

# DEVON ENERGY CORP/DE

## FORM 8-K12G3

(Registration of Securities of Successor Issuers)

Filed 08/18/99 for the Period Ending 08/17/99

Address	333 W. SHERIDAN AVENUE OKLAHOMA CITY, OK 73102
Telephone	4055528183
CIK	0001090012
Symbol	DVN
SIC Code	1311 - Crude Petroleum and Natural Gas
Fiscal Year	12/31

# DEVON ENERGY CORP/DE

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(Registration of Securities of Successor Issuers)

Filed 8/18/1999 For Period Ending 8/17/1999

Address	20 N BROADWAY STE 1500 OKLAHOMA CITY, Oklahoma 73102
Telephone	405-235-3611
CIK	0001090012
Industry	Oil & Gas Operations
Sector	Energy
Fiscal Year	12/31

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) August 17, 1999

## DEVON ENERGY CORPORATION

(Exact Name of registrant as Specified in its Charter)

Delaware	*	73-1567067
(State or Other Jurisdiction of Incorporation or Organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

**20 NORTH BROADWAY, SUITE 1500, OKLAHOMA CITY, OK 73102**

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (405) 235-3611

A Commission file number is to be issued in connection with this filing. The Commission file number of the registrant's predecessor Devon Energy Corporation, an Oklahoma corporation is 1-10067; the Commission file number of the registrant's predecessor, PennzEnergy Company, a Delaware corporation, is 1-05591.

## **ITEM 2. Acquisition or Disposition of Assets**

On August 17, 1999, Devon Energy Corporation, a Delaware corporation ("Devon"), formerly Devon Delaware Corporation, acquired (i) all of the issued and outstanding shares of common stock of Devon Energy Corporation (Oklahoma), formerly Devon Energy Corporation ("Devon Oklahoma"), and (ii) all of the issued and outstanding shares of common stock of PennzEnergy Company ("PennzEnergy"), each pursuant to an Amended and Restated Agreement and Plan of Merger dated as of May 19, 1999 (the "Merger Agreement"). The PennzEnergy and the Devon Oklahoma shares were acquired in exchange for shares of Devon common stock. Devon Oklahoma is now a wholly-owned subsidiary of Devon. PennzEnergy was merged with and into Devon.

The merger was originally announced on May 20, 1999. Shareholders of Devon and PennzEnergy approved the merger at special meetings of shareholders on August 17, 1999. Approximately 99 percent of Devon shares voted were in favor of the merger. Approximately 92 percent of PennzEnergy shares voted were in favor of the merger. A copy of the press release announcing this event is filed herewith as an exhibit.

The terms of the Merger Agreement were described in the Joint Proxy Statement/Prospectus of Devon Oklahoma and PennzEnergy dated July 15, 1999, which was included in Devon's Registration Statement on Form S-4 (File No. 333-82903). A press release announcing the approval of the Merger Agreement by the stockholders of each of Devon Oklahoma and PennzEnergy was issued on August 17, 1999, and the information contained therein is incorporated herein by reference to Exhibit 99.1 to Devon Oklahoma's Current Report on Form 8-K filed August 17, 1999.

Devon is the successor issuer to Devon Oklahoma and PennzEnergy under Rule 12g-3(c) of the Securities Exchange Act of 1934 (the "Act"). Pursuant to Rule 12g-3(f) of the Act, Devon, as the successor to Devon Oklahoma and PennzEnergy, is deemed to have its Common Stock, par value \$0.10 per share, registered pursuant to Section 12(b) of the Act.

## **ITEM 7. Financial Statements and Exhibits**

### **(a) Financial Statements of the Business Acquired**

The financial statements of PennzEnergy are hereby incorporated by reference to the Annual Report of PennzEnergy Company on Form 10-K for the year ended December 31, 1998, and the Quarterly Report of PennzEnergy Company on Form 10-Q for the quarterly period ended June 30, 1999.

### **(b) Pro Forma Financial Information**

The pro forma financial information related to the consummation of the Merger is hereby incorporated by reference to the Registration Statement on Form S-4 of Devon Delaware Corporation, filed with the Securities and Exchange Commission (File No. 333-82903).

### **(c) Exhibits**

2 Amended and Restated Agreement and Plan of Merger among the Registrant, Devon Oklahoma, Devon Oklahoma Corporation and PennzEnergy dated as of May 19, 1999 (incorporated by reference to Exhibit 2.1 to Registrant's Registration Statement on Form S-4 (File No. 333-82903)).

- 3 Registrant's Restated Certificate of Incorporation.
- 4.1 Form of Common Stock Certificate.
- 4.2 Rights Agreement between Registrant and BankBoston, N.A.
- 4.3 Certificate of Designations of Series A Junior Participating Preferred Stock of Registrant.
- 4.4 Certificate of Designations of the 6.49% Cumulative Preferred Stock, Series A of Registrant.
- 4.5 Amending Support Agreement, dated August 17, 1999, between the Registrant and Northstar Energy Corporation.
- 4.6 Second Supplemental Indenture dated as of August 17, 1999, among the Registrant, Devon Energy Corporation (Oklahoma) and The Bank of New York as Trustee.
- 4.7 Fifth Supplemental Indenture dated as of August 17, 1999, among Registrant (as successor by Merger to PennzEnergy) and Chase Bank of Texas, National Association as Trustee.
- 4.8 First Supplemental Indenture dated as of August 17, 1999, among Registrant (as successor by Merger to PennzEnergy) and Chase Bank of Texas, National Association as Trustee.
- 4.9 Description of Capital Stock of Devon Energy Corporation.
- 9 Amending Voting and Exchange Agreement, dated August 17, 1999, between Registrant, Northstar Energy Corporation and CIB Mellon Trust Company.
- 99 Press release dated August 17, 1999.

**SIGNATURES**

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

**DEVON ENERGY CORPORATION**

*Date:*        *August 18, 1999*

*By: /s/ Marian J. Moon*

-----  
*Marian J. Moon*

*Corporate Secretary*

**EXHIBIT 3**

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**DEVON DELAWARE CORPORATION**

**ARTICLE I**

**Name**

The name of this corporation (the "Corporation") is Devon Energy Corporation.

**ARTICLE II**

**Registered Office**

The address of the registered office of the Corporation in the State of Delaware is at 1209 Orange Street, in the City of Wilmington, County of New Castle, and the name of its registered agent at that address is The Corporation Trust Company.

**ARTICLE III**

**Business**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

**ARTICLE IV**

**Authorized Capital Stock**

A. The Corporation shall be authorized to issue a total of 404,500,001 shares of capital stock divided into classes as follows:

- (1) 400,000,000 shares of Common Stock, par value \$0.10 per share ("Common Stock"),
- (2) 4,500,000 shares of Preferred Stock, par value \$1.00 per share ("Preferred Stock"), and
- (3) one share of Special Voting Stock, par value \$.10 per share.

B. Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors of the Corporation (the "Board"), each of said series to be distinctly designated. The voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, if any, of each such series may differ from those of any and all other series of Preferred Stock at any time outstanding, and the Board is hereby expressly granted authority to fix or alter, by resolution or resolutions, the designation, number, voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, of each such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock that shall constitute, such series, which number (except where otherwise provided by the Board in the resolution establishing such series) may be increased or decreased (but not below the number of shares of such series then outstanding) from time to time by action of the Board;
- (2) The rights in respect of dividends, if any, of such series of Preferred Stock, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes or any other series of the same or other class or classes of capital stock of the Corporation, and whether or in what circumstances such dividends shall be cumulative;
- (3) The right, if any, of the holders of such series of Preferred Stock to convert the same into, or exchange the same for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock or other securities of the Corporation or any other person, and the terms and conditions of such conversion or exchange;
- (4) Whether or not shares of such series of Preferred Stock shall be subject to redemption, and, if so, the terms and conditions of such redemption (including whether such redemption shall be optional or mandatory), including the date or dates or event or events upon or after which they shall be redeemable, and the amount and type of consideration payable upon redemption, which may vary under different conditions and at different redemption dates;
- (5) The rights, if any, of the holders of such series of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation or in the event of any merger or consolidation of or sale of assets by the Corporation;
- (6) The terms of any sinking fund or redemption or purchase account, if any, to be provided for shares of such series of the Preferred Stock;
- (7) The voting powers, if any, of the holders of any series of Preferred Stock generally or with respect to any particular matter, which may be less than, equal to or

greater than one vote per share, and which may, without limiting the generality of the foregoing, include the right, voting as a series by itself or together with the holders of any other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation generally or under such specific circumstances and on such conditions, as shall be provided in the resolution or resolutions of the Board adopted pursuant hereto, including, without limitation, in the event there shall have been a default in the payment of dividends on or redemption of any one or more series of Preferred Stock; and

(8) Any other powers, preferences and relative, participating, optional or other rights, and qualifications, limitations or restrictions of shares of such series of Preferred Stock.

C. (1) After the provisions with respect to preferential dividends on any series of Preferred Stock (fixed in accordance with the provisions of Paragraph B of this Article IV), if any, shall have been satisfied and after the Corporation shall have complied with all the requirements, if any, with respect to redemption of, or the setting aside of sums as sinking funds or redemption or purchase accounts with respect to, any series of Preferred Stock (fixed in accordance with the provisions of Paragraph B of this Article IV), and subject further to any other conditions that may be fixed in accordance with the provisions of Paragraph B of this Article IV, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board.

(2) In the event of the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any (fixed in accordance with the provisions of Paragraph B of this Article IV), to be distributed to the holders of Preferred Stock by reason thereof, the holders of Common Stock shall, subject to the additional rights, if any (fixed in accordance with the provisions of Paragraph B of this Article IV), of the holders of any outstanding shares of Preferred Stock, be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law, and subject to the provisions of such resolution or resolutions as may be adopted by the Board pursuant to Paragraph B of this Article IV granting the holders of one or more series of Preferred Stock exclusive voting powers with respect to any matter, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(4) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the combined voting power of the then-outstanding shares of Voting Stock, voting together as a single class.



D. Each outstanding share of Special Voting Stock shall be entitled, on all matters presented to the stockholders of the Corporation, to that number of votes equal to the number of Exchangeable Shares of Northstar Energy Corporation, an Alberta corporation, outstanding from time to time not owned by the Corporation or any of its wholly owned subsidiaries. No dividend or distribution of assets shall be paid to the holders of Special Voting Stock. The Special Voting Stock is not convertible into any other class or series of the capital stock of the Corporation or into cash, property or other rights, and may not be redeemed. Any shares of Special Voting Stock purchased or otherwise acquired by the Corporation shall be deemed retired and shall be canceled and may not thereafter be reissued or otherwise disposed of by the Corporation. At such time as the Special Voting Stock has no votes attached to it because there are no Exchangeable Shares outstanding, the Special Voting Stock shall be canceled. In respect of all matters concerning the voting of shares, the Common Stock and the Special Voting Stock shall vote as a single class and such voting rights shall be identical in all respects.

E. No stockholder of the Corporation shall by reason of his holding shares of any class or series of stock of the Corporation have any preemptive or preferential right to purchase, acquire, subscribe for or otherwise receive any additional, unissued or treasury shares (whether now or hereafter acquired) of any class or series of stock of the Corporation now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying any right, option or warrant to purchase, acquire, subscribe for or otherwise receive shares of any class or series of stock of the Corporation now or hereafter to be authorized, whether or not the issuance of any such shares, or such notes, debentures, bonds or other securities, would adversely affect the dividends or voting or other rights of such stockholder, and the Board may issue or authorize the issuance of shares of any class or series of stock of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying rights, options or warrants to purchase, acquire, subscribe for or otherwise receive shares of any class or series of stock of the Corporation, without offering any such shares of any such class, either in whole or in part, to the existing stockholders of any class.

F. Cumulative voting of shares of any class or series of capital stock of the Corporation having voting rights is not permitted.

G. The holders of Convertible Debentures (as hereinafter defined) shall have the right to convert such Convertible Debentures into Common Stock, subject to the terms of the Indenture (as hereinafter defined). Indenture means the Indenture, dated as of July 3, 1996, between Devon Energy Corporation and The Bank of New York, as the same may be supplemented or amended from time to time. "Convertible Debentures" has the meaning assigned to such term in the First Supplemental Indenture, dated as of July 3, 1999, between Devon Energy Corporation and the Bank of New York.

The Corporation shall make any further conversion adjustments as may be required from time to time by the Indenture and the Supplemental Indenture.

## ARTICLE V

### Election of Directors

A. The business and affairs of the Corporation shall be conducted and managed by, or under the direction of, the Board. The number of directors which shall constitute the entire Board shall not be less than three nor more than twenty, and, except as provided in Paragraph D of this Article V, shall be determined by resolution adopted by a majority of the entire Board. No reduction in number shall have the effect of removing any director prior to the expiration of his or her term.

B. The Board, other than those directors elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV, shall be divided into three classes, Class I, Class II and Class III, and the Board shall designate the directors who shall first serve in Class I, Class II and Class III. Such classes shall be as nearly equal in number as possible; provided, however, the Board of Directors at the time of filing the Certificate of Merger pursuant to the Amended and Restated Agreement and Plan of Merger, dated May 19, 1999, among the Corporation, Devon Energy Corporation, an Oklahoma corporation, Devon Oklahoma Corporation, an Oklahoma corporation, and PennzEnergy Company, a Delaware corporation, shall have four directors in Class I, four directors in Class II and six directors in Class III. Each director shall serve for a term ending on the third annual meeting following the annual meeting at which such director was elected; provided, however, that the directors first designated to Class I shall serve for a term expiring at the annual meeting next following the date of their designation as Class I Directors, the directors first designated to Class II shall serve for a term expiring at the second annual meeting next following the date of their designation as Class II Directors, and the directors first designated to Class III shall serve for a term expiring at the third annual meeting next following the date of their designation as Class III Directors. At each annual election of directors, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors of the Corporation they succeed, unless the Board of Directors shall designate one or more directorships whose term then expires as directorships of another class in order more nearly to achieve equality of number of directors among the classes. In the event of any change in the authorized number of Directors of the Corporation, each Director of the Corporation then continuing to serve as such shall nevertheless continue as a Director of the class of which he is a member until the expiration of his current term, or his prior death, resignation or removal.

C. Except as otherwise provided for or fixed pursuant to the provisions of Article IV relating to the rights of the holders of any series of Preferred Stock to elect additional directors, except as provided in Paragraph D of this Article V, and subject to the provisions hereof, newly created directorships resulting from any increase in the authorized number of directors, and any vacancies on the Board resulting from death, resignation, disqualification, removal, or other cause, may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board. Any director elected in accordance with the preceding sentence or Paragraph D of this Article V shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or

in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided pursuant to Article IV of this Certificate of Incorporation relating to additional directors elected by the holders of one or more series of Preferred Stock, no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

D. There shall be a "Balance Period" during which the number of directors constituting the whole Board shall at all times be an even number and vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled, and nominations by the Board shall be made, as follows:

(a) Any vacancy on the Board resulting from the death, resignation, disqualification or removal of a Continuing Director (hereinafter defined) shall be filled only by the affirmative vote of a majority of the remaining Continuing Directors then in office. Nominations of the Board to fill the positions of Continuing Directors whose terms are about to expire shall likewise be made by the affirmative vote of a majority of the Continuing Directors then in office.

(b) Any vacancy on the Board resulting from the death, resignation, disqualification or removal of a New Director (hereinafter defined) shall be filled only by the affirmative vote of a majority of the remaining New Directors then in office. Nominations of the Board to fill the positions of New Directors whose terms are about to expire shall likewise be made by the affirmative vote of a majority of the New Directors then in office. Notwithstanding the foregoing provisions of this paragraph (b), throughout the Balance Period at least one New Director shall be a person who shall have been mutually approved (prior to his or her initial election to the Board) by the Chairman and the President of the Corporation.

(c) Any newly created directorship or directorships resulting from an increase in the authorized number of directors shall be allocated so that the aggregate number of board positions to be filled by Continuing Directors shall be equal to the number of Board positions to be filled by New Directors. Such newly created directorships to be filled by Continuing Directors shall be filled, or nominations therefor made, in the same manner as is provided in paragraph (a) above and such newly created directorships to be filled, or nominations therefor made, by New Directors shall be filled in the same manner as is provided in paragraph (b) above.

The number of directors which shall constitute the entire Board shall be expanded if necessary to comply with the foregoing provision of this Section D.

The Balance Period shall begin on the date this Amended and Restated Certificate of Incorporation becomes effective and shall end on the annual meeting of the stockholders in the year 2000.

"Continuing Director" shall mean a director who was a director of Devon Energy Corporation, an Oklahoma corporation, immediately prior to the Closing under the Amended and Restated Agreement and Plan of Merger by and among the Corporation, Devon Energy Corporation, Devon Oklahoma Corporation and PennzEnergy Company dated as of May 19, 1999, or who subsequently became a director as a result of the filing of a newly created directorship or vacancy by the Continuing Directors as aforesaid or as a result of his or her election as a director having been nominated by the Continuing Directors as herein provided. "New Director" shall mean any director other than a Continuing Director.

E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV, then upon commencement and for the duration of the period during which such right continues (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total and authorized number of directors of the Corporation shall be reduced accordingly.

## **ARTICLE VI**

### **Meetings of Stockholders**

A. Meetings of stockholders of the Corporation may be held within or without the State of Delaware, as the By-laws of the Corporation may provide. Except as otherwise provided for or fixed pursuant to the provisions of Article IV relating to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only (i) pursuant to a resolution adopted by a majority of the then-authorized number of directors of the Corporation and (ii) if permitted by the By-laws of the Corporation, by the Chairman of the Board or the President of the Corporation as and in the manner provided in the By-laws of the Corporation. Special meetings of stockholders may not be called by any other person or persons or in any other manner. The ability of the stockholders of the Corporation to call a special meeting of stockholders is hereby specifically denied. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

B. In addition to the powers conferred on the Board by this Certificate of Incorporation and by the General Corporation Law, and without limiting the generality thereof, the Board is specifically authorized from time to time, by resolution of the Board without additional authorization by the stockholders of the Corporation, to adopt, amend or repeal the By-laws of the Corporation, in such form and with such terms as the Board may determine, including, without limiting the generality of the foregoing, By-laws relating to (i) regulation of the procedure for submission by stockholders of nominations of persons to be elected to the Board, (ii) regulation of the attendance at annual or special meetings of the stockholders of persons other than holders of record or their proxies, and (iii) regulation of the business that may properly be brought by a stockholder of the Corporation before an annual or special meeting of stockholders of the Corporation.

## **ARTICLE VII**

### **Stockholder Consent**

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and the ability of the stockholders of the Corporation to consent in writing to the taking of any action is hereby specifically denied.

## **ARTICLE VIII**

### **Limitation of Liability**

A director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended. Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

## **ARTICLE IX**

### **Executive Committee**

The Board, pursuant to the By-laws of the Corporation or by resolution passed by a majority of the then-authorized number of directors, may designate any of their number to constitute an Executive Committee, which Executive Committee, to the fullest extent permitted by law and provided for in said resolution or in the By-laws of the Corporation, shall have and may exercise all of the powers of the Board in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers that may require it.

## ARTICLE X

### Indemnification

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

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

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

D. The Corporation may purchase (upon resolution duly adopted by the board of directors) and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability.

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

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

## **ARTICLE XI**

### **Amendment Of Corporate Documents**

#### **A. Certificate of Incorporation**

In addition to any affirmative vote required by applicable law and in addition to any vote of the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV, any alteration, amendment, repeal or rescission (a "Change") of any provision of this Certificate of Incorporation must be approved by at least a majority of the then-authorized number of directors and by the affirmative vote of the holders of at least a majority of the combined voting power of the then-outstanding shares of Voting Stock, voting together as a single class; provided, however, that if any such Change relates to Article V, VI, VII, VIII, X or XII hereof or to this Article XI, such Change must also be approved by the affirmative vote of the holders of at least 66 2/3% of the combined voting power of the then- outstanding shares of Voting Stock, voting together as a single class. Subject to the provisions hereof, the Corporation reserves the right at any time, and from time to time, to amend, alter, repeal or rescind any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon

stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

## B. By-Laws

In addition to any affirmative vote required by law, any Change of the By-laws of the Corporation may be adopted either (i) by the Board by the affirmative vote of at least a majority of the then-authorized number of directors or (ii) by the stockholders by the affirmative vote of the holders of at least 66 2/3% of the combined voting power of the then-outstanding shares of Voting Stock, voting together as a single class.

## **ARTICLE XII**

### **Definitions**

For the purposes of this Certificate of Incorporation:

A. A "person" shall mean any individual, firm, corporation, partnership, limited liability company, trust, unincorporated organization or other entity.

B. "Voting Stock" means all outstanding shares of capital stock of the Corporation that pursuant to or in accordance with this Certificate of Incorporation are entitled to vote generally in the election of directors of the Corporation, and each reference herein, where appropriate, to a percentage or portion of shares of Voting Stock shall refer to such percentage or portion of the voting power of such shares entitled to vote.

**[SIGNATURE PAGE TO FOLLOW]**



IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates and integrates and does further amend the provisions of the Certificate of Incorporation of the Corporation, and which has been duly adopted in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law, has been executed by an authorized officer of the Corporation on this 17th day of August, 1999.

**DEVON DELAWARE CORPORATION**

*/s/ J. Larry Nichols*  
By: \_\_\_\_\_

**[SIGNATURE PAGE OF RESTATED CERTIFICATE OF INCORPORATION]**

COMMON STOCK  
\$.10 PAR VALUE

COMMON STOCK  
\$.10 PAR VALUE

INCORPORATED UNDER THE LAWS  
OF THE STATE OF DELAWARE

CUSIP 25179M 10 3

THIS CERTIFICATE IS TRANSFERABLE IN  
BOSTON, MASS. AND NEW YORK, N.Y.

SEE REVERSE FOR CERTAIN  
DEFINITIONS

**DEVON ENERGY CORPORATION**

**THIS CERTIFIES THAT**

**IS THE RECORD HOLDER OF**

**FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF**

Devon Energy Corporation (hereinafter called the "Corporation") transferable on the books of the Corporation, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby are issued and shall be subject to all of the provisions of the Certificate of Incorporation of the Corporation and of the amendments thereto, to all of which the holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

*Dated:*

*/s/ J. Larry Nichols*

-----  
*President*

*/s/ Marian J. Moon*

-----  
*Secretary*

**CORPORATE  
SEAL**

**DEVON ENERGY CORPORATION  
DELAWARE**

**COUNTERSIGNED AND REGISTERED BY:  
BANKBOSTON, N.A.  
as Transfer Agent and Registrar**

*By: /s/ M. Dinger*

-----  
*Authorized Signature*

**DEVON ENERGY CORPORATION**

The Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Such request may be made to the Corporation or the transfer agent.

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in a Rights Agreement between Devon Energy Corporation and BankBoston, N.A. dated as of August 17, 1999 (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of Devon Energy Corporation. Under certain circumstances, as set forth in the Rights Agreement, such Rights may be redeemed, may expire, or may be evidenced by separate certificates and no longer be evidenced by this certificate. Devon Energy Corporation will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge after receipt of a written request therefor. Under certain circumstances set forth in the Rights Agreement, Rights issued to, or held by, any Person who is, was or becomes an Acquiring Person or any Affiliate or Associate thereof (as defined in the Rights Agreement), whether currently held by or on behalf of such Person or by any subsequent holder, may become null and void.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants in common  
TEN ENT -- as tenants by the entireties JT TEN -- as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT -- \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
Under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

For value received, hereby sell, assign and transfer unto

**PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

\_\_\_\_\_  
\_\_\_\_\_  
**PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING ZIP CODE OF ASSIGNEE**  
\_\_\_\_\_  
\_\_\_\_\_

**Shares**

\_\_\_\_\_  
of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint  
Attorney

\_\_\_\_\_  
to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated,

**X**  
(SIGNATURE)

**NOTICE:**

**THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.**

**X**

(SIGNATURE)

**THE SIGNATURE(S) MUST BE GUARANTEED BY AN  
ELIGIBLE GUARANTOR INSTITUTION AS DEFINED  
IN RULE 17Ad-15 UNDER THE SECURITIES  
EXCHANGE ACT OF 1934, AS AMENDED.  
SIGNATURE(S) GUARANTEED BY:**

**EXHIBIT 4.6**

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**SECOND SUPPLEMENTAL INDENTURE**

among

**Devon Energy Corporation**

**Devon Energy Corporation (Oklahoma)**

and

The Bank of New York  
as Trustee

**Dated as of August 17, 1999**

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SECOND SUPPLEMENTAL INDENTURE, dated as of August \_\_, 1999 (the "Second Supplemental Indenture"), among Devon Energy Corporation (formerly Devon Delaware Corporation), a Delaware corporation (the "New Devon Guarantor"), Devon Energy Corporation (Oklahoma) (formerly Devon Energy Corporation), an Oklahoma corporation and a wholly-owned subsidiary of New Devon Guarantor (the "Company"), and The Bank of New York, as trustee (the "Trustee") under the Indenture dated as of July 3, 1996 between the Company and the Trustee (the "Base Indenture") and the First Supplemental Indenture dated as of July 3, 1996 between the Company and the Trustee (the "First Supplemental Indenture" and together with the Base Indenture and the Second Supplemental Indenture, the "Indenture").

**WITNESSETH**

WHEREAS, the Company and the Trustee have heretofore executed the Base Indenture and the First Supplemental Indenture providing for the issuance of 6 1/2% Convertible Junior Subordinated Debentures (the "Convertible Debentures"), the form and substance of such Convertible Debentures and the terms, provisions and conditions thereof set forth as provided in the Base Indenture and the First Supplemental Indenture;

WHEREAS, Devon Financing Trust, a Delaware statutory business trust (the "Trust"), in July 1996 sold to Morgan Stanley & Co. Incorporated (the "Initial Purchaser") in a private placement, \$149,500,000 of 6 1/2% Trust Convertible Preferred Securities (the "Convertible Preferred Securities"), representing undivided beneficial interests in the assets of the Trust and invested the proceeds from such sale, together with the proceeds of the issuance and sale by the Trust to the Company of \$4,623,750 aggregate liquidation amount of its Common Securities, in \$154,123,750 aggregate principal amount of the Convertible Debentures;

WHEREAS, the Company has heretofore executed and delivered a Preferred Securities Guarantee Agreement and a Common Securities Guarantee Agreement, each dated as of July 3, 1996 (collectively, the "Trust Securities Guarantees"), pursuant to which the Company guaranteed certain obligations of the Trust;

WHEREAS, as a result of the merger of PennzEnergy Company with and into New Devon Guarantor and the merger of Devon Oklahoma Corporation, an Oklahoma corporation, with and into the Company (collectively, the "Merger"), the

Company has continued to survive as a direct wholly owned subsidiary of New Devon Guarantor, and each share of the common stock of the Company was converted into the right to receive one share of New Devon Guarantor's common stock;

WHEREAS, pursuant to Section 6.4 of the First Supplemental Indenture, the Merger constituted a Common Stock Fundamental Change (as defined in the First Supplemental Indenture);

WHEREAS, Section 14.9 of the Base Indenture requires that the Company and New Devon Guarantor, as a result of the Merger, execute a supplemental indenture pursuant to which holders of the Convertible Debentures shall have the right to convert such Convertible Debentures into the kind and amount of shares of common stock of New Devon Guarantor receivable in the Merger by a holder of such number of shares of common stock of the Company into which such Convertible Debentures might have been converted immediately prior to the Merger;

WHEREAS, the New Devon Guarantor is willing to guarantee on a subordinated basis as set forth more fully herein, among other things, the payment of the principal of, premium, if any, and interest on the Convertible Debentures in order to preserve the exemption available under Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act") for the conversion of Convertible Debentures into common stock of the New Devon Guarantor;

WHEREAS, Section 8.1 of the Base Indenture and Section 6.4 of the First Supplemental Indenture permit the Company to merge with another corporation provided certain conditions are satisfied;

WHEREAS, pursuant to Sections 9.1(h) and 9.1(i) of the Base Indenture, the Company, New Devon Guarantor and the Trustee may enter into this Second Supplemental Indenture without consent of the holders of the Convertible Debentures; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Second Supplemental Indenture, and all requirements necessary to make this Second Supplemental Indenture a valid instrument in accordance with its terms have been performed.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the

Company, New Devon Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Convertible Debentures as follows:

## **ARTICLE I**

### **DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

#### Section 1.1 Definition of Terms.

- (a) Capitalized terms used herein without definition shall have the meaning assigned to them in the Indenture.
- (b) The definition of "Common Stock" set forth in Section 1.1 of the Base Indenture is hereby amended by deleting all references therein to "the Company" and inserting in lieu thereof "the New Devon Guarantor," and Section 1.1(h) of the First Supplemental Indenture is hereby amended by deleting "(iii) Common Stock" and inserting in lieu thereof "(iii) [reserved]."
- (c) The definition of "Common Stock Fundamental Change" set forth in Section 1.1 of the First Supplemental Indenture is hereby amended by deleting all references therein to "the Company" and inserting in lieu thereof "the New Devon Guarantor."
- (d) Section 1.1 of the First Supplemental Indenture is hereby amended to add the following definitions:

"New Devon Guarantor" means Devon Energy Corporation (formerly Devon Delaware Corporation), a Delaware corporation, and shall include its successors and assigns.

"Guarantor Senior Indebtedness " means, with respect to the New Devon Guarantor, (i) the principal, premium, if any, and interest in respect of (a) indebtedness of the New Devon Guarantor for money borrowed under any credit agreements, notes, guarantees or similar documents and (b) indebtedness evidenced by securities, debentures, bonds or other similar instruments issued by the New Devon Guarantor; (ii) all capital lease obligations of the New Devon Guarantor; (iii) all obligations of the New Devon Guarantor issued or assumed as the deferred purchase price of property, all conditional sale obligations of the New Devon



Guarantor issued or assumed as the deferred purchase price of property, all conditional sale obligations of the New Devon Guarantor and all obligations of the New Devon Guarantor under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations of the New Devon Guarantor for the reimbursement on any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (v) all obligations of the New Devon Guarantor (contingent or otherwise) with respect to interest rate or other swap, cap or collar agreements, oil or gas commodity hedge transactions or other similar instruments or agreements or foreign currency hedge, exchange, purchase or similar instruments or agreements; (vi) all obligations of the types referred to in clauses (i) through (v) of other Persons for the payment of which the New Devon Guarantor is responsible or liable as obligor, guarantor or otherwise; and (vii) all obligations of the types referred to in clauses (i) through (vi) of other Persons secured by lien on any property or asset of the New Devon Guarantor (whether or not such obligation is assumed by the New Devon Guarantor), whether outstanding on the date of the Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the New Devon Guarantor, except for (A) any such indebtedness that is by its terms subordinated to or pari passu with the New Devon Guaranty, and (B) any indebtedness between or among the New Devon Guarantor or its Affiliates.

"New Devon Guaranty" means the guarantee of the Guarantor pursuant to Section 16.1 hereof.

Section 1.2 Section 5.1 of the Base Indenture is hereby amended by deleting subsection (h) thereof and adding the following new subsections:

(h) the entry by a court having jurisdiction in the premises of decree or order for relief in respect of the New Devon Guarantor in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the New Devon Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(i) the commencement by the New Devon Guarantor of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by it to the entry of a decree

or order for relief in respect of the New Devon Guarantor in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidation, assignee, trustee, sequestrator or similar official of the New Devon Guarantor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors; or

(j) any other Event of Default provided with respect to Debentures of such series.

Section 1.3 The first sentence of Section 5.2 of the Base Indenture is hereby amended by deleting "If an Event of Default described in clause (a), (b), (c), (d), (g) or (h)" and inserting in lieu thereof the following: "If an Event of Default described in clause (a), (b), (c), (d), (g), or (j)". The second sentence of Section 5.2 of the Base Indenture is hereby amended by deleting "(e) or (f)" and inserting in lieu thereof the following: "(e), (f), (h) or (i)".

Section 1.4 The Base Indenture is hereby amended to add the following provisions as a new Section 7.3A to be inserted immediately following Section 7.3 of the Base Indenture:

Section 7.3A Reports by New Devon Guarantor. The New Devon Guarantor shall:

(a) file with the Trustee, within 15 days after the New Devon Guarantor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the New Devon Guarantor may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the New Devon Guarantor is not required to file information, documents or reports pursuant to either of such Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in

respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports required to be filed with respect to compliance by the New Devon Guarantor with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit to all Holders, in the manner and to the extent provided in Trust Indenture Act Section 313(c) within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the New Devon Guarantor pursuant to paragraphs

(a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute notice of any information contained therein or determinable from information contained therein, including the New Devon Guarantor's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

## **ARTICLE II**

### **CONVERSION OF DEBENTURES**

Section 2.1 Article XIV of the Base Indenture is hereby amended by deleting Section 14.6, 14.7 and 14.8 and inserting in lieu thereof the following:

"Section 14.6 Reservation of Shares of Common Stock. The New Devon Guarantor shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock or treasury shares, for the purpose of effecting the conversion of Debentures, the full number of shares of Common Stock of the New Devon Guarantor then issuable upon the conversion of all outstanding Debentures of any series that has conversion rights.

Section 14.7 Payment of Certain Taxes upon Conversion. The New Devon Guarantor will pay any and all taxes that may be payable in respect of the issue or delivery of shares of its Common Stock on conversion of Debentures

pursuant hereto. The New Devon Guarantor shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of its Common Stock in a name other than that of the Holder of the Debentures or Debentures to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the New Devon Guarantor the amount of any such tax, or has established, to the satisfaction of the New Devon Guarantor, that such tax has been paid.

Section 14.8 Nonassessability. The New Devon Guarantor covenants that all shares of Common Stock which may be issued upon conversion of Debentures will upon issue in accordance with the terms hereof be duly and validly issued and fully paid and nonassessable."

Section 2.2 Section 1.16 of the Base Indenture is hereby amended by deleting all references to "the Company" and inserting in lieu thereof " the Company or the New Devon Guarantor" and by adding at the end of the first paragraph thereof after the word "Debentures" the following: "provided, however, that the foregoing shall not affect or impair the obligations of the New Devon Guarantor hereunder."

Section 2.3 Section 6.1 of the First Supplemental Indenture is hereby amended by deleting all references to "the Company" and inserting in lieu thereof "the New Devon Guarantor."

Section 2.4 Section 6.2(a) of the First Supplemental Indenture is hereby amended by deleting all references to "the Company" and inserting in lieu thereof "the New Devon Guarantor."

Section 2.5 Section 6.2(b) of the First Supplemental Indenture is hereby amended by deleting the first reference to "the Company" and inserting in lieu thereof "the New Devon Guarantor."

Section 2.6 Section 6.2(c) of the First Supplemental Indenture is hereby amended by deleting the reference to "the Company" and inserting in lieu thereof "the New Devon Guarantor."

Section 2.7 Sections 6.3, 6.4, 6.5, 6.6, 6.7 and 6.8 of the First Supplemental Indenture are hereby amended by deleting all references to "the Company" and inserting in lieu thereof "the New Devon Guarantor."

Section 2.8 The thirteenth paragraph of the [Form of Reverse of Debenture] of Section 7.1 of the First Supplemental Indenture is hereby amended by deleting the reference to "the Company" and inserting in lieu thereof "the Company or the New Devon Guarantor", and by adding at the end of such thirteenth paragraph in the [Form of Reverse of Debenture] after the word "released" the following: "; provided, however, that the foregoing shall not affect or impair the obligations of the New Devon Guarantor hereunder."

Section 2.9 The Company and the New Devon Guarantor confirm and agree that, in accordance with the proviso to Section 6.4(c)(ii) of the First Supplemental Indenture, the Conversion Price in effect immediately prior to the Merger shall be the Conversion Price in effect immediately after the Merger and thereafter unless and until adjusted in accordance with the Indenture.

### **ARTICLE III**

Section 3.1 The New Devon Guarantor hereby covenants and warrants that (a) immediately after the effective time of the Merger (the "Effective Time"), no condition or event shall exist which constitutes or would, after notice or lapse of time or both, constitute an Event of Default (as defined in the Indenture), (b) it has complied, or has caused the Company to comply, and will comply, or will cause the Company to comply, with all applicable provisions of Article X of the Indenture and (c) it has been authorized by its Board of Directors, pursuant to Section 9.1 of the Base Indenture, to execute this Second Supplemental Indenture.

### **ARTICLE IV**

Section 4.1 Guaranty of Debentures. The Indenture is hereby amended to add the following provisions as a new Article XVI to be inserted immediately following Article XV of the Indenture. Article XVI shall apply to the Convertible Debentures only.

## ARTICLE XVI

### SUBORDINATED GUARANTY OF CONVERTIBLE DEBENTURES

Section 16.1 New Devon Guaranty. Subject to the provisions of this Article XVI, the New Devon Guarantor hereby unconditionally guarantees, on a subordinated basis as set forth more fully in this Article XVI, to each holder of a Convertible Debenture authenticated and delivered by the Trustee in accordance with the Indenture (i) the due and punctual payment of the principal of, premium, if any, and interest (including interest on other amounts which may accrue after the filing against the Company of a petition under the United States Bankruptcy Code (the "Bankruptcy Code"), whether or not the obligation to pay interest on such amounts shall be enforceable against the Company) on such Convertible Debenture, when and as the same shall become due and payable, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal of, premium and interest, if any, on such Convertible Debenture, to the extent lawful, and the due and punctual performance of all obligations of the Company under the Securities Guarantees and all other obligations of the Company to the holders or the Trustee all in accordance with the terms of such Convertible Debenture and of this Indenture, and (ii) in the case of any extension of time of payment or renewal of any such Convertible Debenture or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, at stated maturity, by acceleration or otherwise. A demand for payment under this Article XVI shall not be effective prior to 48 hours after a demand upon the Company for full and complete payment of all amounts due and payable under the Convertible Debentures, unless such demand upon the Company shall be stayed by operation of Section 362 of the Bankruptcy Code or otherwise. In all other respects, the New Devon Guarantor hereby agrees that its obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of any such Convertible Debenture or this Indenture, any failure to enforce the provisions of any such Convertible Debenture or this Indenture, any waiver, modification or indulgence granted to the Company with respect thereto, by the holder of such Convertible Debenture or the Trustee, or any other circumstances which may otherwise constitute a legal or equitable discharge of a surety or New Devon Guarantor. The New Devon Guarantor hereby waives diligence, presentment, filing of claims with a court in the event of merger or bankruptcy of the Company, any right to require a proceeding first against the Company, the benefit of discussion, protest or notice with respect to any such Convertible Debenture or the debt evidenced thereby and all demands whatsoever (except as specified above), and covenants, that this New Devon Guaranty

will not be discharged as to any such Convertible Debenture except by payment in full of the principal thereof, premium if any, and interest thereon. The New Devon Guarantor further agrees that, as between the New Devon Guarantor, on the one hand, and the Convertible Debenture holder and the Trustee, on the other hand, (i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five hereof for the purposes of this New Devon Guaranty notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, provided that notice of such acceleration has been given to the New Devon Guarantor by the Trustee, and (ii) in the event of any declarations of acceleration of such obligations as provided in Article Five hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the New Devon Guarantor for the purpose of this New Devon Guaranty. The New Devon Guarantor shall be subrogated to all rights of the holders of any Convertible Debentures against the Company in respect of any amounts paid to the Convertible Debenture holder by the New Devon Guarantor pursuant to the provisions of this New Devon Guaranty; provided that the New Devon Guarantor shall not be entitled to enforce, or to receive any payments arising out of or based upon, such right of subrogation until the principal of, premium, if any, and interest on all the Convertible Debentures shall have been paid in full and until all amounts payable under any Senior Indebtedness shall have been paid in full.

Section 16.2 New Devon Guaranty Subordinate to Guarantor Senior Indebtedness. The New Devon Guarantor covenants and agrees, and each Holder of a Convertible Debenture, by the Holder's acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the obligations of the New Devon Guarantor under the New Devon Guaranty (the "Guarantor Obligations") are hereby expressly made subordinate and junior in right of payment to the prior payment in full of all Guarantor Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred. No provision of this Article shall prevent the occurrence of any default or Event of Default hereunder.

Section 16.3 Payment Over of Proceeds Upon Dissolution, Etc. Upon any payment by the New Devon Guarantor or distribution of assets of the New Devon Guarantor of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the New Devon Guarantor, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Guarantor Senior Indebtedness shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the New Devon Guarantor

on the Guarantor Obligations; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the New Devon Guarantor, or distribution of assets of the New Devon Guarantor of any kind or character, whether in cash, property or securities, to which the Holders of the Convertible Debentures or the Trustee would be entitled to receive from the New Devon Guarantor, except for the provisions of this Article, shall be paid by the New Devon Guarantor or by any receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, or by the Holders of the Convertible Debentures or by the Trustee under the Indenture if received by them or it, directly to the holders of Guarantor Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Guarantor Senior Indebtedness held by such holders, as calculated by the New Devon Guarantor) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Guarantor Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Guarantor Senior Indebtedness, before any payment or distribution is made to the Holders of the Convertible Debentures or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the New Devon Guarantor of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee before all Guarantor Senior Indebtedness is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Guarantor Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the New Devon Guarantor, for application to the payment of all Guarantor Senior Indebtedness, as the case may be, remaining unpaid to the extent necessary to pay such Guarantor Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Guarantor Senior Indebtedness.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the New Devon Guarantor as reorganized or readjusted, or securities of the New Devon Guarantor or any other corporation provided for by a plan of reorganization or readjustment which are



subordinated in right of payment to all Guarantor Senior Indebtedness which may at the time be outstanding to substantially the same extent as, or to a greater extent than, the New Devon Guaranty is so subordinated as provided in this Article. The consolidation of the New Devon Guarantor with, or the merger of the New Devon Guarantor into, another Person or the liquidation or dissolution of the New Devon Guarantor following the conveyance or transfer of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article XVII shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the New Devon Guarantor for the purposes of this Section if the Person formed by such consolidation or into which the New Devon Guarantor is merged or the Person which acquires by conveyance or transfer such properties and assets substantially as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the condition set forth in Article XVII.

**Section 16.4 Prior Payment to Guarantor Senior Indebtedness Upon Acceleration of Convertible Debentures.** In the event that any Convertible Debentures are declared due and payable before their Stated Maturity, then and in such event the holders of Guarantor Senior Indebtedness shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Guarantor Senior Indebtedness or provision shall be made for such payment in cash, before the Holders of the Convertible Debentures are entitled to receive any payment (including any payment which may be payable by reason of the payment of any other indebtedness of the New Devon Guarantor being subordinated to the Guarantor Obligations) by the New Devon Guarantor under the Guarantor Obligations or on account of the purchase or other acquisition of Convertible Debentures.

In the event that, notwithstanding the foregoing, the New Devon Guarantor shall make any payment to the Trustee or the Holder of any Convertible Debenture prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the New Devon Guarantor.

The provisions of this Section shall not apply to any payment with respect to which Section 14.2 would be applicable.

**Section 16.5 No Payment When Guarantor Senior Indebtedness in Default.** In the event and during the continuation of any default by the New Devon Guarantor in the payment of principal, premium, interest or any other payment due

on any Guarantor Senior Indebtedness, as the case may be, beyond any applicable grace period with respect thereto, or in the event that the maturity of any Guarantor Senior Indebtedness, as the case may be, has been accelerated because of a default, then, in any such case, no payment shall be made by the New Devon Guarantor with respect to the Guarantor Obligations until such default is cured or waived or ceases to exist or any such acceleration or demand for payment has been rescinded.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 16.5 such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Guarantor Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Guarantor Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that the holders of the Guarantor Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Guarantor Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of Guarantor Senior Indebtedness.

Section 16.6 Payment Permitted in Certain Situations. Nothing contained in this Article or elsewhere in this Indenture or in any of the Convertible Debentures shall prevent (a) the New Devon Guarantor, at any time except during the pendency of any dissolution, winding-up, liquidation or reorganization of the New Devon Guarantor, whether voluntary or involuntary or any bankruptcy, insolvency, receivership or other proceedings of the New Devon Guarantor referred to in Section 16.3 or under the conditions described in Section 16.4 or 16.5, from making payments at any time of principal of or premium, if any, or interest on the Convertible Debentures, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of, or premium, if any, or interest on the Convertible Debenture or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

Section 16.7 Subrogation to Rights of Holders of Guarantor Senior Indebtedness. Subject to the payment in full of all Guarantor Senior Indebtedness or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Guarantor Senior Indebtedness, the rights of the Holders of Convertible Debentures shall be subrogated to the extent of the payments or distributions made to the holders of such Guarantor Senior Indebtedness pursuant to the provisions of this Article (equally and ratably with the holders of indebtedness of

the New Devon Guarantor which by its express terms is subordinated to indebtedness of the New Devon Guarantor to substantially the same extent as the Guarantor Obligations are subordinated to the Guarantor Senior Indebtedness and is entitled to like rights of subrogation) to the rights of the holders of such Guarantor Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Guarantor Senior Indebtedness until the principal of (and premium, if any) and interest on the Convertible Debentures shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Guarantor Senior Indebtedness of any cash, property or securities to which the Holders of Convertible Debentures or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to or for the benefit of the holders of Guarantor Senior Indebtedness by Holders of Convertible Debentures or the Trustee, shall, as among the New Devon Guarantor, its creditors other than holders of Guarantor Senior Indebtedness and the Holders of Convertible Debentures, be deemed to be payment or distribution by the New Devon Guarantor to or on account of the Guarantor Senior Indebtedness.

**Section 16.8 Provisions Solely to Define Relative Rights.** The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of Convertible Debentures on the one hand and the holders of Guarantor Senior Indebtedness on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Convertible Debentures is intended to or shall (a) impair, as among the New Devon Guarantor, its creditors other than holders of Guarantor Senior Indebtedness and the Holders of Convertible Debentures, the obligation of the New Devon Guarantor, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Guarantor Senior Indebtedness, is intended to rank equally with all other general obligations of the New Devon Guarantor), to pay to the Holders of Convertible Debentures the Guarantor Obligations as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the New Devon Guarantor of the Holders of Convertible Debentures and creditors of the New Devon Guarantor, as the case may be, other than the holders of Guarantor Senior Indebtedness; or (c) prevent the Trustee or the Holder of any Convertible Debenture from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Guarantor Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

**Section 16.9 Trustee to Effectuate Subordination.** Each Holder of a Convertible Debenture by such Holder's acceptance thereof authorizes and directs the

Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Section 16.10 No Waiver of Subordination Provisions. No right of any present or future holder of any Guarantor Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the New Devon Guarantor or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the New Devon Guarantor with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Guarantor Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Convertible Debentures, without incurring responsibility to the Holders of Convertible Debentures and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of Convertible Debentures to the holders of Guarantor Senior Indebtedness do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Guarantor Senior Indebtedness or otherwise amend or supplement in any manner Guarantor Senior Indebtedness or any instrument evidencing the same or any agreement under which Guarantor Senior Indebtedness is outstanding; (b) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Guarantor Senior Indebtedness; (c) release any Person liable in any manner for the collection of Guarantor Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the New Devon Guarantor and any other Person.

Section 16.11 Notice to Trustee. The New Devon Guarantor shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the New Devon Guarantor which would prohibit the making of any payment to or by the Trustee in respect of the Guarantor Obligations pursuant to the provisions of this Article. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Guarantor Obligations pursuant to the provisions of this Article, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the New Devon Guarantor or a holder or holders of Guarantor Senior

Indebtedness or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.2, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall have not received the notice provided for in this

Section at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment under the Guarantor Obligations), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

Subject to the provisions of Section 6.2, the Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Guarantor Senior Indebtedness (or a trustee therefor) to establish that such notice has been given by a holder of Guarantor Senior Indebtedness (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Guarantor Senior Indebtedness to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Guarantor Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such person to receive such payment.

Section 16.12 Reliance on Judicial Order or Certificate of Liquidating Agent. Upon any payment or distribution of assets of the New Devon Guarantor referred to in this Article, the Trustee, subject to the provisions of Section 6.2, and the Holders of Convertible Debentures shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Convertible Debentures, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Guarantor Senior Indebtedness and other indebtedness of the New Devon Guarantor, as the case

may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 16.13 Trustee Not Fiduciary for Holders of Guarantor Senior Indebtedness. With respect to the holders of Guarantor Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of such Guarantor Senior Indebtedness shall be read into the Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Guarantor Senior Indebtedness and shall not be liable to any such holders or creditors if it shall in good faith pay over or distribute to Holders of Convertible Debentures or to the New Devon Guarantor or to any other Person cash, property or securities to which any holders of Guarantor Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 16.14 Rights of Trustee as Holder of Guarantor Senior Indebtedness, Preservation of Trustee's Rights. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Guarantor Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Guarantor Senior Indebtedness and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.6.

Section 16.15 Article Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company or the New Devon Guarantor and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 16.14 shall not apply to the New Devon Guarantor or any Affiliate of the New Devon Guarantor if it or such Affiliate acts as Paying Agent.

Section 16.16 Certain Conversions Deemed Payment. For the purposes of this Article only, (a) the issuance and delivery of junior securities (or cash paid in lieu of fractional shares) upon conversion of Convertible Debentures in accordance with Article XIV, or pursuant to the terms set forth in an Officers' Certificate or established in one or more indentures supplemental hereto in accordance

with Section 3.1, shall not be deemed to constitute a payment or distribution on account of the Guarantor Obligations or on account of the purchase or other acquisition of Convertible Debentures, and (b) the payment, issuance or delivery of cash, property or securities (other than junior securities and cash paid in lieu of fractional shares) upon conversion of a Convertible Debenture shall be deemed to constitute payment on account of the principal of such Convertible Debenture. For the purposes of this Section, the term "junior securities" means (i) shares of any stock of any class of the New Devon Guarantor and (ii) securities of the New Devon Guarantor which are subordinated in right of payment to all Guarantor Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Guarantor Obligations are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Convertible Debentures is intended to or shall impair, as among the New Devon Guarantor, its creditors other than holders of Guarantor Senior Indebtedness and the Holders of Convertible Debentures, the right, which is absolute and unconditional, of the Holder of any Convertible Debenture to convert such Convertible Debenture in accordance with Article XIV.

Section 16.17 Execution of Guaranty. To evidence its New Devon Guaranty to the Convertible Debenture Holders specified in Section 16.1, the New Devon Guarantor hereby agrees to execute the New Devon Guaranty in substantially the form above recited to be endorsed on each Convertible Debenture authenticated and delivered by the Trustee after the Effective Time or, in lieu thereof, stamp each such Convertible Debenture with an appropriate notation on such Convertible Debenture. The New Devon Guarantor hereby agrees that its New Devon Guaranty set forth in Section 16.1 shall remain in full force and effect notwithstanding any failure to include such endorsement or notation of such New Devon Guaranty on each Convertible Debenture. If applicable, the New Devon Guaranty shall be signed on behalf of the New Devon Guarantor by its Chairman of the Board, Chief Executive Officer, President or a Vice President, prior to the authentication of the Convertible Debenture on which it is endorsed, and the delivery of such Convertible Debenture by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the New Devon Guaranty on behalf of the New Devon Guarantor. Such signatures upon the New Devon Guaranty may be manual or facsimile signatures of the present, past or any future such officers and may be imprinted or otherwise reproduced on the New Devon Guaranty, and in case any such officer who shall have signed the New Devon Guaranty shall cease to be such officer before the Convertible Debenture on which such New Devon Guaranty is endorsed shall have been authenticated and delivered by the Trustee or disposed of by the Company, such Convertible

Debenture nevertheless may be authenticated and delivered or disposed of as though the person who signed the New Devon Guaranty had not ceased to be such officer of the New Devon Guarantor.

Section 16.18 Termination of Guaranty. The New Devon Guaranty shall terminate upon the date on which there are no Convertible Debentures outstanding under the Indenture.

#### **ARTICLE V**

#### **NEW DEVON GUARANTOR CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

Section 17.1 The Indenture is hereby amended to add the following provisions as a new Article XVII to be inserted immediately following Article XVI of the Indenture.

#### **ARTICLE XVII**

#### **NEW DEVON GUARANTOR CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

Section 17.1 New Devon Guarantor May Consolidate, Etc. on Certain Terms. The New Devon Guarantor shall not merge or consolidate with any other corporation or sell or convey all or substantially all of its assets to any Person, unless (a) either the New Devon Guarantor shall be the continuing corporation, or the successor corporation (if other than the New Devon Guarantor) shall be a corporation organized under the laws of the United States of America or any State thereof and shall expressly assume the Guarantor Obligations, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the New Devon Guarantor, by supplemental indenture satisfactory to the Trustee, executed and delivered to the Trustee by such corporation, and (b) the New Devon Guarantor or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

Section 17.2 Successor Corporation Substituted. In case of any such consolidation, merger, sale or conveyance, and following such an assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the New Devon Guarantor, with the same effect as if it had been named herein. Such successor corporation may cause to be signed, and may issue either in its own



name or in the name of the New Devon Guarantor prior to such succession the New Devon Guaranty to be endorsed upon the Convertible Debentures issuable hereunder which theretofore shall not have been signed by the New Devon Guarantor and delivered to the Trustee; and, upon the order of such successor corporation instead of the New Devon Guarantor and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any securities which previously shall have been signed and delivered by the officers of the New Devon Guarantor, to the Trustee for authentication, and any such endorsement which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose.

In case of any such consolidation, merger, sale or conveyance such changes in phraseology and form (but not in substance) may be made in the Debentures thereafter to be issued as may be appropriate.

In the event of any such sale or conveyance (other than a conveyance by way of lease) the New Devon Guarantor or any successor corporation which shall theretofore have become such in the manner described in this Article shall be discharged from all obligations and covenants under this Indenture and the Convertible Debentures and may be liquidated and dissolved.

Section 17.3 Opinion of Counsel to Trustee. The Trustee may receive an Opinion of Counsel, prepared in accordance with Section 1.2, as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, and any such liquidation or dissolution, complies with the applicable provisions of this Indenture.

## **ARTICLE VI**

### **MISCELLANEOUS**

Section 6.1 This Second Supplemental Indenture shall become effective at the Effective Time and shall be automatically null and void if and in the event that the Merger shall not become effective on or prior to December 31, 1999.

Section 6.2 After the Effective Time, any Convertible Debentures authenticated and delivered in substitution for, or in lieu of, Convertible Debentures then outstanding and all Convertible Debentures presented or delivered to the Trustee on and after the Effective Time for such purpose shall be either restated to give the

effect to the Second Supplemental Indenture or, in lieu thereof, stamped with a notation substantially as follows:

The principal amount of this Debenture has become convertible into shares of the Common Stock, par value \$0.10 per share, of Devon Energy Corporation, a Delaware corporation, at a conversion price per share in accordance with the terms of the Indenture, such conversion price being subject to certain adjustments as set forth in the Indenture. Reference herein to "Common Stock of the Company" or the "Company's Common Stock" shall be deemed to be to the Common Stock of Devon Energy Corporation. The payment of principal of, premium, if any, and interest on the Debentures has been guaranteed by Devon Energy Corporation on a subordinated basis as set forth in the Indenture. The Indenture, dated as of July 3, 1996, referred to in this Debenture, as amended by the First Supplemental Indenture, dated as of July 3, 1996, has been further amended by a Second Supplemental Indenture, dated as of August 17, 1999, to provide for such convertibility and guarantee. Reference is hereby made to said Second Supplemental Indenture, copies of which are on file with Devon Energy Corporation, for a statement of the amendment therein made.

Nothing contained in this Second Supplemental Indenture shall require the holder of any Convertible Debenture to submit or exchange such Convertible Debenture prior to the Effective Time in order to obtain the benefits of the New Devon Guaranty or any other provisions hereunder.

The Company agrees to provide the Trustee with a stamp or means of reproducing the above legend on the Convertible Debentures without materially obscuring the text of the Convertible Debentures.

Anything herein contained to the contrary notwithstanding, the Trustee shall not at any time be under any responsibility to acquire or cause any Convertible Debenture now or hereafter outstanding to be presented or delivered to it for any purpose provided for in this Section.

Section 6.3 Ratification of Indenture; Second Supplemental Indenture Controls. The Indenture, as supplemented by the First Supplemental Indenture and this Second Supplemental Indenture, is in all respects ratified and confirmed, and this Second Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. The provisions of this Second

Supplemental Indenture shall supercede the provisions of the Base Indenture and First Supplemental Indenture to the extent they are inconsistent herewith.

Section 6.4 Trustee Not Responsible for Recitals. The recitals herein contained are made by the Company and the New Devon Guarantor and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture.

Section 6.5 Governing Law. This Second Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York, as applied to contracts made and performed within the State of New York, without regard to principles of conflict of laws.

Section 6.6 Separability. In case any one or more of the provisions contained in this Second Supplemental Indenture or in the Convertible Debentures shall for any reason be held to be invalid or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Second Supplemental Indenture or of the Convertible Debentures, but this Second Supplemental Indenture and the Convertible Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 6.7 Counterparts. This Second Supplemental Indenture may be executed in any number of counterparts each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed as of the date first above written.

**DEVON ENERGY CORPORATION**

By: /s/ J. Larry Nichols  
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Name: J. Larry Nichols  
Title: President

**DEVON ENERGY CORPORATION (OKLAHOMA)**

By: /s/ J. Larry Nichols  
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Name: J. Larry Nichols  
Title: President

**THE BANK OF NEW YORK,  
as Trustee**

By: /s/ Thomas C. Knight  
-----

Name: Thomas C. Knight  
Title: Assistant Vice President

**EXHIBIT 4.3**

**CERTIFICATE OF DESIGNATIONS**

of

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

of

**DEVON ENERGY CORPORATION**

Pursuant to Section 151 of the General  
Corporation Law  
of the State of Delaware

DEVON ENERGY CORPORATION, a corporation organized and existing under the General Corporation Law of the State of Delaware, in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Restated Certificate of Incorporation of the said Corporation, the said Board of Directors on August 17, 1999 adopted the following resolution creating a series of 1,000,000 shares of Preferred Stock designated as "Series A Junior Participating Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of the Restated Certificate of Incorporation, a series of Preferred Stock, par value \$1.00 per share, of the Corporation be and hereby is created, and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

1. Designation and Amount. There shall be a series of Preferred Stock that shall be designated as "Series A Junior Participating Preferred Stock," and the number of shares constituting such series shall be 1,000,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, however, that no decrease shall reduce the number of shares of Series A Junior Participating Preferred Stock to less than the number of shares then issued and outstanding plus the number of shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

## 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock, in preference to the holders of shares of any class or series of stock of the Corporation ranking junior to the Series A Junior Participating Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the 1st day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) the Adjustment Number (as defined below) times the aggregate per share amount of all cash dividends, and the Adjustment Number times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$0.10 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. The "Adjustment Number" shall initially be 100. In the event the Corporation shall at any time (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

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

entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

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

(A) Each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to a number of votes equal to the Adjustment Number on all matters submitted to a vote of the stockholders of the Corporation.

(B) Except as otherwise provided herein, in the Restated Certificate of Incorporation or by law, the holders of shares of Series A Junior Participating Preferred Stock, the holders of shares of any other class or series entitled to vote with the Common Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C)(i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") that shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, (1) the number of Directors shall be increased by two, effective as of the time of election of such Directors as herein provided, and (2) the holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) upon which these or like voting rights have been conferred and are exercisable (the "Voting Preferred Stock") with dividends in arrears in an amount equal to six quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect such two Directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that such voting right shall not be exercised unless the holders of at least one-third in number of the shares of Voting Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Voting Preferred Stock of such voting right.

(iii) Unless the holders of Voting Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent of the total number of shares of Voting Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Voting Preferred Stock, which meeting shall thereupon be called by the Chairman of the Board, the President, a Vice President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Voting Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Voting Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or, in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent of the total number of shares of Voting Preferred Stock outstanding. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, after the holders of Voting Preferred Stock shall have exercised their right to elect Directors voting as a class, (x) the Directors so elected by the holders of Voting Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class or classes of stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class or classes of stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Voting Preferred Stock as a class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Voting Preferred Stock as a class shall terminate and (z) the number of Directors shall be such number as may be provided for in the Restated Certificate of Incorporation or By-Laws irrespective of any increase made pursuant to the provisions of paragraph (C) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the Restated Certificate of Incorporation or By-Laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(D) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.



#### 4. Certain Restrictions.

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

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

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

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

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

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

6. Liquidation, Dissolution or Winding Up. (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the

holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) the Adjustment Number. Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall, subject to the prior rights of all other series of Preferred Stock, if any, ranking prior thereto, receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Series A Junior Participating Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, that rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6, but the sale, lease or conveyance of all or substantially all the Corporation's assets shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share equal to the Adjustment Number times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged.

8. Redemption. (A) The Corporation, at its option, may redeem shares of the Series A Junior Participating Preferred Stock in whole at any time and in part from time to time, at a redemption price equal to the Adjustment Number times the current per share market price (as such term is hereinafter defined) of the Common Stock on the date of the mailing of the notice of

redemption, together with unpaid accumulated dividends to the date of such redemption. The "current per share market price" on any date shall be deemed to be the average of the closing price per share of such Common Stock for the ten consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that in the event that the current per share market price of the Common Stock is determined during a period following the announcement of (A) a dividend or distribution on the Common Stock other than a regular quarterly cash dividend or (B) any subdivision, combination or reclassification of such Common Stock and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, shall not have occurred prior to the commencement of such ten Trading Day period, then, and in each such case, the current per share market price shall be properly adjusted to take into account ex-dividend trading. The closing price for each day shall be the last sales price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange, or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or, if the Common Stock is not listed or admitted to trading on any national securities exchange but sales price information is reported for such security, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ") or such other self-regulatory organization or registered securities information processor (as such terms are used under the Securities Exchange Act of 1934, as amended) that then reports information concerning the Common Stock, or, if sales price information is not so reported, the average of the high bid and low asked prices in the over-the-counter market on such day, as reported by NASDAQ or such other entity, or, if on any such date the Common Stock is not quoted by any such entity, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board of Directors of the Corporation. If on any such date no such market maker is making a market in the Common Stock, the fair value of the Common Stock on such date as determined in good faith by the Board of Directors of the Corporation shall be used. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business, or, if the Common Stock is not listed or admitted to trading on any national securities exchange but is quoted by NASDAQ, a day on which NASDAQ reports trades, or, if the Common Stock is not so quoted, a Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in the State of New York are not authorized or obligated by law or executive order to close.

(B) In the event that fewer than all the outstanding shares of the Series A Junior Participating Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be determined by lot or pro rata as may be determined by the Board of Directors or by any other method that may be determined by the Board of Directors in its sole discretion to be equitable.

(C) Notice of any such redemption shall be given by mailing to the holders of the shares of Series A Junior Participating Preferred Stock to be redeemed a notice of such redemption, first class postage prepaid, not later than the fifteenth day and not earlier than the sixtieth day before

the date fixed for redemption, at their last address as the same shall appear upon the books of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the close of business on such redemption date. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the stockholder received such notice, and failure duly to give such notice by mail, or any defect in such notice, to any holder of Series A Junior Participating Preferred Stock shall not affect the validity of the proceedings for the redemption of any other shares of Series A Junior Participating Preferred Stock that are to be redeemed. On or after the date fixed for redemption as stated in such notice, each holder of the shares called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the redemption price. If fewer than all the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(D) The shares of Series A Junior Participating Preferred Stock shall not be subject to the operation of any purchase, retirement or sinking fund.

9. Ranking. The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise, and shall rank senior to the Common Stock as to such matters.

10. Amendment. At any time that any shares of Series A Junior Participating Preferred Stock are outstanding, the Restated Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

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

IN WITNESS WHEREOF, the undersigned has executed this Certificate and does affirm the foregoing as true this 17th day of August, 1999.

*/s/ J. LARRY NICHOLS*

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*Name: J. Larry Nichols*

*Title: President and Chief Executive Officer*

**EXHIBIT 4.4**

**CERTIFICATE OF DESIGNATIONS**  
of the

**6.49% CUMULATIVE PREFERRED STOCK, SERIES A**

of  
**DEVON ENERGY CORPORATION**

Pursuant to Section 151 of the

General Corporation Law of the State of Delaware

DEVON ENERGY CORPORATION, a Delaware corporation (the "Corporation"), HEREBY CERTIFIES that resolutions were duly adopted by the Board of Directors of the Corporation in accordance with Section 151(g) of the General Corporation Law of the State of Delaware pursuant to the authority conferred upon the Board of Directors of the Corporation by the provisions of the Restated Certificate of Incorporation of the Corporation as follows:

RESOLVED, that a series of the Corporation's Preferred Stock, par value \$1.00 per share ("Preferred Stock"), designated as 6.49% Cumulative Preferred Stock, Series A be and hereby is created and that the designation and number of shares thereof and the powers, preferences and rights thereof are as follows:

**6.49% CUMULATIVE PREFERRED STOCK, SERIES A**

1. Designation and Amount; No Fractional Shares. There shall be a series of Preferred Stock designated as "6.49% Cumulative Preferred Stock, Series A" (the "Series A Preferred Stock") and the authorized number of shares constituting such series shall be 1,500,000. The Series A Preferred Stock is issuable in whole shares only.

2. Dividends. Holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or a duly authorized committee thereof out of funds of the Corporation legally available for payment of dividends, cumulative cash dividends at the rate of 6.49% per annum per share on the initial liquidation preference of \$100.00 per share (equivalent to \$6.49 per annum per share of Series A Preferred Stock). Dividends on the Series A Preferred Stock shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing September 30, 1999 (each a "Dividend Payment Date"). If any date on which dividends would otherwise be payable is a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close, then the dividends otherwise payable on such date shall instead be payable on the next succeeding business day. Dividends on shares of the Series A Preferred Stock shall be fully cumulative and shall accumulate (whether or not earned or declared and whether or not the Corporation has funds legally available for the payment of dividends), on a daily basis, without interest, from the previous Dividend Payment Date, except that the first dividend shall accrue, without interest, from June 30, 1999 (being the last dividend payment date on the 6.49% Cumulative Preferred Stock, Series A (the "Converted PZE Preferred Stock"), of PennzEnergy Company, a Delaware corporation ("PennzEnergy"), to be converted into Series A Preferred Stock pursuant to the Amended and Restated Agreement and Plan of Merger dated as of May 19, 1999 among Devon Energy Corporation, an Oklahoma corporation,

the Corporation, Devon Oklahoma Corporation, an Oklahoma corporation, and PennzEnergy).. Accumulated and unpaid dividends shall not bear interest. Dividends shall be payable, in arrears, to holders of record as they appear in the records of the Corporation at the close of business on the applicable record date, which shall be the 15th day of the calendar month in which the applicable Dividend Payment Date falls or such other date designated by the Board of Directors of the Corporation for the payment of dividends that is not more than 30 nor less than 10 days prior to such Dividend Payment Date. Any dividend payable on the Series A Preferred Stock for any dividend period that is shorter or longer than a full quarterly period shall be computed on the basis of a 360- day year consisting of twelve 30-day months.

If, prior to 18 months after June 2, 1998 (the date of the original issuance of the Converted PZE Preferred Stock), one or more amendments to the Internal Revenue Code of 1986, as amended (the "Code"), are enacted that change the percentage of the dividends received deduction (currently 70%) as specified in section 243(a)(1) of the Code or any successor provision (the "Dividends Received Percentage"), the amount of each dividend payable (if declared) per share of Series A Preferred Stock for dividend payments made on or after the effective date of such change in the Code will be adjusted by multiplying the amount of the dividend payable described above (before adjustment) by the factor determined by the following formula (the "DRD Formula"), and rounding the result to the nearest cent (with one-half cent rounded up):

1- .35(1-.70)

1- .35(1-DRP)

For the purposes of the DRD Formula, "DRP" means the Dividends Received Percentage (expressed as a decimal) applicable to the dividend in question; provided, however, that if the Dividends Received Percentage applicable to the dividend in question shall be less than 50%, then the DRP shall equal .50. No amendment to the Code, other than a change in the percentage of the dividends received deduction set forth in section 243(a)(1) of the Code or any successor provision thereto, will give rise to such an adjustment. Notwithstanding the foregoing provisions, if, with respect to any such amendment, the Corporation receives either an unqualified opinion of nationally recognized independent tax counsel selected by the Corporation or a private letter ruling or similar form of authorization from the Internal Revenue Service ("IRS") to the effect that such amendment does not apply to a dividend payable on the Series A Preferred Stock, then such amendment will not result in the adjustment provided for pursuant to the DRD Formula with respect to such dividend (including, if applicable, any adjustment that would otherwise result in the payment of Post- Declaration Date Dividends or Additional Dividends as defined below). Any such opinion shall be based upon the legislation amending or establishing the Dividends Received Percentage or upon a published pronouncement of the IRS addressing such legislation. Unless the context otherwise requires, references to dividends in this Certificate of Designations will mean dividends as adjusted by the DRD Formula. The Corporation's calculation of the dividends payable, as so adjusted and as certified accurate as to calculation and reasonable as to method by the independent certified public accountants then regularly engaged by the Corporation, shall be final and not subject to review absent manifest error.

Notwithstanding anything contained in the preceding paragraph, if any such amendment to the Code which reduces the Dividends Received Percentage is enacted after the dividend payable on a Dividend Payment Date has been declared but before such Dividend Payment Date, the amount of the dividend payable on such Dividend Payment Date will not be increased; instead, an additional dividend (a "Post-Declaration Date Dividend") equal to the excess, if any, of

(x) the product of the dividend paid by the Corporation on such Dividend Payment Date and the factor determined in accordance with the DRD Formula (with the DRP used in the DRD Formula equal to the greater of the Dividend Received Percentage applicable to the dividend in question and .50) over (y) the dividend paid by the Corporation on such Dividend Payment Date, will accrue and will be payable (if declared) on the next succeeding Dividend Payment Date to holders of Series A Preferred Stock on the record date applicable to the next succeeding Dividend Payment Date or, if the Series A Preferred Stock is called for redemption prior to such record date, to holders of Series A Preferred Stock on the applicable redemption date, as the case may be, in addition to any other amounts payable on such date.

If any such amendment to the Code is enacted that reduces the Dividends Received Percentage and the reduction in the Dividends Received Percentage retroactively applies to a Dividend Payment Date as to which the Corporation previously paid dividends on the Series A Preferred Stock or to a dividend payment date as to which PennzEnergy previously paid dividends on the Converted PZE Preferred Stock (each, an "Affected Dividend Payment Date"), additional dividends (the "Additional Dividends") will accrue and will be payable (if declared) on the next succeeding Dividend Payment Date (or, if such amendment is enacted after the dividend payable on such Dividend Payment Date has been declared, on the second succeeding Dividend Payment Date following the date of enactment) to holders of record on the record date applicable to such succeeding Dividend Payment Date or, if the Series A Preferred Stock is called for redemption prior to such record date, to holders of Series A Preferred Stock on the applicable redemption date, as the case may be, in an amount equal to the sum, for all Affected Dividend Payment Dates, of the excess of (x) the product of the dividend paid by the Corporation (or PennzEnergy, as applicable) on such Affected Dividend Payment Date and the factor determined in accordance with the DRD Formula (with the DRP used in the DRD Formula equal to the greater of the Dividends Received Percentage and .50 applied to such Affected Dividend Payment Date) over (y) the dividend paid by the Corporation (or PennzEnergy, as applicable) on such Affected Dividend Payment Date. The Corporation will only make one payment of Additional Dividends for any such amendment.

Notwithstanding the foregoing, no adjustment in the dividends payable by the Corporation shall be made, and no Post-Declaration Date Dividends or Additional Dividends shall be payable by the Corporation, in respect of the enactment of any amendment to the Code 18 months or more June 2, 1998.

In the event that the amount of dividends payable per share of the Series A Preferred Stock is adjusted pursuant to the DRD Formula and/or Post-Declaration Date Dividends or Additional Dividends are to be paid, the Corporation shall give notice of each such adjustment and, if applicable, any Post-Declaration Date Dividends and Additional Dividends to the holders of Series A Preferred Stock.



No dividends may be declared or paid or set apart for payment on any stock of the Company ranking on a parity with the Series A Preferred Stock with respect to the payment of dividends unless there shall also be or have been declared and paid or set apart for payment on the Series A Preferred Stock dividends for all dividend payment periods of the Series A Preferred Stock ending on or before the dividend payment date of such parity stock, ratably in proportion to the respective amounts of dividends (x) accumulated and unpaid or payable on such parity stock, on the one hand, and (y) accumulated and unpaid through the dividend payment period or periods of the Series A Preferred Stock next preceding such dividend payment date, on the other hand.

Except as set forth in the preceding paragraph, unless full cumulative dividends on the Series A Preferred Stock have been paid through the most recently completed quarterly dividend period for the Series A Preferred Stock, no dividends (other than in Common Stock of the Corporation) may be paid or declared and set apart for payment or other distribution made upon the Common Stock or on any other stock of the Corporation ranking junior to or on a parity with the Series A Preferred Stock as to dividends, nor may any Common Stock or any other stock of the Corporation ranking junior to or on a parity with the Series A Preferred Stock as to dividends be redeemed, purchased or otherwise acquired for any consideration (or any payment be made to or available for a sinking fund for the redemption of any shares of such stock; provided, however, that any moneys theretofore deposited in any sinking fund with respect to any such stock in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such stock in accordance with the terms of such sinking fund, regardless of whether at the time of such application full cumulative dividends upon shares of the Series A Preferred Stock outstanding to the most recent Dividend Payment Date shall have been paid or declared and set apart for payment) by the Corporation; provided that any such junior or parity stock or Common Stock may be converted into or exchanged for stock of the Corporation ranking junior to the Series A Preferred Stock as to dividends.

3. Liquidation Preference. The shares of Series A Preferred Stock shall rank, as to rights to distributions on liquidation, dissolution or winding up of the Corporation, prior to the shares of Common Stock and any other stock of the Corporation ranking junior to the Series A Preferred Stock as to rights upon liquidation, dissolution or winding up of the Corporation, so that in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders, an amount equal to \$100 per share, plus an amount equal to all dividends (whether or not earned or declared) accrued and accumulated and unpaid on the shares of Series A Preferred Stock to the date of payment (including any Post-Declaration Date Dividends and Additional Dividends), before any distribution of assets is made to holders of shares of Common Stock or any other class or series of stock of the Corporation that ranks junior to the Series A Preferred Stock as to rights to distributions upon liquidation, dissolution or winding up. The holders of the Series A Preferred Stock shall not be entitled to receive the preferential amounts as aforesaid until the liquidation preference of any other stock of the Corporation ranking senior to the Series A Preferred Stock as to rights to distributions upon liquidation, dissolution or winding up shall have been paid (or a sum set aside therefor sufficient to provide for payment) in full. After payment of the full amount of the preferential amounts as aforesaid, the holders of shares of Series A Preferred Stock will not be entitled to any further participation in any distribution of

assets by the Corporation. If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of shares of Series A Preferred Stock and any stock ranking on a parity with the Series A Preferred Stock as to rights to distributions on liquidation, dissolution or winding up of the Corporation shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then such assets, or the proceeds thereof, shall be distributable among such holders ratably in accordance with the respective amounts which would be payable on such shares if all amounts payable thereon were paid in full. For the purposes hereof, neither a consolidation or merger of the Corporation with or into any other corporation, nor a merger of any one or more other corporations with or into the Corporation, nor a sale, lease, exchange or transfer of all or substantially all of the Corporation's assets shall be considered a liquidation, dissolution or winding up of the Corporation.

4. Conversion. The Series A Preferred Stock is not convertible into, or exchangeable for, other securities or property.

5. Voting Rights. The Series A Preferred Stock, except as provided herein or as otherwise from time to time required by law, shall have no voting rights. Whenever, at any time or times, the equivalent of six quarterly dividends, whether or not consecutive, on the outstanding shares of Series A Preferred Stock or on any stock ranking on a parity with the Series A Preferred Stock with respect to the payments of dividends shall be in arrears, the number of directors of the Corporation shall be increased by two (without duplication of any increase made pursuant to the terms of any other series of Preferred Stock) and the holders of the Series A Preferred Stock shall have the right, with holders of shares of any one or more other series of Preferred Stock outstanding at the time upon which like voting rights have been conferred and are exercisable ("Voting Parity Stock"), voting together as a class, to vote for the election of two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at a special meeting called at the request of holders of Series A Preferred Stock and/or Voting Parity Stock entitled to cast not less than 25% of the votes entitled to be cast by all such Series A Preferred Stock and Voting Parity Stock outstanding (provided that no such special meeting shall be called during the period within 60 days immediately prior to the date fixed for the next annual meeting of stockholders) or at the Corporation's next annual meeting of stockholders, and at each subsequent annual meeting of stockholders until such right shall terminate as hereinafter provided. Such voting right shall continue until all dividends accumulated on such shares of Preferred Stock on which voting rights have been conferred, including the Series A Preferred Stock, for the past dividend periods and the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment, whereupon such right shall terminate, subject to reversion in the event of each and every subsequent default of the character above mentioned. Upon any termination of the right of the holders of shares of Series A Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any vacancy created by the removal of any Preferred Director may be filled only by the affirmative vote of the holders of shares of Series A Preferred Stock voting separately as a class (together with the holders of shares of Voting Parity Stock). If the office of any Preferred Director becomes vacant for any reason other than removal from office, the remaining Preferred Director

may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. At elections for such directors, each holder of shares of Series A Preferred Stock shall be entitled to one vote for each share held (the holders of shares of any other class or series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock held as may be granted to them).

So long as any shares of any Series A Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66-2/3% of the shares of such Series A Preferred Stock:

(i) authorize, create or issue any capital stock of the Corporation ranking, as to dividends or upon liquidation, dissolution or winding up, prior to such Series A Preferred Stock, or reclassify any authorized capital stock of the Corporation into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock, or

(ii) amend, alter or repeal the certificate of designations for such Series A Preferred Stock, or the Restated Certificate of Incorporation of the Corporation, whether by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of such Series A Preferred Stock (provided that no such adverse effect shall be deemed to result if the Series A Preferred Stock is converted or exchanged in a merger or consolidation into preferred stock of the corporation surviving such merger or consolidation or of the corporation issuing any securities into which Common Stock is converted or exchanged in such transaction if the powers, preferences and rights of such preferred stock are not different in an adverse respect from those of the Series A Preferred Stock).

Any increase in the amount of authorized Common Stock, Preference Common Stock or Preferred Stock, or any increase or decrease in the number of shares of any series of Preference Common Stock or Preferred Stock or the authorization, creation and issuance of other classes or series of Common Stock or other stock, in each case ranking on a parity with or junior to the shares of Series A Preferred Stock with respect to the payment of dividends and distributions upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required or upon which the holders of Series A Preferred Stock shall be entitled to vote shall be effected, all outstanding shares of Series A Preferred Stock shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

6. Redemption. The shares of Series A Preferred Stock shall not be redeemable prior to June 2, 2008. On and after such date, the Corporation, at its option, may redeem shares of the Series A Preferred Stock, as a whole or in part, at any time or from time to time, at a redemption price equal to \$100 per share, plus, in each case, an amount equal to all dividends (whether or not earned or declared) accrued and accumulated and unpaid (including

any Post-Declaration Date Dividends and Additional Dividends) to the date fixed for redemption, without interest.

If full cumulative dividends on the Series A Preferred Stock have not been paid or set apart for payment with respect of all prior dividend periods, the Series A Preferred Stock may not be redeemed in part and the Corporation may not purchase or acquire any shares of the Series A Preferred Stock otherwise than pursuant to a purchase or exchange offer made on the same terms to all holders of the Series A Preferred Stock. If fewer than all the outstanding shares of Series A Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be selected by lot or pro rata or by any other means determined by the Board of Directors in its sole discretion to be equitable.

In the event the Corporation shall redeem shares of Series A Preferred Stock, written notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed at such holder's address as the same appears on the stock books of the Corporation and notice shall also be given by publication during the aforesaid period prior to the redemption date in a newspaper of general circulation in the Borough of Manhattan, the City of New York; provided, however, that no failure to give such notice nor any defect therein shall affect the validity of the proceedings for the redemption of any shares of Series A Preferred Stock to be redeemed except as to the holder to whom the Corporation has failed to mail said notice or except as to the holder whose notice was defective. Each such notice shall state: (a) the redemption date; (b) the number of shares of Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed from such holder, the number of shares to be redeemed from such holder; (c) the redemption price and any accumulated and unpaid dividends to the redemption date; (d) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (e) that dividends on the shares to be redeemed will cease to accrue on such redemption date (unless the Corporation shall default in providing funds for the payment of the redemption price of the shares called for redemption at the time and place specified in such notice).

If a notice of redemption has been given pursuant to this Paragraph 6 and if, on or before the date fixed for redemption, the funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of the shares of Series A Preferred Stock so called for redemption, then, notwithstanding that any certificates for such shares have not been surrendered for cancellation, on the redemption date dividends shall cease to accrue on the shares to be redeemed, and at the close of business on the redemption date the holders of such shares shall cease to be stockholders with respect to such shares and shall have no interest in or claims against the Corporation by virtue thereof and shall have no voting or other rights with respect to such shares, except the right to receive the moneys payable upon surrender (and endorsement, if required by the Corporation) of their certificates, and the shares evidenced thereby shall no longer be outstanding. The Corporation's obligation to provide funds for the payment of the redemption price (and any accumulated and unpaid dividends to the redemption date) of the shares called for redemption shall be deemed fulfilled if, on or before a redemption date, the Corporation shall deposit, with a bank or trust company, or an affiliate of a bank or trust company, having an office

or agency in New York City and having a capital and surplus of at least \$50,000,000, such funds sufficient to pay the redemption price (and any accumulated and unpaid dividends to the redemption date) of the shares called for redemption, in trust for the account of the holders of the shares to be redeemed (and so as to be and continue to be available therefor), with irrevocable instructions and authority to such bank or trust company that such funds be delivered upon redemption of the shares of Series A Preferred Stock so called for redemption.

Subject to applicable escheat laws, any moneys so set aside by the Corporation and unclaimed at the end of two years from the redemption date shall revert to the general funds of the Corporation, after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Corporation for the payment of the amounts payable upon such redemption. Any interest accrued on funds so deposited shall be paid to the Corporation from time to time.

Shares of Series A Preferred Stock that have been issued and reacquired in any manner, including shares purchased or redeemed, shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of the class of Preferred Stock undesignated as to series and may be redesignated and reissued as part of any series of the preferred stock.

7. Amendment of Resolution. The Board reserves the right from time to time to increase or decrease the number of shares that constitute the Series A Preferred Stock (but not below the number of shares thereof then outstanding) and in other respects to amend this Certificate of Designations within the limitations provided by law, this resolution and the Restated Certificate of Incorporation.

8. Rank. Any stock of any class or classes or series of the Corporation shall be deemed to rank:

(a) prior to shares of the Series A Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, if the holders of stock of such class or classes or series shall be entitled by the terms thereof to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of the Series A Preferred Stock;

(b) on a parity with shares of the Series A Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof are different from those of the Series A Preferred Stock, if the holders of stock of such class or classes or series shall be entitled by the terms thereof to the receipt of dividends or of amounts distributed upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority of one over the other as between the holders of such stock and the holders of shares of Series A Preferred Stock; and

(c) junior to shares of the Series A Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, if such class or classes or series shall be Common Stock or if the holders of the Series A Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of stock of such class or classes or series.

The Series A Preferred Stock shall rank, as to dividends and upon liquidation, dissolution or winding up, senior to the Corporation's Series A Junior Participating Preferred Stock.

IN WITNESS WHEREOF, the undersigned has executed this Certificate and does affirm the foregoing as true this 17th day of August, 1999.

*/s/ J. LARRY NICHOLS*

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*By: J. Larry Nichols*  
*Title: President and Chief Executive Officer*

## EXHIBIT 4.5

### AMENDING SUPPORT AGREEMENT

THIS AMENDING SUPPORT AGREEMENT is entered into as of August 17, 1999, among Devon Energy Corporation, a Delaware corporation ("New Devon"), Devon Energy Corporation (Oklahoma) (formerly Devon Energy Corporation, an Oklahoma corporation) ("Old Devon"), and Northstar Energy Corporation, an Alberta corporation ("Northstar").

#### RECITALS

WHEREAS, pursuant to an arrangement effected by Articles of Arrangement dated December 10, 1998 filed pursuant to the Business Corporations Act (Alberta) (the "Act"), the issued and outstanding common shares of Northstar were exchanged for issued and outstanding Exchangeable Shares of Northstar (the "Exchangeable Shares").

WHEREAS the Plan of Arrangement and the Articles of Amendment of Northstar set forth the rights, privileges, restrictions and conditions (collectively the "Exchangeable Share Provisions") attaching to the Exchangeable Shares.

WHEREAS Old Devon and Northstar executed and delivered a Support Agreement dated December 10, 1998 (the "Support Agreement").

WHEREAS Old Devon, New Devon, Devon Oklahoma Corporation ("Devon Oklahoma") and PennzEnergy Company entered into a Merger Agreement dated May 19, 1999 pursuant to which Devon Oklahoma, a wholly-owned subsidiary of Old Devon, agreed to merge into Old Devon, with Old Devon becoming a wholly-owned subsidiary of New Devon and PennzEnergy Company agreed to merge into New Devon.

WHEREAS upon the merger becoming effective on August 17, 1999, inter alia:

(i) the holders of Devon Common Stock (as that term is defined in the Support Agreement) received shares of the common stock of New Devon; and (ii) Old Devon became a wholly-owned subsidiary of New Devon.

WHEREAS the Exchangeable Share Provisions were amended with the approval of the holders of the Exchangeable Shares in accordance with the Act to change the definition of "Devon" to refer to New Devon.

WHEREAS Section 1.1 of the Support Agreement by its terms incorporates the defined terms of the Exchangeable Share Provisions into the Support Agreement;

WHEREAS it is necessary to substitute Old Devon with New Devon in the Support Agreement and amend the Support Agreement pursuant to Section 3.2 of the Support Agreement to maintain the equivalence of the Exchangeable Shares and the Devon Common Stock.

NOW THEREFORE in consideration of the respective covenants and agreements provided in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1 New Devon shall be substituted as a party to the Support Agreement in the place and stead of Old Devon effective as of the date hereof with all of the rights and obligations of Old Devon under the Support Agreement.

2 New Devon hereby agrees with Old Devon and Northstar that it shall and will from time to time and at all times hereafter be bound by and observe, perform and fulfill each and every covenant, agreement, term, condition and stipulation on the part of Old Devon in the Support Agreement.

3 Northstar hereby consents to and accepts New Devon as a party of the Support Agreement and agrees the Support Agreement shall continue in full force and effect with New Devon substituted as a party thereto in the place and stead of Old Devon.

4 For greater certainty, the "Exchangeable Share Provisions" referred to in the recitals to the Support Agreement shall be deemed to include any amendment thereto made from time to time.

5 This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

6 Except as specifically provided for in this Agreement, the Support Agreement shall continue in full force and effect with New Devon substituted as a party thereto in the place and stead of Old Devon.

IN WITNESS WHEREOF, New Devon, Old Devon and Northstar have caused this agreement to be signed by their respective officers thereunder duly authorized, all as of the date first written above.

**DEVON ENERGY CORPORATION**

*/s/ J. Larry Nichols*  
By: \_\_\_\_\_

DEVON ENERGY CORPORATION (OKLAHOMA)

*/s/ J. Larry Nichols*  
By: \_\_\_\_\_

**NORTHSTAR ENERGY CORPORATION**

*/s/ John Richels*  
By: \_\_\_\_\_

*/s/ Don A. Garner*  
By: \_\_\_\_\_



**EXHIBIT 4.2**

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**DEVON DELAWARE CORPORATION  
(TO BE RENAMED  
DEVON ENERGY CORPORATION)**

**AND**

**BANKBOSTON, N.A.,**

**RIGHTS AGENT**

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**RIGHTS AGREEMENT**

**DATED AS OF AUGUST 17, 1999**

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Exhibit A - Form of Certificate of Designations of Series A Junior  
Participating Preferred Stock

Exhibit B - Form of Rights Certificate

## **RIGHTS AGREEMENT**

This Rights Agreement, dated as of August 17, 1999 (the "Agreement"), between Devon Delaware Corporation (to be renamed Devon Energy Corporation), a Delaware corporation (the "Company"), and BankBoston, N.A., a national banking association (the "Rights Agent"),

### **WITNESSETH:**

WHEREAS, the Board of Directors of the Company has authorized the issuance of one Right in respect of, and to be issued together with, each share of common stock, par value \$0.10 per share, of the Company (the "Common Stock") issued to holders of Common Stock, par value \$.10 per share ("Old Devon Common Stock"), of Devon Energy Corporation, an Oklahoma corporation ("Old Devon") and to holders of Common Stock, par value \$0.83-1/3 per share ("PennzEnergy Common Stock") of PennzEnergy Company, a Delaware corporation ("PennzEnergy") upon conversion of such Old Devon Common Stock and PennzEnergy Common Stock in the seriatim mergers (together, the "Merger") of Devon Oklahoma Corporation, an Oklahoma corporation ("Devon Oklahoma"), with and into Old Devon and PennzEnergy with and into the Company pursuant to the Amended and Restated Agreement and Plan of Merger dated as of May 19, 1999, as amended, among Old Devon, the Company, Devon Oklahoma and PennzEnergy (the "Merger Agreement"); and; has authorized the issuance of one Right (as such number may hereinafter be adjusted pursuant to the provisions of Section 11(p) hereof) for each share of Common Stock of the Company issued (whether originally issued or delivered from the Company's treasury) between the effective time of the second of such seriatim mergers (the "Merger Effective Time") and the earlier of the Distribution Date (as hereinafter defined) and the Expiration Date (as hereinafter defined), and, in certain circumstances provided for in Section 22 hereof, after the Distribution Date, each Right initially representing the right to purchase one Fractional Share (as hereinafter defined) of Series A Junior Participating Preferred Stock of the Company, upon the terms and subject to the conditions hereinafter set forth (the "Rights"); and

WHEREAS, in the Merger the Certificate of Incorporation of the Company will be amended and restated to, among other things, change the name of the Company to Devon Energy Corporation;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings indicated:

"Acquiring Person" shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but shall not include any Exempt Person; provided, however, that a Person shall not be or become an Acquiring Person if such Person, together with its Affiliates and Associates, shall become the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock or

Exchangeable Shares outstanding due to the repurchase of Common Stock or Exchangeable Shares by the Company or Northstar unless and until such time as such Person or any Affiliate or Associate of such Person shall purchase or otherwise become the Beneficial Owner of additional shares of Common Stock (including as a result of becoming the Beneficial Owner of additional Exchangeable Shares) constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock (including as a result of becoming the Beneficial Owner of additional Exchangeable Shares) constituting 1% or more of the then outstanding shares of Common Stock shall become an Affiliate or Associate of such Person, unless, in either such case, such Person, together with all Affiliates and Associates of such Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding; and provided, further, that if the Board of Directors, with the concurrence of a majority of the members of the Board of Directors who are not, and are not representatives, nominees, Affiliates or Associates of, such Person or an Acquiring Person, determines in good faith that a Person that would otherwise be an "Acquiring Person" has become such inadvertently (including, without limitation, because (i) such Person was unaware that it beneficially owned a percentage of Common Stock that would otherwise cause such Person to be an "Acquiring Person" or (ii) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of changing or influencing control of the Company, and if such Person as promptly as practicable divested or divests itself of Beneficial Ownership of a sufficient number of shares of Common Stock so that such Person would no longer be an "Acquiring Person," then such Person shall not be deemed to be or to have become an "Acquiring Person" for any purposes of this Agreement and provided, further, that the trustee from time to time (the "Trustee") under the Voting and Exchange Trust Agreement (the "Voting and Exchange Trust Agreement") by and among the Company (as successor to Old Devon), Northstar Energy Corporation and the Trustee shall not, and the Trustee's Affiliates and Associates shall not, be deemed an Acquiring Person pursuant to this Section solely as a result of the transactions contemplated by the Voting and Exchange Trust Agreement, including, without limitation, the issuance to the Trustee of the Voting Share (as defined in the Voting and Exchange Trust Agreement).

"Adjustment Shares" shall have the meaning set forth in Section 11(a)(ii) hereof.

"Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Associate" shall mean, with reference to any Person, (1) any corporation, firm, partnership, association, unincorporated organization or other entity (other than the Company or a Subsidiary of the Company) of which such Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of equity securities, (2) any trust or other estate in which such Person has a substantial beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

A Person shall be deemed the "Beneficial Owner" of, and shall be deemed to "beneficially own," any securities:

(i) that such Person or any of such Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person shall not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote such security if such agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (i.e., not including a solicitation exempted by Rule 14a-2(b)(2) of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the General Rules and Regulations under the Exchange Act and (B) is not then reportable by such Person on Schedule 13D under the Exchange Act (or any comparable or successor report);

(ii) that such Person or any of such Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether such right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or upon the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person shall not be deemed the "Beneficial Owner" of, or to "beneficially own," (A) securities tendered pursuant to a tender or exchange offer made by such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, (B) securities issuable upon exercise of Rights at any time prior to the occurrence of a Triggering Event, or (C) securities issuable upon exercise of Rights from and after the occurrence of a Triggering Event which Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3(a) or Section 22 hereof (the "Original Rights") or pursuant to Section 11(i) or (p) hereof in connection with an adjustment made with respect to any Original Rights; or

(iii) that are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or Exchangeable Shares or (B) any group (as that term is used in Rule 13d-5(b) of the General Rules and Regulations under the Exchange Act) of which such Person is a member;

provided, however, that nothing in this definition shall cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities

acquired through such Person's participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Regulation M promulgated under the Exchange Act, or to cover overallocments created in connection with a public offering) until the expiration of forty days after the date of such acquisition. For purposes of this Agreement, "voting" a security shall include voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act as in effect on the date of this Agreement) in respect of such security.

Notwithstanding any other provision of this Agreement, whenever reference is made in this Agreement to Beneficial Ownership of, or a Person beneficially owning, a specified percentage of the outstanding shares of Common Stock (including for purposes of determining whether any Person is an Acquiring Person), such percentage shall be computed by treating each outstanding Exchangeable Share as though it were an outstanding share of Common Stock (both for purposes of determining the number of shares of Common Stock Beneficially Owned by such Person and the number of shares of Common Stock outstanding), provided, however, that Exchangeable Shares held by the Company or any Subsidiary of the Company (including Northstar) shall not be deemed to be outstanding for such purpose.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in The Commonwealth of Massachusetts are authorized or obligated by law or executive order to close.

"close of business" on any given date shall mean 5:00 p.m., eastern time, on such date; provided, however, that if such date is not a Business Day, it shall mean 5:00 p.m., eastern time, on the next succeeding Business Day.

"Closing Price" of a security for any day shall mean the last sales price, regular way, on such day or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, on such day, in either case as reported in the principal transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange, or, if such security is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which such security is listed or admitted to trading, or, if such security is not listed or admitted to trading on any national securities exchange but sales price information is reported for such security, as reported by NASDAQ or such other self-regulatory organization or registered securities information processor (as such terms are used under the Exchange Act) that then reports information concerning such security, or, if sales price information is not so reported, the average of the high bid and low asked prices in the over-the-counter market on such day, as reported by NASDAQ or such other entity, or, if on such day such security is not quoted by any such entity, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such security selected by the Board of Directors of the Company, or, if on such day no market maker is making a market in such security, the fair value of such security on such day as determined in good faith by the Board of Directors of the Company.



"Common Stock" shall mean the common stock, par value \$0.10 per share, of the Company, except that "Common Stock" when used with reference to equity interests issued by any Person other than the Company shall mean the capital stock of such Person with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such Person.

"Common Stock Equivalents" shall have the meaning set forth in Section 11(a)(iii) hereof.

"Company" shall mean the Person named as the "Company" in the preamble of this Agreement until a successor Person shall have become such or until a Principal Party shall assume, and thereafter be liable for, all obligations and duties of the Company hereunder, pursuant to the applicable provisions of this Agreement, and thereafter "Company" shall mean such successor Person or Principal Party.

"Current Market Price" shall have the meaning set forth in Section 11(d) hereof.

"Current Value" shall have the meaning set forth in Section 11(a)(iii) hereof.

"Distribution Date" shall mean the earlier of (i) the close of business on the tenth day (or, if such Stock Acquisition Date results from the consummation of a Permitted Offer, such later date as may be determined by the Company's Board of Directors as set forth below before the Distribution Date occurs) after the Stock Acquisition Date (or, if the tenth day after the Stock Acquisition Date occurs before the Merger Effective Time, the close of business on the Merger Effective Time) or (ii) the close of business on the tenth Business Day (or such later date as may be determined by the Company's Board of Directors as set forth below before the Distribution Date occurs) after the date that a tender offer or exchange offer by any Person (other than any Exempt Person) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act as then in effect, if upon consummation thereof, such Person would be an Acquiring Person, other than a tender or exchange offer that is determined before the Distribution Date occurs to be a Permitted Offer. The Board of Directors of the Company may, to the extent set forth in the preceding sentence, defer the date set forth in clause (i) or (ii) of the preceding sentence to a specified later date or to an unspecified later date to be determined by a subsequent action or event (but in no event to a date later than the close of business on the tenth day after the first occurrence of a Triggering Event).

"Equivalent Preferred Stock" shall have the meaning set forth in Section 11(b) hereof.

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

"Exchangeable Shares" shall mean the Exchangeable Shares of Northstar.

"Exchange Ratio" shall have the meaning set forth in Section 24 hereof.

"Exempt Person" shall mean the Company, any Subsidiary of the Company (including Old Devon and Northstar), any employee benefit plan of the Company or of any Subsidiary of the Company, and any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any Subsidiary of the Company.

"Expiration Date" shall mean the earliest of (i) the Final Expiration Date, (ii) the time at which the Rights are redeemed as provided in Section 23 hereof, (iii) the time at which the Rights expire pursuant to Section 13(d) hereof and (iv) the time at which all Rights then outstanding and exercisable are exchanged pursuant to Section 24 hereof.

"Final Expiration Date" shall mean the close of business on August 17, 2009.

"Flip-In Event" shall mean an event described in Section 11(a)(ii) hereof.

"Flip-In Trigger Date" shall have the meaning set forth in Section 11(a)(iii) hereof.

"Flip-Over Event" shall mean any event described in clause (x), (y) or (z) of Section 13(a) hereof, but excluding any transaction described in Section 13(d) hereof that causes the Rights to expire.

"Fractional Share" with respect to the Preferred Stock shall mean one one-hundredth of a share of Preferred Stock.

"Merger" shall have the meaning set forth in the recitals clause at the beginning of this Agreement.

"Merger Effective Time" shall have the meaning set forth in the recitals clause at the beginning of this Agreement.

"NASDAQ" shall mean the National Association of Securities Dealers, Inc. Automated Quotations System.

"Northstar" shall mean Northstar Energy Corporation, an Alberta corporation.

"Original Rights" shall have the meaning set forth in the definition of "Beneficial Owner."

"Permitted Offer" shall mean a tender offer or an exchange offer for all outstanding shares of Common Stock at a price and on terms determined, prior to the time the Person making the offer or any Affiliate or Associate thereof is an Acquiring Person, by at least a majority of the members of the Board of Directors who are not officers or employees of the Company and who are not, and are not representatives, nominees, Affiliates or Associates of, an Acquiring Person or the person making the offer, after receiving advice from one or more investment banking firms, to be (a) at a price and on terms that are fair to stockholders and not inadequate (taking into account all

factors that such members of the Board deem relevant including, without limitation, prices that could reasonably be achieved if the Company or its assets were sold on an orderly basis designed to realize maximum value) and (b) otherwise in the best interests of the Company and its stockholders.

"Person" shall mean any individual, firm, corporation, partnership, limited liability company, association, trust, unincorporated organization or other entity.

"Preferred Stock" shall mean shares of Series A Junior Participating Preferred Stock, par value \$1.00 per share, of the Company having the rights, powers and preferences set forth in the form of Certificate of Designations attached hereto as Exhibit A and, to the extent that there is not a sufficient number of shares of Series A Junior Participating Preferred Stock authorized to permit the full exercise of the Rights, any other series of Preferred Stock, par value \$1.00 per share, of the Company designated for such purpose containing terms substantially similar to the terms of the Series A Junior Participating Preferred Stock.

"Principal Party" shall have the meaning set forth in Section 13(b) hereof.

"Purchase Price" shall have the meaning set forth in Section 4(a) hereof.

"Redemption Price" shall have the meaning set forth in Section 23(a) hereof.

"Rights" shall have the meaning set forth in the recitals clause at the beginning of this Agreement.

"Rights Agent" shall mean the Person named as the "Rights Agent" in the preamble of this Agreement until a successor Rights Agent shall have become such pursuant to the applicable provisions hereof, and thereafter "Rights Agent" shall mean such successor Rights Agent. If at any time there is more than one Person appointed by the Company as Rights Agent pursuant to the applicable provisions of this Agreement, "Rights Agent" shall mean and include each such Person.

"Rights Certificates" shall mean the certificates evidencing the Rights.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Spread" shall have the meaning set forth in Section 11(a)(iii) hereof.

"Stock Acquisition Date" shall mean the first date of public announcement (which, for purposes of this definition and Section 23, shall include, without limitation, a report filed pursuant to Section 13(d) of the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such.

"Subsidiary" shall mean, with reference to any Person, any corporation or other Person of which an amount of voting securities sufficient to elect at least a majority of the directors or other persons performing similar functions is beneficially owned, directly or indirectly, by such Person, or otherwise controlled by such Person.

"Substitution Period" shall have the meaning set forth in Section 11(a)(iii) hereof.

"Trading Day" with respect to a security shall mean a day on which the principal national securities exchange on which such security is listed or admitted to trading is open for the transaction of business, or, if such security is not listed or admitted to trading on any national securities exchange but is quoted by NASDAQ, a day on which NASDAQ reports trades, or, if such security is not so quoted, a Business Day.

"Triggering Event" shall mean any Flip-In Event or any Flip-Over Event.

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent (i) to act as agent for the Company and (ii) to take certain actions in respect of the holders of the Rights (who, in accordance with Section 3 hereof, shall prior to the Distribution Date also be the holders of the Common Stock)(although it is expressly agreed that the Rights Agent shall not act as agent for such holders) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such Co-Rights Agents as it may deem necessary or desirable, upon ten (10) days' prior written notice to the Rights Agent. The Rights Agent shall have no duty to supervise, and shall in no event be liable for, the acts or omissions of any such co-Rights Agent.

Section 3. Issue of Rights Certificates.

(a) Until the Distribution Date, (x) the Rights will be evidenced by the certificates for Common Stock registered in the names of the holders of the Common Stock and not by separate certificates, and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Common Stock (including a transfer to the Company). As soon as practicable after the Distribution Date, the Rights Agent will send by first-class, insured, postage prepaid mail, to each record holder of the Common Stock as of the close of business on the Distribution Date (other than any Person referred to in the first sentence of Section 7(e)), at the address of such holder shown on the records of the Company, one or more Rights Certificates, evidencing one Right for each share of Common Stock so held, subject to adjustment as provided herein. In the event that an adjustment in the number of Rights per share of Common Stock has been made pursuant to Section 11(p) hereof, at the time of distribution of the Rights Certificates, the Company shall make the necessary and appropriate rounding adjustments (in accordance with Section 14(a) hereof) so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Distribution Date, the Rights will be evidenced solely by such Rights Certificates.

(b) One Right will be issued in respect of each share of Common Stock issued in the Merger. Certificates issued for shares of Common Stock that are so issued or shall be transferred or exchanged after the Merger Effective Time but prior to the earlier of the Distribution Date or the Expiration Date shall also be deemed to be certificates for Rights, and shall bear the legend referred to in paragraph (c) of this Section 3.

(c) Rights shall be issued in respect of all shares of Common Stock that are issued (whether originally issued or delivered from the Company's treasury) after the Merger Effective Time but prior to the earlier of the Distribution Date or the Expiration Date or, in certain circumstances provided in Section 22 hereof, after the Distribution Date. Certificates issued for shares of Common Stock that shall so become outstanding or shall be transferred or exchanged after the Merger Effective Time but prior to the earlier of the Distribution Date or the Expiration Date shall also be deemed to be certificates for Rights, and shall bear the following legend:

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in the Rights Agreement between Devon Energy Corporation (the "Company") and BankBoston, N.A. (the "Rights Agent") dated as of August 17, 1999 as it may from time to time be supplemented or amended (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal offices of the Company. Under certain circumstances, as set forth in the Rights Agreement, such Rights may be redeemed, may be exchanged, may expire or may be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company or the Rights Agent will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge promptly after receipt of a written request therefor. UNDER CERTAIN CIRCUMSTANCES SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS BENEFICIALLY OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS, WAS OR BECOMES AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE THEREOF (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT), AND CERTAIN TRANSFEREES THEREOF, WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

With respect to such certificates containing the foregoing legend, until the earlier of the Distribution Date or the Expiration Date, the Rights associated with the Common Stock represented by such certificates shall be evidenced by such certificates alone, and registered holders of Common Stock shall also be the registered holders of the associated Rights, and the transfer of any of such certificates shall also constitute the transfer of the Rights associated with the Common Stock represented by such certificates.

#### Section 4. Form of Rights Certificates.

(a) The Rights Certificates (and the forms of election to purchase and of assignment to be printed on the reverse thereof), when, as and if issued, shall be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or quotation system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the provisions of Section 11 and Section 22 hereof, the Rights Certificates, whenever issued, shall be dated as of the date on which the Merger Effective Time occurs and on their face shall entitle the holders thereof to purchase such number of Fractional Shares of Preferred Stock as shall be set forth therein at the price set forth therein (such exercise price per Fractional Share (or, as set forth in this Agreement, for other securities), the "Purchase Price"), but the amount and type of securities purchasable upon the exercise of each Right and the Purchase Price thereof shall be subject to adjustment as provided herein.

(b) Any Rights Certificate issued pursuant to Section 3(a) or Section 22 hereof that represents Rights beneficially owned by a Person described in the first sentence of Section 7(e), and any Rights Certificate issued pursuant to Section 6 or Section 11 hereof upon transfer, exchange, replacement or adjustment of any such Rights, shall contain (to the extent feasible) the following legend, modified as applicable to apply to such Person:

The Rights represented by this Rights Certificate are or were beneficially owned by a Person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement). Accordingly, this Rights Certificate and the Rights represented hereby [will] [have] become null and void in the circumstances and with the effect specified in Section 7(e) of such Agreement.

The provisions of Section 7(e) of this Agreement shall be operative whether or not the foregoing legend is contained on any such Rights Certificate. The Company shall give notice to the Rights Agent promptly after it becomes aware of the existence of any Acquiring Person or any Associate or Affiliate thereof.

## Section 5. Countersignature and Registration.

(a) The Rights Certificates shall be executed on behalf of the Company by its Chairman of the Board, its President or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof, which shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Rights Certificates shall be countersigned by the Rights Agent, either manually or by facsimile signature, and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Rights Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Rights Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the person who signed such Rights Certificates had not ceased to be such officer of the Company; and any Rights Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Rights Certificate, shall be a proper officer of the Company to sign such Rights Certificate, although at the date of the execution of this Rights Agreement any such person was not such an officer.

(b) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at its principal office or offices designated as the appropriate place for surrender of Rights Certificates upon exercise or transfer, books for registration and transfer of the Rights Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Rights Certificates, the number of Rights evidenced on its face by each of the Rights Certificates and the certificate number and the date of each of the Rights Certificates.

## Section 6. Transfer, Split-Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates.

(a) Subject to the provisions of Section 4(b), Section 7(e), Section 13(d), Section 14 and Section 24 hereof, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date, any Rights Certificate or Rights Certificates may be transferred, split up, combined or exchanged for another Rights Certificate or Rights Certificates, entitling the registered holder to purchase a like number of Fractional Shares of Preferred Stock (or, following a Triggering Event, Common Stock, other securities, cash or other assets, as the case may be) as the Rights Certificate or Rights Certificates surrendered then entitled such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Rights Certificate or Rights Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Rights Certificate or Rights Certificates to be transferred, split up, combined or exchanged at the principal office or offices of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Rights Certificate until the registered holder shall have completed and signed the certificate contained in the form of assignment on the reverse side of such Rights Certificate and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) thereof or of the Affiliates or Associates thereof as the Company shall reasonably request. Thereupon the Rights Agent shall, subject to Section 4(b), Section 7(e), Section 13(d), Section 14

and Section 24 hereof, countersign and deliver to the Person entitled thereto a Rights Certificate or Rights Certificates, as the case may be, as so requested. The Company may require payment by the holder of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split-up, combination or exchange of Rights Certificates.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Rights Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Rights Certificate if mutilated, the Company will, subject to Section 4(b), Section 7(e), Section 13(d), Section 14 and Section 24, execute and deliver a new Rights Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Rights Certificate so lost, stolen, destroyed or mutilated.

#### Section 7. Exercise of Rights; Purchase Price.

(a) Subject to Section 7(e) hereof, the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including, without limitation, the restrictions on exercisability set forth in Section 9(c), Section 11(a)(iii) and Section 23(a) hereof) in whole or in part at any time after the Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly completed and executed, to the Rights Agent at the principal office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of Fractional Shares of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable, at or prior to the Expiration Date.

(b) The Purchase Price for each Fractional Share of Preferred Stock pursuant to the exercise of a Right shall initially be \$185.00, and shall be subject to adjustment from time to time as provided in Sections 11 and 13(a) hereof and shall be payable in accordance with paragraph (c) below.

(c) Upon receipt of a Rights Certificate representing exercisable Rights, with the form of election to purchase and the certificate on the reverse side thereof duly executed, accompanied by payment, with respect to each Right so exercised, of the Purchase Price per Fractional Share of Preferred Stock (or other shares, securities, cash or other assets, as the case may be) to be purchased as set forth below and an amount equal to any applicable transfer tax, the Rights Agent shall, subject to Section 20(k) hereof, thereupon promptly

(i)(A) requisition from any transfer agent of the shares of Preferred Stock (or make available, if the Rights Agent is the transfer agent for such shares) certificates for the total number of Fractional Shares of Preferred Stock to be purchased, and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company, in its sole discretion, shall have elected to deposit the shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depositary agent, requisition from the depositary agent depositary receipts representing interests in such number of Fractional



Shares of Preferred Stock as are to be purchased (in which case certificates for the shares of Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depository agent) and the Company will direct the depository agent to comply with such request, (ii) requisition from the Company the amount of cash, if any, to be paid in lieu of fractional shares in accordance with Section 14 hereof, (iii) after receipt of such certificates or depository receipts, cause the same to be delivered to or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder and (iv) after receipt thereof, deliver such cash, if any, to or upon the order of the registered holder of such Rights Certificate. The payment of the Purchase Price (as such amount may be reduced pursuant to Section 11(a)(iii) hereof) may be made in cash or by certified check, cashier's or official bank check or bank draft payable to the order of the Company or the Rights Agent. In the event that the Company is obligated to issue other securities (including Common Stock) of the Company, pay cash and/or distribute other property pursuant to Section 11(a) or Section 13(a) hereof, the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when appropriate. The Company reserves the right to require prior to the occurrence of a Triggering Event that, upon exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

(d) In case the registered holder of any Rights Certificate shall exercise fewer than all the Rights evidenced thereby, a new Rights Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to, or upon the order of, the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Triggering Event, any Rights beneficially owned by or transferred to (i) an Acquiring Person or an Associate or Affiliate of an Acquiring Person other than any such Person that became such pursuant to a Permitted Offer and the Board of Directors in good faith determines was not involved in and did not cause or facilitate, directly or indirectly, such Triggering Event, (ii) a direct or indirect transferee of such Rights from such Acquiring Person (or any such Associate or Affiliate) who becomes a transferee after such Triggering Event or (iii) a direct or indirect transferee of such Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with such Triggering Event and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from such Acquiring Person (or such Affiliate or Associate) to holders of equity interests in such Acquiring Person (or such Affiliate or Associate) or to any Person with whom such Acquiring Person (or such Affiliate or Associate) has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer that the Board of Directors of the Company determines is part of a plan, arrangement or understanding that has as a primary purpose or effect the avoidance of this Section 7(e), shall become null and void without any further action, no holder of such Rights shall have any rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise, and such Rights shall not be transferable. The Company shall use all reasonable efforts to ensure that the provisions of this Section 7(e) and Section 4(b) hereof are complied with, but shall have no liability to any holder of Rights Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have

(i) completed and signed the certificate contained in the form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such exercise and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

**Section 8. Cancellation and Destruction of Rights Certificates.** All Rights Certificates surrendered for the purpose of exercise, transfer, split-up, combination or exchange shall, if surrendered to the Company or any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Rights Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Rights Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Rights Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Rights Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

**Section 9. Reservation and Availability of Capital Stock.**

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock (and, following the occurrence of a Triggering Event, out of its authorized and unissued shares of Common Stock and/or other securities or out of its authorized and issued shares held in its treasury), the number of shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) that, as provided in this Agreement, including Section 11(a)(iii) hereof, will be sufficient to permit the exercise in full of all outstanding Rights.

(b) So long as any shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) issuable and deliverable upon the exercise of the Rights are listed on any national securities exchange or quoted on any trading system, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed on such exchange, or quoted on such system, upon official notice of issuance upon such exercise. Following the occurrence of a Triggering Event, the Company will use its best efforts to list (or continue the listing of) the Rights and the securities issuable and deliverable upon the exercise of the Rights on one or more national securities exchanges or to cause the Rights and the securities purchasable upon exercise of the Rights to be reported by NASDAQ or such other transaction reporting system then in use.

(c) The Company shall use its best efforts to (i) prepare and file, as soon as practicable following the first occurrence of a Flip-In Event or, if applicable, as soon as practicable following the earliest date after the first occurrence of a Flip-In Event on which the consideration

to be delivered by the Company upon exercise of the Rights has been determined pursuant to this Agreement (including in accordance with Section 11(a)(iii) hereof), a registration statement on an appropriate form under the Securities Act with respect to the securities purchasable upon exercise of the Rights, (ii) cause such registration statement to become effective as soon as practicable after such filing, and (iii) cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities and (B) the Expiration Date. The Company will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time not to exceed 90 days after the date set forth in clause (i) of the first sentence of this Section 9(c), the exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective. In addition, if the Company shall determine that the Securities Act requires an effective registration statement under the Securities Act following the Distribution Date, the Company may temporarily suspend the exercisability of the Rights until such time as such a registration statement has been declared effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction if the requisite qualification in such jurisdiction shall not have been obtained, the exercise thereof shall not be permitted under applicable law or any required registration statement shall not have been declared effective.

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Fractional Shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges that may be payable in respect of the issuance or delivery of the Rights Certificates and of any certificates for a number of Fractional Shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax that may be payable in respect of any transfer or delivery of Rights Certificates to a Person other than, or the issuance or delivery of a number of Fractional Shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) in respect of a name other than that of, the registered holder of the Rights Certificates evidencing Rights surrendered for exercise or to issue or deliver any certificates for a number of Fractional Shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until such tax shall have been paid (any such tax being payable by the holder of such Rights Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax is due.

Section 10. Preferred Stock Record Date. Each Person in whose name any certificate for a number of Fractional Shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of such shares (fractional or otherwise) of Preferred Stock (or Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Rights Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and all applicable transfer taxes) was made; provided, however, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Rights Certificate, as such, shall not be entitled to any rights of a stockholder of the Company with respect to shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number and Kind of Shares or Number of Rights. The Purchase Price, the number and kind of shares or other securities subject to purchase upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a)(i) In the event the Company shall at any time (A) declare a dividend on the outstanding shares of Preferred Stock payable in shares of Preferred Stock, (B) subdivide the outstanding shares of Preferred Stock, (C) combine the outstanding shares of Preferred Stock into a smaller number of shares or (D) otherwise reclassify the outstanding shares of Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a) and Section 7(e) hereof, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of Preferred Stock or capital stock, as the case may be, issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the Purchase Price then in effect, the aggregate number and kind of shares of Preferred Stock or capital stock, as the case may be, which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, he would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification. If an event occurs that would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii) hereof.

(ii) Subject to Sections 23 and 24 of this Agreement, in the event any Person shall, at any time after the Merger Effective Time, become an Acquiring Person,

unless the event causing such Person to become an Acquiring Person is (1) a Flip-Over Event or (2) an acquisition of shares of Common Stock pursuant to a Permitted Offer (provided that this clause (2) shall cease to apply if such Acquiring Person thereafter becomes the Beneficial Owner of any additional shares of Common Stock other than pursuant to such Permitted Offer or a transaction set forth in Section 13(a) or 13(d) hereof), then,

(x) the Purchase Price shall be adjusted to be the Purchase Price immediately prior to the first occurrence of a Flip-In Event multiplied by the number of Fractional Shares of Preferred Stock for which a Right was exercisable immediately prior to such first occurrence and (y) each holder of a Right (except as provided below in Section 11(a)(iii) and in Section 7(e) hereof) shall thereafter have the right to receive, upon exercise thereof at a price equal to the Purchase Price in accordance with the terms of this Agreement, in lieu of shares of Preferred Stock, such number of shares of Common Stock of the Company as shall equal the result obtained by dividing the Purchase Price by 50% of the Current Market Price per share of Common Stock on the date of such first occurrence (such number of shares, the "Adjustment Shares"); provided that the Purchase Price and the number of Adjustment Shares shall be further adjusted as provided in this Agreement to reflect any events occurring after the date of such first occurrence.

(iii) In the event that the number of shares of Common Stock that are authorized by the Company's certificate of incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights is not sufficient to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii) of this Section

11(a), the Company shall, to the extent permitted by applicable law and regulation, (A) determine the excess of (1) the value of the Adjustment Shares issuable upon the exercise of a Right (computed using the Current Market Price used to determine the number of Adjustment Shares) (the "Current Value") over (2) the Purchase Price (such excess is herein referred to as the "Spread"), and (B) with respect to each Right, make adequate provision to substitute for the Adjustment Shares, upon the exercise of the Rights and payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Common Stock or other equity securities of the Company (including, without limitation, shares, or units of shares, of preferred stock (including, without limitation, the Preferred Stock) that the Board of Directors of the Company has determined to have the same value as shares of Common Stock (such shares of preferred stock are herein referred to as "Common Stock Equivalents")), (4) debt securities of the Company, (5) other assets or (6) any combination of the foregoing, having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board of Directors of the Company based upon the advice of a nationally recognized investment banking firm selected by the Board of Directors of the Company; provided, however, if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within 30 days following the later of (x) the first occurrence of a Flip-In Event and (y) the date on which the Company's right of redemption pursuant to Section 23(a) expires (the later of (x) and (y) being referred to herein as the "Flip-In Trigger Date"), then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, shares of Common Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If the Board of

Directors of the Company shall determine in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, the 30-day period set forth above may be extended to the extent necessary, but not more than 90 days after the Flip-In Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such period, as it may be extended, the "Substitution Period"). To the extent that the Company or the Board of Directors determines that some action need be taken pursuant to the first and/or second sentences of this Section

11(a)(iii), the Company (x) shall provide, subject to Section 7(e) hereof, that such action shall apply uniformly to all outstanding Rights, and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of the Common Stock shall be the Current Market Price per share of the Common Stock on the Flip-In Trigger Date and the value of any Common Stock Equivalent shall be deemed to have the same value as the Common Stock on such date.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them to subscribe for or purchase (for a period expiring within 45 calendar days after such record date) Preferred Stock (or shares having substantially the same rights, privileges and preferences as the shares of Preferred Stock ("Equivalent Preferred Stock")) or securities convertible into Preferred Stock or Equivalent Preferred Stock at a price per share of Preferred Stock or per share of Equivalent Preferred Stock (or having a conversion price per share, if a security convertible into Preferred Stock or Equivalent Preferred Stock) less than the Current Market Price per share of Preferred Stock on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of shares of Preferred Stock that the aggregate offering price of the total number of shares of Preferred Stock and/or Equivalent Preferred Stock so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such Current Market Price, and the denominator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of additional shares of Preferred Stock and/or Equivalent Preferred Stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible). In case such subscription price may be paid by delivery of consideration, part or all of which may be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Shares of Preferred Stock owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed, and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price that would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for a distribution to all holders of Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness, cash (other than a regular quarterly cash dividend out of the earnings or retained earnings of the Company), assets (other than a dividend payable in Preferred Stock, but including any dividend payable in stock other than Preferred Stock) or subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Current Market Price per share of Preferred Stock on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a share of Preferred Stock and the denominator of which shall be such Current Market Price per share of Preferred Stock. Such adjustments shall be made successively whenever such a record date is fixed, and in the event that such distribution is not so made, the Purchase Price shall be adjusted to be the Purchase Price that would have been in effect if such record date had not been fixed.

(d)(i) For the purpose of any computation hereunder, other than computations made pursuant to Section 11(a)(iii) hereof, the "Current Market Price" per share of Common Stock of a Person on any date shall be deemed to be the average of the daily Closing Prices per share of such Common Stock for the 30 consecutive Trading Days immediately prior to such date, and for purposes of computations made pursuant to Section 11(a)(iii) hereof, the "Current Market Price" per share of Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of such Common Stock for the 10 consecutive Trading Days immediately following such date; provided, however, that in the event that the Current Market Price per share of Common Stock is determined during a period following the announcement of (A) a dividend or distribution on such Common Stock other than a regular quarterly cash dividend or the dividend of the Rights, or (B) any subdivision, combination or reclassification of such Common Stock, and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, shall not have occurred prior to the commencement of the requisite 30 Trading Day or 10 Trading Day period, as set forth above, then, and in each such case, the Current Market Price shall be properly adjusted to take into account ex- dividend trading. If the Common Stock is not publicly held or not so listed or traded, "Current Market Price" per share shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

(ii) For the purpose of any computation hereunder, the "Current Market Price" per share (or Fractional Share) of Preferred Stock shall be determined in the same manner as set forth above for the Common Stock in clause (i) of this Section 11(d) (other than the last sentence thereof). If the Current Market Price per share (or Fractional Share) of Preferred Stock cannot be determined in the manner provided above or if the Preferred Stock

is not publicly held or listed or traded in a manner described in clause

(i) of this Section 11(d), the "Current Market Price" per share of Preferred Stock shall be conclusively deemed to be an amount equal to 100 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock occurring after the date of this Agreement) multiplied by the Current Market Price per share of the Common Stock. If neither the Common Stock nor the Preferred Stock is publicly held or so listed or traded, Current Market Price per share of the Preferred Stock shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. For all purposes of this Agreement, the Current Market Price of a Fractional Share of Preferred Stock shall be equal to the Current Market Price of one share of Preferred Stock divided by 100.

(e) Anything herein to the contrary notwithstanding, no adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; provided, however, that any adjustments that by reason of this Section 11 (e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest ten-thousandth of a share of Common Stock or other share or to the nearest ten-thousandth of a Fractional Share of Preferred Stock, as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three years from the date of the transaction which mandates such adjustment or (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a) or Section 13(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive in respect of such Right any shares of capital stock other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right and the Purchase Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11(a), (b), (c), (e), (f), (g), (h), (i), (j), (k) and (m) hereof, and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of Fractional Shares of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of Fractional Shares of Preferred Stock (calculated to the nearest one ten-thousandth of a Fractional Share) obtained by (i) multiplying (x) the number of Fractional Shares of Preferred Stock covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to



such adjustment of the Purchase Price, and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect, on or after the date of any adjustment of the Purchase Price, to adjust the number of Rights in lieu of any adjustment in the number of Fractional Shares of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of Fractional Shares of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Rights Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this

Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Rights Certificates on such record date Rights Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Rights Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of Fractional Shares of Preferred Stock issuable upon the exercise of the Rights, the Rights Certificates theretofore and thereafter issued may continue to express the Purchase Price per Fractional Share and the number of Fractional Shares that were expressed in the initial Rights Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then par value, if any, or the stated capital of the number of Fractional Shares of Preferred Stock or of the number of shares of Common Stock or other securities issuable upon exercise of a Right, the Company shall take any corporate action that may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable such number of Fractional Shares of Preferred Stock or such number of shares of Common Stock or other securities at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after

such record date the number of Fractional Shares of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the number of Fractional Shares of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in their good faith judgment the Board of Directors of the Company shall determine to be advisable in order that any (i) consolidation or subdivision of the Preferred Stock, (ii) issuance wholly for cash of any shares of Preferred Stock at less than the current market price, (iii) issuance wholly for cash of shares of Preferred Stock or securities that by their terms are convertible into or exchangeable for shares of Preferred Stock, (iv) stock dividends or (v) issuance of rights, options or warrants referred to in this Section 11 hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

(n) The Company covenants and agrees that it shall not, at any time that there is an Acquiring Person, (i) consolidate with any other Person, (ii) merge with or into any other Person, or (iii) sell, lease or transfer (or permit one or more Subsidiaries to sell, lease or transfer), in one transaction or a series of related transactions, assets or earning power aggregating more than 50% of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons, if (x) at the time of or immediately after such consolidation, merger, sale, lease or transfer there are any rights, warrants or other instruments or securities of the Company or any other Person outstanding or agreements, arrangements or understandings in effect that would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (y) prior to, simultaneously with or immediately after such consolidation, merger, sale, lease or transfer, the stockholders or other equity owners of the Person who constitutes, or would constitute, the "Principal Party" for purposes of Section 13(a) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates, or (z) the identity, form or nature of organization of the Principal Party (including, without limitation, the selection of the Person that will be the Principal Party as a result of the Company's entering into one or more consolidations, mergers, sales, leases, transfers or transactions with more than one party) would preclude or limit the exercise of Rights or otherwise diminish substantially or eliminate the benefits intended to be afforded by the Rights.

(o) The Company covenants and agrees that, after the Distribution Date, it will not, except as permitted by Section 23, Section 24 or Section 27 hereof, take (or permit any Subsidiary to take) any action if the purpose of such action is to, or if at the time such action is taken it is reasonably foreseeable that such action will, diminish substantially or eliminate the benefits intended to be afforded by the Rights.

(p) Notwithstanding Section 3(c) hereof or any other provision of this Agreement to the contrary, in the event that the Company shall at any time after the Merger Effective Time and

prior to the Distribution Date (i) declare a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, (iii) combine the outstanding shares of Common Stock into a smaller number of shares or (iv) otherwise reclassify the outstanding shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter with Rights, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction (the "Adjustment Fraction") the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event. In lieu of such adjustment in the number of Rights associated with one share of Common Stock, the Company may elect to adjust the number of Fractional Shares of Preferred Stock purchasable upon the exercise of one Right and the Purchase Price. If the Company makes such election, the number of Rights associated with one share of Common Stock shall remain unchanged, and the number of Fractional Shares of Preferred Stock purchasable upon exercise of one Right and the Purchase Price shall be proportionately adjusted so that (i) the number of Fractional Shares of Preferred Stock purchasable upon exercise of a Right following such adjustment shall equal the product of the number of Fractional Shares of Preferred Stock purchasable upon exercise of a Right immediately prior to such adjustment multiplied by the Adjustment Fraction and (ii) the Purchase Price following such adjustment shall equal the product of the Purchase Price immediately prior to such adjustment multiplied by the Adjustment Fraction.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made as provided in Section 11 or Section 13 hereof, the Company shall (a) promptly prepare a certificate setting forth such adjustment and a brief statement of the facts accounting for such adjustment,

(b) promptly file with the Rights Agent, and with each transfer agent for the Preferred Stock and the Common Stock, a copy of such certificate and (c) mail a brief summary thereof to each registered holder of a Rights Certificate (or, if prior to the Distribution Date, to each registered holder of a certificate representing shares of Common Stock) in accordance with Section 26 hereof. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

(a) In the event that, from and after the time an Acquiring Person has become such, directly or indirectly, (x) the Company shall consolidate with, or merge with and into, any other Person, and the Company shall not be the continuing or surviving corporation of such consolidation or merger, (y) any Person shall consolidate with, or merge with or into, the Company, and the Company shall be the continuing or surviving corporation of such consolidation or merger, and, in connection with such consolidation or merger, all or part of the outstanding shares of Common Stock shall be changed into or exchanged for stock or other securities of the Company or any other Person or cash or any other property, or (z) the Company shall sell, lease or otherwise transfer (or one or more of its Subsidiaries shall sell, lease or otherwise transfer), in one transaction or a series of related transactions, assets or earning power aggregating more than 50% of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any Person or Persons (other than the Company or any wholly owned Subsidiary of the Company or any combination thereof in one or more transactions each of which complies (and all of which together comply) with Section 11 (o) hereof), then, and in each such case (except as may be contemplated by Section 13(d) hereof), proper provision shall be made so that: (i) the Purchase Price shall be adjusted to be the Purchase Price immediately prior to the first occurrence of a Triggering Event multiplied by the number of Fractional Shares of Preferred Stock for which a Right was exercisable immediately prior to such first occurrence; (ii) on and after the Distribution Date, each holder of a Right, except as provided in Section 7(e) hereof, shall thereafter have the right to receive, upon the exercise thereof at the Purchase Price in accordance with the terms of this Agreement, in lieu of shares of Preferred Stock or Common Stock of the Company, such number of validly authorized and issued, fully paid, nonassessable and freely tradeable shares of Common Stock of the Principal Party (as such term is hereinafter defined), not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by dividing the Purchase Price by 50% of the Current Market Price per share of the Common Stock of such Principal Party on the date of consummation of such Flip-Over Event; provided that the Purchase Price and the number of shares of Common Stock of such Principal Party issuable upon exercise of each Right shall be further adjusted as provided in this Agreement to reflect any events occurring after the date of such first occurrence of a Triggering Event or after the date of such Flip-Over Event, as applicable; (iii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such Flip-Over Event, all the obligations and duties of the Company pursuant to this Agreement; (iv) the term "Company" shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 hereof shall apply only to such Principal Party following the first occurrence of a Flip-Over Event; (v) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock) in connection with the consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights; and (vi) the provisions of Section 11(a)(ii) hereof shall be of no effect following the occurrence of any Flip-Over Event.

(b) "Principal Party" shall mean

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of Section 13(a), (A) the Person that is the issuer of any securities into which shares of Common Stock of the Company are converted in such merger or consolidation, or, if there is more than one such issuer, the issuer the Common Stock of which has the greatest aggregate market value, or (B) if no securities are so issued, (x) the Person that survives such consolidation or is the other party to the merger and survives such merger, or, if there is more than one such Person, the Person the Common Stock of which has the greatest aggregate market value or  
(y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives); and

(ii) in the case of any transaction described in clause (z) of the first sentence of Section 13(a), the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred, or if the Person receiving the greatest portion of the assets or earning power cannot be determined, the Person the Common Stock of which has the greatest aggregate market value;

provided, however, that in any such case, if the Common Stock of such Person is not at such time and has not been continuously over the preceding twelve-month period registered under Section 12 of the Exchange Act, and if (1) such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, "Principal Party" shall refer to such other Person; (2) such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stocks of all of which are and have been so registered, "Principal Party" shall refer to whichever of such Persons is the issuer of the Common Stock having the greatest aggregate market value; and (3) such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in (1) and (2) above shall apply to each of the chains of ownership having an interest in such joint venture as if such party were a "Subsidiary" of both or all of such joint venturers and the Principal Parties in each such chain shall bear the obligations set forth in this Section 13 in the same ratio as their direct or indirect interests in such Person bear to the total of such interests.

(c) The Company shall not consummate any Flip-Over Event unless each Principal Party (or Person that may become a Principal Party as a result of such Flip-Over Event) shall have a sufficient number of authorized shares of its Common Stock that have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 and unless prior thereto the Company and each such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in paragraphs (a) and (b) of this Section 13 and further providing that, as soon as practicable after the date of such Flip-Over Event, the Principal Party at its own expense will

(i) prepare and file a registration statement under the Securities Act with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate

form, and will use its best efforts to cause such registration statement to (A) become effective as soon as practicable after such filing and (B) remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date;

(ii) use its best efforts to qualify or register the Rights and the securities purchasable upon exercise of the Rights under the "blue sky" laws of such jurisdictions as may be necessary or appropriate;

(iii) use its best efforts, if the Common Stock of the Principal Party is or shall become listed on a national securities exchange, to list (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on such securities exchange and, if the Common Stock of the Principal Party shall not be listed on a national securities exchange, to cause the Rights and the securities purchasable upon exercise of the Rights to be reported by NASDAQ or such other transaction reporting system then in use; and

(iv) deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates that comply in all respects with the requirements for registration on Form 10 under the Exchange Act.

The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers. In the event that a Flip-Over Event shall occur at any time after the occurrence of a Flip-In Event, the Rights that have not theretofore been exercised shall thereafter become exercisable in the manner described in Section 13(a).

(d) Notwithstanding anything in this Agreement to the contrary, Section 13 shall not be applicable to a transaction described in subparagraphs (x) and (y) of Section 13(a) if (i) such transaction is consummated with a Person or Persons who acquired shares of Common Stock pursuant to a Permitted Offer (or a wholly owned subsidiary of any such Person or Persons), (ii) the price per share of Common Stock offered in such transaction is not less than the price per share of Common Stock paid to all holders of Common Stock whose shares were purchased pursuant to such Permitted Offer, and (iii) the form of consideration being offered to the remaining holders of shares of Common Stock pursuant to such transaction is the same as the form of consideration paid pursuant to such Permitted Offer. Upon consummation of any such transaction contemplated by this Section 13(d), all Rights hereunder shall expire.

#### Section 14. Fractional Rights and Fractional Shares.

(a) The Company shall not be required to issue fractions of Rights, except prior to the Distribution Date as provided in Section 11(p) hereof, or to distribute Rights Certificates or scrip evidencing fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the Closing Price of one Right for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable.

(b) The Company shall not be required to issue fractions of shares of Preferred Stock (other than, except as provided in Section 7(c) hereof, fractions that are integral multiples of a Fractional Share of Preferred Stock) upon exercise of the Rights or to distribute certificates or scrip evidencing fractional shares of Preferred Stock (other than, except as provided in Section 7(c) hereof, fractions that are integral multiples of a Fractional Share of Preferred Stock). Interests in fractions of shares of Preferred Stock in integral multiples of a Fractional Share of Preferred Stock may, at the election of the Company in its sole discretion, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it, provided that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the shares of Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of a Fractional Share of Preferred Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of one one-hundredth of the Closing Price of a share of Preferred Stock for the Trading Day immediately prior to the date of such exercise.

(c) Following the occurrence of a Triggering Event, the Company shall not be required to issue fractions of shares of Common Stock upon exercise of the Rights or to distribute certificates or scrip evidencing fractional shares of Common Stock. In lieu of fractional shares of Common Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the Closing Price of one share of Common Stock for the Trading Day immediately prior to the date of such exercise.

(d) The holder of a Right by the acceptance of the Right expressly waives his right to receive any fractional Rights or any fractional shares upon exercise of a Right, except as permitted by this Section 14.

Section 15. Rights of Action. All rights of action in respect of this Agreement, other than rights of action vested in the Rights Agent pursuant to Section 18 hereof, are vested in the respective registered holders of the Rights Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock) and, where applicable, the Company; and any registered holder of any Rights Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Rights Certificate (or, prior to the Distribution Date, of the Common Stock), may, in his own behalf and for his own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his right to exercise the Rights evidenced by such Rights Certificate in the manner provided in such Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations hereunder and injunctive relief against actual or threatened violations of the obligations hereunder of any Person subject to this Agreement. After a Triggering Event, holders of Rights shall be entitled to recover the reasonable costs and expenses, including attorneys' fees, incurred by them in any action to enforce the provisions of this Agreement.

Section 16. Agreement of Rights Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will not be evidenced by Rights Certificates and will be transferable only in connection with the transfer of Common Stock;

(b) after the Distribution Date, the Rights Certificates will be transferable only on the registry books of the Rights Agent if surrendered at the principal office or offices of the Rights Agent designated for such purposes, duly endorsed or accompanied by a proper instrument of transfer and with the form of assignment set forth on the reverse side thereof and the certificate contained therein duly completed and fully executed;

(c) subject to Section 6(a) and Section 7(f) hereof, the Company and the Rights Agent may deem and treat the Person in whose name a Rights Certificate (or, prior to the Distribution Date, the associated Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Rights Certificates or the associated Common Stock certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, the Company must use its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible.

Section 17. Rights Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the number of Fractional Shares of Preferred Stock or any other securities of the Company that may at any time be issuable upon the exercise of the Rights represented thereby, nor shall anything contained herein or in any Rights Certificate be construed to confer upon the holder of any Rights Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Rights Certificate shall have been exercised in accordance with the provisions hereof.



Section 18. Concerning the Rights Agent.

(a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and disbursements and other reasonable disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability or expense, incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability in the premises.

(b) The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any Rights Certificate or certificate for Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it, after proper inquiry or examination, to be genuine and to be signed, executed and, where necessary, guaranteed, verified or acknowledged, by the proper Person or Persons.

Section 19. Merger or Consolidation or Change of Name of Rights Agent.

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the corporate trust or stock transfer business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, however, that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Rights Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of a predecessor Rights Agent and deliver such Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor or in the name of the successor Rights Agent; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Rights Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

Section 20. Duties of Rights Agent. The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Rights Certificates, by their acceptance thereof, shall be bound:

- (a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.
- (b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring Person and the determination of "Current Market Price") be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.
- (c) The Rights Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct. In no event shall the Rights Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Rights Certificates or be required to verify the same (except as to its countersignature on such Rights Certificates), but all such statements and recitals are and shall be deemed to have been made by the Company only.
- (e) The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Rights Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Rights Certificate; nor shall it be responsible for any adjustment required under the provisions of Section 11 or Section 13 hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Rights Certificates after receipt of actual knowledge of any such adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Preferred Stock or Common Stock or other securities to be issued pursuant to this Agreement or any Rights Certificate or as to whether any shares of Preferred Stock or Common

Stock or other securities will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chairman of the Board, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, omission, default, neglect or misconduct; provided, however, that reasonable care was exercised in the selection and continued employment thereof.

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been completed or indicates an affirmative response to clause 1 and/or 2 thereof, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon 30 days' notice in writing mailed to the Company, and to each transfer agent of the Common Stock and the Preferred Stock, by registered or certified mail, and to the registered holders, if any, of the Rights Certificates

by first-class mail. The Company may remove the Rights Agent or any successor Rights Agent (with or without cause) upon 30 days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and the Preferred Stock, by registered or certified mail, and to the registered holders of the Rights Certificates, if any, by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent.

Notwithstanding the foregoing provisions of this

Section 21, in no event shall the resignation or removal of a Rights Agent be effective until a successor Rights Agent shall have been appointed and have accepted such appointment. If the Company shall fail to make such appointment within a period of 30 days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the registered holder of a Rights Certificate (who shall, with such notice, submit his Rights Certificate for inspection by the Company), then the Rights Agent or the registered holder of any Rights Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (a) a corporation organized and doing business under the laws of the United States or of the State of New York (or of any other state of the United States so long as such corporation is authorized to conduct a stock transfer or corporate trust business in the State of New York), in good standing, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$100,000,000 or (b) an affiliate of a corporation described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and the Preferred Stock, and mail a notice thereof in writing to the registered holders of the Rights Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Rights Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Rights Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of Common Stock following the Distribution Date and prior to the Expiration Date, the Company (a) shall, with respect to shares of Common Stock so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement granted or awarded on or prior to the Distribution Date, or upon the exercise, conversion or exchange of securities issued by the Company on or prior to the Distribution Date, and (b) may, in any other case, if deemed necessary or appropriate by the Board of Directors of the Company, issue Rights Certificates representing the

appropriate number of Rights in connection with such issuance or sale; provided, however, that (i) no such Rights Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Rights Certificate would be issued, and (ii) no such Rights Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

### Section 23. Redemption and Termination.

(a) The Board of Directors of the Company may, at its option, at any time prior to the earlier of (i) the close of business on the tenth day following the first date of public announcement of the occurrence of a Flip-In Event (or, if such date shall have occurred prior to the Merger Effective Time, the close of business on the tenth day following the Merger Effective Time) and (ii) the Expiration Date, cause the Company to redeem all but not less than all the then outstanding Rights at a redemption price of \$0.01 per Right, as such amount may be appropriately adjusted, if necessary, to reflect any stock split, stock dividend or similar transaction (such redemption price being hereinafter referred to as the "Redemption Price"); provided, however, that the Rights may not be redeemed following any merger to which the Company is a party that (i) occurs when there is an Acquiring Person and (ii) was not approved prior to such merger by the Board of Directors of the Company and by the stockholders of the Company at a stockholders' meeting. Notwithstanding anything contained in this Agreement to the contrary, the Rights shall not be exercisable after the first occurrence of a Flip-In Event until such time as the Company's right of redemption hereunder has expired. The Company may, at its option, pay the Redemption Price in cash, shares of Common Stock (based on the Current Market Price of the Common Stock at the time of redemption) or any other form of consideration deemed appropriate by the Board of Directors.

(b) Immediately upon the effectiveness of the action of the Board of Directors of the Company ordering the redemption of the Rights (the effectiveness of which action may be conditioned on the occurrence of one or more events or on the existence of one or more facts or may be effective at some future time), evidence of which shall be filed with the Rights Agent and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. Promptly after the effectiveness of the action of the Board of Directors ordering the redemption of the Rights, the Company shall give notice of such redemption to the Rights Agent and the registered holders of the then outstanding Rights by mailing such notice to all such holders at each holder's last address as it appears upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the Company for the Common Stock. Any notice that is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made.

Section 24. Exchange.

(a) The Board of Directors of the Company may, at its option, at any time and from time to time after the occurrence of a Flip-In Event, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e) hereof) for shares of Common Stock or Common Stock Equivalents or any combination thereof, at an exchange ratio of one share of Common Stock, or such number of Common Stock Equivalents or units representing fractions thereof as would be deemed to have the same value as one share of Common Stock, per Right, appropriately adjusted, if necessary, to reflect any stock split, stock dividend or similar transaction (such exchange ratio being hereinafter referred to as the "Exchange Ratio"). Notwithstanding the foregoing, the Board of Directors may not effect such exchange at any time after (i) any Person (other than an Exempt Person), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50% or more of the shares of Common Stock then outstanding or (ii) the occurrence of a Flip-Over Event.

(b) Immediately upon the effectiveness of the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to and in accordance with subsection (a) of this Section 24 (the effectiveness of which action may be conditioned on the occurrence of one or more events or on the existence of one or more facts or may be effective at some future time) and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock and/or Common Stock Equivalents equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the registered holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock and/or Common Stock Equivalents for Rights will be effected and, in the event of any partial exchange, the number of Rights that will be exchanged. Any partial exchange shall be effected as nearly pro rata as possible based on the number of Rights (other than Rights that have become void pursuant to the provisions of Section 7(e) hereof) held by each holder of Rights.

(c) In the event that the number of shares of Common Stock that are authorized by the Company's certificate of incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights is not sufficient to permit an exchange of Rights as contemplated in accordance with this Section 24, the Company may, at its option, take all such action as may be necessary to authorize additional shares of Common Stock for issuance upon exchange of the Rights.

(d) The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates or scrip evidencing fractional shares of Common Stock upon exchange of the Rights. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of Rights with regard to which such fractional shares of Common Stock

would otherwise be issuable an amount in cash equal to the same fraction of the value of a whole share of Common Stock. For purposes of this Section 24, the value of a whole share of Common Stock shall be the Closing Price per share of Common Stock for the Trading Day immediately prior to the date of exchange pursuant to this Section 24, and the value of any Common Stock Equivalent shall be deemed to have the same value as the Common Stock on such date.

#### Section 25. Notice of Certain Events.

(a) In case the Company shall propose, at any time after the Distribution Date, (i) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular quarterly cash dividend out of earnings or retained earnings of the Company), or (ii) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, or (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding shares of Preferred Stock), or (iv) to effect any consolidation or merger into or with any other Person (other than a wholly owned Subsidiary of the Company in a transaction that complies with Section 11(o) hereof), or to effect any sale, lease or other transfer of all or substantially all the Company's assets to any other Person or Persons (other than a wholly owned Subsidiary of the Company in a transaction that complies with Section 11(o) hereof), or (v) to effect the liquidation, dissolution or winding up of the Company, then, in each such case, the Company shall give to each holder of record of a Rights Certificate, to the extent feasible and in accordance with

Section 26 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, lease, transfer, liquidation, dissolution or winding up is to take place and the date of participation therein by the holders of the shares of Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least 20 days prior to the record date for determining holders of the shares of Preferred Stock for purposes of such action, and in the case of any such other action, at least 20 days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the shares of Preferred Stock, whichever shall be the earlier. The failure to give notice required by this Section 25 or any defect therein shall not affect the legality or validity of the action taken by the Company or the vote upon any such action.

(b) In case any Flip-In Event or Flip-Over Event shall occur, then (i) the Company shall as soon as practicable thereafter give to each registered holder of a Rights Certificate (or if occurring prior to the Distribution Date, the registered holders of Common Stock), in accordance with Section 26 hereof, a notice of the occurrence of such event, which shall specify the event and the consequences of the event to holders of Rights under Section 11(a)(ii) or Section 13(a) hereof, and (ii) all references in the preceding paragraph to Preferred Stock shall be deemed thereafter to refer to Common Stock and/or, if appropriate, other securities.

Section 26. Notices. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Rights Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102-8260 Attention: Corporate Secretary

Subject to the provisions of Section 21, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Rights Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

BankBoston, N.A.

c/o EquiServe Limited Partnership  
150 Royall Street  
Canton, Massachusetts 02021

Attention: Client Administration

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Rights Certificate (or, if prior to the Distribution Date, to the holder of certificates representing shares of Common Stock) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. Supplements and Amendments. Except as provided in the last sentence of this Section 27, at any time when the Rights are then redeemable, the Company may in its sole and absolute discretion and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement in any respect without the approval of any holders of Rights or holders of Common Stock. At any time when the Rights are not redeemable, except as provided in the last sentence of this Section 27, the Company may and the Rights Agent shall, if the Company so directs, supplement or amend this Agreement without the approval of any holders of Rights in order (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein, (iii) to shorten or lengthen any time period hereunder or (iv) to change or supplement the provisions hereunder in any manner that the Company may deem necessary or desirable; provided that no such amendment or supplement shall materially adversely affect the interests of the holders of Rights (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person); and further provided that this Agreement may not be supplemented or amended pursuant to this sentence to lengthen (A) a time period relating to when the Rights may be redeemed or (B) any other time period unless the lengthening of such other time period is for the purpose of protecting, enhancing or clarifying the rights of, and/or the benefits to, the holders of Rights (other than any Acquiring Person and its Affiliates and Associates). Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed



supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment; provided, however, that the Rights Agent may, but shall not be obligated to, enter into any such supplement or amendment that affects the Rights Agent's own rights, duties or immunities under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, no supplement or amendment shall be made that decreases the Redemption Price.

Section 28. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Determinations and Actions by the Board of Directors, etc. For all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any Person is the Beneficial Owner, shall, subject to the last sentence of the definition of Beneficial Owner in Section 1, be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement. The Board of Directors of the Company (or, as set forth herein, certain specified members thereof) shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend this Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) that are done or made by the Board of Directors of the Company in good faith, shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties, and (y) not subject the Board of Directors to any liability to the holders of the Rights.

Section 30. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock).

Section 31. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that notwithstanding anything in this Agreement to the contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or

unenforceable and the Board of Directors of the Company determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, then, unless there has occurred any merger referred to in the proviso to the first sentence of Section

23(a), the right of redemption set forth in Section 23 hereof shall be reinstated and shall not expire until the close of business on the tenth day following the date of such determination by the Board of Directors of the Company or, if earlier, immediately prior to any such merger. Without limiting the foregoing, if any provision requiring that a determination be made by less than the entire Board of Directors of the Company is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, such determination shall then be made by the entire Board of Directors of the Company.

Section 32. Governing Law. This Agreement, each Right and each Rights Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State.

Section 33. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 34. Descriptive Headings. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

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

**DEVON DELAWARE CORPORATION**

*By /s/ J. Larry Nichols*

\_\_\_\_\_  
*Name: J. Larry Nichols*

*Title: President*

**BANKBOSTON, N.A.**

*By /s/ Carol Mulvey-Eori*

\_\_\_\_\_  
*Name: Carol Mulvey-Eori*

*Title: Managing Director*

**Exhibit A**

**FORM OF  
CERTIFICATE OF DESIGNATIONS**

of

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

of

**DEVON ENERGY CORPORATION**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

DEVON ENERGY CORPORATION, a corporation organized and existing under the General Corporation Law of the State of Delaware, in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Restated Certificate of Incorporation of the said Corporation, the said Board of Directors on August 17, 1999, adopted the following resolution creating a series of 1,000,000 shares of Preferred Stock designated as "Series A Junior Participating Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of the Restated Certificate of Incorporation, a series of Preferred Stock, par value \$1.00 per share, of the Corporation be and hereby is created, and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

1. Designation and Amount. There shall be a series of Preferred Stock that shall be designated as "Series A Junior Participating Preferred Stock," and the number of shares constituting such series shall be 1,000,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, however, that no decrease shall reduce the number of shares of Series A Junior Participating Preferred Stock to less than the number of shares then issued and outstanding plus the number of shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

## 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock, in preference to the holders of shares of any class or series of stock of the Corporation ranking junior to the Series A Junior Participating Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the 1st day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) the Adjustment Number (as defined below) times the aggregate per share amount of all cash dividends, and the Adjustment Number times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$0.10 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. The "Adjustment Number" shall initially be 100. In the event the Corporation shall at any time (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock

entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

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

(A) Each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to a number of votes equal to the Adjustment Number on all matters submitted to a vote of the stockholders of the Corporation.

(B) Except as otherwise provided herein, in the Restated Certificate of Incorporation or by law, the holders of shares of Series A Junior Participating Preferred Stock, the holders of shares of any other class or series entitled to vote with the Common Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") that shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, (1) the number of Directors shall be increased by two, effective as of the time of election of such Directors as herein provided, and (2) the holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) upon which these or like voting rights have been conferred and are exercisable (the "Voting Preferred Stock") with dividends in arrears in an amount equal to six quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect such two Directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that such voting right shall not be exercised unless the holders of at least one-third in number of the shares of Voting Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Voting Preferred Stock of such voting right.

(iii) Unless the holders of Voting Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent of the total number of shares of Voting Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Voting Preferred Stock, which meeting shall thereupon be called by the Chairman of the Board, the President, a Vice President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Voting Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Voting Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or, in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent of the total number of shares of Voting Preferred Stock outstanding. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, after the holders of Voting Preferred Stock shall have exercised their right to elect Directors voting as a class, (x) the Directors so elected by the holders of Voting Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class or classes of stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class or classes of stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Voting Preferred Stock as a class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Voting Preferred Stock as a class shall terminate and (z) the number of Directors shall be such number as may be provided for in the Restated Certificate of Incorporation or By-Laws irrespective of any increase made pursuant to the provisions of paragraph (C) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the Restated Certificate of Incorporation or By-Laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(D) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

#### 4. Certain Restrictions.

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

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

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

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

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

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

6. **Liquidation, Dissolution or Winding Up.** (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or

winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) the Adjustment Number. Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall, subject to the prior rights of all other series of Preferred Stock, if any, ranking prior thereto, receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Series A Junior Participating Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, that rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6, but the sale, lease or conveyance of all or substantially all the Corporation's assets shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share equal to the Adjustment Number times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged.

8. Redemption. (A) The Corporation, at its option, may redeem shares of the Series A Junior Participating Preferred Stock in whole at any time and in part from time to time, at a redemption price equal to the Adjustment Number times the current per share market price (as such term is hereinafter defined) of the Common Stock on the date of the mailing of the notice of redemption, together with unpaid accumulated dividends to the date of such redemption. The



"current per share market price" on any date shall be deemed to be the average of the closing price per share of such Common Stock for the ten consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that in the event that the current per share market price of the Common Stock is determined during a period following the announcement of (A) a dividend or distribution on the Common Stock other than a regular quarterly cash dividend or (B) any subdivision, combination or reclassification of such Common Stock and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, shall not have occurred prior to the commencement of such ten Trading Day period, then, and in each such case, the current per share market price shall be properly adjusted to take into account ex-dividend trading. The closing price for each day shall be the last sales price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange, or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or, if the Common Stock is not listed or admitted to trading on any national securities exchange but sales price information is reported for such security, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ") or such other self-regulatory organization or registered securities information processor (as such terms are used under the Securities Exchange Act of 1934, as amended) that then reports information concerning the Common Stock, or, if sales price information is not so reported, the average of the high bid and low asked prices in the over-the-counter market on such day, as reported by NASDAQ or such other entity, or, if on any such date the Common Stock is not quoted by any such entity, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board of Directors of the Corporation. If on any such date no such market maker is making a market in the Common Stock, the fair value of the Common Stock on such date as determined in good faith by the Board of Directors of the Corporation shall be used. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business, or, if the Common Stock is not listed or admitted to trading on any national securities exchange but is quoted by NASDAQ, a day on which NASDAQ reports trades, or, if the Common Stock is not so quoted, a Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in the State of New York are not authorized or obligated by law or executive order to close.

(B) In the event that fewer than all the outstanding shares of the Series A Junior Participating Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be determined by lot or pro rata as may be determined by the Board of Directors or by any other method that may be determined by the Board of Directors in its sole discretion to be equitable.

(C) Notice of any such redemption shall be given by mailing to the holders of the shares of Series A Junior Participating Preferred Stock to be redeemed a notice of such redemption, first class postage prepaid, not later than the fifteenth day and not earlier than the sixtieth day before the date fixed for redemption, at their last address as the same shall appear upon the books of the Corporation. Each such notice shall state: (i) the redemption date;  
(ii) the number of shares to be

redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the close of business on such redemption date. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the stockholder received such notice, and failure duly to give such notice by mail, or any defect in such notice, to any holder of Series A Junior Participating Preferred Stock shall not affect the validity of the proceedings for the redemption of any other shares of Series A Junior Participating Preferred Stock that are to be redeemed. On or after the date fixed for redemption as stated in such notice, each holder of the shares called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the redemption price. If fewer than all the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(D) The shares of Series A Junior Participating Preferred Stock shall not be subject to the operation of any purchase, retirement or sinking fund.

9. Ranking. The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise, and shall rank senior to the Common Stock as to such matters.

10. Amendment. At any time that any shares of Series A Junior Participating Preferred Stock are outstanding, the Restated Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

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

IN WITNESS WHEREOF, the undersigned has executed this Certificate and does affirm the foregoing as true this 17th day of August, 1999.

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**President**

A-8

**Exhibit B**

[Form of Rights Certificate]

**Certificate No. R- \_\_\_\_\_ Rights**

NOT EXERCISABLE AFTER AUGUST 17, 2009 OR EARLIER IF REDEEMED OR EXCHANGED BY THE COMPANY. THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE COMPANY, AT \$0.01 PER RIGHT ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS BENEFICIALLY OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS, WAS OR BECOMES AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE THEREOF (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFEREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

**RIGHTS CERTIFICATE**

**DEVON ENERGY CORPORATION**

This certifies that \_\_\_\_\_, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of August 17, 1999 as it may from time to time be supplemented or amended (the "Rights Agreement"), between Devon Energy Corporation, a Delaware corporation (the "Company"), and BankBoston, N.A., a national banking association (the "Rights Agent"), to purchase from the Company at any time prior to 5:00 p.m. (New York City time) on August 17, 2009 at the principal office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-hundredth of a fully paid, nonassessable share (a "Fractional Share") of Series A Junior Participating Preferred Stock (the "Preferred Stock") of the Company, at a purchase price of \$\_\_\_\_\_ per one one-hundredth of a share (the "Purchase Price"), upon presentation and surrender of this Rights Certificate with the Form of Election to Purchase and related Certificate set forth on the reverse hereof duly executed. The Purchase Price may be paid in cash or by certified check, cashier's or official bank check or bank draft payable to the order of the Company or the Rights Agent. The number of Rights evidenced by this Rights Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Purchase Price per Fractional Share set forth above, are the number and Purchase Price as of August 17, 1999, based on the Preferred Stock as constituted at such date. The Company reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Rights Agreement) that a number of Rights be exercised so that only whole shares of Preferred Stock will be issued.

From and after the first occurrence of a Triggering Event (as such term is defined in the Rights Agreement), if the Rights evidenced by this Rights Certificate are beneficially owned by or transferred to (i) an Acquiring Person or an Associate or Affiliate of an Acquiring Person (as such terms are defined in the Rights Agreement), (ii) a transferee of any such Acquiring Person, Associate or Affiliate, or (iii) under certain circumstances specified in the Rights Agreement, a transferee of a person who, concurrently with or after such transfer, became an Acquiring Person or an Affiliate or Associate of an Acquiring Person, such Rights shall, with certain exceptions, become null and void in the circumstances set forth in the Rights Agreement, and no holder hereof shall have any rights whatsoever with respect to such Rights from and after the occurrence of such Triggering Event.

As provided in the Rights Agreement, the Purchase Price and the number and kind of shares of Preferred Stock or other securities or assets that may be purchased upon the exercise of the Rights evidenced by this Rights Certificate are subject to modification and adjustment upon the happening of certain events, including Triggering Events.

This Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the above-mentioned office of the Rights Agent and are also available upon written request to the Company or the Rights Agent.

This Rights Certificate, with or without other Rights Certificates, upon surrender at the principal office or offices of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or Rights Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of Fractional Shares of Preferred Stock as the Rights evidenced by the Rights Certificate or Rights Certificates surrendered shall have entitled such holder to purchase. If this Rights Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Rights Certificate or Rights Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate (i) may be redeemed by the Company at its option at a redemption price of \$0.01 per Right, payable, at the election of the Company, in cash or shares of Common Stock or such other consideration as the Board of Directors may determine, at any time prior to the earlier of the close of business on (a) the tenth day following the first public announcement of the occurrence of a Flip-In Event (as such time period may be extended or shortened pursuant to the Rights Agreement) and (b) the Expiration Date (as such term is defined in the Rights Agreement) or (ii) may be exchanged in whole or in part for shares of the Company's Common Stock, par value \$0.10 per share, and/or other equity securities of the Company deemed to have the same value as shares of Common Stock,

at any time prior to a person's becoming the beneficial owner of 50% or more of the shares of Common Stock outstanding or the occurrence of a Flip-Over Event.

No fractional shares of Preferred Stock are required to be issued upon the exercise of any Right or Rights evidenced hereby (other than, except as set forth above, fractions that are integral multiples of a Fractional Share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), but in lieu thereof a cash payment may be made, as provided in the Rights Agreement.

No holder of this Rights Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of shares of Preferred Stock or of any other securities of the Company that may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Rights Certificate shall have been exercised as provided in the Rights Agreement.

This Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

**Dated as of** \_\_\_\_\_

ATTEST:

DEVON ENERGY CORPORATION

\_\_\_\_\_  
Secretary

By \_\_\_\_\_

Title:

Countersigned:

**BANKBOSTON, N.A.**

By: \_\_\_\_\_  
Authorized Signature

**FORM OF ASSIGNMENT**

(To be executed by the registered holder if such holder desires to transfer any Rights evidenced by the Rights Certificate.)

FOR VALUE RECEIVED \_\_\_\_\_ hereby sells, assigns and transfers  
unto \_\_\_\_\_

(Please print name and address of transferee)

\_\_\_\_\_ Rights evidenced by this Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney, to transfer the said Rights on the books of the within-named Company, with full power of substitution.

Dated: \_\_\_\_\_, 199\_\_

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**Signature**

**Signature Guaranteed:**

Signatures must be guaranteed by a member firm of a national securities exchange, a member of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or another eligible guarantor institution (as defined pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended).

## CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Rights Certificate  are  are not being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined pursuant to the Rights Agreement);

(2) after due inquiry and to the best knowledge of the undersigned, it  did  did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate of an Acquiring Person or who is a direct or indirect transferee of an Acquiring Person or of an Affiliate or Associate of an Acquiring Person.

Dated: \_\_\_\_\_, \_\_\_\_\_ Signature

### **Signature Guaranteed:**

Signatures must be guaranteed by a member firm of a national securities exchange, a member of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or another eligible guarantor institution (as defined pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended).

## NOTICE

The signatures to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

**FORM OF ELECTION TO PURCHASE**

(To be executed if holder desires to exercise Rights represented by the Rights Certificate.)

**To: DEVON ENERGY CORPORATION**

The undersigned hereby irrevocably elects to exercise \_\_\_\_\_ Rights represented by this Rights Certificate to purchase the shares of Preferred Stock issuable upon the exercise of the Rights (or such other securities of the Company or of any other person that may be issuable upon the exercise of the Rights) and requests that certificates for such shares (or other securities) be issued in the name of and delivered to:

Please insert social security  
or other identifying number

---

(Please print name and address)

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If such number of Rights shall not be all the Rights evidenced by this Rights Certificate, a new Rights Certificate for the balance of such Rights shall be registered in the name of and delivered to:

Please insert social security  
or other identifying number

---

(Please print name and address)

---

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

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

Signatures must be guaranteed by a member firm of a national securities exchange, a member of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or another eligible guarantor institution (as defined pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended).



## CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Rights Certificate  are  are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined pursuant to the Rights Agreement);

(2) after due inquiry and to the best knowledge of the undersigned, it  did  did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person or who is a direct or indirect transferee of an Acquiring Person or of an Affiliate or Associate of an Acquiring Person.

Dated: \_\_\_\_\_, \_\_\_\_\_ Signature

### **Signature Guaranteed:**

Signatures must be guaranteed by a member firm of a national securities exchange, a member of the National Association of Securities Dealers, Inc., a commercial bank or trust company having an office or correspondent in the United States or another eligible guarantor institution (as defined pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended).

## NOTICE

The signatures to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Rights Certificate

in every particular, without alteration or enlargement or any change whatsoever.

**EXHIBIT 4.7**

**DEVON ENERGY CORPORATION**

**AND**

**CHASE BANK OF TEXAS, NATIONAL ASSOCIATION**

**TRUSTEE**

**FIFTH SUPPLEMENTAL INDENTURE**

**DATED AS OF**

AUGUST 17, 1999

**TO**

**INDENTURE**

**DATED AS OF**

DECEMBER 15, 1992

THIS FIFTH SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of August 17, 1999, between Devon Energy Corporation, a Delaware corporation (the "Company") (as successor by merger to PennzEnergy Company, a Delaware corporation (formerly Pennzoil Company)), and Chase Bank of Texas, National Association, a national banking association, incorporated and existing under the laws of the United States of America (formerly known as Texas Commerce Bank National Association), as Trustee (the "Trustee"), supplements the Indenture dated as of December 15, 1992 (the "Indenture"), between the Company and the Trustee, pursuant to which the Company's 4.90% Exchangeable Senior Debentures due 2008 and 4.95% Exchangeable Senior Debentures due 2008 (the "Securities") were issued and are currently outstanding.

### **RECITALS**

WHEREAS, PennzEnergy Company ("PennzEnergy"), Devon Energy Corporation, an Oklahoma corporation, Devon Delaware Corporation, a Delaware corporation and a wholly owned subsidiary of Devon Energy Corporation ("Devon Delaware"), and Devon Oklahoma Corporation, an Oklahoma corporation and a wholly owned subsidiary of Devon Delaware, entered into an Amended and Restated Agreement and Plan of Merger, dated as of May 19, 1999 (the "Merger Agreement"), pursuant to which, on August 17, 1999 (the "Closing Date"), PennzEnergy merged with and into Devon Delaware, with Devon Delaware surviving (the "Merger");

WHEREAS, Devon Delaware's name was changed to Devon Energy Corporation;

WHEREAS, Section 801(1) of the Indenture requires that the Person into which the Company is merged shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest (including all Additional Amounts) on all the Securities and the performance of every covenant of the Indenture on the part of the Company to be performed or observed.

WHEREAS, consistent with the terms of the Indenture, the Company has duly determined to make, execute and deliver to the Trustee this Supplemental Indenture providing for the assumption by the Company of the obligations under the Indenture and the Securities;

### **NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:**

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to Section 801(1) of the Indenture, the parties hereto hereby agree, for the benefit of the respective Holders from time to time of the Securities, as follows:

SECTION ONE

**DEFINITIONS**

Capitalized terms used and not otherwise defined herein have the respective meanings assigned to such terms in the Indenture.

SECTION TWO

**ASSUMPTION**

The Company hereby expressly assumes the due and punctual payment of the principal of (and premium, if any) and interest (including all Additional Amounts, if any) on all the Securities and the performance of every covenant of the Indenture and all supplements to the Indenture on the part of the Company to be performed or observed.

SECTION THREE

**RATIFICATION**

Except as expressly amended and supplemented herein, the Indenture, as heretofore supplemented, shall remain unchanged and in full force and effect. This Supplemental Indenture shall be construed as supplemental to the Indenture and shall form a part thereof.

SECTION FOUR

**GOVERNING LAW**

This Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed therein.

SECTION FIVE

**COUNTERPARTS**

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION SIX

**THE TRUSTEE**

The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Devon Energy Corporation has caused this Fifth Supplemental Indenture to be duly executed and its seal to be affixed hereunto and the same to be attested by its Secretary or an Assistant Secretary, and Chase Bank of Texas, National Association, as Trustee, has caused this Fifth Supplemental Indenture to be signed by one of its duly authorized officers as of the day and year first above written.

**DEVON ENERGY CORPORATION**

[SEAL]

By /s/ William T. Vaughn

-----  
Name: William T. Vaughn

Title: Vice President-Finance

Attest:

/s/ Marian J. Moon

-----  
Name: Marian J. Moon

Title: Corporate Secretary

**CHASE BANK OF TEXAS, NATIONAL  
ASSOCIATION, Trustee**

[SEAL]

By /s/ Letha Glover

-----  
Name: Letha Glover

Title: Assistant Vice President  
and Trust Officer

Attest:

/s/ Rebecca A. Newman

-----  
Name: Rebecca A. Newman

Title: Vice President and  
Trust Officer

**[SIGNATURE PAGE TO FIFTH SUPPLEMENTAL INDENTURE]**

**EXHIBIT 4.8**

**DEVON ENERGY CORPORATION**

**AND**

**CHASE BANK OF TEXAS, NATIONAL ASSOCIATION**

**TRUSTEE**

**FIRST SUPPLEMENTAL INDENTURE**

**DATED AS OF**

AUGUST 17, 1999

**TO**

**INDENTURE**

**DATED AS OF**

FEBRUARY 15, 1986

THIS FIRST SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of August 17, 1999, between Devon Energy Corporation, a Delaware corporation (the "Company") (as successor by merger to PennzEnergy Company, a Delaware corporation (formerly Pennzoil Company)), and Chase Bank of Texas, National Association, a national banking association, incorporated and existing under the laws of the United States of America (formerly known as Texas Commerce Bank National Association (successor to Mellon Bank, N.A.)), as Trustee (the "Trustee"), supplements the Indenture dated as of February 15, 1986 (the "Indenture"), between the Company and the Trustee, pursuant to which the Company's 10 5/8% Debentures due 2001, 10 1/8% Debentures due 2009, 9 5/8% Notes due 1999 and 10 1/4% Debentures due 2005 (the "Securities") were issued and are currently outstanding.

### **RECITALS**

WHEREAS, PennzEnergy Company ("PennzEnergy"), Devon Energy Corporation, an Oklahoma corporation, Devon Delaware Corporation, a Delaware corporation and a wholly owned subsidiary of Devon Energy Corporation ("Devon Delaware"), and Devon Oklahoma Corporation, an Oklahoma corporation and a wholly owned subsidiary of Devon Delaware, entered into an Amended and Restated Agreement and Plan of Merger, dated as of May 19, 1999 (the "Merger Agreement"), pursuant to which, on August 17, 1999 (the "Closing Date"), PennzEnergy merged with and into Devon Delaware, with Devon Delaware surviving (the "Merger");

WHEREAS, Devon Delaware's name was changed to Devon Energy Corporation;

WHEREAS, Section 801(1) of the Indenture requires that the Person into which the Company is merged shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest (including all Additional Amounts) on all the Securities and the performance of every covenant of the Indenture on the part of the Company to be performed or observed.

WHEREAS, consistent with the terms of the Indenture, the Company has duly determined to make, execute and deliver to the Trustee this Supplemental Indenture providing for the assumption by the Company of the obligations under the Indenture and the Securities;

### **NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:**

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to Section 801(1) of the Indenture, the parties hereto hereby agree, for the benefit of the respective Holders from time to time of the Securities, as follows:



SECTION ONE

**DEFINITIONS**

Capitalized terms used and not otherwise defined herein have the respective meanings assigned to such terms in the Indenture.

SECTION TWO

**ASSUMPTION**

The Company hereby expressly assumes the due and punctual payment of the principal of (and premium, if any) and interest (including all Additional Amounts, if any) on all the Securities and the performance of every covenant of the Indenture and all supplements to the Indenture on the part of the Company to be performed or observed.

SECTION THREE

**RATIFICATION**

Except as expressly amended and supplemented herein, the Indenture, as heretofore supplemented, shall remain unchanged and in full force and effect. This Supplemental Indenture shall be construed as supplemental to the Indenture and shall form a part thereof.

SECTION FOUR

**GOVERNING LAW**

This Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed therein.

SECTION FIVE

**COUNTERPARTS**

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION SIX

**THE TRUSTEE**

The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Devon Energy Corporation has caused this First Supplemental Indenture to be duly executed and its seal to be affixed hereunto and the same to be attested by its Secretary or an Assistant Secretary, and Chase Bank of Texas, National Association, as Trustee, has caused this First Supplemental Indenture to be signed by one of its duly authorized officers as of the day and year first above written.

**DEVON ENERGY CORPORATION**

[SEAL]

By /s/ William T. Vaughn

-----  
Name: William T. Vaughn

Title: Vice President-Finance

Attest:

/s/ Marian J. Moon

-----  
Name: Marian J. Moon

Title: Corporate Secretary

**CHASE BANK OF TEXAS, NATIONAL  
ASSOCIATION, Trustee**

[SEAL]

By /s/ Letha Glover

-----  
Name: Letha Glover

Title: Assistant Vice President  
and Trust Officer

Attest:

/s/ Rebecca A. Newman

-----  
Name: Rebecca A. Newman

Title: Vice President and  
Trust Officer

**[SIGNATURE PAGE TO FIRST SUPPLEMENTAL INDENTURE]**

## EXHIBIT 4.9

### DESCRIPTION OF CAPITAL STOCK

#### General

The authorized capital stock of Devon consists of:

- . 400,000,000 shares of common stock, par value \$0.10 per share,
- . 4,500,000 shares of preferred stock, par value \$1.00 per share, and
- . one share of special voting stock, par value \$0.10 per share.

#### Common Stock

Holders of Devon common stock are entitled to receive dividends out of legally available funds when and if declared by the Devon board of directors. Subject to the rights of the holders of any outstanding shares of Devon preferred stock, holders of shares of Devon common stock are entitled to cast one vote for each share held of record on all matters submitted to a vote of stockholders. They are not entitled to cumulative voting rights for the election of directors. Except pursuant to the rights agreement, the shares of Devon common stock have no preemptive, conversion or other rights to subscribe for or purchase any securities of Devon. Upon liquidation or dissolution of Devon, the holders of shares of Devon common stock are entitled to share ratably in any of Devon's assets that remain after payment or provision for payment to creditors and holders of preferred stock. All outstanding shares of Devon common stock are fully paid and nonassessable.

#### Trust Convertible Preferred Securities

On July 3, 1996, Devon Financing Trust, a Delaware business trust sponsored by Devon, issued 2,990,000 trust convertible preferred securities. The trust convertible preferred securities are convertible into shares of Devon common stock at the rate of 1.6393 shares of Devon common stock per trust convertible preferred security. The conversion of the trust convertible preferred securities may have a dilutive effect on the common stockholders of Devon and may affect the market price of the shares of Devon common stock.

#### Preferred Stock

The Devon preferred stock may be issued in one or more series. The Devon board may establish attributes of any series, including the designation and number of shares in the series, dividend rates (cumulative or noncumulative), voting rights, redemptions, conversion or preference rights, and any other rights and qualifications, preferences and limitations or restrictions on shares of a series. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of Devon without any vote or action by the stockholders and may adversely affect the voting and other rights of the holders of shares of Devon common stock. The specific terms of a particular series of preferred stock will be described in a certificate of designations relating to that series. The Devon board has designated 1,500,000 shares of preferred stock as Devon 6.49% cumulative preferred stock, series A. The Devon board has also designated 1,000,000 shares of preferred stock as series A junior participating preferred stock in connection with Devon's rights agreement.

## **Special Voting Stock**

One share of special voting stock, par value \$0.10 per share, is authorized for issuance by Devon and is outstanding. Except as otherwise required by law or Devon's restated certificate of incorporation, the special voting share will possess a number of votes equal to the number of outstanding exchangeable shares from time to time not owned by Devon or any entity controlled by Devon for the election of directors and on all other matters submitted to a vote of Devon stockholders. The holders of shares of Devon common stock and the holder of the special voting share will vote together as a single class on all matters. In the event of a Devon liquidation event, all outstanding exchangeable shares will automatically be exchanged for shares of Devon common stock, and the holder of the special voting share will not be entitled to receive any assets of Devon available for distribution to its stockholders. The holder of the special voting share will not be entitled to receive dividends. At such time as the special voting share has no votes attached to it because there are no exchangeable shares outstanding not owned by Devon or an entity controlled by Devon, the special voting share will be canceled.

## **Share Rights Plan**

Under Devon's rights agreement, holders of shares of Devon common stock have one right for each share of Devon common stock that they hold. The certificates representing outstanding shares of Devon common stock also evidence one right for each share. Initially, the rights will trade with the shares of Devon common stock. Holders of exchangeable shares will receive one right with each share of Devon common stock they receive upon exchange of their exchangeable shares. If events generally associated with an unsolicited takeover attempt of Devon or transactions involving a change of control occur (including an acquisition, or a tender or exchange offer that would result in a bidder acquiring 15% or more of Devon's voting securities), the rights will be distributed, will become exercisable and will trade separately from the shares of Devon common stock.

The rights have antitakeover effects. They will cause substantial dilution to a person or group that attempts to acquire Devon in a manner that causes the rights to become exercisable. We believe, however, that the rights should not affect any prospective offeror willing to negotiate with the Devon board or interfere with any merger or other business combination approved by the Devon board. The Devon board may redeem the rights for \$0.01 per right. The terms of the rights agreement may be amended by the Devon board without the consent of

the Devon stockholders or the holders of the rights.

## EXHIBIT 9

### AMENDING VOTING AND EXCHANGE TRUST AGREEMENT

THIS AMENDING VOTING AND EXCHANGE TRUST AGREEMENT is entered into as of August 17, 1999, among Devon Energy Corporation, a Delaware corporation ("New Devon"), Devon Energy Corporation (Oklahoma), an Oklahoma corporation ("Old Devon"), Northstar Energy Corporation, an Alberta corporation ("Northstar") and CIBC Mellon Trust Company, a Canadian trust company ("Trustee").

#### RECITALS

WHEREAS, pursuant to an arrangement effected by Articles of Arrangement dated December 10, 1998 filed pursuant to the Business Corporations Act (Alberta) (the "Act"), the issued and outstanding common shares of Northstar were exchanged for issued and outstanding Exchangeable Shares of Northstar (the "Exchangeable Shares").

WHEREAS the Plan of Arrangement and the Articles of Amendment of Northstar set forth the rights, privileges, restrictions and conditions (collectively the "Exchangeable Share Provisions") attaching to the Exchangeable Shares.

WHEREAS Old Devon, Northstar and the Trustee executed and delivered a Voting and Exchange Trust Agreement dated December 10, 1998 (the "Voting and Exchange Trust Agreement").

WHEREAS Old Devon, New Devon, Devon Oklahoma Corporation ("Devon Oklahoma") and PennzEnergy Company entered into a Merger Agreement dated May 19, 1999 pursuant to which Devon Oklahoma, a wholly-owned subsidiary of Old Devon, agreed to merge into Old Devon, with Old Devon becoming a wholly-owned subsidiary of New Devon, and PennzEnergy Company agreed to merge into New Devon.

WHEREAS upon the merger becoming effective on August 17, 1999, inter alia:

(i) the holders of Devon Common Stock (as that term is defined in the Voting and Exchange Trust Agreement) received shares of the common stock of New Devon; (ii) one share of New Devon Special Voting Stock was created and issued to the Trustee and the Voting Share (as that term is defined in the Voting and Exchange Trust Agreement) of Old Devon was cancelled; and (iii) Old Devon became a wholly-owned subsidiary of New Devon.

WHEREAS the Exchangeable Share Provisions were amended with the approval of the holders of the Exchangeable Shares in accordance with the Act to change the definition of "Devon" to refer to New Devon.

WHEREAS Section 1.1 of the Voting and Exchange Trust Agreement by its terms incorporates the defined terms of the Exchangeable Share Provisions into the Voting and Exchange Trust Agreement;

WHEREAS it is necessary to substitute Old Devon with New Devon in the Voting and Exchange Trust Agreement and amend the Voting and Exchange Trust Agreement pursuant to Section 12.4 of the Voting and Exchange Trust Agreement to maintain the equivalence of the Exchangeable Shares and the Devon Common Stock.

NOW THEREFORE in consideration of the respective covenants and agreements provided in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1 New Devon shall be substituted as a party to the Voting and Exchange Trust Agreement in the place and stead of Old Devon effective as of the date hereof with all of the rights and obligations of Old Devon under the Voting and Exchange Trust Agreement.

2 New Devon hereby agrees with Old Devon, Northstar and the Trustee that it shall and will from time to time and at all times hereafter be bound by and observe, perform and fulfill each and every covenant, agreement, term, condition and stipulation on the part of Old Devon in the Voting and Exchange Trust Agreement.

3 Northstar and the Trustee hereby consent to and accept New Devon as a party of the Voting and Exchange Trust Agreement and agree the Voting and Exchange Trust Agreement shall continue in full force and effect with New Devon substituted as a party thereto in the place and stead of Old Devon.

4 The Trustee hereby accepts the substitution of the Voting Share under the Voting and Exchange Trust Agreement.

5 For greater certainty: (i) the "Exchangeable Share Provisions" referred to in the recitals to the Voting and Exchange Trust Agreement shall be deemed to include any amendment thereto made from time to time; (ii) the "Devon Special Voting Stock" referred to in the recitals to the Voting and Exchange Trust Agreement shall be deemed to be the share of the Devon Special Voting Stock of New Devon; and (iii) the "Support Agreement" referred to in Section 1.1 of the Voting and Exchange Trust Agreement shall be deemed to include any amendment thereto made from time to time.

6 This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

7 Except as specifically provided for in this Agreement, the Voting and Exchange Trust Agreement shall continue in full force and effect with New Devon substituted as a party thereto in the place and stead of Old Devon.

IN WITNESS WHEREOF, New Devon, Old Devon, Northstar and the Trustee have caused this agreement to be signed by their respective officers thereunder duly authorized, all as of the date first written above.

**DEVON ENERGY CORPORATION**

*/s/ J. Larry Nichols*  
By: \_\_\_\_\_

DEVON ENERGY CORPORATION (OKLAHOMA)

*/s/ J. Larry Nichols*  
By: \_\_\_\_\_

NORTHSTAR ENERGY CORPORATION

*/s/ John Richels*  
By: \_\_\_\_\_

*/s/ Don A. Garner*  
By: \_\_\_\_\_

CIBC MELLON TRUST COMPANY

*/s/ Jacquie Fisher*  
By: \_\_\_\_\_

*/s/ Dareal McGeein*  
By: \_\_\_\_\_

## EXHIBIT 99

[Devon Energy Corporation Logo]

[PennzEnergy Company Logo]

FOR IMMEDIATE RELEASE

CONTACT: VINCE WHITE  
DEVON ENERGY CORPORATION  
(405) 552-4505

JEANNE BUCHANAN  
PENNZENERGY COMPANY  
(713) 546-6444

### **Devon Energy and PennzEnergy Announce COMPLETION OF MERGER**

OKLAHOMA CITY, OKLAHOMA; HOUSTON, TEXAS, August 17, 1999 -- Devon Energy Corporation (AMEX: DVN, TSE: NSX) and PennzEnergy Company (NYSE: PZE) today announced that their merger has been completed. The merger was announced on May 20, 1999. Shareholders of both companies approved the merger at special meetings of shareholders on August 17, 1999. More than 99 percent of the shares represented at the Devon meeting were cast in favor of the merger. Of the shares represented at the PennzEnergy meeting, approximately 92 percent were cast in favor of the merger.

#### **TERMS OF MERGER**

In the merger, each PennzEnergy share was converted into 0.4475 shares of common stock of the new Devon Energy Corporation. Each share of Devon common stock was converted into one share of new Devon. PennzEnergy shareholders will own approximately 31 percent of the combined company and Devon shareholders will own approximately 69 percent.

#### **THE NEW DEVON ENERGY CORPORATION**

Devon Energy Corporation now ranks in the top 10 of all U.S.-based independent oil and gas producers in terms of market capitalization, total proved reserves and annual production. Key measures of Devon Energy Corporation include:

- . Total capitalization of approximately \$5.0 billion.
- . Proved reserves, as of December 31, 1998, of approximately 660 million barrels of oil equivalent (MMBOE) (52 percent natural gas and 48 percent liquids).
- . Net average daily production during 1998 of 230,000 barrels of oil equivalent (60 percent natural gas and 40 percent liquids).
- . U.S. operations concentrated in four core areas with year-end 1998 proved reserves of 422 MMBOE.



. One of the world's largest coal bed methane producers from Devon's stable San Juan Basin reserves. Significant exposure to the developing Powder River Basin and Raton Basin coal seam plays.

. One of the largest producers in the Gulf of Mexico with operations on 75 blocks. Interests in an additional 98 undeveloped blocks.

. Significant operations in the Western Canadian Sedimentary Basin. Year-end 1998 proved reserves of 144 MMBOE.

. International operations in the Caspian Sea region, Egypt and Venezuela. Year-end 1998 proved reserves of 94 MMBOE, primarily in Azerbaijan.

. An aggregate 15 million net undeveloped acres, providing an extensive inventory of exploration opportunities.

James L. Pate, Chairman of Devon Energy Corporation, said, "This merger has created a powerful new independent energy company. Devon is now poised to take advantage of substantial economies of scale, cost savings and opportunities for strategic expansion. These synergies will result in improved value for all shareholders of the new Devon."

"I am excited and eager to begin this new chapter in the life of Devon Energy Corporation," said J. Larry Nichols, President and CEO of Devon. "This merger is the largest in Devon's history. It carries with it more opportunities to enhance shareholder value than anything we have accomplished to date. This is truly a banner day and I want to welcome all our new shareholders to Devon."

### **EXCHANGE AND TRANSMITTAL OF SHARES**

Shareholders of Devon and PennzEnergy will receive written instructions for exchanging their current shares for shares of the new Devon Energy Corporation. The exchange and transmittal process will begin promptly. Questions concerning this process should be directed to the Exchange Agent, BankBoston, N.A., at its toll free number (800) 733-5001.

### **FORWARD LOOKING STATEMENTS**

This press release includes "forward-looking statements" as defined by the Securities and Exchange Commission. Such statements are those concerning the company's plans, expectations and objectives for future operations. All statements, other than statements of historical facts, included in this press release that address activities, events or developments that the company expects, believes or anticipates will or may occur in the future are forward-looking statements. Such statements are subject to a number of assumptions, risks and uncertainties, many of which are beyond the control of the company. Investors are cautioned that any such statements are not guarantees of future performance and that actual results or developments may differ materially from those projected in the forward-looking statements.

Devon Energy Corporation is an independent energy company engaged in oil and gas property acquisition, exploration and production. It is one of the top 10 public independent oil and gas companies in the United States and Canada, as measured by oil and gas reserves. Devon's Canadian operations are primarily conducted by its subsidiary, Northstar Energy Corporation, traded on the Toronto Stock Exchange under the symbol NSX. Shares of the new Devon Energy Corporation will continue to trade on the American Stock Exchange under the symbol DVN.

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**End of Filing**

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