

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **1996-11-14** | Period of Report: **1996-09-30**  
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FILER

**SEAGULL ENERGY CORP**

CIK: **320321** | IRS No.: **741764876** | State of Incorpor.: **TX** | Fiscal Year End: **1231**  
Type: **10-Q** | Act: **34** | File No.: **001-08094** | Film No.: **96664244**  
SIC: **4923** Natural gas transmissison & distribution

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HOUSTON TX 77002-6714*

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FORM 10-Q  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 1996  
-----

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

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

Commission file number 1-8094

Seagull Energy Corporation

(Exact name of registrant as specified in its charter)

Texas 74-1764876

State or other jurisdiction of incorporation or organization (I.R.S. Employer Identification No.)

1001 Fannin, Suite 1700, Houston, Texas 77002-6714

(Address of principal executive offices) (Zip code)

(713) 951-4700

(Registrant's telephone number, including area code)

None

(Former name, former address and former fiscal year, if changed since last report)

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

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

CLASS	OUTSTANDING AT OCTOBER 31, 1996
Common Stock, \$.10 par value	62,743,687

SEAGULL ENERGY CORPORATION AND SUBSIDIARIES

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PART I. FINANCIAL INFORMATION

PRESENTATION OF FINANCIAL INFORMATION

In the opinion of management, the following unaudited consolidated financial statements contain all adjustments necessary to present fairly the financial position of Seagull Energy Corporation and Subsidiaries ("Seagull" or the "Company") as of September 30, 1996, and the results of its operations for the three and nine month periods ended September 30, 1996 and 1995, and cash flows for the nine month periods then ended. As discussed in Note 1 to the Company's Unaudited Consolidated Financial Statements, the shareholders of Seagull and Global Natural Resources Inc. ("Global") approved a merger of a wholly owned subsidiary of Seagull into Global on October 3, 1996 (the "Merger"). Accordingly, the unaudited financial statements presented herein include the results of Seagull (the "Primary Financial Information") and, supplementally, the combined operations of Seagull and Global (the "Supplemental Financial Information" or the "Combined Company"). Certain adjustments were made to the Supplemental Financial Information to conform the accounting policies and presentation used by Seagull and Global. The Supplemental Financial Information does not include estimated transaction costs of the Merger of approximately \$8-10 million (before tax). The estimated transaction costs will be expensed in the fourth quarter of 1996, the period in which the Merger was consummated. As discussed in Note 2 to the Company's Unaudited Consolidated Financial Statements, Seagull purchased all of the stock of Esso Suez Inc. and certain of the assets of Esso Egypt Limited effective September 10, 1996. The Unaudited Consolidated Financial Statements included herein include the results of operations of Esso Suez Inc. and of the certain assets of Esso Egypt Limited since September 10, 1996. All other adjustments made are of a normal, recurring nature. The results of operations for the three and nine months ended September 30, 1996 are not necessarily indicative of the results to be expected for the full year.

The financial information presented herein should be read in conjunction with the consolidated financial statements and notes included in Seagull's Annual Report on Form 10-K for the year ended December 31, 1995 and Global's Annual Report on Form 10-K for the year ended December 31, 1995.

Item 2 of this document includes forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Although Seagull believes that its expectations are based on reasonable assumptions, it can give no assurance that its expectations will be achieved. Important factors that could cause actual results to differ materially from those in the forward looking statements include political developments in foreign countries, federal and state regulatory developments, the timing and extent of changes in commodity prices, the timing and extent of success discovering, developing and producing or acquiring oil and gas reserves, and conditions of the capital and equity markets during the periods covered by the forward looking statements.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
Item 1. FINANCIAL STATEMENTS  
CONSOLIDATED STATEMENTS OF EARNINGS  
(Dollars in Thousands Except Per Share Amounts)  
(Unaudited)

<TABLE>  
<CAPTION>

Primary Financial Information	Supplemental Financial Information
-----	-----
Three Months Ended September 30,	Three Months Ended September 30,

	1996	1995	1996	1995
<S>	<C>	<C>	<C>	<C>
Revenues:				
Gas and oil operations.....	\$72,594	\$ 55,732	\$ 98,175	\$ 73,026
Alaska transmission and distribution.....	12,611	12,355	12,611	12,355
	85,205	68,087	110,786	85,381
Costs of Operations:				
Alaska transmission and distribution				
cost of gas sold.....	4,517	4,779	4,517	4,779
Operations and maintenance.....	25,575	25,487	35,323	33,058
Exploration charges.....	9,597	7,733	10,654	9,750
Depreciation, depletion and amortization.	30,629	29,633	36,533	35,668
	70,318	67,632	87,027	83,255
Operating Profit.....	14,887	455	23,759	2,126
Other (Income) Expense:				
General and administrative.....	2,244	2,876	3,643	3,601
Interest expense.....	10,781	13,568	10,795	13,605
Gain on sales of property, plant and equipment, net.....	(1,839)	(82,028)	(2,330)	(81,963)
Interest income and other.....	(262)	224	(1,986)	(1,665)
	10,924	(65,360)	10,122	(66,422)
Earnings Before Income Taxes.....	3,963	65,815	13,637	68,548
Income Tax Expense.....	2,330	24,265	6,179	24,856
Net Earnings.....	\$ 1,633	\$ 41,550	\$ 7,458	\$ 43,692
Earnings Per Share.....	\$ 0.04	\$ 1.13	\$ 0.12	\$ 0.70
Weighted Average Number of Common Shares Outstanding (in thousands).....	37,011	36,768	63,934	62,752

</TABLE>

See Accompanying Notes to Unaudited Consolidated Financial Statements.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
Item 1. FINANCIAL STATEMENTS  
CONSOLIDATED STATEMENTS OF EARNINGS  
(Dollars in Thousands Except Per Share Amounts)  
(Unaudited)

	Primary Financial Information		Supplemental Financial Information	
	Nine Months Ended September 30,		Nine Months Ended September 30,	
	1996	1995	1996	1995
<S>	<C>	<C>	<C>	<C>
Revenues:				
Gas and oil operations.....	\$217,896	\$178,219	\$296,319	\$230,198
Alaska transmission and distribution.....	63,744	66,205	63,744	66,205
	281,640	244,424	360,063	296,403
Costs of Operations:				
Alaska transmission and distribution				
cost of gas sold.....	26,974	31,267	26,974	31,267
Operations and maintenance.....	76,588	82,229	104,843	104,244
Exploration charges.....	24,438	21,752	30,839	30,239

Depreciation, depletion and amortization.	92,949	96,217	111,731	114,386
Impairment of long-lived assets.....	-	44,376	-	48,842
	-----	-----	-----	-----
	220,949	275,841	274,387	328,978
	-----	-----	-----	-----
Operating Profit (Loss).....	60,691	(31,417)	85,676	(32,575)
Other (Income) Expense:				
General and administrative.....	10,177	15,377	14,033	18,483
Interest expense.....	33,435	41,499	33,478	41,613
Gain on sales of property, plant and equipment, net.....	(2,223)	(82,365)	(2,711)	(82,316)
Interest income and other.....	(730)	(188)	(2,988)	(2,899)
	-----	-----	-----	-----
	40,659	(25,677)	41,812	(25,119)
	-----	-----	-----	-----
Earnings (Loss) Before Income Taxes.....	20,032	(5,740)	43,864	(7,456)
Income Tax Expense (Benefit).....	9,460	(1,615)	21,028	1,681
	-----	-----	-----	-----
Net Earnings (Loss).....	\$ 10,572	\$ (4,125)	\$ 22,836	\$ (9,137)
	=====	=====	=====	=====
Earnings (Loss) Per Share.....	\$ 0.29	\$ (0.11)	\$ 0.36	\$ (0.15)
	=====	=====	=====	=====
Weighted Average Number of Common Shares Outstanding (in thousands).....	37,046	36,128	63,828	62,071
	=====	=====	=====	=====

</TABLE>

See Accompanying Notes to Unaudited Consolidated Financial Statements.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
Item 1. FINANCIAL STATEMENTS  
CONSOLIDATED BALANCE SHEETS  
(Dollars in Thousands)  
(Unaudited)

	Primary Financial Information		Supplemental Financial Information	
	September 30, 1996	December 31, 1995	September 30, 1996	December 31, 1995
	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
<b>ASSETS</b>				
Current Assets:				
Cash and cash equivalents.....	\$ 17,828	\$ 11,205	\$ 32,937	\$ 21,477
Short-term liquid investments.....	-	-	-	5,004
Accounts receivable, net.....	94,763	119,898	107,232	131,709
Inventories.....	12,577	4,947	14,080	6,969
Prepaid expenses and other.....	8,989	11,331	11,106	16,272
	-----	-----	-----	-----
Total Current Assets.....	134,157	147,381	165,355	181,431
Property, Plant and Equipment - at cost (successful efforts method for gas and oil properties).....	1,740,875	1,581,002	1,973,664	1,783,163
Accumulated Depreciation, Depletion and Amortization	656,801	569,587	751,857	652,985
	-----	-----	-----	-----
	1,084,074	1,011,415	1,221,807	1,130,178
Other Assets.....	39,891	40,000	45,221	47,516
	-----	-----	-----	-----
Total Assets.....	\$1,258,122	\$1,198,796	\$1,432,383	\$1,359,125
	=====	=====	=====	=====
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>				
Current Liabilities:				
Accounts payable.....	\$ 75,426	\$ 83,111	\$ 84,945	\$ 94,318
Accrued expenses.....	25,758	33,080	39,334	50,224
Current maturities of long-term debt.....	7,227	1,214	8,914	1,650
	-----	-----	-----	-----

Total Current Liabilities.....	108,411	117,405	133,193	146,192
Long-Term Debt.....	589,395	545,343	604,583	557,107
Other Noncurrent Liabilities.....	52,948	52,276	53,620	53,237
Deferred Income Taxes.....	45,802	36,104	40,665	29,586
Redeemable Bearer Shares.....	-	-	16,103	16,591
Shareholders' Equity:				
Common Stock, \$.10 par value; authorized 100,000,000 shares; Primary - issued 36,776,878 shares and 36,561,290 shares, respectively, and Supplemental - 62,980,843 shares and 62,562,187, respectively.....	3,678	3,656	6,298	6,256
Additional paid-in capital.....	329,942	326,918	481,667	477,018
Retained earnings.....	135,163	124,591	103,471	80,635
Foreign currency translation adjustment.....	669	389	669	389
Less - note receivable from employee stock ownership plan.....	(4,922)	(4,922)	(4,922)	(4,922)
Less - 308,812 shares of Common Stock held in Treasury, at cost.....	(2,964)	(2,964)	(2,964)	(2,964)
Total Shareholders' Equity.....	461,566	447,668	584,219	556,412
Commitments and Contingencies.....				
Total Liabilities and Shareholders' Equity.....	\$1,258,122	\$1,198,796	\$1,432,383	\$1,359,125

</TABLE>

See Accompanying Notes to Unaudited Consolidated Financial Statements.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
Item 1. FINANCIAL STATEMENTS  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Dollars in Thousands)  
(Unaudited)

	Primary Financial Information		Supplemental Financial Information	
	Nine Months Ended September 30,		Nine Months Ended September 30,	
	1996	1995	1996	1995
<S>	<C>	<C>	<C>	<C>
Operating Activities:				
Net earnings (loss).....	\$ 10,572	\$ (4,125)	\$ 22,836	\$ (9,137)
Adjustments to reconcile net earnings (loss) to net cash provided by operating activities:				
Depreciation, depletion and amortization.....	95,478	98,624	114,260	116,793
Impairment of gas and oil properties.....	-	44,376	-	48,842
Amortization of deferred financing costs.....	2,362	2,570	2,362	2,570
Deferred income taxes.....	9,639	(7,506)	11,020	(10,459)
Dry hole expense.....	13,551	11,407	14,137	16,425
Gain on sales of property, plant and equipment, net.....	(2,223)	(82,365)	(2,711)	(82,316)
Other.....	174	(395)	197	(439)
	129,553	62,586	162,101	82,279
Changes in operating assets and liabilities, net of acquisitions:				
Decrease in short-term liquid investments.....	-	-	5,010	22,084
Decrease in accounts receivable.....	32,138	26,705	31,480	27,967
Decrease in inventories, prepaid expenses and other.....	1,122	7,911	4,742	8,378
Decrease in accounts payable.....	(9,271)	(35,939)	(10,959)	(38,963)
Decrease in accrued expenses and other.....	(5,451)	(12,910)	(9,359)	(15,763)
Net Cash Provided By Operating Activities.....	148,091	48,353	183,015	85,982
Investing Activities:				
Capital expenditures.....	(95,124)	(57,208)	(135,946)	(94,195)
Acquisitions, net of cash acquired.....	(100,153)	-	(100,153)	-

Proceeds from sales of property, plant and equipment.....	2,861	102,865	5,879	103,301
Other.....	-	-	1,897	(577)
	-----	-----	-----	-----
Net Cash Provided By (Used In) Investing Activities...	(192,416)	45,657	(228,323)	8,529
Financing Activities:				
Proceeds from revolving lines of credit and other borrowings.	267,259	550,296	272,559	557,996
Principal payments on revolving lines of credit and other borrowings.....	(210,393)	(683,569)	(211,018)	(684,844)
Proceeds from monetary production payment.....	-	46,242	-	46,242
Principal payments on monetary production payment liability..	(7,088)	-	(7,088)	-
Proceeds from sales of common stock.....	2,391	764	4,000	1,462
Other.....	(1,213)	(1,493)	(1,677)	(2,583)
	-----	-----	-----	-----
Net Cash Provided by (Used in) Financing Activities...	50,956	(87,760)	56,776	(81,727)
Effect of Exchange Rate Changes on Cash.....	(8)	(220)	(8)	(220)
	-----	-----	-----	-----
Increase In Cash And Cash Equivalents.....	6,623	6,030	11,460	12,564
Cash And Cash Equivalents At Beginning Of Period.....	11,205	6,432	21,477	10,313
	-----	-----	-----	-----
Cash And Cash Equivalents At End Of Period.....	\$ 17,828	\$ 12,462	\$ 32,937	\$ 22,877
	=====	=====	=====	=====

</TABLE>

See Accompanying Notes to Unaudited Consolidated Financial Statements.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation.

On October 3, 1996, the shareholders of Seagull Energy Corporation ("Seagull") and Global Natural Resources Inc. ("Global") approved a merger of a wholly owned subsidiary of Seagull into Global (the "Merger"). Pursuant to the Merger, each share of Global common stock was converted into 0.88 shares of Seagull common stock. The Merger will be accounted for as a pooling of interests. Accordingly, the unaudited financial statements presented herein include the results of Seagull (the "Primary Financial Information") and, supplementally, the combined operations of Seagull and Global (the "Supplemental Financial Information" or the "Combined Company"). The Supplemental Financial Information does not include estimated transaction costs of the Merger of approximately \$8-10 million (before tax). The estimated transaction costs of the Merger will be expensed in the fourth quarter of 1996, the period in which the Merger was consummated.

Changes in Financial Presentations.

Certain reclassifications have been made in the 1995 unaudited financial statements to conform to the presentation used in 1996.

Supplemental Disclosures of Cash Flow Information.

<TABLE>  
<CAPTION>

(Dollars in Thousands)

	Nine Months Ended September 30,	
	Primary Financial Information	
	1996	1995
<S>	<C>	<C>
	-----	-----

Cash paid during the period for:

Interest (net of amount capitalized).....	\$37,975	\$46,436
Income taxes.....	\$ 3,142	\$ 833

</TABLE>

Gas and Oil Properties.

Effective March 31, 1995, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of." This SFAS requires that an impairment loss be recognized when the carrying amount of an asset exceeds the sum of the estimated future cash flows (undiscounted) of the asset. Under SFAS No. 121, the Company reviewed the impairment of gas and oil properties on a depletable unit basis. For each depletable unit determined to be impaired, an impairment loss equal to the difference between the carrying value and the fair value of the depletable unit was recognized. Fair value, on a depletable unit basis, was estimated to be the present value of expected future cash flows computed by applying estimated future gas and oil prices, as determined by management, to estimated future production of gas and oil reserves over the economic lives of the reserves. As a result of the adoption of SFAS No. 121,

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (Unaudited)

the Company recognized a non-cash pre-tax charge against earnings during the first quarter of 1995 of \$44.4 million.

Earnings Per Share.

The weighted average number of common shares outstanding used in the computation of earnings per share for the three months ended September 30, 1996 and 1995 and nine months ended September 30, 1996 gives effect to the assumed exercise of dilutive stock options as of the beginning of the period. The effect of the assumed exercise of stock options as of the beginning of the period has an anti-dilutive effect on the computation of loss per share for the nine months ended September 30, 1995 and has therefore not been included in the weighted average number of common shares outstanding.

NOTE 2. ACQUISITIONS

On September 10, 1996, Seagull purchased the stock of Esso Suez Inc. ("ESI") and certain assets of Esso Egypt Limited (the "EEL Assets") for a net purchase price of approximately \$74 million in cash (the "Esso Suez Acquisition") financed through additional borrowings under Seagull's revolving credit facilities (the "Credit Facilities"). ESI holds a 100% interest in the East Zeit oil producing concession in the offshore Gulf of Suez, and the EEL Assets consist of the entire working interest in the South Hurghada concession located onshore on the coast of the Gulf of Suez approximately 250 miles southeast of Cairo. As of September 10, 1996, the ESI concession area contained approximately 17 million net barrels of proved oil reserves. The 63,000-acre South Hurghada concession contains a number of currently drillable exploratory prospects, plus two existing oil discoveries.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (Unaudited)

The following table presents the unaudited pro forma results of the combined operations of Seagull, Global, ESI and the EEL Assets for the nine months ended September 30, 1996 and 1995 as though the Merger and Esso Suez Acquisition had occurred on January 1, 1995. The Pro Forma Combined information does not include estimated transaction costs of the Merger of approximately \$8-10 million (before tax). The estimated transaction costs will be expensed in the fourth quarter of 1996, the period in which the Merger was consummated.

<TABLE>  
 <CAPTION>

(Dollars in Thousands Except Per Share Amounts)

-----						
Nine Months Ended September 30, 1996						
-----						
Primary Financial Information	Esso Suez (* )	Adjustments	Seagull/ Esso Suez	Global	Adjustments	Pro Forma Combined



<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues.....	\$281,640	\$34,314	\$ -	\$315,954	\$82,525	\$(4,102)	\$394,377
Operating expenses.....	220,949	22,864	(5,636)	238,177	61,396	(7,958)	291,615
Operating profit.....	60,691	11,450	5,636	77,777	21,129	3,856	102,762
Other (income) expense..	40,659	(56)	3,105	43,708	(2,703)	3,856	44,861
Earnings before income taxes.....	20,032	11,506	2,531	34,069	23,832	-	57,901
Income tax expense.....	9,460	7,055	(1,087)	15,428	10,187	1,381	26,996
Net earnings.....	\$ 10,572	\$ 4,451	\$ 3,618	\$ 18,641	\$13,645	\$(1,381)	\$ 30,905
Earnings per share.....	\$ 0.29			\$ 0.50			\$ 0.48

</TABLE>

(\*) Represents the results of operations of ESI for the period January 1, 1995 through the date of the Esso Suez Acquisition, September 10, 1996. The results of operations of ESI subsequent to the date of acquisition are included in the Primary Financial Information.

<TABLE>  
<CAPTION>

Nine Months Ended September 30, 1995							
<S>	Primary Financial Information	Esso Suez	Adjustments	Seagull/ Esso Suez	Global	Adjustments	Pro Forma Combined
Revenues.....	\$244,424	\$58,213	\$ -	\$302,637	\$55,252	\$(3,273)	\$354,616
Operating expenses.....	275,841	27,180	(2,326)	300,695	55,050	(1,913)	353,832
Operating profit (loss)...	(31,417)	31,033	2,326	1,942	202	(1,360)	784
Other (income) expense....	(25,677)	(34)	3,360	(22,351)	(2,548)	3,106	(21,793)
Earnings (loss) before income taxes.....	(5,740)	31,067	(1,034)	24,293	2,750	(4,466)	22,577
Income tax expense (benefit).....	(1,615)	18,397	(1,176)	15,606	6,249	(2,953)	18,902
Net earnings (loss).....	\$ (4,125)	\$12,670	\$ 142	\$ 8,687	\$(3,499)	\$(1,513)	\$ 3,675
Earnings (loss) per share.	\$ (0.11)			\$ 0.24			\$ 0.06

</TABLE>

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

The following table sets forth the combining supplemental balance sheet information of Seagull and Global as though the Merger occurred on September 30, 1996.

<TABLE>  
<CAPTION>

(Dollars in Thousands)

September 30, 1996			
<S>	Primary Financial Information	Global	Supplemental Financial Information
Current Assets.....	\$ 134,157	\$ 31,198	\$ 165,355
Property, Plant and Equipment, net.....	1,084,074	137,733	1,221,807
Other Assets.....	39,891	5,330	45,221
Total Assets.....	\$1,258,122	\$174,261	\$ 1,432,383
Current Liabilities.....	\$ 108,411	\$ 24,782	\$ 133,193
Long-term Debt.....	589,395	15,188	604,583
Other Noncurrent Liabilities.....	52,948	672	53,620
Deferred Income Taxes.....	45,802	-	(5,137)

Redeemable Bearer Shares.....	-	16,103	-	16,103
Shareholders' Equity.....	461,566	117,516	5,137	584,219
-----				
Total Liabilities and Shareholders' Equity.....	\$1,258,122	\$174,261	\$ -	\$1,432,383
=====				

</TABLE>

The unaudited pro forma information does not purport to be indicative of actual results if the Merger and the Esso Suez Acquisition had been in effect for the periods indicated, or of future results.

NOTE 3. LONG-TERM DEBT

On May 28, 1996, the Credit Facilities were amended to extend the maturity date two years and reduce stated interest rate margins. The Credit Facilities have a maximum commitment of \$750 million. Under the new terms of the Credit Facilities, the commitments thereunder begin to decline on March 31, 1999 in equal quarterly reductions of approximately \$46 million and a final reduction of approximately \$56 million on December 31, 2002. The Credit Facilities bear interest, at Seagull's option, at various market-sensitive rates plus an applicable margin or competitive bid rate.

The amount of senior indebtedness available to Seagull is subject to a borrowing base (the "Borrowing Base"), based upon the proved reserves of Seagull's Gas and Oil Operations segment and the financial performance of Seagull's other business segment. The Borrowing Base is generally determined annually but may be redetermined one additional time each year, at the option of either Seagull or the banks. With the Esso Suez Acquisition, Seagull requested and received a \$50 million increase in the Borrowing Base to \$550 million on October 1, 1996.

NOTE 4. COMMITMENTS AND CONTINGENCIES

The Company is a party to ongoing litigation in the normal course of business. Management regularly analyzes current information and, as necessary, provides accruals for probable liabilities on the eventual disposition of these matters. While the outcome of lawsuits

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

or other proceedings against the Company cannot be predicted with certainty, management believes that the effect on its financial condition and results of operations, if any, will not be material.

NOTE 5. SUPPLEMENTAL FINANCIAL INFORMATION

Changes in Financial Presentations.

Certain adjustments have been made to the Supplemental Financial Information to conform the accounting principles and presentation used by Seagull and Global.

Supplemental Disclosures of Cash Flow Information.

<TABLE>  
<CAPTION>

(Dollars in Thousands)

	Nine Months Ended September 30,	
	Supplemental Financial Information	
	1996	1995
	<C>	<C>
Cash paid during the period for:		
Interest (net of amount capitalized).....	\$38,660	\$46,493
Income taxes.....	\$13,247	\$ 6,607
=====		

</TABLE>

Gas and Oil Properties.

Global originally adopted SFAS No. 121 effective December 31, 1995 and

recorded a pre-tax non-cash charge against earnings of \$1.7 million for the impairment of proved oil and gas properties determined on the same basis as Seagull's impairment described above. Global's impairment has been reclassified to the first quarter of 1995 to conform to Seagull's date of adoption of SFAS No. 121.

#### Other Property and Equipment.

Under SFAS No. 121, Global grouped and evaluated other property and equipment for impairment based on the ability to identify separate cash flows generated therefrom. As a result, Global recognized a pre-tax non-cash charge against earnings of \$2.8 million for impairment of other property and equipment. Global's impairment has been reclassified to the first quarter of 1995 to conform to the Seagull date of adoption of SFAS No. 121.

#### Earnings Per Share.

The weighted average number of common shares outstanding used in the computation of earnings per share for the Supplemental Financial Information assumed Global common stock was converted at a ratio of .88 shares of Seagull common stock for each share of Global common stock and common stock equivalent.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

#### Long-Term Debt.

On July 16, 1996, the credit agreement dated May 19, 1995 (the "Global Credit Agreement") was amended to extend the maturity date one year and increase the maximum commitment. The Global Credit Agreement has a maximum commitment of \$41.6 million, subject to a borrowing base. The bank has agreed to extend letters of credit not exceeding the lesser of (i) \$20 million or (ii) the Aggregate Commitments (as defined in the Global Credit Agreement) minus the aggregate principal amount of all loans then outstanding under the Global Credit Agreement. As of September 30, 1996 and December 31, 1995, under this agreement, there were no loans outstanding and approximately \$18 million in letters of credit had been issued. These letters of credit are primarily associated with the Redeemable Bearer Shares (see below). Subsequent to the Merger, the Global Credit Agreement has been canceled and the letters of credit reissued under the Credit Facilities.

#### Redeemable Bearer Shares.

In August 1993, Global received \$19.2 million from the Hambros Channel Islands Trust Corporation Limited in the form of an interest-free loan. The loan is repayable on demand only to the extent necessary to redeem bearer share warrants presented for exchange until July 2008. Each bearer share warrant presented during this period will be redeemed for \$6.66. As of September 30, 1996, there were 2,480,740 outstanding bearer share warrants. The loan is secured by a letter of credit which is issued under the Global Credit Agreement. During 1996 and 1995 there were no drawings under the letter of credit. In July 2008, the obligation of the Company to holders of bearer share warrants will cease, the interest-free loan will terminate, and any remaining cash will revert to the Company and will be accounted for as an increase in additional paid-in capital.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

#### GENERAL

On October 3, 1996, the shareholders of Seagull Energy Corporation ("Seagull" or the "Company") and Global Natural Resources Inc. ("Global") approved a merger of a wholly owned subsidiary into Global (the "Merger"). The Merger will be accounted for as a pooling of interests. Accordingly, the unaudited financial statements presented herein include the results of Seagull (the "Primary Financial Information") and, supplementally, the combined operations of Seagull and Global (the "Supplemental Financial Information" or the "Combined Company"). The following discussion is intended to assist in an understanding of both the Primary Financial Information and the Supplemental Financial Information for each of the periods indicated. See the discussion immediately below regarding the Primary Financial Information and see page 22 of Management's Discussion and Analysis of Financial Condition and Results of

Operations for the discussion regarding the Supplemental Financial Information. The accompanying unaudited financial statements and the notes thereto, and the consolidated financial statements and notes included in Seagull's Annual Report on Form 10-K for the year ended December 31, 1995 and Global's Annual Report on Form 10-K for the year ended December 31, 1995 contain detailed information that should be referred to in conjunction with the following discussion.

RESULTS OF OPERATIONS - PRIMARY FINANCIAL INFORMATION

<TABLE>  
<CAPTION>

CONSOLIDATED HIGHLIGHTS

(Dollars in Thousands Except Per Share Amounts)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues:						
Gas and oil operations (*).....	\$72,594	\$55,732	+ 30	\$217,896	\$178,219	+ 22
Alaska transmission and distribution.....	12,611	12,355	+ 2	63,744	66,205	- 4
	\$85,205	\$68,087	+ 25	\$281,640	\$244,424	+ 15
Operating Profit (Loss):						
Gas and oil operations (*).....	\$13,602	\$ (452)	+3,109	\$ 45,516	\$ (45,252)	+201
Alaska transmission and distribution.....	1,285	907	+ 42	15,175	13,835	+ 10
	\$14,887	\$ 455	+3,172	\$ 60,691	\$ (31,417)	+293
Net Earnings (Loss).....	\$ 1,633	\$41,550	- 96	\$ 10,572	\$ (4,125)	+356
Earnings (Loss) Per Share.....	\$ 0.04	\$ 1.13	- 96	\$ 0.29	\$ (0.11)	+364
Net Cash Provided by Operating Activities Before Changes in Operating Assets and Liabilities.....	\$42,351	\$15,767	+ 169	\$129,553	\$ 62,586	+107
Net Cash Provided by Operating Activities.....	\$45,208	\$12,123	+ 273	\$148,091	\$ 48,353	+206
Weighted Average Number of Common Shares Outstanding (in thousands).....	37,011	36,768	+ 1	37,046	36,128	+ 3

</TABLE>

(\*) The Company restated its results of operations for the three and nine months ended September 30, 1995, to combine the former Exploration and Production segment and Pipeline and Marketing segment into Gas and Oil Operations. Substantially all of the Company's gas processing and gas gathering assets were sold in September 1995. These assets disposed of contributed \$5.2 million and \$17.6 million in revenues and \$2.1 million and \$6.2 million in operating profit for the three and nine months ended September 30, 1995, respectively.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
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PRIMARY FINANCIAL INFORMATION  
CONSOLIDATED HIGHLIGHTS, Continued

The increase in net earnings for the nine months ended September 30, 1996 was due to the increase in operating profit and decreases in general and administrative ("G&A") expense and interest expense, which were partially offset by the absence of the pre-tax gain on sale of certain pipeline assets (the "Pipeline Assets") of \$82 million and an increase in income taxes. The decrease in net earnings for the 1996 third quarter versus the 1995 third quarter was due to the absence of the pre-tax gain on sale of the Pipeline Assets of \$82 million partially offset by an increase in operating profit and a decrease in income taxes. Revenues and operating profit are discussed in the respective segment sections. G&A expense and interest expense are discussed under the "Other (Income) Expense" section, and income taxes are discussed under the "Income Taxes" section.

Net cash provided by operating activities before and after changes in

operating assets and liabilities increased for the three and nine month periods of 1996 versus 1995 primarily due to increases in exploration and production ("E&P") revenues which were due to increases in natural gas prices.

On September 25, 1995, Seagull and three other sellers completed the sale of their disparate interests in 19 natural gas gathering systems and a gas processing plant. Net proceeds after payment of transaction costs were used to reduce Seagull's borrowings under Seagull's revolving credit facilities (the "Credit Facilities"). For the three and nine months ended September 30, 1995, the Pipeline Assets contributed \$5.2 million and \$17.6 million, respectively in revenues and \$2.1 million and \$6.2 million, respectively, to the operating profit of the Gas and Oil Operations segment. With the sale of the Pipeline Assets, Seagull's former Exploration and Production segment and the Pipeline and Marketing segment have been combined into Gas and Oil Operations.

Natural gas is stated herein in billion cubic feet ("Bcf"), million cubic feet ("MMcf") or thousand cubic feet ("Mcf"). Oil, condensate and natural gas liquids ("NGL") are stated in barrels ("Bbl"). MMcfe and Mcfe represent the equivalent of one million and one thousand cubic feet of natural gas, respectively. Oil, condensate and NGL are converted to gas at a ratio of one barrel of liquids per six Mcf of gas, based on relative energy content. MBOE and BOE represent the equivalent of one thousand barrels and one barrel of oil, respectively, on the same basis described above.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

PRIMARY FINANCIAL INFORMATION

<TABLE>  
<CAPTION>

GAS AND OIL OPERATIONS (\*)

(Dollars in Thousands Except Per Unit Amounts)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues:						
Gas .....	\$59,845	\$41,754	+ 43	\$180,973	\$134,512	+ 35
Oil and NGL.....	9,558	5,509	+ 73	22,607	17,396	+ 30
Other.....	3,191	8,469	- 62	14,316	26,311	- 46
Total Revenues.....	72,594	55,732	+ 30	217,896	178,219	+ 22
Direct Operating Expense.....	17,404	18,001	- 3	52,388	55,955	- 6
General Operating Expense.....	3,338	2,811	+ 19	8,540	11,107	- 23
Exploration Charges.....	9,597	7,734	+ 24	24,438	21,753	+ 12
Depreciation, Depletion and Amortization....	28,653	27,638	+ 4	87,014	90,280	- 4
Impairment of long-lived assets.....	-	-	-	-	44,376	-100
Operating Profit (Loss).....	\$13,602	\$ (452)	+3,109	\$ 45,516	\$ (45,252)	+201

</TABLE>

(\*) The Company restated its results of operations for the three and nine months ended September 30, 1995 to combine the former Exploration and Production segment and Pipeline and Marketing segment into Gas and Oil Operations. Substantially all of the Company's gas processing and gas gathering assets were sold in September 1995. These assets disposed of contributed \$5.2 million and \$17.6 million in revenues and \$2.1 million and \$6.2 million in operating profit for the three and nine months ended September 30, 1995, respectively.

The increase in operating profit for the three and nine months ended September 30, 1996 was primarily due to the Gas and Oil Operations segment's 35% and 32%, respectively, increase in domestic natural gas prices. Operating profit for the nine months ended September 30, 1996 also benefited from the absence of the pre-tax non-cash impairment of long-lived assets of \$44.4 million recorded in the first quarter of 1995.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

PRIMARY FINANCIAL INFORMATION  
GAS AND OIL OPERATIONS, continued

<TABLE>  
<CAPTION>

EXPLORATION AND PRODUCTION REVENUE DATA

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
DOMESTIC:						
Natural Gas Sales:						
Net Daily Production (MMcf).....	276.3	250.1	+10	286.0	274.4	+ 4
Average Sales Price (\$ per Mcf).....	2.14	1.59	+35	2.08	1.58	+32
Oil and NGL Sales:						
Net Daily Production (Bbl).....	3,393	3,025	+12	3,334	3,109	+ 7
Average Sales Price (\$ per Bbl).....	18.74	15.06	+24	17.76	15.82	+12
CANADA:						
Natural Gas Sales:						
Net Daily Production (MMcf).....	57.5	58.3	- 1	56.1	59.2	- 5
Average Sales Price (\$ per Mcf).....	1.05	0.96	+ 9	1.18	0.98	+20
Oil and NGL Sales:						
Net Daily Production (Bbl).....	1,011	1,372	-26	991	1,158	-14
Average Sales Price (\$ per Bbl).....	15.51	10.45	+48	15.16	12.57	+21
EGYPT:						
Oil Sales:						
Net Daily Production (Bbl) (*).....	1,174	-	NA	394	-	NA
Average Sales Price (\$ per Bbl).....	20.97	-	NA	20.97	-	NA

</TABLE>

(\*) Oil production in Egypt reflects the Esso Suez Acquisition (see below) on September 10, 1996. Net daily oil and NGL production presented above reflects the Company's production divided by the number of days in the appropriate period. Net daily oil production based on the number of days the Egyptian assets were owned by Seagull (September 10 through September 30, 1996) would be 5,413 Bbl.

The increase in revenues for the three and nine months ended September 30, 1996 as compared to 1995 was primarily the net result of two factors - (i) increases in the Company's average realized price of natural gas for its domestic E&P activities; and (ii) decreases in revenues related to the sale of the Pipeline Assets. While the Company had voluntary curtailments during 1995 as a result of the low natural gas price environment, there have been no voluntary curtailments in the U.S. since October 1995. The resulting increases in natural gas and oil production were partially offset by normal declines in domestic and Canadian production from developed properties combined with the impact of substantially lower levels of development expenditures in late 1994 and all of 1995, which was also a result of the low natural gas price environment. Oil production in Egypt reflects the Company's purchase, on September 10, 1996, of the stock of Esso Suez Inc. ("ESI") and certain assets of Esso Egypt Limited (the "EEL Assets") (the "Esso Suez Acquisition").

In late 1995, Seagull initiated an active risk management program for both its own E&P production and third party activities, utilizing such derivative financial instruments as futures contracts, options and swaps. The primary objective of the risk management program is to help ensure more stable cash flow. The risk management program is also an important part of Seagull's third-party marketing efforts, allowing Seagull to convert a customer's requested price to a price structure that is consistent with Seagull's overall pricing strategy. Seagull accounts for its commodity derivative contracts as hedging activities and, accordingly, the effect of hedging activities is included in revenues when the commodities are produced. Seagull's outstanding

PRIMARY FINANCIAL INFORMATION  
GAS AND OIL OPERATIONS, continued

contracts for commodity hedging activities at September 30, 1996 are not expected to have a material impact on the results of operations or financial condition of Seagull.

Direct operating expenses decreased for the nine months ended September 30, 1996 primarily due to the absence of the operations and maintenance costs attributable to the Pipeline Assets sold in September 1995. This decrease in direct operating expense was partially offset by an increase in direct operating expenses for the Company's E&P activities; however direct operating expenses per equivalent unit of production were essentially unchanged from the prior year.

Effective March 31, 1995, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of." As a result of the adoption of SFAS No. 121, the Company recognized a pre-tax non-cash impairment of \$44.4 million during the first quarter of 1995. The Company's average domestic depreciation, depletion and amortization ("DD&A") rate decreased for both the three and nine months ended September 30, 1996 versus 1995 primarily as the result of the cumulative effect of several small changes in the components of DD&A expense, including an upward revision of proved reserves for certain properties. Results for the nine months ended September 30, 1996 also benefited from a reduction in the DD&A rate due to the impairment charge recorded in the first quarter of 1995.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

PRIMARY FINANCIAL INFORMATION

<TABLE>  
<CAPTION>  
ALASKA TRANSMISSION AND DISTRIBUTION

(Dollars in Thousands)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues.....	\$12,611	\$12,355	+ 2	\$63,744	\$66,205	- 4
Cost of Gas Sold.....	4,517	4,779	- 5	26,974	31,267	-14
Gross Margin.....	8,094	7,576	+ 7	36,770	34,938	+ 5
Operations and Maintenance Expense.....	4,833	4,674	+ 3	15,660	15,166	+ 3
Depreciation, Depletion and Amortization.....	1,976	1,995	- 1	5,935	5,937	-
Operating Profit.....	\$ 1,285	\$ 907	+42	\$15,175	\$13,835	+10

OPERATING DATA:

Degree Days (*).....	948	732	+30	6,771	6,417	+ 6
Volumes (Bcf):						
Gas Sold.....	2.9	2.7	+ 7	17.2	17.7	- 3
Gas Transported.....	5.3	5.5	- 4	15.3	13.2	+16
Combined.....	8.2	8.2	-	32.5	30.9	+ 5
Margins (\$ per Mcf):						
Gas Sold.....	2.06	2.03	+ 1	1.73	1.67	+ 4
Gas Transported.....	0.41	0.38	+ 8	0.45	0.40	+13
Combined.....	0.99	0.93	+ 6	1.13	1.13	-
Customers (end of period).....	93,176	91,174	+ 2	93,176	91,174	+ 2

</TABLE>

(\*) A measure of weather severity calculated by subtracting the mean temperature for each day from 65 degrees Fahrenheit. More degree days equate to colder weather.

Operating profit of the Alaska transmission and distribution segment (ENSTAR Natural Gas Company, a division of the Company, and Alaska Pipeline Company, a wholly owned subsidiary, (collectively referred to herein as "ENSTAR Alaska")) for the nine month period ended September 30, 1996 improved from the 1995 period primarily as a result of slightly higher volumes due to colder

weather and an increased number of customers.

This segment's business is seasonal with approximately 65% of its sales made in the first and fourth quarters of each year.

<TABLE>  
<CAPTION>  
OTHER (INCOME) EXPENSE

(Dollars in Thousands)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
General and Administrative.....	\$ 2,244	\$ 2,876	- 22	\$10,177	\$ 15,377	- 34
Interest Expense .....	10,781	13,568	- 21	33,435	41,499	- 19
Gains on Sale of Property, Plant and Equipment, net.....	(1,839)	(82,028)	- 98	(2,223)	(82,365)	- 97
Interest Income and Other.....	(262)	224	-217	(730)	(188)	+288
	\$10,924	\$ (65,360)	+117	\$40,659	\$ (25,677)	+258

</TABLE>

G&A expenses decreased for the nine months ended September 30, 1996 in comparison to 1995 primarily due to the absence of one-time pre-tax charges of \$8 million recorded during the second quarter of 1995 to account for expenses involved in the Company's workforce reduction and consolidation and decreases in costs associated with compensation plans that are

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

PRIMARY FINANCIAL INFORMATION  
OTHER (INCOME) EXPENSE, Continued

tied directly to the price of Seagull Common Stock, partially offset by increases in accrued incentive compensation expense. G&A expenses also decreased for the three ended September 30, 1996 in comparison to 1995 primarily due to decreases in costs associated with compensation plans that are tied directly to the price of Seagull Common Stock, partially offset by increases in accrued incentive compensation expense. The closing price of Seagull Common Stock decreased 12% for the nine months ended September 30, 1996 from \$22.25 at December 31, 1995 to \$19.625 on September 30, 1996, compared to a 6% increase in the 1995 period. The closing price of Seagull Common Stock decreased 22% in the third quarter of 1996 from \$25.00 at June 30, 1996 to \$19.625 on September 30, 1996 compared to a 23% increase in the 1995 period.

Decreases in interest expense for the three and nine months ended September 30, 1996 over 1995 were a result of both lower average debt levels and lower average interest rates on the Credit Facilities. With the proceeds from the sale of the Pipeline Assets in September 1995, the Company repaid a portion of the balances outstanding under the Credit Facilities. The Esso Suez Acquisition net cash purchase price of approximately \$74 million was financed through additional borrowings under the Credit Facilities. The average interest rates on the Credit Facilities were 6.1% and 7.2% for the nine months ended September 30, 1996 and 1995, respectively, and 5.8% and 7.1% for the three months ended September 30, 1996 and 1995, respectively.

The decrease in the gain on sale of property, plant and equipment for both the three and nine month periods ended September 30, 1996 as compared to the comparable 1995 periods is primarily due to the \$82 million pre-tax gain on sale of the Pipeline Assets recorded in the third quarter of 1995.

INCOME TAXES

The increase in income taxes for the nine months ended September 30, 1996 was primarily the net result of the increase in earnings before income taxes for the period and the absence of Internal Revenue Code Section 29 Tax Credits ("Section 29 Credits") which reduced Seagull's 1995 projected annual effective tax rate. The decrease in income taxes for the third quarter of 1996 versus the third quarter of 1995 was primarily due to the decrease in earnings before income taxes for the period partially offset by the absence of Section 29 Credits.



Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
 RESULTS OF OPERATIONS  
 (Unaudited)

PRIMARY FINANCIAL INFORMATION

LIQUIDITY AND CAPITAL RESOURCES -  
 PRIMARY FINANCIAL INFORMATION

On May 28, 1996, the Credit Facilities were amended to extend the maturity date two years and reduce stated interest rate margins. The Credit Facilities have a maximum commitment of \$750 million. Under the new terms of the Credit Facilities, the commitments thereunder begin to decline on March 31, 1999 in equal quarterly reductions of approximately \$46 million and a final reduction of approximately \$56 million on December 31, 2002. The Credit Facilities bear interest, at the Company's option, at various market-sensitive rates (LIBOR, Banker's Acceptance or the prime rate of the agent bank) plus the applicable margin or a competitive bid rate.

The amount of senior indebtedness available to the Company is subject to a borrowing base (the "Borrowing Base"), based upon the proved reserves of the Company's Gas and Oil Operations segment and the financial performance of the Company's other business segment. The Borrowing Base is generally determined annually but may be redetermined one additional time each year, at the option of either the Company or the banks, and upon the sale of certain assets included in the Borrowing Base. With the Esso Suez Acquisition, Seagull requested and received a \$50 million increase in the Borrowing Base to \$550 million on October 1, 1996.

Currently, the available commitment under the Credit Facilities is subject to a \$550 million Borrowing Base and is determined after consideration of outstanding borrowings under the Company's other senior debt facilities. As of November 7, 1996, borrowings outstanding under the Credit Facilities were \$251 million, leaving immediately available unused commitments of approximately \$151 million, net of outstanding letters of credit of \$20 million, \$100.0 million of borrowings outstanding under the Company's senior notes and \$28 million in borrowings under other debt agreements.

On September 10, 1996, Seagull consummated the Esso Suez Acquisition for a net purchase price of approximately \$74 million in cash financed through additional borrowings under the Credit Facilities. ESI holds a 100% interest in the East Zeit oil producing concession in the offshore Gulf of Suez, and the EEL Assets consist of the entire working interest in the South Hurghada concession located onshore on the coast of the Gulf of Suez approximately 250 miles south of Cairo. On September 10, 1996, the ESI concession area contained approximately 17 million net barrels of proved oil reserves. The 63,000-acre South Hurghada concession contains a number of currently drillable exploratory prospects, plus two existing oil discoveries.

In addition to the facilities discussed above, the Company has money market facilities with two major U. S. banks with a combined maximum commitment of \$70 million. These lines of credit bear interest at rates made available by the banks at their discretion and may be canceled at either the Company's or the banks' discretion. The lines are subject to annual renewal.

Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
 RESULTS OF OPERATIONS  
 (Unaudited)

RESULTS OF OPERATIONS -  
 SUPPLEMENTAL FINANCIAL INFORMATION

<TABLE>

<CAPTION>

CONSOLIDATED HIGHLIGHTS (1)

(Dollars in Thousands Except Per Share Amounts)

	Three Months Ended September 30,		Percent Change	Nine Months Ended September 30,		Percent Change
	1996	1995		1996	1995	
<S> Revenues:	<C>	<C>	<C>	<C>	<C>	<C>

Gas and oil operations (2).....	\$ 98,175	\$73,026	+ 34	\$296,319	\$230,198	+ 29
Alaska transmission and distribution.....	12,611	12,355	+ 2	63,744	66,205	- 4
	\$110,786	\$85,381	+ 30	\$360,063	\$296,403	+ 21
Operating Profit (Loss):						
Gas and oil operations (2).....	\$ 22,474	\$ 1,219	+1,744	\$ 70,501	\$(46,410)	+252
Alaska transmission and distribution.....	1,285	907	+ 42	15,175	13,835	+ 10
	\$ 23,759	\$ 2,126	+1,018	\$ 85,676	\$(32,575)	+363
Net Earnings (Loss).....	\$ 7,458	\$43,692	- 83	\$ 22,836	\$ (9,137)	+350
Earnings (Loss) Per Share.....	\$ 0.12	\$ 0.70	- 83	\$ 0.36	\$ (0.15)	+340
Net Cash Provided by Operating Activities Before Changes in Operating Assets and Liabilities.....						
	\$ 53,354	\$19,748	+ 170	\$162,101	\$ 82,279	+ 97
Net Cash Provided by Operating Activities.....						
	\$ 58,934	\$17,493	+ 237	\$183,015	\$ 85,982	+113
Weighted Average Number of Common Shares Outstanding (in thousands).....						
	63,934	62,752	+ 2	63,828	62,071	+ 3

</TABLE>

- (1) The Supplemental Financial Information does not include estimated transaction costs of the Merger of approximately \$8-10 million (before tax). The estimated transaction costs will be expensed in the fourth quarter of 1996, the period in which the Merger was consummated.
- (2) The Company restated its results of operations for the three and nine months ended September 30, 1995, to combine the former Exploration and Production segment and Pipeline and Marketing segment into Gas and Oil Operations. Substantially all of the Company's gas processing and gas gathering assets were sold in September 1995. These assets disposed of contributed \$5.2 million and \$17.6 million in revenues and \$2.1 million and \$6.2 million in operating profit for the three and nine months ended September 30, 1995, respectively.

The increase in net earnings for the nine months ended September 30, 1996 was due to the increase in operating profit and decreases in G&A expense and interest expense, which were partially offset by the absence of the pre-tax gain on sale of the Pipeline Assets of \$82 million and an increase in income taxes. Net earnings for the three months ended September 30, 1996 decreased from the third quarter of 1995 primarily due to the absence of the pre-tax gain on the sale of the Pipeline Assets, but benefited from an increase in operating profit and a decrease in income tax expense. The increase in operating profit for the three and nine months ended September 30, 1996 was primarily due to the Gas and Oil Operations segment's increases in natural gas prices and international production. Revenues and operating profit are discussed in the respective segment sections.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

SUPPLEMENTAL FINANCIAL INFORMATION

<TABLE>

<CAPTION>

GAS AND OIL OPERATIONS (\*)

(Dollars in Thousands Except Per Unit Amounts)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues:						
Gas .....	\$71,196	\$48,745	+ 46	\$216,482	\$158,679	+ 36
Oil and NGL.....	20,259	12,342	+ 64	54,705	34,834	+ 57
Other.....	6,720	11,939	- 44	25,132	36,685	- 31
Total Revenues.....	98,175	73,026	+ 34	296,319	230,198	+ 29
Direct Operating Expense.....	25,271	24,090	+ 5	75,637	74,105	+ 2

General Operating Expense.....	5,219	4,293	+ 22	13,546	14,972	- 10
Exploration Charges.....	10,654	9,701	+ 10	30,839	30,240	+ 2
Depreciation, Depletion and Amortization....	34,557	33,723	+ 2	105,796	108,449	- 2
Impairment of Long-Lived Assets.....	-	-	-	-	48,842	-100
Operating Profit (Loss).....	\$22,474	\$ 1,219	+1,744	\$ 70,501	\$(46,410)	+252

</TABLE>

(\*) The Company restated its results of operations for the three and nine months ended September 30, 1995, to combine the former Exploration and Production segment and Pipeline and Marketing segment into Gas and Oil Operations. Substantially all of the Company's gas processing and gas gathering assets were sold in September 1995. The Pipeline Assets contributed \$5.2 million and \$17.6 million in revenues and \$2.1 million and \$6.2 million in operating profit for the three and nine months ended September 30, 1995, respectively.

The increase in operating profit of the Gas and Oil Operations segment for the three and nine months ended September 30, 1996 as compared to the 1995 periods was primarily due to a 34% and 29% increase, respectively, in revenues due to increases in domestic natural gas prices and international production. In addition, the nine month period of 1996 benefited from the absence of a \$48.8 million pre-tax non-cash charge for impairment of long-lived assets recorded during 1995.

<TABLE>

<CAPTION>

EXPLORATION AND PRODUCTION REVENUE BY AREA

(Dollars in Thousands)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Gas Revenues:						
Domestic.....	\$61,370	\$40,998	+ 50	\$185,298	\$133,967	+ 38
Canada.....	5,547	5,173	+ 7	18,192	15,811	+ 15
Cote d'Ivoire.....	581	-	NA	1,996	-	NA
Indonesia.....	3,698	2,574	+ 44	10,996	8,901	+ 24
	\$71,196	\$48,745	+ 46	\$216,482	\$158,679	+ 36
Oil and NGL Revenues:						
Domestic.....	\$ 7,290	\$ 5,100	+ 43	\$ 21,505	\$ 16,549	+ 30
Canada.....	1,443	1,318	+ 9	4,113	3,973	+ 4
Egypt.....	5,223	-	NA	10,182	-	NA
Cote d'Ivoire.....	2,273	1,574	+ 44	7,334	2,256	+225
Russia.....	3,529	4,121	- 14	10,595	11,374	- 7
Indonesia.....	501	229	+119	976	682	+ 43
	\$20,259	\$12,342	+ 64	\$ 54,705	\$ 34,834	+ 57

</TABLE>

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

SUPPLEMENTAL FINANCIAL INFORMATION  
GAS AND OIL OPERATIONS, Continued

<TABLE>

<CAPTION>

EXPLORATION AND PRODUCTION REVENUE DATA

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
DOMESTIC:						
Natural Gas Sales:						
Net Daily Production (MMcf).....	312.6	284.3	+10	323.3	312.8	+ 3
Average Sales Price (\$ per Mcf).....	2.13	1.57	+36	2.09	1.57	+ 33
Oil and NGL Sales:						

Net Daily Production (Bbl).....	4,163	3,622	+15	4,351	3,772	+ 15
Average Sales Price (\$ per Bbl).....	19.04	15.30	+24	18.04	16.07	+ 12
-----						
CANADA:						
Natural Gas Sales:						
Net Daily Production (MMcf).....	57.5	58.3	- 1	56.1	59.2	- 5
Average Sales Price (\$ per Mcf).....	1.05	0.96	+ 9	1.18	0.98	+ 20
Oil and NGL Sales:						
Net Daily Production (Bbl).....	1,011	1,372	-26	991	1,158	- 14
Average Sales Price (\$ per Bbl).....	15.51	10.45	+48	15.16	12.57	+ 21
-----						
EGYPT:						
Oil and NGL Sales:						
Net Daily Production (Bbl).....	2,680	-	NA	1,851	-	NA
Average Sales Price (\$ per Bbl).....	21.19	-	NA	20.07	-	NA
-----						
COTE D'IVOIRE:						
Natural Gas Sales:						
Net Daily Production (MMcf).....	3.5	-	NA	4.2	-	NA
Average Sales Price (\$ per Mcf).....	1.79	-	NA	1.74	-	NA
Oil and NGL Sales:						
Net Daily Production (Bbl).....	1,258	1,118	+13	1,421	543	+162
Average Sales Price (\$ per Bbl).....	19.64	15.30	+28	18.83	15.22	+ 24
-----						
RUSSIA:						
Oil and NGL Sales:						
Net Daily Production (Bbl).....	3,102	3,216	- 4	2,898	2,792	+ 4
Average Sales Price (\$ per Bbl).....	12.37	13.93	-11	13.34	14.92	- 11
=====						

</TABLE>

In addition to the factors affecting revenues discussed in the Primary Financial Information section of Management's Discussion and Analysis of Financial Condition and Results of Operations, oil and NGL revenues increased for the three and nine months ended September 30, 1996 compared to 1995 as production in Cote d'Ivoire and Egypt began in April 1995 and November 1995, respectively.

Indonesian liquid natural gas ("LNG") liftings for the nine months ended September 30, 1996 and 1995 totaled 358 and 314, respectively. Indonesian LNG liftings for the three months ended September 30, 1996 and 1995 totaled 116 and 96, respectively. The Company has not been advised as to specific price or production changes which would affect Indonesian oil and gas revenues.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

SUPPLEMENTAL FINANCIAL INFORMATION  
GAS AND OIL OPERATIONS, Continued

<TABLE>

<CAPTION>

EXPLORATION AND PRODUCTION LIFTING COSTS (\*)

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
\$ PER MCFE:						
Domestic.....	0.45	0.44	+ 2	0.46	0.44	+ 5
Canada.....	0.52	0.52	-	0.52	0.45	+16
Egypt.....	0.62	-	NA	0.59	-	NA
Cote d'Ivoire.....	0.58	0.53	+ 9	0.59	0.54	+ 9
Russia.....	1.27	0.92	+38	1.24	0.95	+31
	0.51	0.48	+ 6	0.51	0.46	+11
=====						
\$ PER BOE:						
Domestic.....	2.72	2.64	+ 2	2.79	2.63	+ 5
Canada.....	3.12	3.12	-	3.12	2.73	+16
Egypt.....	3.70	-	NA	3.54	-	NA
Cote d'Ivoire.....	3.48	3.20	+ 9	3.53	3.25	+ 9
Russia.....	7.60	5.51	+38	7.45	5.72	+31
	3.03	2.87	+ 6	3.05	2.78	+11
=====						

</TABLE>

(\*) Lifting costs represent costs incurred to operate and maintain wells and related equipment and facilities. These costs include, among other things, repairs and maintenance, labor, materials, supplies, property taxes, insurance, severance taxes and transportation costs.

In addition to the factors affecting direct operating expenses discussed in the Primary Financial Information section of Management's Discussion and Analysis of Financial Condition and Results of Operations, direct operating expenses also increased for the three and nine months ended September 1996 over 1995 due to the loss of the 1995 Russian export tariff exemption and an increase in excise tax rate. Because the Company has not received its export tariff exemption for 1996, it does not have priority access to export pipelines and must compete with Russian production associations for limited pipeline capacity to export markets. The first quarter of 1996 was the first period during which the Company did not export all of its Russian production. The Company cannot predict what percentage of its future production will be sold on the Russian domestic market.

Exploration charges increased slightly for the three and nine months ended September 30, 1996 due to increases in domestic seismic costs, partially offset by decreases in dry hole costs over the comparable prior year periods. Dry hole costs decreased to \$14.1 million from \$16.4 million for the nine months ended September 30, 1996 and 1995, respectively, and to \$4.8 million from \$6.7 million for the three months ended September 30, 1996 and 1995, respectively.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

SUPPLEMENTAL FINANCIAL INFORMATION  
GAS AND OIL OPERATIONS, Continued

<TABLE>  
<CAPTION>  
EXPLORATION AND PRODUCTION DEPRECIATION, DEPLETION  
AND AMORTIZATION RATE

	Three Months Ended September 30,			Nine Months Ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
\$ PER MCFE:						
Domestic.....	0.87	0.94	- 7	0.87	0.97	-10
Canada.....	0.72	0.78	- 8	0.73	0.74	- 1
Egypt.....	0.67	-	NA	0.84	-	NA
Cote d'Ivoire.....	0.91	1.64	-45	0.92	1.54	-40
Russia.....	0.40	0.34	+18	0.42	0.32	+31
	0.83	0.90	- 8	0.84	0.92	- 9
\$ PER BOE:						
Domestic.....	5.23	5.67	- 7	5.23	5.66	-10
Canada.....	4.31	4.70	- 8	4.40	4.46	- 1
Egypt.....	4.03	-	NA	5.04	-	NA
Cote d'Ivoire.....	5.48	9.81	-45	5.54	9.24	-40
Russia.....	2.40	2.02	+18	2.51	1.92	+31
	4.97	5.42	- 8	5.05	5.52	- 9

</TABLE>

Effective March 31, 1995, the Combined Company adopted SFAS No. 121 and recognized a non-cash pre-tax charge against earnings during the 1995 first quarter of \$48.8 million.

LIQUIDITY AND CAPITAL RESOURCES - SUPPLEMENTAL FINANCIAL INFORMATION

<TABLE>  
<CAPTION>  
CAPITAL EXPENDITURES AND ACQUISITIONS

(Dollars in Thousands)

	Three months ended September 30,			Nine months ended September 30,		
	1996	1995	Percent Change	1996	1995	Percent Change
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Capital Expenditures:						
Exploration and Production:						
Lease acquisitions.....	\$ 4,420	\$ 3,602	+ 23	\$ 9,767	\$ 8,041	+21
Exploration costs.....	18,535	8,479	+119	48,790	31,180	+56
Development costs.....	33,118	20,746	+ 60	68,137	48,443	+41
	56,073	32,827	+ 71	126,694	87,664	+45
Alaska Transmission and Distribution.....	3,458	2,178	+ 59	6,805	4,992	+36
Other.....	1,147	518	+121	2,447	1,539	+59
Total Capital Expenditures.....	\$60,678	\$35,523	+ 71	\$135,946	\$94,195	+44
Acquisitions.....	\$74,484	-	NA	\$100,153	-	NA

</TABLE>

Current plans for 1996 call for capital expenditures of approximately \$209 million, including about \$196 million in exploration and production, of which about \$74 million is exploration.

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Item 2. SEAGULL ENERGY CORPORATION AND SUBSIDIARIES  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS  
(Unaudited)

SUPPLEMENTAL FINANCIAL INFORMATION  
LIQUIDITY AND CAPITAL RESOURCES, Continued

For additional discussion of Seagull's liquidity and capital resources, see "Liquidity and Capital Resources" in the Primary Financial Information section of Management's Discussion and Analysis of Financial Condition and Results of Operations.

On July 16, 1996, the credit agreement dated May 19, 1995 (the "Global Credit Agreement") was amended to extend the maturity date one year and increase the maximum commitment. The Global Credit Agreement has a maximum commitment of \$41.6 million. In addition, the bank has agreed to extend letters of credit not exceeding the lesser of (i) \$20 million or (ii) the Aggregate Commitments (as defined in the Global Credit Agreement) minus the aggregate principal amount of all loans then outstanding under the Global Credit Agreement. As of September 30, 1996 and December 31, 1995, under this agreement, there were no loans outstanding and approximately \$18 million in letters of credit had been issued. These letters of credit are primarily associated with the Redeemable Bearer Shares. Subsequent to the Merger, the Global Credit Agreement has been canceled and the letters of credit reissued under the Credit Facilities.

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES

PART II. OTHER INFORMATION

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

At a Special Meeting of Shareholders of the Company held on October 3, 1996, the shareholders voted to approve the issuance of up to 27,580,486 shares of common stock pursuant to the Merger and elect three new directors.

<TABLE>  
<CAPTION>

	For	Against	Abstained	Broker Non-Vote
<S>	<C>	<C>	<C>	<C>
Approval of the Issuance of Shares of Common Stock Pursuant to the Merger.....	26,086,919	2,178,915	68,357	83,160
Election of R.A. Walker as a Director of the Company (to serve until the 1997 Annual Meeting of Shareholders).....	25,617,313	2,800,038	-	-
Election of Sidney R. Petersen as a Director of the				

Company (to serve until the 1998 Annual Meeting of Shareholders).....	25,617,379	2,799,972	-	-
Election of Robert F. Vagt as a Director of the Company (to serve until the 1999 Annual Meeting of Shareholders).....	25,568,179	2,849,172	-	-

</TABLE>

Subsequent to the Special Meeting of Shareholders, the class designations of various directors were modified by a unanimous action of the Board of Directors. Accordingly, the Board of Directors is classified as follows:

Class I (term expires at the 1999 Annual Meeting of Shareholders):

John W. Elias  
Peter J. Fluor  
Sam F. Segnar  
Robert F. Vagt

Class II (term expires at the 1997 Annual Meeting of Shareholders):

J. Evans Attwell  
Richard J. Burgess  
Barry J. Galt  
Dee S. Osborne  
Sidney R. Petersen

Class III (term expires at the 1998 Annual Meeting of Shareholders):

Thomas H. Cruikshank  
William R. Grant  
Dean P. Guerin  
Richard M. Morrow  
R. A. Walker

SEAGULL ENERGY CORPORATION AND SUBSIDIARIES

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits:

- \*#10.1 Seagull Energy Corporation Executive Supplemental Retirement Plan, as amended.
- \*#10.2 Executive Supplemental Retirement Plan Membership Agreement between the Company and Barry J. Galt dated as of February 3, 1986, as amended.
- \*#10.3 Seagull Thrift Plan, as amended and restated effective September 1, 1996.
- \* 27.1 Financial Data Schedule.

-----  
\* Filed herewith.

# Identifies management contracts and compensatory plans or arrangements.

(b) Reports on Form 8-K:

The Company filed a current report on Form 8-K dated July 22, 1996 with respect to Seagull's acquisition of all the outstanding common stock of Esso Suez Inc. and certain assets of Esso Egypt Limited. The items reported in such current report were Item 5 (Other Events) and Item 7 (Financial Statements and Exhibits). The following financial statements were included in this report:

(a) Financial statements of business acquired.

The financial statements of Esso Suez Inc. For the years ended December 31, 1995, 1994 and 1993 and the six months ended June 30, 1996 and 1995.

The Company filed a current report on Form 8-K dated September 10, 1996 with respect to Seagull's acquisition of all the outstanding common stock of Esso Suez Inc. and certain assets of Esso Egypt Limited. The items reported in such current report were Item 2 (Acquisition or Disposition of Assets) and Item 7 (Financial Statements and Exhibits). The following financial statements

were included in this report:

(a) Financial statements of business acquired.

The financial statements of Esso Suez Inc. For the years ended December 31, 1995, 1994 and 1993 and the six months ended June 30, 1996 and 1995 (incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 28, 1996).

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SEAGULL ENERGY CORPORATION AND SUBSIDIARIES

SIGNATURES

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

SEAGULL ENERGY CORPORATION

By: /s/ William L. Transier  
William L. Transier, Senior Vice President  
and Chief Financial Officer  
(Principal Financial Officer)

Date: November 13, 1996

By: /s/ Gordon L. McConnell  
Gordon L. McConnell, Vice President  
and Controller  
(Principal Accounting Officer)

Date: November 13, 1996

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EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
*#10.1	Seagull Energy Corporation Executive Supplemental Retirement Plan, as amended.	
*#10.2	Executive Supplemental Retirement Plan Membership Agreement between the Company and Barry J. Galt dated as of February 3, 1986, as amended.	
*#10.3	Seagull Thrift Plan, as amended and restated effective September 1, 1996.	
* 27.1	Financial Data Schedule.	

-----

\* Filed herewith.

# Identifies management contracts and compensatory plans or arrangements.



SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN

WHEREAS, SEAGULL ENERGY CORPORATION (the "Company"), desiring to aid certain of its executives in making provision for their retirement for the purpose of assisting the Company to recruit and retain key management personnel, has decided to adopt the following SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN (the "Plan");

NOW, THEREFORE, the Plan shall be and is hereby adopted as follows, effective as of January 1, 1986:

I. Definitions and Construction

1.01 Definitions

Where the following words and phrases appear in the Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary. (1) **Accrued Benefit:** The benefit of a Member determined under the Plan.

(2) **Actuarial Equivalent:** Equality in value of the aggregate amounts expected to be received under different forms of payment based upon mortality and interest rate assumptions adopted by the actuary for the Plan.

(3) **Annuity Starting Date:** The first day of the first period with respect to which an amount is received as a benefit pursuant to the Plan.

(4) **Applicable Percentage:** The percentage determined by the Committee and set forth in a Member's Membership Agreement which is used to compute his Accrued Benefit.

(5) **Average Monthly Compensation:** The result obtained by dividing the total Compensation paid to a Member during a considered period by the number of months during the considered period. The considered period shall be the Member's last five consecutive calendar years of employment; provided, that if a Member has less than five consecutive calendar years of employment, his considered period shall be all of his completed calendar years of employment.

(6) **Committee:** The Compensation Committee of the Directors.

(7) Company: Seagull Energy Corporation.

(8) Compensation: The total of all amounts paid by the Company to or for the benefit of a Member for services rendered or labor performed while a Member, excluding, however, non-cash remuneration, income incurred as a result of the exercise of stock options or stock appreciation rights, incentive bonuses or other supplemental pay (whether paid in cash or in kind) and contributions to any other deferred compensation program. Notwithstanding the foregoing, a Member's Compensation shall be deemed to include any amount of remuneration from the Company which he could have received in cash but elected to defer pursuant to the provisions of a qualified cash or deferred arrangement within the meaning of section 401(k) of the Internal Revenue Code of 1954, as amended.

(9) Directors: The Board of Directors of the Company.

(10) Effective Date: January 1, 1986.

(11) Eligible Surviving Spouse: A surviving spouse to whom a deceased Member was married on the date of execution of his Membership Agreement.

(12) Member: Any employee of the Company or any subsidiary of the Company who has been designated by the Committee to be a Member of the Plan and who has executed a Membership Agreement.

(13) Membership Agreement: The agreement executed by and between an employee of the Company evidencing his status as a Member of the Plan and setting forth the terms and conditions of such membership. A Member's Membership Agreement may change any provision of the Plan as it pertains to such Member and such provision as so changed shall be applicable and binding with respect to such Member and the Company as if set forth in the text of the Plan.

(14) Normal Retirement Date: The date upon which a Member attains sixty-five years of age.

(15) Pension: With respect to a Member entitled to receive benefits under the Plan, a series of monthly payments for the life of the Member.

(16) Plan: The Seagull Energy Corporation Executive Supplemental Retirement Plan, as amended from time to time.

(17) Plan Year: Any twelve consecutive month period commencing upon January 1 of each year.

(18) Social Security Benefit: The amount of the monthly benefit which,

under the provisions of the federal Social Security Act, as amended, such Member is, or will be, entitled to receive as his "primary insurance amount" at age sixty-five assuming (i) that he has made or will make appropriate and timely application for such benefit, (ii) that no event has occurred or will occur by reason of which the amount of such benefit has been or will be delayed, suspended or forfeited in whole or in part, (iii) that if he terminates employment prior to attaining age sixty-five he will receive no further Compensation (which would be treated as taxable wages for purposes of the federal Social Security Act) after the time of his termination of employment, (iv) that if he terminates employment prior to attaining age sixty-five by reason of disability and is eligible for a benefit from the Plan, his Social Security Benefit shall mean the disability benefit or old age insurance benefit

received by him under the federal Social Security Act, and (v) that if he dies before attaining age sixty-five and while employed, his Social Security Benefit shall be determined as described in (iii) above. As used herein, the term "primary insurance amount" shall have the meaning ascribed to it in the federal Social Security Act as amended.

(19) Vested Interest: The percentage of a Member's Accrued Benefit which, pursuant to the Plan and his Membership Agreement, is nonforfeitable.

#### 1.02 Number and Gender

Wherever appropriate herein, words used in the singular shall be considered to include the plural and the plural to include the singular. The masculine gender, where appearing in this Plan, shall be deemed to include the feminine gender.

### II. Purpose and Nature of the Plan

The purpose of the Plan is to provide supplemental retirement benefits for those employees who are designated by the Directors as Members and who complete the required period of employment with the Company. The Plan is intended to provide a method for attracting and retaining key employees of the Company and to encourage such individuals to remain with the Company and devote their best efforts to its affairs. The Plan shall constitute an unfunded, unsecured obligation of the Company to make retirement benefit payments in accordance with the provisions of the Plan. The establishment of the Plan shall not be deemed to create a trust. No Member shall have any security or other interest in any assets of the Company.

### III. Participation

#### 3.01 Selection of Participants

The Committee shall select those individuals who will participate in the Plan. Members of the Plan shall be selected from among those key employees of the Company or any subsidiary of the Company who, in the opinion of the Committee, are in a position to make the most significant contributions to the long-term profitability of the Company. The term "employee" shall mean any person (including any officer) employed by the Company or a subsidiary on a fulltime salaried basis and shall include directors who are also employees of the Company or of a subsidiary. For purposes of the foregoing, the term

"subsidiary" shall mean any corporation a majority of the outstanding voting stock or voting power of which is beneficially owned directly or indirectly by the Company. No member of the Committee while serving as such shall be eligible to be a Member of the Plan.

### 3.02 Notice

The Committee shall give writ ten notice to each employee who has been selected to be a Member of the Plan. Each Member of the Plan shall execute a Membership Agreement setting forth the terms and conditions of his membership.

## IV. Benefits

### 4.01 No Benefits Unless Herein Set Forth

Except as set forth in this Article, a Member shall acquire no right to any benefit under the Plan.

### 4.02 Retirement

(a) A Member whose employment with the Company is terminated, for a reason other than death, on or after his Normal Retirement Date shall be entitled to receive, as of such date, a Pension commencing on the first day of the month coinciding with or next following the Member's Normal Retirement Date, each monthly payment of such Pension being equal to the following amount:

- (1) his Applicable Percentage of his Average Monthly Compensation; minus
- (2) the sum of his Social Security Benefit and his benefits received or receivable under any qualified defined benefit pension plan (expressed in the form of the Actuarial Equivalent of a Pension).

For purposes of computing item (2) above, the Member shall supply the Committee with such information as it may reasonably request. If a Member fails to supply the Committee with such information, the Company shall have no obligation to pay any benefits under the Plan to such Member.

- (b) With respect to any Mem ber who is to receive his benefit pursuant

to Paragraph (a) above, such Member's Annuity Starting Date shall be his Normal Retirement Date or, if later, the first day of the first month coincident with or immediately following his retirement.

#### 4.03 Severance Benefit

(a) For purposes of this

Section, a Member's Vested Interest shall be determined by such Member's full years of Vesting Service in accordance with the vesting schedule established by the Committee with respect to such Member at the time he is designated as a Member of the Plan. A Member's vesting schedule shall be set forth in his Membership Agreement. A Member shall be credited with one year of Vesting Service for each calendar year during which he is employed by the Company on a full-time basis or during which he is entitled to severance benefits pursuant to a contract or the Company's regular severance policy.

(b) Paragraph (a) above notwithstanding, a Member shall have a 100% Vested Interest upon termination of his employment by reason of total and permanent disability.

(c) Each Member whose employment is terminated for any reason other than death or retirement on or after his Normal Retirement Date shall be entitled to receive a Pension commencing on the first day of the month coinciding with or next following such Member's Normal Retirement Date, each monthly payment of such Pension being equal to the product of such Member's Vested Interest, as of the date his employment was terminated, multiplied by the following amount:

(1) his Applicable Percentage of his Average Monthly Compensation; minus

(2) the sum of his Social Security Benefit and his benefits received or receivable under any qualified defined benefit pension plan (expressed in the form of the Actuarial Equivalent of a Pension). For purposes of computing item (2) above, the Member shall supply the Committee with such information as it may reasonably request. If a Member fails to supply the Committee with such information, the Company shall have no obligation to pay any benefits under the Plan to such Member.

(e) With respect to any Member who is to receive his benefit pursuant to Paragraph (c) above, such Member's Annuity Starting Date shall be his Normal Retirement Date.

#### 4.04 Death Benefits

(a) Except as provided in this Paragraph (a), no benefits shall be

paid pursuant to this Plan with respect to any Member who dies prior to his Annuity Starting Date. A married Member with an Eligible Surviving Spouse shall have a survivor annuity paid to his Eligible Surviving Spouse in the event such Member dies while employed prior to his Annuity Starting Date; provided, however, that such monthly amount shall be actuarially reduced to the extent payments begin prior to the date the Member attained or would have

attained the date the Member attained or would have attained the age of sixty-five. The survivor annuity provided by this Paragraph (a) shall consist of monthly payments in the same amount such deceased Member would have received had he terminated his employment with the Company on the day prior to his death. Payment of the survivor annuity provided by this Paragraph (a) shall begin as of the first day of the month coinciding with or next following the Member's date of death and end as of the date of the Eligible Surviving Spouse's death.

(b) Except as provided in this Paragraph (b), no benefits shall be paid pursuant to this Plan with respect to any Member who dies after his Annuity Starting Date. Any married Member with an Eligible Surviving Spouse who dies after his Annuity Starting Date, shall have paid to such Eligible Surviving Spouse a survivor annuity consisting of monthly payments in an amount equal to the monthly amount the Member was receiving prior to his death. Such survivor annuity shall commence as of the first day of the month coinciding with or next following the Member's date of death and shall end as of the date of the Eligible Surviving Spouse's death.

## V. Forfeitures

### 5.01 Discharge for Cause

If a Member's employment is terminated by the Company or one of its subsidiaries because he has engaged in misconduct to the material detriment of the Company or because he has been convicted of a felony, he shall not be entitled to receive any benefit under the Plan and his Accrued Benefit shall be forfeited.

### 5.02 Competition with the Company

If a Member engages in competitive activities against the Company and its subsidiaries to the material detriment of the Company and its subsidiaries following his termination of employment, he shall forfeit all right and entitlement to any amount of Accrued Benefit under the Plan (regardless of whether payment of same has commenced) at the time he engages in such competitive activities.

## VI. Administration of the Plan

### 6.01 Administration

The Committee shall be charged with the general administration of the Plan. The Committee shall be the "plan administrator" and shall be the "named fiduciary" with respect to the general administration of the Plan.

### 6.02 Committee

Actions All Committee actions shall be controlled by a vote of a majority of its members; however, the signature of any Committee member on any document shall be sufficient evidence for any person that such document is in accordance with the terms of this Plan.

### 6.03 General

Duties The Committee shall have the exclusive duty and authority interpret the provisions of the Plan, to decide any disputes which may arise regarding the rights of Members and to direct the general administration of the Plan. Any disputes arising under the Plan shall be resolved by the Committee, and its decision shall be binding on all concerned parties. In the event that an individual's claim for a benefit is denied or modified, the Committee shall provide such individual with a written statement setting forth the specific reasons for such denial or modification in a manner calculated to

be understood by the individual. Any such written statement shall reference the pertinent provisions of the Plan upon which the denial or modification is based and shall explain the Plan's claim review procedure. Such individual may, within sixty days of receipt of such written statement, make written request to the Committee for review of its initial decision. Within sixty days following such request for review, the Committee shall, after affording such individual a reasonable opportunity for a full and fair hearing, render its final decision in writing to such individual.

### 6.04 Committee Records

The Committee shall maintain records of all relevant data pertaining to the Plan and minutes of all Committee meetings. Any Member may inspect any records pertaining to him during business hours.

### 6.05 Expenses

All administrative expenses of the Committee shall be paid by the Company and its subsidiaries in such proportions as may be agreed upon by them from time to time.

#### 6.06 Information

The Company shall supply full and timely information relating to Members and such other pertinent facts as the Committee may require.

#### 6.07 Administrative Powers

The Committee shall enforce the terms of the Plan and shall have powers necessary to accomplish that purpose including, but not by way of limitation, the following powers:

- (a) to determine all questions relating to eligibility;
- (b) to determine all questions involving benefits payable to Members;
- (c) to hire legal counsel;
- (d) to interpret Plan provisions and made and publish rules for the administration of the Plan;
- (e) to delegate administrative duties to others which are not inconsistent with the terms of the Plan.

### VII. Amendment and Termination

#### 7.01 Right to Amend Reserved

The Company reserves the right to amend the Plan at any time. The Company shall promptly forward a copy of any such amendment to the Committee.

#### 7.02 Termination of Plan

The Company may terminate the Plan at any time by filing a written notice at least ten days before termination with the Committee and the Members; provided, however, no such termination shall deprive any Member of any Accrued Benefit under the Plan to the extent that such Member has a Vested Interest in such Accrued Benefit attributable to Vesting Service credited as a result of employment completed prior to the date of such termination.



### 7.03 Automatic Termination of Plan

The Plan shall terminate if the Company is legally dissolved, declared bankrupt or makes a general assignment for the benefit of its creditors, provided that Members shall have rights as general creditors of the Company upon occurrence of any such event.

## VIII. Miscellaneous

### 8.01 Alienability

A Member shall not have any power or right to transfer, assign, anticipate, mortgage, commute or otherwise encumber in advance any of the benefits payable hereunder, nor shall said benefits be subject to seizure for payment of any debts or judgments of any of them, or be transferable by operation of law in the event of bankruptcy, insolvency or otherwise.

### 8.02 Participation in Other Plans

Nothing contained in the Plan shall be construed to alter, abridge or in any manner affect the rights and privileges of a Member to participate in any pension, profit sharing, bonus or similar plan with the Company may now or hereafter have.

### 8.03 Reorganization

The Company shall not merge or consolidate with any other corporation, or reorganize, unless and until such succeeding or

continuing corporation agrees to assume and discharge the obligations of the Company under the Plan.

### 8.04 Not a Contract of Employment

The Plan shall not be deemed to constitute a contract of employment nor shall any provision herein restrict the right of the Company to discharge a Member or restrict the right of a Member to terminate his employment.

### 8.05 Benefits Constitute Unsecured Liability

Benefits under the Plan constitute an unfunded, unsecured liability of the Company to make payments in accordance with the provisions hereof, and neither a Member nor any person claiming under him shall have any security or

other interest in any specific assets of the Company by virtue of the Plan.

8.06 Governing Law

The Plan shall be construed, administered and governed in all respects by the laws of the State of Texas.

8.07 Counterparts

The Plan may be executed or conformed in any number of counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, the Company has executed this Plan on the 3rd day of February, 1986, effective as of January 1, 1986.

ATTEST:

SEAGULL ENERGY CORPORATION

/s/ SYLVIA SANCHEZ

/s/ BARRY GALT

\_\_\_\_\_  
Secretary

By \_\_\_\_\_

FIRST AMENDMENT TO  
SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN

WHEREAS, SEAGULL ENERGY CORPORATION (the "Company") has heretofore adopted the SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN (the "Plan"); and

WHEREAS, the Company desires to amend the Plan;

NOW, THEREFORE, the Plan shall be amended as follows, effective as of January 1, 1989:

1. Item (2) of Paragraph (a) of Section 4.02 of the Plan shall be deleted and the following shall be substituted therefor:

"(2) Fifty percent (50%) of his Social Security Benefit."

2. Item (2) of Paragraph (c) of Section 4.03 of the Plan shall be deleted and the following shall be substituted therefor:

"(2) Fifty percent (50%) of his Social Security Benefit."

3. The second and third sentences of Paragraph (a) of Section 4.04 of the Plan shall be deleted and the following shall be substituted therefor:

"A married Member with an Eligible Surviving Spouse shall have a survivor annuity paid to his Eligible Surviving Spouse in the event such Member dies while employed prior to his Annuity Starting Date. The survivor annuity provided by this Paragraph (a) shall consist of monthly payments in the same amount such deceased Member would have received had he terminated his employment with the Company on the date prior to his death assuming, for such purposes, that he had a 100% Vested Interest as of such date without regard to his actual Vested Interest as of such date."

4. The following Section 4.05 shall be added to Article IV of the Plan:

#### "4.05 Disability Benefits

(a) A Member whose employment with the Company is terminated by reason of total and permanent disability shall be entitled to receive a Pension commencing on the first day of the month coinciding with or next following the date of such Member's termination of employment, each monthly payment of such Pension being equal to the following amounts:

(1) his Applicable Percentage of his Average Monthly Compensation; minus

(2) the sum of 50% of his Social Security Benefit and 100% of disability benefits received by him pursuant to the Seagull Energy Corporation Long Term Disability Income Plan.

For purposes of computing Item (2) above, the Member shall supply the Committee with such information as it may reasonably request. If a Member fails to supply the Committee with such information, the Company shall have no obligation to pay any benefits under the Plan to such Member. For purposes of this Paragraph (a), a Member shall be deemed to be totally and permanently disabled if such Member has been determined to be eligible for benefits under the Seagull Energy Corporation Long Term Disability Income Plan.

(b) With respect to any Member who is to receive his benefit pursuant to Paragraph (a) above, such Member's Annuity Starting Date shall be the first day of the first month coincident with or immediately following the date the

Committee determines that he is totally and permanently disabled."

5. As amended hereby, the Plan is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 31st day of January, 1989.

ATTEST:

SEAGULL ENERGY CORPORATION

/s/ SYLVIA SANCHEZ

By /s/ JOE T. RYE

SECOND AMENDMENT TO  
SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN

WHEREAS, SEAGULL ENERGY CORPORATION (the "Company") has heretofore adopted the SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN (the "Plan"); and

WHEREAS, the Company desires to amend the Plan;

NOW, THEREFORE, the Plan shall be amended as follows, effective as of January 1, 1989:

1. Section 4.04 of the Plan shall be deleted and the following shall be substituted therefor:

"4.04 Death Benefits. (a) A married Member with an Eligible Surviving Spouse shall have a survivor annuity paid to his Eligible Surviving Spouse in the event such Member dies while employed by the Company. The survivor annuity

provided by this Paragraph (a) shall consist of monthly payments in the same amount such deceased Member would have received had he terminated his employment with the Company on the date prior to his death assuming, for such purposes, that he had a 100% Vested Interest as of such date without regard to his actual Vested Interest as of such date. Payment of the survivor annuity provided by this Paragraph (a) shall begin as of the first day of the month coinciding with or next following the Member's date of death and shall end as of the date of the Eligible Surviving Spouse's death.

(b) A married Member with an Eligible Surviving Spouse shall have a survivor annuity paid to his Eligible Surviving Spouse in the event such Member dies after termination of employment with the Company and prior to his Annuity Starting Date. The survivor annuity provided by this Paragraph (b) shall consist of monthly payments in the same amount such deceased Member would have been entitled to receive commencing as of his Annuity Starting Date. Payment of the survivor annuity provided by this Paragraph (b) shall begin as of the first day of the month coinciding with or next following the Member's date of death and shall end as of the date of the Eligible Surviving Spouse's death.

(c) Any married Member with an Eligible Surviving Spouse who dies after his Annuity Starting Date shall have paid to such Eligible Surviving Spouse a survivor annuity consisting of monthly payments in an amount equal to the monthly amount the Member was receiving prior to his death. Such survivor annuity shall commence as of the first day of the month coinciding with or next following the Member's date of death and shall end as of the date of the Eligible Surviving Spouse's death."

2. As amended hereby, the Plan is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 15th day of December, 1989.

ATTEST:

SEAGULL ENERGY CORPORATION

/s/ SYLVIA SANCHEZ

By /s/ JOE T. RYE

SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN  
MEMBERSHIP AGREEMENT

WHEREAS, BARRY J. GALT ("Employee") has been designated as eligible to become a Member of the SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN (the "Plan"), a copy of which is attached hereto as Exhibit "A," subject to and conditioned upon Employee's execution of this agreement; and

WHEREAS, Employee desires to become a Member of the Plan on the terms and provisions set forth therein and in this agreement;

NOW, THEREFORE, the parties hereto agree as follows:

1. Employee agrees to become a Member of the Plan, effective as of February 3, 1986.

2. For purposes of Section 1.01(5) of the Plan, Employee's considered period shall be his last three consecutive calendar years of employment or, if less, all of his completed calendar years of employment.

3. For purposes of Section 1.01(8) of the Plan, Employee's Compensation for 1984 shall be deemed equal to \$300,000.00 and his Compensation for 1985 shall be deemed equal to \$330,000.00.

4. Employee's Applicable Percentage under the Plan shall be 50%.

5. Employee's Vesting Schedule under the Plan shall be as follows:

	Vested Interest
Prior to January 1, 1984	40%
As of December 31, 1984*	48%
As of December 31, 1985*	56%
As of December 31, 1986*	64%
As of December 31, 1987*	72%
As of December 31, 1988*	80%
As of December 31, 1989*	88%
As of December 31, 1990*	96%
As of December 31, 1991* and thereafter	100%

\*provided that Employee is employed by the Company on such date and has been so employed by the Company on a full-time basis during the twelve month period immediately preceding such date.

For purposes of the foregoing schedule, Employee shall be deemed to have been in the full-time employment of the Company for the entire year of 1984.

6. The aggregate amount of any death benefits becoming payable pursuant to Section 4.04 of the Plan shall be reduced, dollar-for-dollar, by the dollar amount of insurance proceeds payable (regardless of the identity of the beneficiary thereunder) as a result of Employee's death pursuant to any life insurance maintained on the life of the Employee pursuant to Section 3.4 of the Employment Agreement entered into by and between Employee and the Company on December 30, 1983.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 3rd day of February, 1986.

SEAGULL ENERGY CORPORATION

ATTEST:

/s/ SYLVIA SANCHEZ

\_\_\_\_\_  
Secretary

/s/ JOE T. RYE

By \_\_\_\_\_  
Vice President

/s/ BARRY J. GALT

\_\_\_\_\_  
BARRY J. GALT

AMENDMENT TO  
SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN  
MEMBERSHIP AGREEMENT

WHEREAS, SEAGULL ENERGY CORPORATION (the "Company") and BARRY J. GALT ("Employee") have heretofore executed an instrument entitled "SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN MEMBERSHIP AGREEMENT" (the

"Agreement"), evidencing the terms and conditions of the Employee's membership in the SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN; and

WHEREAS, the Company and the Employee mutually desire to amend the Agreement;

NOW, THEREFORE, the parties hereto agree as follows, effective as of January 1, 1989:

1. Item (6) of the Agreement shall be deleted in its entirety.

2. As amended hereby, the Agreement is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 31st day of January, 1989.

SEAGULL ENERGY CORPORATION

ATTEST:

/s/ SYLVIA SANCHEZ

\_\_\_\_\_  
Corporate Secretary

/s/ JOE T. RYE

By \_\_\_\_\_  
Vice President, Finance and  
Administration

Employee  
/s/ BARRY J. GALT

\_\_\_\_\_  
BARRY J. GALT

SECOND AMENDMENT TO  
SEAGULL ENERGY CORPORATION  
EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN  
MEMBERSHIP AGREEMENT

WHEREAS, SEAGULL ENERGY CORPORATION (the "Company") and BARRY J. GALT ("Employee") have heretofore executed an instrument entitled "SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN MEMBERSHIP AGREEMENT" (the "Agreement"), evidencing the terms and conditions of the Employee's membership in the SEAGULL ENERGY CORPORATION EXECUTIVE SUPPLEMENTAL RETIREMENT PLAN;



WHEREAS, such Agreement has previously been amended, effective as of January 1, 1989; and

WHEREAS, the Company and the Employee mutually desire to further amend the Agreement;

NOW, THEREFORE, the parties hereto agree as follows, effective as of January 1, 1990:

1. The following three sentences shall be added after the last sentence of Item (5) of the Agreement.

Notwithstanding the Vesting Schedule set forth above, in the event of a "change of control" that is not approved, recommended and supported by at least two-thirds of the Directors that were also Directors prior to the occurrence of any such "change of control" in actions taken prior to, and with respect to, such "change of control," Employee shall have a 100% Vested Interest as of the date of such "change of control." Further, in the event of a "change of control" other than as described in the preceding sentence, Employee shall have a 100% Vested Interest upon involuntary termination of employment within the twelve-month period following the date of such "change of control." For purposes of the preceding sentences, a "change of control" shall be deemed to have occurred if (i) any person (other than Employee or the Company) including a "group" as determined in accordance with Section 13(d)(3) of the Securities Exchange Act of 1934, becomes the beneficial owner of shares of the Company having 40% or more of the total number of votes that may be cast for the election of Directors; or (ii) as a result of, or in connection with, any cash tender or exchange offer, merger or other business combination, sale of assets or contested election, or any combination of the foregoing transactions (a "Transaction"), the persons who were Directors before the Transaction shall

cease to constitute a majority of the Board of Directors of the Company or any successor thereto. The determinations of whether a "change of control" has occurred and whether such "change of control" was not approved, recommended or supported by the Directors in actions taken prior to, and with respect to, such "change of control" shall be made by the Committee as existing at least six months prior to the occurrence of such "change of control" and its determination shall be final.

2. As amended hereby, the Agreement is specifically ratified and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to

be executed this 29th day of January, 1990.

ATTEST:

SEAGULL ENERGY CORPORATION

/s/ SYLVIA SANCHEZ

\_\_\_\_\_

/s/ JOE T. RYE

By

\_\_\_\_\_

/s/ BARRY J. GALT

\_\_\_\_\_  
Barry J. Galt

SEAGULL THRIFT PLAN

As Amended and Restated  
Effective September 1, 1996

SEAGULL THRIFT PLAN

THIS AGREEMENT AND DECLARATION OF TRUST is by and between SEAGULL ENERGY CORPORATION, a Texas corporation, hereinafter referred to as the "Company," and TEXAS COMMERCE BANK NATIONAL ASSOCIATION, Houston, Texas, a national banking association, hereinafter referred to as "Trustee."

W I T N E S S E T H :

WHEREAS, the Company has heretofore adopted the SEAGULL THRIFT PLAN, hereinafter referred to as the "Plan," for the benefit of its employees; and

WHEREAS, the Company has heretofore entered into a trust agreement with the Trustee establishing a trust to hold and invest contributions made under the Plan and from which benefits have been distributed under the Plan;

WHEREAS, the Company desires to restate the Plan and to amend the Plan in several respects, intending thereby to provide an uninterrupted and

continuing program of benefits;

NOW THEREFORE, the Plan and the trust agreement are hereby restated in their entirety as follows with no interruption in time, effective as of September 1, 1996, except as otherwise indicated herein:

(i)

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I. Definitions and Construction

1.1 Definitions. Where the following words and phrases appear in the Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary.

- (1) Account(s): A Member's Cash or Deferred Account, Employer Contribution Contribution Account, Member Contribution Account, and/or Rollover Contribution Account, including the amounts credited thereto.
- (2) Act: The Employee Retirement Income Security Act of 1974, as amended.
- (3) Benefit Commencement Date: With respect to each Member or beneficiary, the date such Member's or beneficiary's benefit is paid to him from the Trust Fund.
- (4) Cash or Deferred Account: An individual account for each Member, which is credited with the Cash or Deferred Contributions made by the Employer on such Member's behalf and the Employer Safe Harbor Contributions, if any, made on such Member's behalf pursuant to Section 3.4 to satisfy the restrictions set forth in Section 3.1(e) and which is credited with (or debited for) such account's allocation of net income (or net loss) and changes in value of the Trust Fund.
- (5) Cash or Deferred Contributions: Contributions made to the Plan by the Employer on a Member's behalf in accordance with the Member's elections to defer Compensation under the Plan's qualified cash or deferred arrangement as described in Section 3.1.
- (6) Code: The Internal Revenue Code of 1986, as amended.
- (7) Committee: The administrative committee appointed by the Directors to administer the Plan.
- (8) Company: Seagull Energy Corporation.

- (9) Company Stock: The common stock of Seagull Energy Corporation.
- (10) Compensation: The total of all wages, salaries, fees for professional service and other amounts received in cash or in kind by a Member for services actually rendered or labor performed for the Employer while a Member to the extent such amounts are includable in gross income, subject to the following adjustments and limitations:

(A) The following shall be excluded:

- (i) bonuses and incentive or other supplemental pay;
- (ii) reimbursements and other expense allowances;
- (iii) cash and noncash fringe benefits;
- (iv) moving expenses;
- (v) Employer contributions to or payments from this or any other deferred compensation program, whether such program is qualified under section 401(a) of the Code or nonqualified;
- (vi) welfare benefits;
- (vii) amounts realized from the receipt or exercise of a stock option that is not an incentive stock option within the meaning of section 422 of the Code;
- (viii) amounts realized at the time property described in section 83 of the Code is freely transferable or no longer subject to a substantial risk of forfeiture;
- (ix) amounts realized as a result of an election described in section 83(b) of the Code;
- (x) any amount realized as a result of a disqualifying disposition within the meaning of section 421(a) of the Code; and
- (xi) any other amounts that receive special tax benefits under the Code but are not hereinafter

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included.

(B) The following shall be included:

- (i) elective contributions made on a Member's behalf by the Employer that are not includable in income under section 125, section 402(e)(3), section 402(h), or section 403(b) of the Code;
- (ii) compensation deferred under an eligible deferred compensation plan within the meaning of section 457(b) of the Code; and
- (iii) employee contributions described in section 414(h) of the Code that are picked up by the employing unit and are treated as employer contributions.

(C) The Compensation of any Member taken into account for purposes of the Plan shall be limited to \$150,000 for any Plan Year with such limitation to be:

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- (i) adjusted automatically to reflect any amendments to section 401(a)(17) of the Code and any cost-of-living increases authorized by section 401(a)(17) of the Code;
- (ii) prorated for a Plan Year of less than twelve months and to the extent otherwise required by applicable law; and
- (iii) in the case of a Member who is either a five-percent owner of the Employer (within the meaning of section 416(i)(1)(A)(iii) of the Code) or is one of the ten most Highly Compensated Employees for the Plan Year and who has a spouse and/or lineal descendants who are under the age of nineteen as of the end of a Plan Year who receive Compensation during such Plan Year, prorated and allocated among such Member, his spouse, and/or lineal descendants under the age of nineteen based on the Compensation for such Plan Year of each such individual.

(11) Controlled Entity: Each corporation that is a member of a controlled

group of corporations, within the meaning of section 1563(a) (determined without regard to sections 1563(a)(4) and 1563(e)(3)(C)) of the Code, of which the Employer is a member, each trade or business (whether or not incorporated) with which the Employer is under common control, and each member of an affiliated service group, within the meaning of section 414(m) of the Code, of which the Employer is a member.

- (12) Direct Rollover: A payment by the Plan to an Eligible Retirement Plan designated by a Distributee.
- (13) Directors: The Board of Directors of the Company.
- (14) Distributee: Each (A) Member entitled to an Eligible Rollover Distribution, (B) Member's surviving spouse with respect to the interest of such surviving spouse in an Eligible Rollover Distribution, and (C) former spouse of a Member who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, with regard to the interest of such former spouse in an Eligible Rollover Distribution.
- (15) Effective Date: September 1, 1996, as to this restatement of the Plan, except (A) as otherwise indicated in specific provisions of the Plan and (B) that provisions hereof affecting the duties of the Trustee shall be effective as of the date of execution of this restatement of the Plan by the Trustee. The original effective date of the Plan was January 1, 1973.
- (16) Eligible Employee: Each Employee other than (A) an Employee whose terms and conditions of employment are governed by a collective bargaining agreement, unless such agreement provides for his coverage under the Plan, (B) a nonresident alien who receives no earned income from the Employer that constitutes income from sources within the United States, (C) an Employee who is a Leased Employee, (D) an Employee who is employed at the ENSTAR Natural Gas Company division of the Company and (E) an Employee who is

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employed by the Alaska Pipeline Company. Notwithstanding any provision of the Plan to the contrary, no individual who is designated, compensated, or otherwise classified or treated by the Employer as an independent contractor shall be eligible to become a Member of the Plan.

- (17) Eligible Retirement Plan: (A) With respect to a Distributee other than a surviving spouse, an individual retirement account described in



section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified plan described in section 401(a) of the Code, which under its provisions accepts such Distributee's Eligible Rollover Distribution and (B) with respect to a Distributee who is a surviving spouse, an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code.

- (18) Eligible Rollover Distribution: Any distribution of all or any portion of the Accounts of a Distributee other than (A) a distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary or for a specified period of ten years or more, (B) a distribution to the extent such distribution is required under section 401(a)(9) of the Code, (C) the portion of a distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), (D) a loan treated as a distribution under section 72(p) of the Code and not excepted by section 72(p)(2), (E) a loan in default that is a deemed distribution, (F) any corrective distribution provided in Sections 3.7 and 4.5(b), and (G) any other distribution so designated by the Internal Revenue Service in revenue rulings, notices, and other guidance of general applicability.
- (19) Employee: Each (A) individual employed by the Employer and (B) Leased Employee.
- (20) Employer: The Company and each entity that has adopted the Plan pursuant to the provisions of Article XVIII.
- (21) Employer Contribution Account: An individual account for each Member, which is credited with the sum of (A) the Employer Matching Contributions made on such Member's behalf, (B) the Employer Discretionary Contributions, if any, made on such Member's behalf pursuant to Section 3.3, and (C) the Employer Safe Harbor Contributions, if any, made on such Member's behalf pursuant to Section 3.4 to satisfy the restrictions set forth in Section 3.5 and which is credited with (or debited for) such account's allocation of net income (or net loss) and changes in value of the Trust Fund.
- (22) Employer Contributions: The total of Employer Matching Contributions, Employer Discretionary Contributions, and Employer Safe Harbor Contributions.

- (23) Employer Discretionary Contributions: Contributions made to the Plan by the Employer pursuant to Section 3.3.
- (24) Employer Matching Contributions: Contributions made to the Plan by the Employer pursuant to Section 3.2.
- (25) Employer Safe Harbor Contributions: Contributions made to the Plan by the Employer pursuant to Section 3.4.
- (26) Employment Commencement Date: The date on which an individual first performs an Hour of Service.
- (27) Highly Compensated Employee: Each Employee who performs services during the Plan Year for which the determination of who is highly compensated is being made (the "Determination Year") and who:
- (A) is a five-percent owner of the Employer (within the meaning of section 416(i)(1)(A)(iii) of the Code) at any time during the Determination Year or the twelve-month period immediately preceding the Determination Year (the "LookBack Year"); or
  - (B) receives compensation (within the meaning of section 415(c)(3) of the Code, including elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement, or tax-sheltered annuity; "compensation" for purposes of this Paragraph) in excess of \$75,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustments authorized by section 414(q)(1) of the Code) during the Look-Back Year; or
  - (C) receives compensation in excess of \$50,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustments authorized by section 414(q)(1) of the Code) during the Look-Back Year and is a member of the top 20% of Employees for the Look-Back Year (other than Employees described in section 414(q)(8) of the Code) ranked on the basis of compensation received during the year; or
  - (D) is an officer (within the meaning of section 416(i) of the Code) during the Look-Back Year and receives compensation in the Look-Back Year greater than 50% of the amount in effect under section 415(b)(1)(A) of the Code for the calendar year in which the Look-Back Year begins; or
  - (E) is described in clauses (B), (C), or (D) above (after modifying such clauses to substitute the Determination Year for the Look-Back Year) and is one of the 100 Employees who receives the most compensation from the Employer or a

For purposes of the preceding sentence, (i) no more than 50 Employees (or, if lesser, the greater of three Employees or 10% of the Employees) shall be treated as officers, (ii) if no officer has compensation in excess of 50% of the amount in effect under section 415(b)(1)(A) of the Code, then the highest-paid officer shall be deemed to be a Highly Compensated Employee, (iii) all employers aggregated with the Employer under section 414(b), (c), (m), or (o) of the Code shall be treated as a single employer, (iv) a former Employee who had a separation year (generally, the Determination Year such Employee separates from service) prior to the Determination Year and who was an active Highly Compensated Employee for either such separation year or any Determination Year ending on or after such Employee's fifty-fifth birthday shall be deemed to be a Highly Compensated Employee, and (v) the Committee may elect, in accordance with the provisions of applicable Treasury regulations, rulings and notices, to make the Look-Back Year calculation for a Determination Year on the basis of the calendar year ending with or within the applicable Determination Year (or, in the case of a Determination Year that is shorter than twelve months, the calendar year ending with or within the twelve-month period ending with the end of the applicable Determination Year). Further, if any individual is a member of the family of a five-percent owner or of a Highly Compensated Employee in the group consisting of the ten Highly Compensated Employees paid the greatest compensation during the year, then such individual shall not be considered a separate employee and any compensation paid to such individual (and any applicable contribution or benefit on behalf of such individual) shall be treated as if it were paid to (or on behalf of) the five-percent owner or Highly Compensated Employee. For purposes of the preceding sentence, the term "family" means, with respect to any active or former Employee, such Employee's spouse and lineal ascendants and descendants and the spouses of such lineal ascendants and descendants. To the extent that the provisions of this Paragraph are inconsistent or conflict with the definition of a "highly compensated employee" set forth in section 414(q) of the Code and the Treasury regulations thereunder, the relevant terms and provisions of section 414(q) of the Code and the Treasury regulations thereunder shall govern and control.

- (28) Hour of Service: Each hour for which an individual is directly or indirectly paid, or entitled to payment, by the Employer or a Controlled Entity for the performance of duties or for reasons other than the performance of duties; provided, however, that no more than 501 Hours of Service shall be credited to an individual on account of

any continuous period during which he performs no duties. Such Hours of Service shall be credited to the individual for the computation period in which such duties were performed or in which occurred the period during which no duties were performed. An Hour of Service also includes each hour, not credited above, for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer or a Controlled Entity. These Hours of Service shall be credited to the individual for the computation period to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made. Solely for purposes of determining whether a One-Year Break-in-Service has occurred, an Hour of Service is also each normal work hour, not otherwise credited above, during which an individual is absent from work by reason of the individual's pregnancy, the birth of a child of the individual, the placement of a child with the individual in connection with the adoption of such child by the individual, or for

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purposes of caring for such child for the period immediately following such birth or placement. The Committee may in its discretion require, as a condition to the crediting of Hours of Service under this provision, that the individual furnish appropriate and timely information to the Committee establishing the reason for any such absence. Such Hours of Service shall be credited to the individual for the computation period in which the absence from work begins if such crediting is necessary to prevent the occurrence of a One-Year Break-in-Service in such computation period; otherwise such Hours of Service shall be credited to the individual in the next following computation period. The number of Hours of Service to be credited to an individual for any computation period shall be governed by 29 CFR ss.ss. 2530.200b-2(b) and (c). Hours of Service shall also include any hours required to be credited by federal law other than the Act or the Code, but only under the conditions and to the extent so required by such federal law.

- (29) Investment Fund: A portion of the Trust Fund that is invested in a specified manner as described in Section 5.1.
- (30) Leased Employee: Each person who is not an employee of the Employer or a Controlled Entity but who performs services for the Employer or a Controlled Entity pursuant to an agreement (oral or written) between the Employer or a Controlled Entity and any leasing organization, provided that such person has performed such services for the Employer or a Controlled Entity or for related persons (within the meaning of section 144(a)(3) of the Code) on a substantially full-time basis for a period of at least one year and such services are of a type

historically performed by the Employer's or Controlled Entity's employees in the Employer's or Controlled Entity's field of business.

- (31) Member: Each individual who (A) has met the eligibility requirements for participation in the Plan pursuant to Article II or (B) has made a Rollover Contribution in accordance with Section 3.8, but only to the extent provided in Section 3.8.
- (32) Member Contribution Account: An individual account for each Member which is credited with his Member contributions made prior to January 1, 1987 and which is credited with (or debited for) such account's allocation of net income (or net loss) and changes in value of the Trust Fund.
- (33) Normal Retirement Date: The date a Member attains the age of sixty-five.
- (34) One-Year Break-in-Service: Any Plan Year during which an individual has no more than 500 Hours of Service.
- (35) Plan: The Seagull Thrift Plan, as amended from time to time.
- (36) Plan Year: The twelve-consecutive month period commencing January 1 of each year.

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- (37) Rollover Contribution Account: An individual account for an Eligible Employee, which is credited with the Rollover Contributions of such Employee and which is credited with (or debited for) such account's allocation of net income (or net loss) and changes in value of the Trust Fund.
- (38) Rollover Contributions: Contributions made by an Eligible Employee pursuant to Section 3.8.
- (39) Trust: The trust established herein to hold and invest contributions made under the Plan, and income thereon, and from which the Plan benefits are distributed.
- (40) Trust Fund: The funds and properties held pursuant to the provisions hereof for the use and benefit of the Members, together with all income, profits, and increments thereto.
- (41) Trustee: The trustee or trustees qualified and acting hereunder at any time.

- (42) Valuation Dates: Each and every business day of the Plan Year.
- (43) Vested Interest: The portion of a Member's Accounts which, pursuant to the Plan, is nonforfeitable.
- (44) Vesting Service: The measure of service used in determining a Member's Vested Interest as determined pursuant to Section 8.4.
- (45) Voting Fiduciary: The independent fiduciary, if any, appointed by the Committee pursuant to the provisions of Section 13.7 to receive voting directions from the Members and vote Company Stock in accordance with the provisions of Section 5.3.

1.2 Number and Gender. Wherever appropriate herein, words used in the singular shall be considered to include the plural and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender.

1.3 Headings. The headings of Articles and Sections herein are included solely for convenience, and if there is any conflict between such headings and the text of the Plan, the text shall control.

1.4 Construction. It is intended that the Plan be qualified within the meaning of section 401(a) of the Code and that the Trust be tax exempt under section 501(a) of the Code, and all provisions herein shall be construed in accordance with such intent.

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## II. Participation

2.1 Eligibility. Each Eligible Employee shall become a Member upon the first day of the month coincident with or next following the date on which such Eligible Employee completes an Hour of Service. Notwithstanding the foregoing:

(a) An Eligible Employee who was a Member of the Plan on the day prior to the Effective Date shall remain a Member of this restatement thereof as of the Effective Date;

(b) An Eligible Employee who was a Member of the Plan, or who was eligible to become a Member of the Plan, prior to a termination of employment shall become a Member immediately upon his reemployment as

an Eligible Employee;

(c) An Employee who has completed an Hour of Service but who has not become a Member of the Plan because he was not an Eligible Employee shall become a Member of the Plan immediately upon becoming an Eligible Employee as a result of a change in his employment status;

(d) An Eligible Employee who had met the requirements of this Section to become a Member of the Plan but who terminated employment prior to the date upon which he would have become a Member shall become a Member immediately upon his reemployment; and

(e) A Member who ceases to be an Eligible Employee but remains an Employee shall continue to be a Member but, on and after the date he ceases to be an Eligible Employee, he shall no longer be entitled to defer Compensation hereunder or share in allocations of Employer Contributions unless and until he shall again become an Eligible Employee.

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### III. Contributions

#### 3.1 Cash or Deferred Contributions.

(a) A Member may elect to defer an integral percentage of from 1% to 14% (or, with respect to a Member who is a Highly Compensated Employee, such lesser percentage as may be prescribed from time to time by the Committee) of his Compensation for a Plan Year by having the Employer contribute the amount so deferred to the Plan. Compensation for a Plan Year not so deferred by such election shall be received by such Member in cash. A Member's election to defer an amount of his Compensation pursuant to this Section shall be made by executing a Compensation reduction agreement pursuant to which the Member authorizes the Employer to reduce his Compensation in the elected amount and the Employer, in consideration thereof, agrees to contribute an equal amount to the Plan. The reduction in a Member's Compensation for a Plan Year pursuant to his election under a Compensation reduction agreement shall be effected by Compensation reductions as of each payroll period within such Plan Year following the effective date of such agreement. The amount of Compensation elected to be deferred by a Member for a Plan Year pursuant to this Section shall become a part of the Employer's Cash or Deferred Contributions for such Plan Year.

(b) A Member's Compensation reduction agreement shall remain in force

and effect for all periods following the date of its execution until modified or terminated or until such Member terminates his employment. A Member who has elected to defer a portion of his Compensation may change his deferral election percentage (within the percentage limits set forth in Paragraph (a) above), effective as of the first day of any month in accordance with the procedures prescribed by the Committee.

(c) A Member may cancel his Compensation reduction agreement, effective as of the first day of any month in accordance with the procedures prescribed by the Committee. A Member who so cancels his Compensation reduction agreement may resume Compensation deferrals, effective as of the first day of any month that is at least six months after such cancellation in accordance with the procedures prescribed by the Committee.

(d) In restriction of the Members' elections provided in Paragraphs (a), (b), and (c) above, the Cash or Deferred Contributions and the elective deferrals (within the meaning of section 402(g) (3) of the Code) under all other plans, contracts, and arrangements of the Employer on behalf of any Member for any calendar year shall not exceed \$7,000 (with such amount to be adjusted automatically to reflect any cost-of-living adjustments authorized by section 402(g) (5) of the Code).

(e) In further restriction of the Members' elections provided in Paragraphs (a), (b), and (c) above, it is specifically provided that one of the "actual deferral percentage" tests set forth in section 401(k) (3) of the Code and the Treasury regulations thereunder must be met in each Plan Year. If multiple use of the alternative limitation (within the meaning of section 401(m) (9) of the Code and Treasury regulation ss. 1.401(m)-2(b)) occurs during

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a Plan Year, such multiple use shall be corrected in accordance with the provisions of Treasury regulation ss. 1.401(m)-2(c); provided, however, that if such multiple use is not eliminated by making Employer Safe Harbor Contributions, then the "actual contribution percentages" of all Highly Compensated Employees participating in the Plan shall be reduced, and the excess contributions distributed, in accordance with the provisions of Section 3.8(c) and applicable Treasury regulations, so that there is no such multiple use.

(f) If the restrictions set forth in Paragraph (d) or (e) above would not otherwise be met for any Plan Year, the Compensation deferral elections made pursuant to Paragraphs (a), (b), and (c) above of Members who are Highly Compensated Employees may be reduced by the Committee on a temporary and prospective basis in such manner as the Committee shall determine.

(g) As soon as administratively feasible following the end of each



month, the Employer shall contribute to the Trust, as Cash or Deferred Contributions with respect to each Member, an amount equal to the amount of Compensation elected to be deferred, pursuant to Paragraphs (a) and (b) above (as adjusted pursuant to Paragraph (f) above), by such Member during such month. Such contributions, as well as the contributions made pursuant to Sections 3.2, 3.3, and 3.4, shall be made without regard to current or accumulated profits of the Employer. Notwithstanding the foregoing, the Plan is intended to qualify as a profit sharing plan for purposes of sections 401(a), 402, 412, and 417 of the Code.

3.2 Employer Matching Contributions. For each calendar month, the Employer shall contribute to the Trust, as Employer Matching Contributions on behalf of each Member who has completed one Year of Service, as defined below, as of the first day of such month, an amount that equals 100% of the Cash or Deferred Contributions that were made pursuant to Section 3.1 on behalf of each of the Members during such month and that were not in excess of 6% of each such Member's Compensation for such month. For purposes of this Section, an Employee shall be credited with one Year of Service upon the completion of any twelve month period commencing with his Commencement Date or any anniversary thereof during which twelve month period such Employee is credited with 1,000 Hours of Service. An Employee who completed one Year of Service prior to a termination of his employment (regardless of whether such Employee had elected to defer compensation pursuant to Section 3.1) shall continue to be credited with one Year of Service upon his reemployment with the Employer.

3.3 Employer Discretionary Contributions. For each Plan Year, the Employer may contribute to the Trust, as an Employer Discretionary Contribution, an additional amount as determined in its discretion.

3.4 Employer Safe Harbor Contributions. In addition to the Employer Matching Contributions made pursuant to Section 3.2 and the Employer Discretionary Contribution made pursuant to Section 3.3, for each Plan Year, the Employer, in its discretion, may contribute to the Trust as a "safe harbor contribution" for such Plan Year the amounts necessary to cause the Plan to satisfy the restrictions set forth in Section 3.1(e) (with respect to certain restrictions on Cash or Deferred Contributions) and Section 3.5 (with respect to certain restrictions on Employer Matching Contributions). Amounts contributed in order to satisfy the restrictions set forth in Section 3.1(e)

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shall be considered "qualified matching contributions" (within the meaning of Treasury regulation ss. 1.401(k)-1(g)(13)) for purposes of such Section, and amounts contributed in order to satisfy the restrictions set forth in Section 3.5 shall be considered Employer Matching Contributions for purposes of such Section. Any amounts contributed pursuant to this Paragraph shall be allocated in accordance with the provisions of Sections 4.2(d) and (e).

3.5 Restrictions on Employer Contributions. In restriction of the Employer Contributions hereunder, it is specifically provided that one of the "actual contribution percentage" tests set forth in section 401(m) of the Code and the Treasury regulations thereunder must be met in each Plan Year. The Committee may elect, in accordance with applicable Treasury regulations, to treat Cash or Deferred Contributions to the Plan as Employer Matching Contributions for purposes of meeting this requirement.

3.6 Return of Contributions. Anything to the contrary herein notwithstanding, the Employer's contributions to the Plan are contingent upon the deductibility of such contributions under section 404 of the Code. To the extent that a deduction for contributions is disallowed, such contributions shall, upon the written demand of the Employer, be returned to the Employer by the Trustee within one year after the date of disallowance, reduced by any net losses of the Trust Fund attributable thereto but not increased by any net earnings of the Trust Fund attributable thereto. Moreover, if Employer contributions are made under a mistake of fact, such contributions shall, upon the written demand of the Employer, be returned to the Employer by the Trustee within one year after the payment thereof, reduced by any net losses of the Trust Fund attributable thereto but not increased by any net earnings of the Trust Fund attributable thereto.

### 3.7 Disposition of Excess Deferrals and Excess Contributions.

(a) Anything to the contrary herein notwithstanding, any Cash or Deferred Contributions to the Plan for a calendar year on behalf of a Member in excess of the limitations set forth in Section 3.1(d) and any "excess deferrals" from other plans allocated to the Plan by such Member no later than March 1 of the next following calendar year within the meaning of, and pursuant to the provisions of, section 402(g)(2) of the Code, shall be distributed to such Member not later than April 15 of the next following calendar year.

(b) Anything to the contrary herein notwithstanding, if, for any Plan Year, the aggregate Cash or Deferred Contributions made by the Employer on behalf of Highly Compensated Employees exceeds the maximum amount of Cash or Deferred Contributions permitted on behalf of such Highly Compensated Employees pursuant to Section 3.1(e) (determined by reducing Cash or Deferred Contributions on behalf of Highly Compensated Employees in order of the "actual deferral percentages" (as that term is defined in section 401(k)(3)(B) of the Code and the Treasury regulations thereunder) beginning with the highest of such percentages), such excess shall be distributed to the Highly Compensated Employees on whose behalf such excess was contributed before the end of the next following Plan Year. For purposes of this Paragraph, the determination and correction of excess Cash or Deferred Contributions of a Member whose actual deferral percentage is determined under the family aggregation rules of sections 401(k) and 414(q) of the Code shall be made in accordance with the provisions of such sections and the Treasury regulations thereunder.

(c) Anything to the contrary herein notwithstanding, if, for any Plan Year, the aggregate Employer Contributions allocated to the Accounts of Highly Compensated Employees exceeds the maximum amount of such Employer Contributions permitted on behalf of such Highly Compensated Employees pursuant to Section 3.5 (determined by reducing Employer Contributions made on behalf of Highly Compensated Employees in order of the "contribution percentages" (as that term is defined in section 401(m) (3) of the Code and Treasury regulations thereunder) beginning with the highest of such percentages), such excess shall be distributed to the Highly Compensated Employees on whose behalf such excess contributions were made (or, if such excess contributions are forfeitable, they shall be forfeited) before the end of the next following Plan Year. For purposes of this Paragraph, the determination and correction of excess Employer Contributions allocated to the Account of a Member whose contribution percentage is determined under the family aggregation rules of sections 401(m) and 414(q) of the Code shall be made in accordance with the provisions of such sections and the Treasury regulations thereunder. Employer Contributions shall be forfeited pursuant to this Paragraph only if distribution of all vested Employer Contributions is insufficient to meet the requirements of this Paragraph. If vested Employer Contributions are distributed to a Member and nonvested Employer Contributions remain credited to such Member's Accounts, such nonvested Employer Contributions shall vest at the same rate as if such distribution had not been made.

(d) In coordinating the disposition of excess deferrals and excess contributions pursuant to this Section, such excess deferrals and excess contributions shall be disposed of in the following order:

(1) First, Cash or Deferred Contributions which constitute excess deferrals described in Paragraph (a) above that are not considered in determining the amount of Employer Matching Contributions pursuant to Section 3.2 shall be distributed;

(2) Next, excess Cash or Deferred Contributions which constitute excess deferrals described in Paragraph (a) above that are considered in determining the amount of Employer Matching Contributions pursuant to Section 3.2 shall be distributed, and the Employer Matching Contributions with respect to such Cash or Deferred Contributions shall be forfeited;

(3) Next, excess Cash or Deferred Contributions described in Paragraph (b) above that are not considered in determining the amount of Employer Matching Contributions pursuant to Section 3.2 shall be distributed;

(4) Next, excess Cash or Deferred Contributions described in Paragraph (b) above that are considered in determining the

amount of Employer Matching Contributions pursuant to Section 3.2 shall be distributed, and the Employer Matching Contributions with respect to such Cash or Deferred Contributions shall be forfeited; and

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(5) Finally, excess Employer Contributions described in Paragraph (c) above shall be distributed (or, if forfeitable, forfeited).

(e) Any distribution or forfeiture of excess deferrals or excess contributions pursuant to the provisions of this Section shall be adjusted for income or loss allocated thereto in the manner determined by the Committee in accordance with any method permissible under applicable Treasury regulations. Any forfeiture pursuant to the provisions of this Section shall be considered to have occurred on the date which is 2 1/2 months after the end of the Plan Year.

3.8 Rollover Contributions.

(a) Qualified Rollover Contributions may be made to the Plan by any Eligible Employee of amounts received by such Eligible Employee from an individual retirement account or annuity or from an employees' trust described in section 401(a) of the Code, which is exempt from tax under section 501(a) of the Code, but only if any such Rollover Contribution is made pursuant to and in accordance with applicable provisions of the Code and Treasury regulations promulgated thereunder. A Rollover Contribution of amounts that are "eligible rollover distributions" within the meaning of section 402(f)(2)(A) of the Code may be made to the Plan irrespective of whether such eligible rollover distribution was paid to the Eligible Employee or paid to the Plan as a "direct" Rollover Contribution. A direct Rollover Contribution to the Plan may be effectuated only by wire transfer directed to the Trustee or by issuance of a check made payable to the Trustee, which is negotiable only by the Trustee and which identifies the Eligible Employee for whose benefit the Rollover Contribution is being made. Any Eligible Employee desiring to effect a Rollover Contribution to the Plan must execute and file with the Committee the form prescribed by the Committee for such purpose. The Committee may require as a condition to accepting any Rollover Contribution that such Eligible Employee furnish any evidence that the Committee in its discretion deems satisfactory to establish that the proposed Rollover Contribution is in fact eligible for rollover to the Plan and is made pursuant to and in accordance with applicable provisions of the Code and Treasury regulations. All Rollover Contributions to the Plan must be made in cash. A Rollover Contribution shall be credited to the Rollover Contribution Account of the Eligible Employee for whose benefit such Rollover Contribution is being made when received by the Trustee.

(b) An Eligible Employee who has made a Rollover Contribution in

accordance with this Section, but who has not otherwise become a Member of the Plan in accordance with Article II, shall become a Member coincident with such Rollover Contribution; provided, however, that such Member shall not have a right to defer Compensation or have Employer Contributions made on his behalf until he has otherwise satisfied the requirements imposed by Article II.

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## IV. Allocations

4.1 Suspended Amounts. All contributions, forfeitures, and the net income (or net loss) of the Trust Fund shall be held in suspense until allocated to the Accounts of the Members as provided herein.

### 4.2 Allocation of Contributions.

(a) Cash or Deferred Contributions made by the Employer on a Member's behalf for each month pursuant to Section 3.1 shall be allocated to such Member's Cash or Deferred Account as of the last day of such month; provided, however, that for purposes of Section 4.4, such contributions shall be allocated to the Cash or Deferred Account of such Member when received by the Trustee.

(b) The 100% Employer Matching Contributions for each month pursuant to Section 3.2(a) shall be allocated as of the last day of such month to the Employer Contribution Accounts of the Members for whom such contributions were made; provided, however, that for purposes of Section 4.4, such contributions shall be allocated to the Employer Contribution Accounts of such Members when received by the Trustee.

(c) The Employer Discretionary Contribution, if any, made pursuant to Section 3.3 for a Plan Year shall be allocated as of the last day of such Plan Year to the Employer Contribution Accounts of the Members (regardless of whether such Member elected to have Cash or Deferred Contributions made to the Plan on his behalf during such Plan Year) who had completed one Year of Service (as defined in Section 3.2) as of the last day of such Plan Year and who (1) were Eligible Employees on such last day of such Plan Year or (2) terminated employment during such Plan Year on or after Normal Retirement Date or by reason of total and permanent disability (as defined in Section 7.2) or death; provided, however, that for purposes of Section 4.4, such contributions shall be allocated to the Employer Contribution Accounts of such Members when received by the Trustee. The allocation to each such eligible Member's Employer Contribution Account shall be that portion of such Employer Discretionary Contribution which is in the same proportion that such Member's Compensation for such Plan Year bears to the total of all such Members' Compensation for such Plan Year.

(d) The Employer Safe Harbor Contribution, if any, made pursuant to Section 3.4 for a Plan Year in order to satisfy the restrictions set forth in Section 3.1(e) shall be allocated as of the last day of such Plan Year to the Cash or Deferred Accounts of Members who (1) received an allocation of Cash or Deferred Contributions for such Plan Year and (2) were not Highly Compensated Employees for such Plan Year (each such Member individually referred to as an "Eligible Member" for purposes of this Paragraph); provided, however, that for purposes of Section 4.4, such contributions shall be allocated to the Cash or Deferred Accounts of such Eligible Members when received by the Trustee. Such allocation shall be made, first, to the Cash or Deferred Account of the Eligible Member who received the least amount of Compensation for such Plan Year until

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the limitation set forth in Section 4.5 has been reached as to such Eligible Member, then to the Cash or Deferred Account of the Eligible Member who received the next smallest amount of Compensation for such Plan Year until the limitation set forth in Section 4.5 has been reached as to such Eligible Member, and continuing in such manner until the Employer Safe Harbor Contribution for such Plan Year has been completely allocated or the limitation set forth in Section 4.5 has been reached as to all Eligible Members. Any remaining Employer Safe Harbor Contribution for such Plan Year shall be allocated among the Cash or Deferred Accounts of all Members who were Eligible Employees during such Plan Year, with the allocation to each such Member's Cash or Deferred Account being the portion of such remaining Employer Safe Harbor Contribution which is in the same proportion that such Member's Compensation for such Plan Year bears to the total of all such Members' Compensation for such Plan Year.

(e) The Employer Safe Harbor Contribution, if any, made pursuant to Section 3.4 for a Plan Year in order to satisfy the restrictions set forth in Section 3.5 shall be allocated as of the last day of such Plan Year to the Employer Contribution Accounts of Members who (1) received an allocation of Employer Matching Contributions for such Plan Year and (2) were not Highly Compensated Employees for such Plan Year (each such Member individually referred to as an "Eligible Member" for purposes of this Paragraph); provided, however, that for purposes of Section 4.4, such contributions shall be allocated to the Employer Contribution Accounts of such Eligible Members when received by the Trustee. Such allocation shall be made, first, to the Employer Contribution Account of the Eligible Member who received the least amount of Compensation for such Plan Year until the limitation set forth in Section 4.5 has been reached as to such Eligible Member, then to the Employer Contribution Account of the Eligible Member who received the next smallest amount of Compensation for such Plan Year until the limitation set forth in Section 4.5 has been reached as to such Eligible Member, and continuing in such manner until the Employer Safe Harbor Contribution for such Plan Year has been completely allocated or the

limitation set forth in Section 4.5 has been reached as to all Eligible Members. Any remaining Employer Safe Harbor Contribution for such Plan Year shall be allocated among the Employer Contribution Accounts of all Members who were Eligible Employees during such Plan Year, with the allocation to each such Member's Employer Contribution Account being the portion of such remaining Employer Safe Harbor Contribution which is in the same proportion that such Member's Compensation for such Plan Year bears to the total of all such Members' Compensation for such Plan Year.

(f) If an Employer Safe Harbor Contribution is made in order to satisfy the restrictions set forth in both Section 3.1(e) and Section 3.4 for the same Plan Year, the Employer Safe Harbor Contribution made in order to satisfy the restrictions set forth in Section 3.1(e) shall be allocated pursuant to Paragraph (d) above prior to allocating the Employer Safe Harbor Contribution made in order to satisfy the restrictions set forth in Section 3.4. In determining the application of the limitations set forth in Section 4.5 to the allocations of Employer Safe Harbor Contributions, all Annual Additions (as such term is defined in Section 4.5) to a Member's Accounts other than Employer Safe Harbor Contributions shall be considered allocated prior to Employer Safe Harbor Contributions.

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4.3 Application of Forfeitures. Any amounts that are forfeited under any provision hereof during a Plan Year shall be applied to reduce Employer Matching Contributions next coming due.

4.4 Valuation of Accounts. All amounts contributed to the Trust Fund shall be invested at the time of their receipt by the Trustee, and the balance of each Account shall reflect the result of daily pricing of the assets in which such Account is invested from the time of receipt by the Trustee until the time of distribution.

#### 4.5 Limitations and Corrections.

(a) For purposes of this Section, the following terms and phrases shall have these respective meanings:

(1) "Annual Additions" of a Member for any Limitation Year shall mean the total of (A) the Employer Contributions, Cash or Deferred Contributions, and forfeitures, if any, allocated to such Member's Accounts for such year, (B) Member's contributions, if any, (excluding any Rollover Contributions) for such year, and (C) amounts referred to in sections 415(1)(1) and 419A(d)(2) of the Code.

(2) "Limitation Year" shall mean the Plan Year.

(3) "Maximum Annual Additions" of a Member for any Limitation Year shall mean the lesser of (A) \$30,000 (or, if greater, one-fourth of the defined benefit dollar limitation in effect under section 415(b)(1)(A) of the Code for such Limitation Year) or (B) 25% of such Member's compensation, within the meaning of section 415(c)(3) of the Code and applicable Treasury regulations thereunder, during such year except that the limitation in this Clause (B) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2) of the Code) after separation from service with the Employer or a Controlled Entity which is otherwise treated as an Annual Addition or to any amount otherwise treated as an Annual Addition under section 415(l)(1) of the Code.

(b) Contrary Plan provisions notwithstanding, in no event shall the Annual Additions credited to a Member's Accounts for any Limitation Year exceed the Maximum Annual Additions for such Member for such year. If as a result of a reasonable error in estimating a Member's compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of section 402(g)(3) of the Code) that may be made with respect to any individual under the limits of section 415 of the Code, or because of other limited facts and circumstances, the Annual Additions that would be credited to a Member's Accounts for a Limitation Year would nonetheless exceed the Maximum Annual Additions for such Member for such year, the excess Annual Additions which, but for this Section, would have been allocated to such Member's Accounts shall be disposed of as follows:

(1) First, any such excess Annual Additions in the form of Cash or Deferred Contributions on behalf of such Member that would not have been considered in determining the amount of Employer

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Contributions allocated to such Member's Accounts pursuant to Section 4.2 shall be distributed to such Member, adjusted for income or loss allocated thereto;

(2) Next, any such excess Annual Additions in the form of Cash or Deferred Contributions on behalf of such Member that would have been considered in determining the amount of Employer Contributions allocated to such Member's Accounts pursuant to Section 4.2 shall be distributed to such Member, adjusted for income or loss allocated thereto, and the Employer Contributions that would have been allocated to such Member's Accounts based upon such distributed Cash or Deferred Contributions shall, to the extent such amounts would have otherwise been allocated to such Member's Accounts, be allocated to a suspense account and shall be held there until used to reduce future



Employer Matching Contributions in the same manner as a forfeiture;

(3) Finally, any such excess Annual Additions in the form of Employer Discretionary Contributions shall, to the extent such amounts would otherwise have been allocated to such Member's Accounts, be allocated to a suspense account and shall be held therein until used to reduce future Employer Matching Contributions in the same manner as a forfeiture.

(c) Pending their application to reduce future Employer Matching Contributions, excess amounts described in Paragraphs (b)(2) and (b)(3) above shall be invested in a principal-safe asset.

(d) For purposes of determining whether the Annual Additions under this Plan exceed the limitations herein provided, all defined contribution plans of the Employer are to be treated as one defined contribution plan. In addition, all defined contribution plans of Controlled Entities shall be aggregated for this purpose. For purposes of this Section only, a "Controlled Entity" (other than an affiliated service group member within the meaning of section 414(m) of the Code) shall be determined by application of a more than 50% control standard in lieu of an 80% control standard. If the Annual Additions credited to a Member's Accounts for any Limitation Year under this Plan plus the additions credited on his behalf under other defined contribution plans required to be aggregated pursuant to this Paragraph would exceed the Maximum Annual Additions for such Member for such Limitation Year, the Annual Additions under this Plan shall be reduced to the extent possible prior to any reductions of additions under such other plan or plans.

(e) In the case of a Member who also participated in a defined benefit plan of the Employer or a Controlled Entity (as defined in Paragraph (d) above), the Employer shall reduce the Annual Additions credited to the Accounts of such Member under this Plan pursuant to the provisions of Paragraph (b) to the extent necessary to prevent the limitation set forth in section 415(e) of the Code from being exceeded. Notwithstanding the foregoing, the provisions of this Paragraph shall apply only if such defined benefit plan does not provide for a reduction of benefits thereunder to ensure that the limitation set forth in section 415(e) of the Code is not exceeded.

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(f) If the limitations set forth in this Section would not otherwise be met for any Limitation Year, the Compensation deferral elections pursuant to Section 3.1 of affected Members may be reduced by the Committee on a temporary and prospective basis in such manner as the Committee shall determine.

## V. Investment Funds

### 5.1 Investment of Accounts.

(a) Each Member shall designate, in accordance with the procedures established from time to time by the Committee, the manner in which the amounts allocated to each of his Accounts shall be invested from among the Investment Funds made available from time to time by the Committee. With respect to each of a Member's Accounts, such Member may designate one of such Investment Funds for all the amounts allocated to such Account or he may split the investment of the amounts allocated to such Account between such Investment Funds in such increments as the Committee may prescribe. If a Member fails to make a designation, then his Accounts shall be invested in the Investment Fund or Funds designated by the Committee from time to time in a uniform and nondiscriminatory manner.

(b) A Member may change his investment designation for future contributions to be allocated to any one or all of his Accounts. Any such change shall be made in accordance with the procedures established by the Committee, and the frequency of such changes may be limited by the Committee.

(c) A Member may elect to convert his investment designation with respect to the amounts already allocated to one or more of his Accounts. Any such conversion shall be made in accordance with the procedures established by the Committee, and the frequency of such conversions may be limited by the Committee.

5.2 Restriction of Acquisition of Company Stock. Notwithstanding any other provision hereof, it is specifically provided that the Trustee shall not purchase Company Stock or other Company securities during any period in which such purchase is, in the opinion of counsel for the Company or the Committee, restricted by any law or regulation applicable thereto. During such period, amounts that would otherwise be invested in Company Stock or other Company securities pursuant to an investment designation shall be invested in such other assets as the Trustee may in its discretion determine, or the Trustee may hold such amounts uninvested for a reasonable period pending the purchase of such stock or securities.

### 5.3 Voting of Company Stock and Other Rights.

(a) To the extent permitted by section 404(a) of the Act, at each annual meeting and special meeting of the shareholders of the Company, a Member or beneficiary may direct the voting of the number of whole shares of

Company Stock attributable to his pro rata interest in the Company Stock fund as of the Valuation Date coinciding with or, if none, next preceding the record date for such meeting. The Committee shall forward or cause to be forwarded to each such Member or beneficiary copies of pertinent proxy solicitation material provided by the Company together with a request for such Member's or beneficiary's confidential instructions as to the manner in which such shares are to be voted. The Committee or the Voting Fiduciary if one has been appointed shall direct the Trustee to vote such shares in accordance with such

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instructions and, to the extent permitted by section 404(a) of the Act, shall also direct the Trustee as to the manner in which to vote any shares of Company Stock at any such meeting for which the Committee has not received, or is not subject to receiving, such voting instructions.

(b) To the extent permitted by section 404(a) of the Act, if a "cash tender offer" or "exchange offer" for shares of Company Stock is made, the shares of Company Stock attributable to a Member's Accounts shall be tendered or exchanged by the Trustee pursuant to such "cash tender offer" or "exchange offer" only in accordance with the written instructions and directions of such Member to the Trustee to so tender or exchange. If written instructions or directions are not timely received from a Member whose Accounts are invested in Company Stock, such Member's pro rata interest in the shares of Company Stock held in the Company Stock fund shall not be tendered or exchanged pursuant to such "cash tender offer" or "exchange offer" except as required by section 404(c) of the Act. For purposes of this Paragraph, the term "cash tender offer" shall include a tender offer for, or request or invitation for tenders of, shares of Company Stock in exchange for cash, as made to the Plan or to holders of shares of Company Stock generally; the term "exchange offer" shall include a tender offer for, or request or invitation for tenders of, any shares of Company Stock in exchange for any consideration other than for all cash, as made to the Plan or to holders of shares of Company Stock generally. If a "cash tender offer" or "exchange offer" for shares of Company Stock is made, the Trustee shall use its best efforts to take those steps reasonably necessary to furnish information to, and allow decision by, each Member whose Accounts are invested in Company Stock with respect to such "cash tender offer" or "exchange offer" in substantially the same manner as would be available to holders of Company Stock generally, and, in that connection, the Trustee shall:

(1) inform each such Member as to the existence of such "cash tender offer" or "exchange offer;"

(2) transmit to each such Member as soon as practicable such written information, explanation and other materials relative to such "cash tender offer" or "exchange offer" as are made available by the Company or by the persons or entities making such "cash tender offer"

or "exchange offer" to the holders of shares of Company Stock generally;

(3) request detailed written instructions and directions from each such Member as to whether to tender or exchange each such Member's pro rata interest in the shares of Company Stock held in the Company Stock fund and, if so instructed and directed, as to the time and manner of such tender or exchange, and such instructions and directions of the individual Members shall be given to the election judge or the Trustee and shall be kept confidential from the Company; and

(4) use its best efforts to effect on a confidential and nondiscriminatory basis the tender or exchange of Company Stock held under the Plan with respect to such "cash tender offer" or "exchange offer" solely in accordance with written instructions and directions received from such Members.

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5.4 Stock Rights, Stock Splits, and Stock Dividends. Except as provided in Section 5.3, no Member or beneficiary shall have any right to request, direct, or demand that the Committee or the Trustee exercise in his behalf rights or privileges to acquire, convert, or exchange Company Stock or other securities. The Trustee, in its discretion, may exercise or sell any such rights or privileges. Company Stock received by the Trustee by reason of a stock split, stock dividend, or recapitalization shall be appropriately allocated to the Accounts of each affected Member or beneficiary in accordance with Section 4.4.

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## VI. Retirement Benefits

6.1 Retirement Benefits. A Member who terminates his employment on or after his Normal Retirement Date shall be entitled to a retirement benefit, payable at the time and in the form provided in Article X, equal in value to the sum of:

(a) The amount in his Accounts as of the Valuation Date next preceding his Benefit Commencement Date; and

(b) If the Valuation Date next preceding such Member's Benefit Commencement Date occurs prior to the close of the Plan Year during which his termination of employment occurred, the amount of such Member's allocation of Cash or Deferred Contributions, Employer Contributions, and Employer Safe Harbor Contributions for such Plan Year.

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## VII. Disability Benefits

7.1 Disability Benefits. In the event a Member's employment is terminated due to total and permanent disability, as determined pursuant to Section 7.2, such Member shall be entitled to a disability benefit, payable at the time and in the form provided in Article X, equal in value to the sum of:

(a) The amount in his Accounts as of the Valuation Date next preceding his Benefit Commencement Date; and

(b) If the Valuation Date next preceding such Member's Benefit Commencement Date occurs prior to the close of the Plan Year during which such disability was determined, the amount of such Member's allocation of Cash or Deferred Contributions, Employer Contributions, and Employer Safe Harbor Contributions for such Plan Year.

7.2 Total and Permanent Disability Determined. A Member's employment shall be considered terminated due to total and permanent disability if the Committee determines, based on a written medical opinion (unless waived by the Committee as unnecessary), that such Member is permanently incapable of performing his job for physical or mental reasons.

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## VIII. Severance Benefits and Determination of Vested Interest

8.1 No Benefits Unless Herein Set Forth. Except as set forth in this Article, upon termination of employment of a Member prior to his Normal

Retirement Date for any reason other than total and permanent disability or death, such Member shall acquire no right to any benefit from the Plan or the Trust Fund.

8.2 Severance Benefit. Each Member whose employment is terminated prior to his Normal Retirement Date for any reason other than total and permanent disability or death shall be entitled to a severance benefit, payable at the time and in the form provided in Article X, equal in value to the sum of:

(a) His Vested Interest in the amount in his Accounts as of the Valuation Date next preceding his Benefit Commencement Date; and

(b) If the Valuation Date next preceding such Member's Benefit Commencement Date occurs prior to the close of the Plan Year during which his termination of employment occurred, the amount of such Member's Vested Interest in his allocation of Cash or Deferred Contributions, Employer Matching Contributions, and Employer Safe Harbor Contributions for such Plan Year.

8.3 Determination of Vested Interest.

(a) A Member shall have a 100% Vested Interest in his Cash or Deferred Account, Member Contribution Account, and Rollover Contribution Account at all times.

(b) A Member's Vested Interest in his Employer Contribution Account shall be determined by such Member's years of Vesting Service in accordance with the following schedule:

	Years of Vesting Service	Vested Interest
Less than	2 years	0%
	2 years	25%
	3 years	40%
	4 years	55%
	5 years	70%
	6 years	85%
	7 years or more	100%

(c) Paragraph (b) above notwithstanding, a Member shall have a 100% Vested Interest in his Employer Contribution Account upon attainment of his Normal Retirement Date while employed by the Employer or a Controlled Entity.

(d) Paragraph (b) above notwithstanding, if a Member shall

cease to be employed by reason of a reduction in force, as hereinafter described, such Member shall then have a 100% Vested Interest in his Employer Contribution Account. The employment of a Member shall be considered as having been terminated because of a "reduction in force" if such termination is the result of a work force reduction, geographic consolidation, or segment disposition.

#### 8.4 Vesting Service.

(a) For the period preceding the Effective Date, subject to the provisions of Paragraphs (c) and (d) below, an individual shall be credited with Vesting Service in an amount equal to all service credited to him for vesting purposes under the Plan as it existed on the day prior to the Effective Date.

(b) For the Plan Year beginning with the Effective Date and all Plan Years thereafter, subject to the provisions of Paragraphs (c) and (d) below, 1,000 or more Hours of Service during any Plan Year shall constitute one year of Vesting Service.

(c) In the case of an individual who terminates employment at a time when he does not have any Vested Interest in his Employer Contribution Account and who then incurs a number of consecutive One-Year Breaks-in-Service that equals or exceeds the greater of five years or his aggregate number of years of Vesting Service completed before such One-Year Breaks-in-Service, such individual's years of Vesting Service completed before such One-Year Breaks-in-Service shall be disregarded in determining his years of Vesting Service.

(d) In the case of a Member who incurs five consecutive One-Year Breaks-in-Service, such Member's years of Vesting Service completed after such One-Year Breaks-in-Service shall be disregarded in determining such Member's Vested Interest in any Plan benefits derived from Employer Contributions on his behalf prior to such One-Year Breaks-in-Service.

#### 8.5 Forfeitures.

(a) With respect to a Member who terminates employment with the Employer with a Vested Interest in his Employer Contribution Account that is less than 100% and either is not entitled to a distribution from the Plan or receives a distribution from the Plan of the balance of his Vested Interest in his Accounts in the form of a lump sum distribution by the close of the second Plan Year following the Plan Year in which his employment is terminated, the forfeitable amount credited to the terminated Member's Employer Contribution Account as of the Valuation Date next preceding his Benefit Commencement Date shall become a forfeiture as of his Benefit Commencement Date (or as of his date of termination of employment if no amount is payable from the Trust Fund on behalf of such Member with such Member being considered to have received a distribution of zero dollars on his date of termination of employment).

(b) In the event that an amount credited to a terminated

Member's Employer Contribution Account becomes a forfeiture pursuant to Paragraph (a) above, the terminated Member shall, upon subsequent reemployment with the Employer prior to incurring five consecutive OneYear Breaks-in-Service, have the forfeited amount restored to such Member's Employer Contribution Account, unadjusted by any subsequent gains or losses of the Trust Fund; provided, however, that such restoration shall be made only if such Member repays in cash an amount equal to the amount so distributed to him pursuant to Paragraph (a) above within five years from the date the Member is reemployed; provided, further, that such Member's repayment of amounts distributed to him from his Cash or Deferred Account shall be limited to the portion thereof that was attributable to contributions with respect to which the Employer made Employer Matching Contributions. A reemployed Member who was not entitled to a distribution from the Plan on his date of termination of employment shall be considered to have repaid a distribution of zero dollars on the date of his reemployment. Any such restoration shall be made as of the Valuation Date coincident with or next succeeding the date of repayment. Notwithstanding anything to the contrary in the Plan, forfeited amounts to be restored by the Employer pursuant to this Paragraph shall be charged against and deducted from forfeitures for the Plan Year in which such amounts are restored that would otherwise be available to reduce Employer Matching Contributions. If such forfeitures otherwise available are not sufficient to provide such restoration, the portion of such restoration not provided by forfeitures shall be charged against and deducted from Employer Contributions otherwise available for allocation to other Members in accordance with Section 4.2(c), and any additional amount needed to restore such forfeited amounts shall be a minimum required Employer Contribution (without regard to current or accumulated earnings and profits).

(c) With respect to a Member whose Vested Interest in his Employer Contribution Account is less than 100% and who receives a termination distribution from his Employer Contribution Account other than a lump sum distribution by the close of the second Plan Year following the Plan Year in which his employment is terminated, any amount remaining in his Employer Contribution Account shall continue to be maintained as a separate account. At any relevant time, such Member's nonforfeitable portion of his separate account shall be determined in accordance with the following formula:

$$X=P(AB + D) - D$$

For purposes of applying the formula: X is the nonforfeitable portion of such separate account at the relevant time; P is the Member's Vested Interest in his Employer Contribution Account at the relevant time; AB is the balance of such separate account at the relevant time; and D is the amount of the distribution. For all other purposes of the Plan, a Member's separate account shall be treated as an Employer Contribution Account. Upon his incurring five consecutive One-Year Breaks-in-Service, the forfeitable portion of a terminated Member's separate account and Employer Contribution Account shall be forfeited as of the end of the Plan Year during which the terminated Member incurred his fifth such consecutive One-Year Break-in-Service.

(d) With respect to a Member who terminates employment with



the Employer with a Vested Interest in his Employer Contribution Account greater than 0% but less than 100% and who is not otherwise subject to the forfeiture provisions of Paragraph (a) or Paragraph (c) above, the forfeitable portion of his Employer Contribution Account shall be forfeited as of the end of the Plan Year during which the terminated Member incurs his fifth consecutive One-Year Break-in-Service or, if earlier, the date of the terminated Member's death.

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(e) Any forfeitures occurring pursuant to Paragraphs (a), (c), or (d) above shall be applied to reduce Employer Matching Contributions next coming due. Prior to such application, forfeited amounts shall be invested in a principal-safe asset.

(f) Distributions of benefits described in this Section shall be subject to the time of payment requirements of Section 10.1.

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IX. Death Benefits

9.1 Death Benefits. Upon the death of a Member while an Employee, the Member's designated beneficiary shall be entitled to a death benefit payable at the time and in the form provided in Article X, equal in value to the sum of:

(a) The amount in his Accounts as of the Valuation Date next preceding his Benefit Commencement Date; and

(b) If the Valuation Date next preceding such Member's Benefit Commencement Date occurs prior to the close of the Plan Year during which his death occurred, the amount of such Member's allocation of Cash or Deferred Contributions, Employer Contributions, and Employer Safe Harbor Contributions for such Plan Year.

9.2 Designation of Beneficiaries.

(a) Each Member shall have the right to designate the beneficiary or beneficiaries to receive payment of his benefit in the event of his death. Each such designation shall be made by executing the beneficiary designation form prescribed by the Committee and filing such form with the

Committee. Any such designation may be changed at any time by such Member by execution of a new designation in accordance with this Section. Notwithstanding the foregoing, if a Member who is married on the date of his death designates an individual or entity other than his surviving spouse as his beneficiary, such designation shall not be effective unless (1) such spouse has consented thereto in writing and such consent (A) acknowledges the effect of such specific designation, (B) either consents to the specific designated beneficiary (which designation may not subsequently be changed by the Member without spousal consent) or expressly permits such designation by the Member without the requirement of further consent by the spouse, and (C) is witnessed by a Plan representative (other than the Member) or a notary public or (2) the consent of such spouse cannot be obtained because such spouse cannot be located or because of other circumstances described by applicable Treasury regulations. Any such consent by such surviving spouse shall be irrevocable.

(b) If no beneficiary designation is on file with the Committee at the time of the death of the Member or if such designation is not effective for any reason as determined by the Committee, the designated beneficiary or beneficiaries to receive such death benefit shall be as follows:

(1) If a Member leaves a surviving spouse, his death benefit shall be paid to such surviving spouse;

(2) If a Member leaves no surviving spouse, his death benefit shall be paid to such Member's executor or administrator or to his heirs at law if there is no administration of such Member's estate.

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## X. Time and Form of Payment of Benefits

### 10.1 Time of Payment.

(a) Subject to the provisions of the remaining Paragraphs of this Section, a Member's Benefit Commencement Date shall be as soon as administratively feasible after the Valuation Date coincident with or next succeeding the date the Member or his beneficiary becomes entitled to a benefit pursuant to Article VI, VII, VIII, or IX.

(b) Unless (1) the Member has attained age sixty-five or died, (2) the Member consents to a distribution pursuant to Paragraph (a) within the ninety-day period ending on the date payment of his benefit hereunder is to commence pursuant to Paragraph (a), or (3) the Member's Vested Interest in his Accounts is not in excess of \$3,500, the Member's Benefit Commencement Date shall be deferred to the date which is as soon as administratively feasible

after the Valuation Date coincident with or next succeeding the earlier of the date the Member attains age sixty-five or the Member's date of death, or such earlier Valuation Date as the Member may elect by written notice to the Committee prior to such Valuation Date. No less than thirty days (unless such thirty-day period is waived by an affirmative election in accordance with applicable Treasury regulations) and no more than ninety days before his Benefit Commencement Date, the Committee shall inform the Member of his right to defer his Benefit Commencement Date and shall describe the Member's Direct Rollover election rights pursuant to Section 10.5 below.

(c) A Member's Benefit Commencement Date shall in no event be later than the sixtieth day following the close of the Plan Year during which such Member attains, or would have attained, his Normal Retirement Date or, if later, terminates his employment with the Employer or a Controlled Entity.

(d) A Member's Benefit Commencement Date shall be in compliance with the provisions of section 401(a)(9) of the Code and applicable Treasury regulations thereunder and shall in no event be later than:

(1) April 1 of the calendar year following the calendar year in which such Member attains the age of seventy and one-half; and

(2) In the case of a benefit payable pursuant to Article IX, the last day of the five-year period following the death of such Member.

The preceding provisions of this Section notwithstanding, a Member may not elect to defer the receipt of his benefit hereunder to the extent that such deferral creates a death benefit that is more than incidental within the meaning of section 401(a)(9)(G) of the Code and applicable Treasury regulations thereunder.

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(e) Subject to the provisions of Paragraphs (c) and (d) above, a Member's Benefit Commencement Date shall not occur before the expiration of the latest to end of the following periods:

(1) A period during which the Member is employed by the Employer or any Controlled Entity; or

(2) A period during which the Member is employed by a purchaser of assets from the Employer or a Controlled Entity if such Member transfers to employment with such purchaser in connection with such purchase. Notwithstanding the foregoing, in the event of a segment disposition by the Employer, the limitation of this Paragraph (e)(2)

shall not apply to a Member who transfers to the employment of the purchaser of such segment if such segment disposition satisfies the requirements of section 401(k)(10) of the Code.

(f) Paragraphs (a), (b), and (c) above notwithstanding, a Member whose Vested Interest in his Accounts is \$3,500 or more may elect to defer his Benefit Commencement Date beyond the date specified in such Paragraphs, subject to the provisions of Paragraph (d), by submitting to the Committee a written statement, signed by the Member, which describes the benefit and designates the date on which the payment of such benefit shall commence.

#### 10.2 Form of Payment.

(a) Subject to the provisions of Paragraph (b) below, a Member's benefit shall be provided from the balance of such Member's Accounts under the Plan and shall be paid in one lump sum on the Member's Benefit Commencement Date. The Member's benefit shall be paid to the Member unless the Member has died prior to his Benefit Commencement Date, in which case the Member's benefit shall be paid to his beneficiary designated in accordance with the provisions of Section 9.2.

(b) Benefits shall be paid (or transferred pursuant to Section 10.3) in cash except that a Member (or his designated beneficiary or legal representative in the case of a deceased Member) may elect to have the portion of his Accounts invested in Company Stock distributed (or transferred pursuant to Section 10.3) in full shares of Company Stock to the extent of such Member's pro rata portion of the shares of Company Stock held in the Company Stock fund, with any balance of the Member's interest in the Company Stock fund (including fractional shares) to be paid or transferred in cash.

10.3 Direct Rollover Election. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have all or any portion of an Eligible Rollover Distribution (other than any portion attributable to the offset of an outstanding loan balance of such Member pursuant to the Plan's loan procedure) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The preceding sentence notwithstanding, a Distributee may elect a Direct Rollover pursuant to this Section only if such Distributee's Eligible

Rollover Distributions during the Plan Year are reasonably expected to total \$200 or more. Furthermore, if less than 100% of the Member's Eligible Rollover Distribution is to be a Direct Rollover, the amount of the Direct Rollover must be \$500 or more. Prior to any Direct Rollover pursuant to this Section, the Committee may require the Distributee to furnish the Committee with a statement

from the plan, account, or annuity to which the benefit is to be transferred verifying that such plan, account, or annuity is, or is intended to be, an Eligible Retirement Plan.

10.4 Unclaimed Benefits. In the case of a benefit payable on behalf of a Member, if the Committee is unable to locate the Member or beneficiary to whom such benefit is payable, upon the Committee's determination thereof, such benefit shall be forfeited, held in a suspense account, and applied to reduce Employer Matching Contributions next coming due. Prior to such application, forfeited amounts shall be invested in a principal-safe asset. Notwithstanding the foregoing, if subsequent to any such forfeiture the Member or beneficiary to whom such benefit is payable makes a valid claim for such benefit, such forfeited benefit shall be restored to the Plan in the manner provided in Section 8.5(b).

10.5 Claims Review. In any case in which a claim for Plan benefits of a Member or beneficiary is denied or modified, the Committee shall furnish written notice to the claimant within ninety days (or within 180 days if additional information requested by the Committee necessitates an extension of the ninety-day period), which notice shall:

- (a) State the specific reason or reasons for the denial or modification;
- (b) Provide specific reference to pertinent Plan provisions on which the denial or modification is based;
- (c) Provide a description of any additional material or information necessary for the Member, his beneficiary, or representative to perfect the claim and an explanation of why such material or information is necessary; and
- (d) Explain the Plan's claim review procedure as contained herein.

In the event a claim for Plan benefits is denied or modified, if the Member, his beneficiary, or a representative of such Member or beneficiary desires to have such denial or modification reviewed, he must, within sixty days following receipt of the notice of such denial or modification, submit a written request for review by the Committee of its initial decision. In connection with such request, the Member, his beneficiary, or the representative of such Member or beneficiary may review any pertinent documents upon which such denial or modification was based and may submit issues and comments in writing. Within sixty days following such request for review the Committee shall, after providing a full and fair review, render its final decision in writing to the Member, his beneficiary or the representative of such Member or beneficiary stating specific reasons for such decision and making specific references to pertinent Plan provisions upon which the decision is based. If special circumstances require an extension of such sixty-day period, the Committee's decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. If an extension of time for review is

required, written notice of the extension shall be furnished to the Member,

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beneficiary, or the representative of such Member or beneficiary prior to the commencement of the extension period.

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## XI. In-Service Withdrawals

### 11.1 In-Service Withdrawals.

(a) A Member may withdraw an amount that is not less than 25% nor more than 100% of the then value of his Member Contribution Account.

(b) A Member who has attained age fifty-nine and one-half may withdraw from his Cash or Deferred Account an amount not less than 25% nor more than 100% of the then value of such Account. Only one such withdrawal may be made in any twenty-four month period.

(c) A Member who has a financial hardship, as determined by the Committee, and who has made all available withdrawals pursuant to the Paragraphs above and pursuant to the provisions of any other plans of the Employer and any Controlled Entities of which he is a member and who has obtained all available loans pursuant to Article XII and pursuant to the provisions of any other plans of the Employer and any Controlled Entities of which he is a member may withdraw from his Rollover Contribution Account and his Cash or Deferred Account amounts not to exceed the lesser of (1) such Member's Vested Interest in such Accounts or (2) the amount determined by the Committee as being available for withdrawal pursuant to this Paragraph. Such withdrawal shall come, first, from the Member's Rollover Contribution Account and then from his Cash or Deferred Account. For purposes of this Paragraph, financial hardship shall mean the immediate and heavy financial needs of the Member. A withdrawal based upon financial hardship pursuant to this Paragraph shall not exceed the amount required to meet the immediate financial need created by the hardship and not reasonably available from other resources of the Member. The amount required to meet the immediate financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. The determination of the existence of a Member's financial hardship and the amount required to be distributed to meet the need

created by the hardship shall be made by the Committee. The decision of the Committee shall be final and binding, provided that all Members similarly situated shall be treated in a uniform and nondiscriminatory manner. A withdrawal shall be deemed to be made on account of an immediate and heavy financial need of a Member if the withdrawal is for:

(1) Expenses for medical care described in section 213(d) of the Code previously incurred by the Member, the Member's spouse, or any dependents of the Member (as defined in section 152 of the Code) or necessary for those persons to obtain medical care described in section 213(d) of the Code and not reimbursed or reimbursable by insurance;

(2) Costs directly related to the purchase of a principal residence of the Member (excluding mortgage payments);

(3) Payment of tuition and related educational fees, and room and board expenses, for the next twelve months of post-secondary education for the Member or the Member's spouse, children, or dependents (as defined in section 152 of the Code);

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(4) Payments necessary to prevent the eviction of the Member from his principal residence or foreclosure on the mortgage of the Member's principal residence; or

(5) Such other financial needs that the Commissioner of Internal Revenue may deem to be immediate and heavy financial needs through the publication of revenue rulings, notices, and other documents of general applicability.

The above notwithstanding, (1) withdrawals under this Paragraph from a Member's Cash or Deferred Account shall be limited to the sum of the Member's Cash or Deferred Contributions to the Plan, plus income allocable thereto and credited to the Member's Cash or Deferred Account as of the Valuation Date coincident with or next preceding December 31, 1988, less any previous withdrawals of such amounts, and (2) amounts allocated to a Member's Cash or Deferred Account pursuant to the provisions of Section 4.2(d) and Employer Matching Contributions used to satisfy the restrictions set forth in Section 3.1(e) shall not be subject to withdrawal. A Member who makes a withdrawal from his Cash or Deferred Account under this Paragraph may not make elective contributions or employee contributions to the Plan or any other qualified or nonqualified plan of the Employer or any Controlled Entity for a period of twelve months following the date of such withdrawal. Further, such Member may not make elective contributions under the Plan or any other plan maintained by the Employer or any Controlled Entity for such Member's taxable year immediately following the

taxable year of the withdrawal in excess of the applicable limit set forth in Section 3.1(d) for such next taxable year less the amount of such Member's elective contributions for the taxable year of the withdrawal.

#### 11.2 Restriction on In-Service Withdrawals.

(a) All withdrawals pursuant to this Article shall be made only as of the first day of any month by executing and filing with the Committee the form prescribed by the Committee at least ten days prior to the proposed date of withdrawal.

(b) Notwithstanding the provisions of this Article, no withdrawal shall be made from an Account to the extent such Account has been pledged to secure a loan under Article XII.

(c) If a Member's Account from which a withdrawal is made is invested in more than one Investment Fund, the withdrawal shall be made pro rata from each Investment Fund in which such Account is invested.

(d) All withdrawals under this Article shall be paid in cash.

(e) Any withdrawal hereunder shall be subject to the Director Rollover election described in Section 10.3.

(f) This Article shall not be applicable to a Member following termination of employment and the amounts in such Member's Accounts shall be distributable in accordance with the provisions of Article X.

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### XII. Loans

12.1 Eligibility for Loan. Upon application by (1) any Member who is an Employee or (2) any Member no longer employed by the Employer, a beneficiary of a deceased Member or an alternate payee under a qualified domestic relations order, as defined in section 414(p)(8) of the Code, who retains an Account balance under the Plan and who is a party-in-interest, as that term is defined in section 3(14) of the Act, as to the Plan (an individual who is eligible to apply for a loan under this Article being hereinafter referred to as a "Member" for purposes of this Article), the Committee may in its discretion direct the Trustee to make a loan or loans to such Member. Such loans shall be made pursuant to the provisions of the Committee's written loan procedure, which procedure is hereby incorporated by reference as a part of the Plan.

#### 12.2 Maximum Loan.



(a) A loan to a Member may not exceed 50% of the then value of such Member's Vested Interest in his Accounts.

(b) Paragraph (a) above to the contrary notwithstanding, the amount of a loan made to a Member under this Article shall not exceed an amount equal to the difference between:

(1) The lesser of \$50,000 (reduced by the excess, if any, of (A) the highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which the loan is made over (B) the outstanding balance of loans from the Plan on the date on which the loan is made) or one-half of the present value of the Member's total nonforfeitable accrued benefit under all qualified plans of the Employer or a Controlled Entity; minus

(2) The total outstanding loan balance of the Member under all other loans from all qualified plans of the Employer or a Controlled Entity.

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### XIII. Administration of the Plan

13.1 Appointment of Committee. The general administration of the Plan shall be vested in the Committee which shall be appointed by the Directors and shall consist of one or more persons. Any individual, whether or not an Employee, is eligible to become a member of the Committee. Each member of the Committee shall, before entering upon the performance of his duties, qualify by signing a consent to serve as a member of the Committee under and pursuant to the Plan and by filing such consent with the records of the Committee. For purposes of the Act, the Committee shall be the Plan "administrator" and shall be the "named fiduciary" with respect to the general administration of the Plan (except as to the investment of the assets of the Trust Fund).

13.2 Term, Vacancies, Resignation, and Removal. Each member of the Committee shall serve until he resigns, dies, or is removed by the Directors. At any time during his term of office, a member of the Committee may resign by giving written notice to the Directors and the Committee, such resignation to become effective upon the appointment of a substitute member or, if earlier, the lapse of thirty days after such notice is given as herein provided. At any time during his term of office, and for any reason, a member of the Committee may be removed by the Directors with or without cause, and the Directors may in their discretion fill any vacancy that may result therefrom. Any member of the

Committee who is an Employee shall automatically cease to be a member of the Committee as of the date he ceases to be employed by the Employer or a Controlled Entity.

13.3 Officers, Records, and Procedures. The Committee may select officers and may appoint a secretary who need not be a member of the Committee. The Committee shall keep appropriate records of its proceedings and the administration of the Plan and shall make available for examination during business hours to any Member or beneficiary such records as pertain to that individual's interest in the Plan. The Committee shall designate the person or persons who shall be authorized to sign for the Committee and, upon such designation, the signature of such person or persons shall bind the Committee.

13.4 Meetings. The Committee shall hold meetings upon such notice and at such time and place as it may from time to time determine. Notice to a member shall not be required if waived in writing by that member. A majority of the members of the Committee duly appointed shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting where a quorum is present shall be by vote of a majority of those present at such meeting and entitled to vote. Resolutions may be adopted or other action taken without a meeting upon written consent signed by all of the members of the Committee.

13.5 Self-Interest of Members. No member of the Committee shall have any right to vote or decide upon any matter relating solely to himself under the Plan or to vote in any case in which his individual right to claim any benefit under the Plan is particularly involved. In any case in which a Committee member is so disqualified to act and the remaining members cannot agree, the Directors shall appoint a temporary substitute member to exercise all the powers of the disqualified member concerning the matter in which he is disqualified.

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13.6 Compensation and Bonding. The members of the Committee shall not receive compensation with respect to their services for the Committee. To the extent required by the Act or other applicable law, or required by the Company, members of the Committee shall furnish bond or security for the performance of their duties hereunder.

13.7 Committee Powers and Duties. The Committee shall supervise the administration and enforcement of the Plan according to the terms and provisions hereof and shall have all powers necessary to accomplish these purposes, including, but not by way of limitation, the right, power, authority, and duty:

(a) To make rules, regulations, and bylaws for the administration of the Plan that are not inconsistent with the terms and provisions hereof, provided such rules, regulation, and bylaws are

evidenced in writing and copies thereof are delivered to the Trustee and to the Company, and to enforce the terms of the Plan and the rules and regulations promulgated thereunder by the Committee;

(b) To construe in its discretion all terms, provisions, conditions, and limitations of the Plan. In all cases, the construction necessary for the Plan to qualify under the applicable provisions of the Code shall control;

(c) To correct any defect or to supply any omission or to reconcile any inconsistency that may appear in the Plan in such manner and to such extent as it shall deem in its discretion expedient to effectuate the purposes of the Plan;

(d) To employ and compensate such accountants, attorneys, investment advisors, and other agents, employees, and independent contractors as the Committee may deem necessary or advisable for the proper and efficient administration of the Plan;

(e) To determine in its discretion all questions relating to eligibility;

(f) To make a determination in its discretion as to the right of any person to a benefit under the Plan and to prescribe procedures to be followed by distributees in obtaining benefits hereunder;

(g) To prepare, file, and distribute, in such manner as the Committee determines to be appropriate, such information and material as is required by the reporting and disclosure requirements of the Act;

(h) To furnish the Employer any information necessary for the preparation of such Employer's tax return or other information that the Committee determines in its discretion is necessary for a legitimate purpose;

(i) To require and obtain from the Employer and the Members any information or data that the Committee determines is necessary for the proper administration of the Plan;

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(j) To instruct the Trustee as to the loans to Members pursuant to the provisions of Article XII;

(k) To instruct the Trustee as to the management, investment, and reinvestment of the Trust Fund;

(l) To appoint investment managers pursuant to Section 15.5;

(m) To receive and review reports from the Trustee and the investment managers as to the financial condition of the Trust Fund, including its receipts and disbursements;

(n) To review periodically the Plan's short-term and long-term investment needs and goals and to communicate such needs and goals to the Trustee and any investment manager as frequently as the Committee, in its discretion, deems necessary for the proper administration of the Plan and Trust; and

(o) To establish or designate Investment Funds as investment options as provided in Article V.

(p) To vote any shares of Company Stock or mutual funds held in the Trust Fund, provided, however, that the Committee shall follow the directions of the Members pursuant to Section 5.3(a) in voting Company Stock, and further provided, that the Committee may appoint a Voting Fiduciary to vote Company Stock in accordance with the directions from the Members.

13.8 Employer to Supply Information. The Employer shall supply full and timely information to the Committee, including, but not limited to, information relating to each Member's Compensation, age, retirement, death, or other cause of termination of employment and such other pertinent facts as the Committee may require. The Employer shall advise the Trustee of such of the foregoing facts as are deemed necessary for the Trustee to carry out the Trustee's duties under the Plan. When making a determination in connection with the Plan, the Committee shall be entitled to rely upon the aforesaid information furnished by the Employer.

13.9 Indemnification. The Company shall indemnify and hold harmless each member of the Committee against any and all expenses and liabilities arising out of his administrative functions or fiduciary responsibilities, including any expenses and liabilities that are caused by or result from an act or omission constituting the negligence of such member in the performance of such functions or responsibilities, but excluding expenses and liabilities that are caused by or result from such member's own gross negligence or willful misconduct. Expenses against which such member shall be indemnified hereunder shall include, without limitation, the amounts of any settlement or judgment, costs, counsel fees, and related charges reasonably incurred in connection with a claim asserted or a proceeding brought or settlement thereof.

#### XIV. Trustee and Administration of Trust Fund

##### 14.1 Appointment, Resignation, Removal, and Replacement of Trustee.

(a) The Trustee shall be appointed, removed, and replaced by and in the sole discretion of the Directors. The Trustee shall be the "named fiduciary" with respect to investment of the Trust Fund's assets.

(b) Any Trustee may resign at any time by giving at least thirty days' written notice of such resignation to the Directors. Any Trustee may be removed, with or without cause, by the Directors on written notice of such removal to such Trustee. The Directors may appoint a successor Trustee by written designation, a copy of which shall be delivered to the Committee and the former Trustee. If there would be no other Trustee then acting, the actual appointment and qualification of a successor Trustee to whom the Trust Fund may be transferred are conditions which must be fulfilled before the resignation or removal of a Trustee shall become effective. The Directors may by resolution increase or decrease the number of Trustees at any time acting hereunder.

14.2 Acceptance of Fund. The Trustee accepts the Trust Fund hereunder and agrees to accept and retain, manage, administer and hold the Trust Fund in accordance with the terms and provisions of this Plan. The Trustee shall receive any securities or other properties that are tendered to the Trustee pursuant to the Plan that are acceptable to the Trustee.

14.3 Committee Discharging Duty. The Trustee may assume that the Committee is discharging its duties under the Plan until and unless the Trustee is notified to the contrary in writing by any person known to be a member of the Committee or by the Employer. Upon receipt of such notice, the Trustee may, if the Trustee so desires, apply to a court of competent jurisdiction for guidance with respect to the disposition of the Trust Fund.

14.4 Taxes. If, pursuant to the provisions of any law now or hereafter enacted, any tax shall be imposed upon the Trustee with respect to the assets or income of the Trust Fund, the Trustee (without the necessity of any direction or approval by the Committee) may pay such tax from the Trust Fund, provided such payment is not otherwise prohibited by law. The Trustee, however, shall not be obligated to pay any such tax as long as the validity thereof is contested in good faith. In determining whether or not to pay any such tax, the Trustee may obtain the advice of counsel (including, but not limited to, counsel for the Employer or the Committee).

14.5 Powers of the Trustee. The Committee shall direct the Trustee in the management, investment, and reinvestment of the Trust Fund. Subject to the limitation of the preceding sentence and to any limitations stated elsewhere herein, in addition to the authority, rights, privileges, powers, and duties

elsewhere herein vested in the Trustee and those now or hereafter conferred by law, the Trustee shall also have the following authority, rights, privileges, powers, and duties:

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(a) To hold, manage, control, collect, and use the Trust Fund in accordance with the terms of this instrument;

(b) To sell (for cash or on credit, or both), exchange, or otherwise dispose of, the whole or any part of the Trust Fund, at public or private sale; to lease (including, but not limited to, oil, gas, or mineral leases), rent, mortgage (including purchase money mortgages), pledge, or otherwise encumber the whole or any part of the Trust Fund; and to loan or borrow money in any manner, including by joint and several obligations, all upon such terms, regardless of the duration of the Trust, as the Trustee may deem advisable (provided that neither the Employer nor any Member may borrow from the Trust Fund except as otherwise permitted herein);

(c) To invest or reinvest the Trust Fund in property of any description whatsoever (including, but not limited to, any common or preferred stocks, open-end or closed-end mutual funds (including mutual funds established and maintained as collective investment funds for trust accounts by the Trustee or its affiliate), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury Bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes, including or not limited to master notes, or other property of any kind, real, or personal or mixed, whether tangible or intangible or productive of income, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments deemed appropriate);

(d) To make or hold investments of any part of the Trust Fund in common or undivided interest with other persons or entities, including an undivided interest in any property in which any Trustee, individually or otherwise, may hold an undivided interest; to buy from or sell to any person or entity to the extent not otherwise prohibited herein;

(e) To make commingled, collective, or common investments and to invest and reinvest all or any portion of the Trust Fund collectively with funds of other pension and profit sharing trusts exempt from tax under section 501(a) of the Code by reason of qualifying under section 401(a) of said Code, including, without limitation, power to invest collectively with such other funds through the medium of one or more of the common, collective, or commingled trust funds, which has been or may hereafter be established and maintained by the Trustee or its affiliates. To the extent of the interest of the Trust Fund in any such collective trust, the agreement or declaration of trust establishing such collective trust shall be deemed to be adopted and made a part of the Plan and Trust as if set forth in full herein.

(f) To deposit or invest all or a part of the Trust Fund in savings accounts, certificates of deposit, or other deposits that bear a reasonable rate of interest in a bank or similar financial institution, including the commercial department of the Trustee,

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if such bank or other institution is supervised by any agency of a state or the federal government.

(g) To employ and compensate such attorneys, counsel, brokers, banks, investment advisors, or other agents, employees, or independent contractors and to delegate to them such of the duties, rights, and powers of the Trustee as may be deemed advisable in handling and administering the Plan;

(h) To partition any property or interest held as a part of the Trust Fund and, in any and all such partitions, to pay or receive such money or property as may be necessary or advisable to equalize differences and to evaluate any property belonging to the Trust Fund;

(i) To institute, join in, maintain, defend, compromise, submit to arbitration, or settle any litigation, claim, obligation, or controversy with respect to any matter affecting the Trust Fund, regardless of the manner in which such matter may have arisen, all in the name of the Trustee and without the joinder of any Member; and

(j) To hold uninvested for a reasonable period of time any moneys received by it until the same shall be invested or disbursed pursuant to the provisions of the Plan.

(k) To invest any of the funds of the Trust into the AVESTA Trust, or any other open-end, diversified, management investment company and that offers collective investment funds for retirement accounts as to which Texas Commerce Bank National Association or any affiliated bank serves as a trustee.

The Trustee is also authorized to exercise all the rights, powers, options, and privileges now or hereafter granted to, provided for, or vested in trustees under the Texas Trust Code, except as such may conflict with the terms of this instrument or applicable law. As far as possible, no subsequent legislation or regulation shall be in limitation of the rights, powers, or privileges granted the Trustee hereunder or set forth in the Texas Trust Code as it exists at the time of the execution hereof. Generally, the Trustee shall have, hold, manage, control, use, invest and reinvest, disburse, and dispose of the Trust Fund under all circumstances to the same extent as if the Trustee were the owner thereof in fee simple, subject only to such limitations as are contained herein and such applicable laws as cannot be waived. This instrument shall always be construed in favor of the validity of any act or omission by or of the Trustee. Notwithstanding the foregoing, the Trustee may not invest the Trust Fund assets in any Company security that is not a "qualifying Company security" or in any Company real property that is not "qualifying Company real property." The Trustee may, however, acquire "qualifying Company securities" or "qualifying Company real property" as an investment, provided that any such acquisition or investment will not result in the Trust Fund's holding more than 100% of the then fair market value of the assets of the Trust Fund in "qualifying Company securities" and "qualifying Company real property." The term "qualifying Company securities" means stock or marketable obligations of the Company or an affiliate. The term "qualifying Company real property" means parcels of real property leased to the Company or an affiliate if a substantial number of the

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parcels are dispersed geographically and if each such parcel is suitable for, or adaptable to, more than one use.

14.6 Compensation, Expenses, and Bond of Trustee. Unless prohibited by Section 14.10, the Trustee shall receive such compensation for services as Trustee hereunder as may be agreed upon from time to time by the Company and the Trustee. The Trustee shall be reimbursed for all reasonable expenses incurred while acting as Trustee as provided in Section 14.10. No bond or other security shall be required of the Trustee unless otherwise required by law or by the Company.

14.7 Reliance. The Trustee shall be fully protected in relying upon a resolution of the Directors as to the membership of the Committee as it then exists and in continuing to rely upon such resolution until a subsequent resolution is filed with the Trustee by the Directors. The Trustee may accept as



true all papers, certificates, statements, and representations of fact that are presented to the Trustee by the Committee without investigation, questioning, or verification if the Trustee believes same to be true and authentic, and the Trustee may rely solely on the written advice of the Committee with respect to any question of fact.

14.8 Accounting. As soon as practicable after the end of each Plan Year, the Trustee shall render a written accounting of the administration of the Trust Fund showing all receipts and disbursements during the year and the then value of the assets of the Trust Fund. This accounting shall be transmitted to the Committee and to the Company.

14.9 Judicial Protection. The Trustee may seek judicial protection by any action or proceeding deemed necessary to settle the accounts of the Trustee or may obtain a judicial determination or a declaratory judgment as to a question of construction of the Plan. The Trustee must join as parties defendant in any such action only the Committee and the Company, although the Trustee may join other parties if the Trustee deems it advisable to do so.

14.10 Payment of Expenses. All expenses incident to the administration of the Plan and Trust, including but not limited to, legal, accounting, Trustee fees, expenses of the Committee, and the cost of furnishing any bond or security required of the Committee shall be paid by the Trustee from the Trust Fund, and, until paid, shall constitute a claim against the Trust Fund which is paramount to the claims of Members and beneficiaries; provided, however, that (a) the obligation of the Trustee to pay such expenses from the Trust Fund shall cease to exist to the extent such expenses are paid by the Employer and (b) in the event the Trustee's compensation is to be paid, pursuant to this Section, from the Trust Fund, any individual serving as Trustee who already receives full-time pay from an employer or an association of employers whose employees are participants in the Plan, or from an employee organization whose members are participants in the Plan, shall not receive any additional compensation for serving as Trustee. This Section shall be deemed to be a part of any contract to provide for expenses of Plan and Trust administration, whether or not the signatory to such contract is, as a matter of convenience, the Employer.

14.11 Trust Fund Property. All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee hereunder shall be held

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for investment purposes as a commingled Trust Fund. The Committee shall maintain Accounts in the name of each Member, but the maintenance of an Account designated as the Account of a Member shall not mean that such Member shall have a greater or lesser interest than that due him by operation of the Plan and shall not be considered as segregating any funds or property from any

other funds or property contained in the commingled fund. No Member shall have any title to any specific asset in the Trust Fund.

14.12 Distributions from Members' Accounts. Distributions from a Member's Accounts shall be made by the Trustee only if, when, and in the amount and manner directed by the Committee. Any distribution made to a Member or for his benefit shall be debited to such Member's Account or Accounts. All distributions hereunder shall be made in cash except as otherwise specifically provided herein.

14.13 Payments Solely from Trust Fund. All benefits payable under the Plan shall be paid or provided for solely from the Trust Fund, and neither the Employer nor the Trustee assumes any liability or responsibility for the adequacy thereof. The Committee or the Trustee may require execution and delivery of such instruments as are deemed necessary to assure proper payment of any benefits.

14.14 No Benefits to the Employer. No part of the corpus or income of the Trust Fund shall be used for any purpose other than the exclusive purpose of providing benefits for the Members and their beneficiaries and of defraying reasonable expenses of administering the Plan. Anything to the contrary herein notwithstanding, the Plan shall not be construed to vest any rights in the Employer other than those specifically given hereunder.

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## XV. Fiduciary Provisions

15.1 Article Controls. This Article shall control over any contrary, inconsistent or ambiguous provisions contained in the Plan.

15.2 General Allocation of Fiduciary Duties. Each fiduciary with respect to the Plan shall have only those specific powers, duties, responsibilities and obligations as are specifically given him under the Plan. The Directors shall have the sole authority to appoint and remove the Trustee and members of the Committee. Except as otherwise specifically provided herein, the Committee shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described herein. Except as otherwise specifically provided herein, the Trustee shall have the sole responsibility for the administration, investment, and management of the assets held under the Plan. However, because the Committee, as a co-fiduciary, has chosen to exercise its power given hereunder to direct the Trustee in the management, investment, and reinvestment of the Trust Fund, the Trustee shall be subject to all proper

directions of the Committee that are made in accordance with the terms of the Plan and the Act. It is intended under the Plan that each fiduciary shall be responsible for the proper exercise of his own powers, duties, responsibilities, and obligations hereunder and shall not be responsible for any act or failure to act of another fiduciary except to the extent provided by law or as specifically provided herein.

15.3 Fiduciary Duty. Each fiduciary under the Plan, including, but not limited to, the Committee and the Trustee as "named fiduciaries," shall discharge his duties and responsibilities with respect to the Plan:

(a) Solely in the interest of the Members, for the exclusive purpose of providing benefits to Members and their beneficiaries and of defraying reasonable expenses of administering the Plan;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is prudent not to do so; and

(d) In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with applicable law.

No fiduciary shall cause the Plan or Trust Fund to enter into a "prohibited transaction" as provided in section 4975 of the Code or section 406 of the Act.

15.4 Delegation and Allocation of Fiduciary Duties. The Committee may appoint subcommittees, individuals or any other agents as it deems advisable and may delegate to any of such appointees any or all of the powers and duties of

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the Committee. Such appointment and delegation must be in writing, specifying the powers or duties being delegated, and must be accepted in writing by the delegatee. Upon such appointment, delegation and acceptance, the delegating Committee members shall have no liability for the acts or omissions of any such delegatee, as long as the delegating Committee members do not violate any fiduciary responsibility in making or continuing such delegation.

15.5 Investment Manager. The Committee may, in its sole discretion, appoint an "investment manager," with power to manage, acquire or dispose of any asset of the Plan and to direct the Trustee in this regard, so long as:

(a) The investment manager is (1) registered as an investment adviser under the Investment Advisers Act of 1940, (2) a bank, as defined in the Investment Advisers Act of 1940, or (3) an insurance company qualified to do business under the laws of more than one state; and

(b) Such investment manager acknowledges in writing that he is a fiduciary with respect to the Plan.

Upon such appointment, the Committee shall not be liable for the acts of the investment manager, as long as the Committee members do not violate any fiduciary responsibility in making or continuing such appointment. The Trustee shall follow the directions of such investment manager and shall not be liable for the acts or omissions of such investment manager. The investment manager may be removed by the Committee at any time and within its sole discretion.

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## XVI. Amendments

16.1 Right to Amend. Subject to Section 16.2 and any other limitations contained in the Act or the Code, the Directors may from time to time amend, in whole or in part, any or all of the provisions of the Plan on behalf of the Company and all Employers. Specifically, but not by way of limitation, the Directors may make any amendment necessary to acquire and maintain a qualified status for the Plan under the Code, whether or not retroactive.

16.2 Limitation on Amendments. No amendment of the Plan shall be made that would vest in the Employer, directly or indirectly, any interest in or control of the Trust Fund. No amendment shall be made that would vary the Plan's exclusive purpose of providing benefits to Members and their beneficiaries and of defraying reasonable expenses of administering the Plan or that would permit the diversion of any part of the Trust Fund from that exclusive purpose. No amendment shall be made that would reduce any then nonforfeitable interest of a Member. No amendment shall increase the duties or responsibilities of the Trustee unless the Trustee consents thereto in writing.

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XVII. Discontinuance of Contributions, Termination,  
Partial Termination, and Merger or Consolidation

17.1 Right to Discontinue Contributions, Terminate, or Partially Terminate. The Employer has established the Plan with the bona fide intention and expectation that from year to year it will be able to, and will deem it advisable to, make its contributions as herein provided. However, the Directors realize that circumstances not now foreseen, or circumstances beyond its control, may make it either impossible or inadvisable for the Employer to continue to make its contributions to the Plan. Therefore, the Directors shall have the power to discontinue contributions to the Plan, terminate the Plan, or partially terminate the Plan at any time hereafter. Each member of the Committee and the Trustee shall be notified of such discontinuance, termination, or partial termination.

17.2 Procedure in the Event of Discontinuance of Contribution, Termination, or Partial Termination.

(a) If the Plan is amended so as to permanently discontinue Employer contributions, or if Employer contributions are in fact permanently discontinued, the Vested Interest of each affected Member shall be 100%, effective as of the date of discontinuance. In case of such discontinuance, the Committee shall remain in existence and all other provisions of the Plan that are necessary, in the opinion of the Committee, for equitable operation of the Plan shall remain in force.

(b) If the Plan is terminated or partially terminated, the Vested Interest of each affected Member shall be 100%, effective as of the termination date or partial termination date, as applicable. Unless the Plan is otherwise amended prior to dissolution of the Company, the Plan shall terminate as of the date of dissolution of the Company.

(c) Upon discontinuance, termination, or partial termination, any previously unallocated contributions, forfeitures, and net income (or net loss) shall be allocated among the Accounts of the Members on such date of discontinuance, termination, or partial termination according to the provisions of Article IV, as if such date of discontinuance, termination, or partial termination were a Valuation Date. Thereafter, the net income (or net loss) shall continue to be allocated to the Accounts of the Members until the balances of the Accounts are distributed. In the event of termination, the date of the final distribution shall be treated as a Valuation Date.

(d) In the case of a termination or partial termination of the Plan, and in the absence of a Plan amendment to the contrary, the Trustee shall pay the balance of the Accounts of a Member for whom the Plan is so terminated, or who is affected by such partial termination, to such Member, subject to the

time of payment, form of payment, and consent provisions of Article X.

17.3 Merger, Consolidation, or Transfer. This Plan and Trust Fund may not merge or consolidate with, or transfer its assets or liabilities to, any other plan, unless immediately thereafter each Member would, in the event such

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other plan terminated, be entitled to a benefit which is equal to or greater than the benefit to which he would have been entitled if the Plan were terminated immediately before the merger, consolidation, or transfer.

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#### XVIII. Participating Employers

18.1 Adoption by Other Employers. It is contemplated that other corporations, associations, partnerships, or proprietorships may adopt this Plan and thereby become Employers. By appropriate action of its Board of Directors or noncorporate counterpart, any such entity, whether or not presently existing, may become, upon approval of the Directors, a party hereto. The provisions of the Plan shall apply separately and equally to each Employer and its Employees in the same manner as is expressly provided for the Company and its Employees, except that the power to appoint or otherwise affect the Committee or the Trustee and the power to amend or terminate the Plan shall be exercised by the Directors alone. Nevertheless, any Employer may, with the consent of the Directors, incorporate in its adoption agreement or in an amendment document specific provisions relating to the operation of the Plan, and such provisions shall become a part of the Plan as to such Employer only. Transfer of employment among Employers shall not be considered a termination of employment hereunder, and an Hour of Service with one Employer shall be considered as an Hour of Service with all others. Any Employer may, by appropriate action of its Board of Directors or noncorporate counterpart, terminate its participation in the Plan. Moreover, the Directors may, in their discretion, terminate an Employer's Plan participation at any time.

18.2 Single Plan. For purposes of the Code and the Act, the Plan as adopted by the Employers shall constitute a single plan rather than a separate plan of each Employer. All assets in the Trust Fund shall be available to pay benefits to all Members and their beneficiaries.

## XIX. Miscellaneous Provisions

19.1 Not Contract of Employment. The adoption and maintenance of the Plan shall not be deemed to be a contract between the Employer and any person or to be consideration for the employment of any person. Nothing herein contained shall be deemed to give any person the right to be retained in the employ of the Employer or to restrict the right of the Employer to discharge any person at any time nor shall the Plan be deemed to give the Employer the right to require any person to remain in the employ of the Employer or to restrict any person's right to terminate his employment at any time.

19.2 Alienation of Interest Forbidden. Except as otherwise provided with respect to "qualified domestic relations orders" pursuant to section 206(d) of the Act and sections 401(a)(13) and 414(p) of the Code and except as otherwise provided under other applicable law, no right or interest of any kind in any benefit shall be transferable or assignable by any Member or any beneficiary or be subject to anticipation, adjustment, alienation, encumbrance, garnishment, attachment, execution, or levy of any kind. Plan provisions to the contrary notwithstanding, the Committee shall comply with the terms and provisions of any "qualified domestic relations order," including an order that requires distributions to an alternate payee prior to a Member's "earliest retirement age" as such term is defined in section 206(d)(3)(E)(ii) of the Act and section 414(p)(4)(B) of the Code, and shall establish appropriate procedures to effect the same.

19.3 Payments to Minors and Incompetents. If a Member or beneficiary entitled to receive a benefit under the Plan is a minor or is determined by the Committee in its discretion to be incompetent or is adjudged by a court of competent jurisdiction to be legally incapable of giving valid receipt and discharge for a benefit provided under the Plan, the Committee may pay such benefit to the duly appointed guardian or conservator of such Member or beneficiary for the account of such Member or beneficiary. If no guardian or conservator has been appointed for such Member or beneficiary, the Committee may pay such benefit to any third party who is determined by the Committee, in its sole discretion, to be authorized to receive such benefit for the account of such Member or beneficiary. Such payment shall operate as a full discharge of all liabilities and obligations of the Committee, the Trustee, the Employer, and any fiduciary of the Plan with respect to such benefit.

19.4 Member's Address. It shall be the affirmative duty of each Member to inform the Committee of, and to keep on file with the Committee, his current

mailing address and the current mailing address of his designated beneficiary. If a Member fails to keep the Committee informed of his current mailing address and the current mailing address of his designated beneficiary, neither the Committee, the Trustee, the Employer, nor any fiduciary under the Plan shall be responsible for any late or lost payment of a benefit or for failure of any notice to be provided timely under the terms of the Plan.

19.5 Severability. If any provision of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof; instead, each provision shall be fully severable

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and the Plan shall be construed and enforced as if said illegal or invalid provision had never been included herein.

19.6 Jurisdiction. The situs of the Plan and the Trust hereby created is Texas. All provisions of the Plan shall be construed in accordance with the laws of Texas except to the extent preempted by federal law.

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## XX. Top-Heavy Status

20.1 Article Controls. Any Plan provisions to the contrary notwithstanding, the provisions of this Article shall control to the extent required to cause the Plan to comply with the requirements imposed under section 416 of the Code.

20.2 Definitions. For purposes of this Article, the following terms and phrases shall have these respective meanings:

(a) Account Balance: As of any Valuation Date, the aggregate amount credited to an individual's account or accounts under a qualified defined contribution plan maintained by the Employer or a Controlled Entity (excluding employee contributions that were deductible within the meaning of section 219 of the Code and rollover or transfer contributions made after December 31, 1983, by or on behalf of such individual to such plan from another qualified plan sponsored by an entity other than the Employer or a Controlled Entity), increased



by (1) the aggregate distributions made to such individual from such plan during a five-year period ending on the Determination Date and (2) the amount of any contributions due as of the Determination Date immediately following such Valuation Date.

(b) **Accrued Benefit:** As of any Valuation Date, the present value (computed on the basis of the Assumptions) of the cumulative accrued benefit (excluding the portion thereof that is attributable to employee contributions that were deductible pursuant to section 219 of the Code, to rollover or transfer contributions made after December 31, 1983, by or on behalf of such individual to such plan from another qualified plan sponsored by an entity other than the Employer or a Controlled Entity, to proportional subsidies or to ancillary benefits) of an individual under a qualified defined benefit plan maintained by the Employer or a Controlled Entity increased by (1) the aggregate distributions made to such individual from such plan during a five-year period ending on the Determination Date and (2) the estimated benefit accrued by such individual between such Valuation Date and the Determination Date immediately following such Valuation Date. Solely for the purpose of determining top-heavy status, the Accrued Benefit of an individual shall be determined under (1) the method, if any, that uniformly applies for accrual purposes under all qualified defined benefit plans maintained by the Employer and the Controlled Entities or (2) if there is no such method, as if such benefit accrued not more rapidly than under the slowest accrual rate permitted under section 411(b)(1)(C) of the Code.

(c) **Aggregation Group:** The group of qualified plans maintained by the Employer and each Controlled Entity consisting of (1) each plan in which a Key Employee participates and each other plan that enables a plan in which a Key Employee participates to meet the requirements of section 401(a)(4) or 410 of the Code or (2) each plan in which a Key Employee participates, each other plan that enables a plan in which a Key Employee participates to meet the requirements of section 401(a)(4) or 410 of the Code and any other plan that the Employer elects to include as a part of such group; provided, however, that the Employer

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may elect to include a plan in such group only if the group will continue to meet the requirements of sections 401(a)(4) and 410 of the Code with such plan being taken into account.

(d) **Assumptions:** The interest rate and mortality assumptions specified for top-heavy status determination purposes in any defined benefit plan included in the Aggregation Group which includes the Plan.

(e) Determination Date: For the first Plan Year of any plan, the last day of such Plan Year and for each subsequent Plan Year of such plan, the last day of the preceding Plan Year.

(f) Key Employee: A "key employee" as defined in section 416 (i) of the Code and the Treasury regulations thereunder.

(g) Plan Year: With respect to any plan, the annual accounting period used by such plan for annual reporting purposes.

(h) Remuneration: The total of all amounts paid by the Employer to or for the benefit of a Member for services rendered or labor performed for the Employer, which are required to be reported on the Member's federal income tax withholding statement or statements (Form W-2 or its subsequent equivalent) for the calendar year ending with the Plan Year, limited to \$150,000 for any Plan Year with such limitation to be (1) adjusted automatically to reflect any amendments to section 401(a)(17) of the Code and any cost-of-living increases authorized by section 401(a)(17) of the Code, (2) prorated for a Plan Year of less than twelve months and to the extent otherwise required by applicable law and (3) in the case of a Member who is either a five-percent owner of the Employer (within the meaning of section 416(i)(1)(A)(iii) of the Code) or is one of the ten most Highly Compensated Employees for the Plan Year and who has a spouse and/or lineal descendants who are under the age of nineteen as of the end of a Plan Year who receive Remuneration during such Plan Year, prorated and allocated among such Member, his spouse, and/or lineal descendants under the age of nineteen based on the Remuneration for such Plan Year of each such individual.

(i) Valuation Date: With respect to any Plan Year of any defined contribution plan, the most recent date within the twelve-month period ending on a Determination Date as of which the trust fund established under such plan was valued and the net income (or loss) thereof allocated to participants' accounts. With respect to any Plan Year of any defined benefit plan, the most recent date within a twelve-month period ending on a Determination Date as of which the plan assets were valued for purposes of computing plan costs for purposes of the requirements imposed under section 412 of the Code.

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### 20.3 Top-Heavy Status.

(a) The Plan shall be deemed to be top-heavy for a Plan Year if, as of the Determination Date for such Plan Year, (1) the sum of Account

Balances of Members who are Key Employees exceeds 60% of the sum of Account Balances of all Members unless an Aggregation Group including the Plan is not top-heavy or (2) an Aggregation Group including the Plan is top-heavy. An Aggregation Group shall be deemed to be top-heavy as of a Determination Date if the sum (computed in accordance with section 416(g)(2)(B) of the Code and the Treasury regulations promulgated thereunder) of (1) the Account Balances of Key Employees under all defined contribution plans included in the Aggregation Group and (2) the Accrued Benefits of Key Employees under all defined benefit plans included in the Aggregation Group exceeds 60% of the sum of the Account Balances and the Accrued Benefits of all individuals under such plans. Notwithstanding the foregoing, the Account Balances and Accrued Benefits of individuals who are not Key Employees in any Plan Year but who were Key Employees in any prior Plan Year shall not be considered in determining the top-heavy status of the Plan for such Plan Year. Further, notwithstanding the foregoing, the Account Balances and Accrued Benefits of individuals who have not performed services for the Employer or any Controlled Entity at any time during the five-year period ending on the applicable Determination Date shall not be considered.

(b) If the Plan is determined to be top-heavy for a Plan Year, the Vested Interest in the Employer Contribution Account of each Member who is credited with an Hour of Service during such Plan Year shall be determined in accordance with the following schedule:

	Years of Vesting Service	Vested Interest
Less than	2 years	0%
	2 years	25%
	3 years	40%
	4 years	60%
	5 years	80%
	6 years or more	100%

(c) If the Plan is determined to be top-heavy for a Plan Year, the Employer shall contribute to the Plan for such Plan Year on behalf of each Member who is not a Key Employee and who has not terminated his employment as of the last day of such Plan Year an amount equal to:

(1) The lesser of (A) 3% of such Member's Remuneration for such Plan Year or (B) a percent of such Member's Remuneration for such Plan Year equal to the greatest percent determined by dividing for each Key Employee the amounts allocated to such Key Employee's Cash or Deferred Account and Employer Contribution Account for such Plan Year by such Key Employee's Remuneration; reduced by

(2) The amount of Employer Discretionary Contributions allocated to such Member's Accounts for such Plan Year.

The minimum contribution required to be made for a Plan Year pursuant to this Paragraph for a Member employed on the last day of such Plan Year shall be made regardless of whether such Member is otherwise ineligible to receive an allocation of the Employer's contributions for such Plan Year. Notwithstanding the foregoing, if the Plan is deemed to be top-heavy for a Plan Year, the Employer's contribution for such Plan Year pursuant to this Paragraph shall be increased by substituting "4%" in lieu of "3%" in Clause (1) hereof to the extent that the Directors determine to so increase such contribution to comply with the provisions of section 416(h)(2) of the Code. Notwithstanding the foregoing, no contribution shall be made pursuant to this Paragraph for a Plan Year with respect to a Member who is a participant in another defined contribution plan sponsored by the Employer or a Controlled Entity if such Member receives under such other defined contribution plan (for the plan year of such plan ending with or within the Plan Year of the Plan) a contribution which is equal to or greater than the minimum contribution required by section 416(c)(2) of the Code. Notwithstanding the foregoing, no contribution shall be made pursuant to this Paragraph for a Plan Year with respect to a Member who is a participant in a defined benefit plan sponsored by the Employer or a Controlled Entity if such Member accrues under such defined benefit plan (for the plan year of such plan ending with or within the Plan Year of this Plan) a benefit that is at least equal to the benefit described in section 416(c)(1) of the Code. If the preceding sentence is not applicable, the requirements of this Paragraph shall be met by providing a minimum benefit under such defined benefit plan which, when considered with the benefit provided under the Plan as an offset, is at least equal to the benefit described in section 416(c)(1) of the Code.

20.4 Termination of Top-Heavy Status. If the Plan has been deemed to be top-heavy for one or more Plan Years and thereafter ceases to be top-heavy, the provisions of this Article shall cease to apply to the Plan effective as of the Determination Date on which it is determined no longer to be top-heavy. Notwithstanding the foregoing, the Vested Interest of each Member as of such Determination Date shall not be reduced and, with respect to each Member who has three or more years of Vesting Service on such Determination Date, the Vested Interest of each such Member shall continue to be determined in accordance with the schedule set forth in Section 20.3(b).

20.5 Effect of Article. Notwithstanding anything contained herein to the contrary, the provisions of this Article shall automatically become inoperative and of no effect to the extent not required by the Code or the Act.

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EXECUTED this 18th day of July, 1996.

SEAGULL ENERGY CORPORATION

By: /s/ STEVE THORINGTON

TEXAS COMMERCE BANK NATIONAL  
ASSOCIATION, Trustee

By: /s/ MICHAEL W. JERDING

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