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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported) February 22, 2007**

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**BLACK HILLS CORPORATION**

(Exact name of registrant as specified in its charter)

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**South Dakota**  
(State or other jurisdiction of incorporation)

**001-31303**  
(Commission File Number)

**46-0458824**  
(IRS Employer Identification  
No.)

**625 Ninth Street, PO Box 1400**  
**Rapid City, South Dakota**  
(Address of principal executive offices)

**57709-1400**  
(Zip Code)

**605.721.1700**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement.**

The disclosure set forth in Item 3.02 of this Form 8-K is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

On February 22, 2007, the Company completed the issuance and sale of an aggregate of 4,170,891 shares (the "Shares") of the Company's common stock, par value \$1.00 per share, at a purchase price of \$36.00 per share, in a private placement to institutional investors (the "Investors") pursuant to the Securities Purchase Agreement dated as of February 14, 2007 among the Company and the Investors. Aggregate gross proceeds totaled \$150,152,076. Credit Suisse and BMO Capital Markets acted as placement agents in connection with the transaction and received an aggregate placement agent fee of \$4,504,562. The Company will use the net proceeds from this offering for debt reduction.

The shares sold in the private placement were issued in reliance on an exemption from registration under the Securities Act of 1933, as amended, pursuant to Section 4(2) thereof. The bases for the availability of this exemption include the facts that the issuance was a private transaction which did not involve a public offering and the shares were offered and sold to a limited number of institutional investors.

Pursuant to a Registration Rights Agreement dated as of February 22, 2007 (the "Registration Rights Agreement"), among the Company and the Investors, we agreed to file a registration statement with the Securities and Exchange Commission in order to register the resale of the Shares within 45 days of closing and to use our reasonable best efforts to cause the registration statement to be effective no later than 90 days after closing.

A complete copy of each of the Securities Purchase Agreement and the Registration Rights Agreement are filed herewith as exhibits to this report and are incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

- (d) Exhibits
  - 10.1 Securities Purchase Agreement dated as of February 14, 2007, by and among Black Hills Corporation and the investors named therein.
  - 10.2 Registration Rights Agreement dated as of February 22, 2007, by and among Black Hills Corporation and the investors named therein.

SIGNATURES

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

BLACK HILLS CORPORATION

By: /s/ Mark T. Thies

Mark T. Thies  
Executive Vice President  
and Chief Financial Officer

Date: February 22, 2007

## Exhibit Index

### Exhibit #

- 10.1 Securities Purchase Agreement dated as of February 14, 2007, by and among Black Hills Corporation and the investors named therein.
- 10.2 Registration Rights Agreement dated as of February 22, 2007, by and among Black Hills Corporation and the investors named therein.

**SECURITIES PURCHASE AGREEMENT**

**by and among**

**BLACK HILLS CORPORATION**

**and**

**THE PURCHASERS SET FORTH ON  
SCHEDULE I HERETO**

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\* Schedules 2.04 and 3.06 and the Exhibits have been omitted from this filing but will be furnished to the Securities and Exchange Commission on request.



This SECURITIES PURCHASE AGREEMENT, dated as of February 14, 2007 (this “**Agreement**”), is by and among BLACK HILLS CORPORATION, a company duly incorporated and existing under the laws of South Dakota (the “**Company**”), and each of the investors signatory hereto and listed for convenience on Schedule 2.01 hereto (each a “**Purchaser**” and collectively, the “**Purchasers**”).

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01 Definitions. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings specified in this Section 1.01.

“**Affiliate**” means, with respect to a specified Person, any other Person, directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, “controlling,” “controlled by,” and “under common control with”) means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“**Business Day**” means any day other than a Saturday, Sunday, or a legal holiday for commercial banks in New York, New York.

“**Closing**” has the meaning specified in Section 2.02.

“**Closing Date**” has the meaning specified in Section 2.02.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the common stock, par value \$1.00 per share, of the Company.

“**Company**” has the meaning specified in the introductory paragraph of this Agreement.

“**Confidentiality Agreements**” means the Confidentiality Agreements, dated as of February 7, 2007, between the Company and each recipient party thereto.

“**Effective Date**” means the date on which the Shelf Registration Statement (as defined in the Registration Rights Agreement) becomes effective.

“**Employee Benefit Plan**” means any (a) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan, (b) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (c) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit

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Plan (including any Multiemployer Plan), or (d) Employee Welfare Benefit Plan or material fringe benefit plan or program.

“**Employee Pension Benefit Plan**” has the meaning set forth in ERISA §3(2).

“**Employee Welfare Benefit Plan**” has the meaning set forth in ERISA §3(1).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Escrow Agreement**” means the Escrow Agreement, dated as of February 14, 2007, among Wells Fargo Bank, National Association, the Company, and Credit Suisse Securities (USA) LLC and BMO Capital Markets Corp. in the form attached hereto as Exhibit C.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“**Exchange Act Filings**” means the periodic and current reports of a Person filed with the Commission under the Exchange Act.

“**Existing Instrument**” has the meaning set forth in Section 3.13(a).

“**GAAP**” means generally accepted accounting principles in the United States in effect from time to time.

“**Governmental Authority**” means, with respect to a particular Person, the country, state, county, city and political subdivisions in which such Person or such Person’s Property is located or that exercises valid jurisdiction over any such Person or such Person’s Property, and any court, agency, department, commission, board, bureau or instrumentality of any of them that exercises valid jurisdiction over any such Person or such Person’s Property.

“**Income Tax**” means any federal, state, local, or foreign income tax, including any interest, penalty, or addition thereto, whether disputed or not.

“**Income Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Income Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“**Law**” means any federal, state, local or foreign order, writ, injunction, judgment, settlement, award, decree, statute, law, rule or regulation or common law.

“**Lien**” means any lien, encumbrance, security interest, equity, charge or other interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based in Law, contract or other instrument, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement, conditional sale or

trust receipt or a lease, consignment or bailment for security purposes. For the purpose of this Agreement, a Person shall be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in connection with a financing.

“**Material Adverse Change**” has the meaning specified in Section 3.08.

“**Material Adverse Effect**” has the meaning specified in Section 3.11.

“**Operative Documents**” means this Agreement, the Registration Rights Agreement, the Escrow Agreement, and the Placement Agency Agreement.

“**Permits**” means, with respect to the Company or any of its Subsidiaries, any licenses, permits, variances, consents, authorizations, waivers, grants, franchises, concessions, exemptions, orders, registrations and approvals of Governmental Authorities or other Persons necessary for the ownership, leasing, operation, occupancy and use of its Properties and the conduct of its businesses as currently conducted.

“**Person**” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or government or any agency, instrumentality or political subdivision thereof, or any other form of entity.

“**Placement Agency Agreement**” means the Placement Agency Agreement, dated as of February 7, 2007, among the Company, Credit Suisse Securities (USA) LLC and BMO Capital Markets Corp. in the form attached hereto as Exhibit D.

“**Private Placement Memorandum**” means, collectively, the private placement memorandum dated February 7, 2007 provided to each Purchaser and the Company’s Exchange Act filings filed on or prior to the date of this Agreement.

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“**Purchase Price**” means, with respect to a particular Purchaser, the amount set forth opposite such Purchaser’s name under the column entitled “Total Purchase Price” on Schedule 2.01 hereto.

“**Purchased Securities**” means, with respect to a particular Purchaser, the number of shares of Common Stock set forth opposite such Purchaser’s name under the column entitled “Purchased Securities” on Schedule 2.01 hereto.

“**Purchaser**” and “**Purchasers**” have the respective meanings specified in the introductory paragraph.

“**Purchaser Material Adverse Effect**” means, with respect to a particular Purchaser, any material adverse effect on the ability of such Purchaser to meet its obligations and to consummate the transactions under this Agreement.

“**Registration Rights Agreement**” means the Registration Rights Agreement by and between the Company and the Purchasers in the form attached hereto as Exhibit A.

“**Representatives**” of any Person means the officers, directors, employees, agents, counsel, accountants, investment bankers and other representatives of such Person.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“**Subsidiaries**” means any direct or indirect subsidiary of the Company whose total assets represent at least 10% of the total assets of the Company and its subsidiaries on a consolidated basis, as identified on Schedule 3.06.

## **ARTICLE II SALE AND PURCHASE**

Section 2.01 Sale and Purchase. Upon the terms and subject to the conditions hereof, the Company hereby issues and sells to each Purchaser, and each Purchaser, severally and not jointly, hereby agrees to purchase from the Company, the Purchased Securities for the Purchase Price. The Purchasers shall wire the Purchase Price to the Escrow Agent (as defined in the Escrow Agreement) on or before the Closing Date (as defined below) pursuant to the terms and conditions of the Escrow Agreement.

Section 2.02 Closing. Upon the terms and subject to the conditions hereof, the consummation of the sale and purchase of the Purchased Securities hereunder (the “**Closing**”) shall take place on February 22, 2007 (the “**Closing Date**”), at the offices of Latham & Watkins LLP (“**Latham**”), 885 Third Avenue, New York, New York 10022-4834.

Section 2.03 The Company’s Deliveries. At the Closing, the Company will deliver, or cause to be delivered, to each Purchaser, as applicable:

(a) A certificate or certificates or other instruments representing the Purchased Securities of such Purchaser, free and clear of any Liens, encumbrances or interests of any party other than restrictions under any applicable securities laws;

(b) A cross-receipt executed by the Company certifying that it has received a wire transfer as of the Closing Date in an amount equal to the Purchase Price of such Purchaser;

(c) Opinions of counsel to the Company, addressed to each Purchaser in the form attached hereto as Exhibits B-1 and B-2 and otherwise reasonably satisfactory to such Purchaser;

(d) A copy of the Registration Rights Agreement, dated as of the Closing Date and executed by the Company;

(e) A certificate of the Chief Executive Officer and Chief Financial Officer of the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Purchasers, certifying as to

(v) the amended and restated articles of incorporation of the Company; (w) the by-laws of the Company; (x) the resolutions of the board of directors of the Company authorizing the execution and performance of this Agreement and the Registration Rights Agreement; and (y) incumbency and signatures of the officers of the Company executing this Agreement and the Registration Rights Agreement;

(f) A certificate dated as of a recent date of the Secretary of State of the State of South Dakota with respect to the good standing in the State of South Dakota of the Company; and

(g) A certified copy of the Certificate of Incorporation for the Company as certified by the Secretary of State of the State of South Dakota within ten (10) Business Days of the Closing.

Section 2.04 Purchasers' Deliveries. At the Closing, each Purchaser will deliver, or cause to be delivered, to the Company:

(a) Payment to the Company of the Purchase Price of such Purchaser by wire transfer of immediately available funds pursuant to the terms of the Escrow Agreement to the account designated by the Company on Schedule 2.04;

(b) A copy of the Registration Rights Agreement, dated as of the Closing Date and executed by such Purchaser; and

(c) A Notice and Questionnaire (as defined in the Registration Rights Agreement).

Section 2.05 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of the other Purchasers, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchasers under this Agreement. The representations and warranties of each Purchaser under this Agreement are several and not joint with the representations and warranties of the other Purchasers, and no Purchaser shall be deemed to have made any representations and warranties with respect to any other Purchasers under this Agreement. Nothing contained herein, and no action taken by any Purchaser pursuant hereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation, the rights arising out of this Agreement, and it shall not be necessary for the other Purchasers to be joined as additional parties in any proceeding for such purpose. Notwithstanding the foregoing, each Purchaser's obligation to purchase its Purchased Securities is conditioned on the contemporaneous closing of the purchase of Purchased Securities

by the other Purchasers and, if, for any reason, any Purchaser shall refuse to enter into this Agreement or shall fail to consummate its obligations hereunder, all obligations of the other Purchasers hereunder shall be null and void and this Agreement shall be terminated.

Section 3.01 No Registration. Assuming the accuracy of the representations and warranties of the Purchasers contained in Section 4.02, it is not necessary, in connection with the issuance and sale of the Purchased Securities to the Purchasers in the manner contemplated by this Agreement, to register the Purchased Securities under the Securities Act or any other securities laws.

Section 3.02 No Integration. None of the Company or any of its Subsidiaries has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any "security" (as defined in the Securities Act) that is or will be integrated with the sale of the Purchased Securities in a manner that would require registration under the Securities Act of the Purchased Securities.

Section 3.03 Private Placement Memorandum. The Private Placement Memorandum, as of its date, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. At the date hereof and as of the Closing Date the Private Placement Memorandum does not and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.04 Operative Documents. The Operative Documents, as of their respective dates, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. At the date hereof and as of the Closing Date no Operative Document contains or will contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.05 Authorization of Operative Documents. This Agreement has been, and at the Closing the other Operative Documents will be, duly authorized, executed and delivered by the Company and this Agreement constitutes, and at the Closing the other Operative Documents will constitute, the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as to rights to indemnification thereunder may be limited by applicable law.

Section 3.06 Authorization of the Purchased Securities. The Purchased Securities have been duly authorized for issuance and sale by the Company and pursuant to this Agreement and,

when issued and delivered by the Company to the Purchasers pursuant to this Agreement on the Closing Date, will be validly issued, fully paid and non-assessable, and the issuance of the Purchased Securities will not be subject to any preemptive or similar rights.

Section 3.07 Enforceability of Operative Documents. The Company is in compliance with the terms of each Operative Document and each representation and warranty contained in the Operative Documents is true and correct.

Section 3.08 No Material Adverse Change. Except as otherwise disclosed in the Private Placement Memorandum, subsequent to the respective dates as of which information is given in the Private Placement Memorandum: (i) there has been no material adverse change, effect, event or development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, properties or results of operations (other than as a result of developments affecting the oil and gas industry generally that do not have a disproportionate effect on the Company and its Subsidiaries), whether or not arising from transactions in the ordinary course of business, of the Company and its Subsidiaries, taken as a whole (a “**Material Adverse Change**”); (ii) the Company and its Subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, nor entered into any material transaction or agreement; and (iii) there has been no cash dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or any wholly-owned Subsidiary of the Company, any of its Subsidiaries on any class of capital stock or other security or repurchase or redemption by the Company or any of its Subsidiaries of any class of capital stock or other security.

Section 3.09 Independent Accountants. Deloitte & Touche LLP, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules incorporated by reference in the Private Placement Memorandum, is an independent registered public accountant with respect to the Company as required by the Securities Act and the Exchange Act and the applicable published rules and regulations thereunder.

Section 3.10 Financial Statements. The financial statements of the Company incorporated by reference in the Private Placement Memorandum present fairly the consolidated financial position of the Company and all of its consolidated subsidiaries whose financial statements are consolidated with those of the Company in accordance with GAAP as of and at the dates indicated and present fairly the results of operations and cash flow of the Company and its consolidated Subsidiaries of and at the dates indicated. Such financial statements of the Company comply as to form with the applicable accounting requirements of Regulation S-X and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The financial data set forth in the Private Placement Memorandum under the caption “Capitalization” fairly presents the information set forth therein as of the dates indicated. Since January 1, 2006, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the “Commission Documents”). As of their

respective dates, the Commission Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder applicable to the Commission Documents, and none of the Commission Documents, at the time they were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the Commission Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the Commission with respect thereto as in effect as of the time of filing.

Section 3.11 Incorporation and Good Standing of the Company and its Subsidiaries. Each of the Company and its Subsidiaries has been duly incorporated or otherwise formed and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, as the case may be, and has power and authority (corporate or otherwise) to own or lease, as the case may be, and operate its properties and to conduct its business as presently conducted and, in the case of the Company, to enter into and perform its obligations under each Operative Document. Each of the Company and each Subsidiary is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result or reasonably be expected to result in a material adverse effect on (i) the condition, financial or otherwise, or on the earnings, business, properties, assets or operations, whether or not arising from transactions in the ordinary course of business, of the Company and its Subsidiaries, taken as a whole or (ii) the ability of the Company to meet its obligations and to consummate the transactions under the Operative Documents (a “**Material Adverse Effect**”). All of the issued and outstanding shares of capital stock, or similar equity interest, of each Subsidiary have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through Subsidiaries, free and clear of any Lien, except that the Company’s revolving credit facility is secured by a negative pledge on any of the Company’s non-mortgage properties.

Section 3.12 Capitalization and Other Capital Stock Matters. The authorized, issued and outstanding capital of the Company as of January 31, 2007, is as set forth under the caption “Description of Capital Stock” in the Private Placement Memorandum. Except as disclosed in the Private Placement Memorandum, the Company has not issued any other options, warrants, script rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or entered into any agreement giving any Person any right to subscribe for or acquire, any shares of its capital stock. Except for customary adjustments as a result of stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations, reclassifications or other similar events, there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders), and the issuance and sale of the Purchased Securities hereunder will not obligate the Company to issue shares of Common Stock or other securities to any Person or result in a right of any holder of securities to adjust the exercise, conversion, exchange or reset price under such securities. The Purchased Securities conform in all material respects to the description thereof contained in the Private

Placement Memorandum. All of the issued and outstanding shares of Common Stock have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries other than those described in the Private Placement Memorandum.

Section 3.13 Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.



(a) Neither the execution nor the delivery of any Operative Document by the Company is, nor the performance of its obligations thereunder, (i) will result in a violation or breach of its charter or bylaws (or other applicable organizational document), (ii) with or without the giving of notice or the passage of time, or both, violate, or be in conflict with, breach of, or constitute a default under, or cause or permit the termination or the acceleration of the maturity of, any material indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its Subsidiaries is subject (each, an “**Existing Instrument**”), (iii) require notice to or the consent of any party to any agreement or commitment, including, without limitation, any lease or license to which the Company is a party, or by which it or its properties is bound or subject, (iv) result in the creation or imposition of any security interest, lien, or other encumbrance upon any property or assets of the Company under any agreement or commitment to which it is a party, or by which it or its properties is bound or subject, or (v) violate or breach any material statute or Law or any judgment, decree, order, regulation or rule of any court or governmental authority to which the Company or its properties is bound or subject; except in the case of (ii), (iii), (iv) and (v) above, for such violations, conflicts, breaches, defaults, terminations and accelerations as would not have, and such notices and consents the absence of which would not have, and such security interests, liens or other encumbrances as would not have, a Material Adverse Effect.

(b) No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency is required for the Company’s execution, delivery and performance of the Operative Documents and consummation of the transactions contemplated thereby and by this Agreement, except (i) with respect to the transactions contemplated by the Registration Rights Agreement, as may be required under the Securities Act and the rules and regulations promulgated thereunder, and (ii) such as have been obtained or made by the Company and are in full force and effect under applicable state securities or blue sky laws.

Section 3.14 No Material Actions or Proceedings. Except as otherwise disclosed in the Private Placement Memorandum, there are no material legal or governmental actions, suits, hearings or investigations or proceedings pending or, to the Company’s knowledge, threatened (i) against or affecting the Company or any of its Subsidiaries, (ii) which has as the subject

thereof any officer or director of, or property owned or leased by, the Company or any of its Subsidiaries or (iii) relating to environmental or discrimination matters.

Section 3.15 All Necessary Permits, etc. The Company and each Subsidiary possess such valid and current licenses, certificates, authorizations or permits issued by the appropriate local, state, federal or foreign regulatory agencies or Governmental Authority necessary to conduct their respective businesses as currently conducted, except as would not have a Material Adverse Effect on the Company and the Subsidiaries, taken as a whole.

Section 3.16 Title to Properties. Each of the Company and its Subsidiaries has (i) good and marketable title to its oil and gas properties, title investigations having been carried out by the Company or its Subsidiaries in accordance with the practice in the oil and gas industry in the areas in which the Company and its Subsidiaries

operate, (ii) good and marketable title to all other material real property owned by it (including pipeline and other easement rights), and (iii) good and marketable title to all material personal property owned by it, in each case free and clear of all Liens and defects except such as are described in the Private Placement Memorandum or such as do not materially affect the value of such properties; and all of the easements, leases and subleases material to the business of the Company and its Subsidiaries and under which the Company or any of its Subsidiaries holds or uses properties are in full force and effect, and neither the Company nor any of its Subsidiaries has any notice violation, breach, or termination, or of any claim that has been asserted by anyone adverse to the rights of the Company or its Subsidiaries under any of the easements, leases or subleases mentioned above, or affecting or questioning the rights of the Company or any Subsidiary thereof to the continued possession or use of the easement or leased or subleased premises.

Section 3.17 Condition of Properties. The plants, buildings, structures and equipment owned by the Company and its Subsidiaries are in good operating condition and repair and have been reasonably maintained consistent with standards generally followed in the industry in which the Company and its Subsidiaries operates (giving due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present uses and, in the case of plants, buildings and other structures, are structurally sound.

Section 3.18 Company Not an “Investment Company”. The Company is not, and, after receipt of payment for the Purchased Securities and application of the proceeds as described under “Use of Proceeds” in the Private Placement Memorandum will not be, required to register as an “investment company” within the meaning of the Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

Section 3.19 Insurance. Each of the Company and its Subsidiaries are insured by recognized and, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of terrorism or vandalism and earthquakes. All policies of insurance and fidelity or surety bonds insuring the Company or any of its Subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its Subsidiaries are in

compliance, in all material respects, with the terms of such policies and instruments; and there are no material claims by the Company or any of its Subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such Subsidiary has, in the past three years, been refused any insurance coverage sought or applied for. The Company has no reason to believe that it or any Subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted.

Section 3.20 No Restriction on Distributions. Except as described in or contemplated by the Private Placement Memorandum, no Subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary’s capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary’s property or assets to the Company or any other Subsidiary of the Company.

Section 3.21 Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any Subsidiary or any other person that would be required to be disclosed in the Company's Exchange Act Filings, which are not disclosed and described in Private Placement Memorandum.

Section 3.22 No General Solicitation. None of the Company or any of its affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act ("**Regulation D**")), has, directly or through an agent, engaged in any form of general solicitation or general advertising in connection with the offering of the Purchased Securities (as those terms are used in Regulation D) under the Securities Act or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act; the Company has not entered into any contractual arrangement with respect to the distribution of the Purchased Securities except for this Agreement, and the Company will not enter into any such arrangement except for the Registration Rights Agreement and as may be contemplated thereby.

Section 3.23 Compliance with Environmental Laws. Except as otherwise disclosed in the Private Placement Memorandum or as would not have a Material Adverse Effect on the Company and the Subsidiaries, taken as a whole, (i) neither the Company nor any of its Subsidiaries is in violation of any Law, order, permit or other requirement relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "**Materials of Environmental Concern**"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (collectively, "**Environmental Laws**"), which violation includes, but is not limited to, noncompliance with any permits or other governmental authorizations required for the operation of the business of the Company or its Subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company or any of its Subsidiaries received any written communication, whether from a governmental authority, citizens group, employee or otherwise,

that alleges that the Company or any of its Subsidiaries is in violation of any Environmental Law, except, in each case, as would not, individually or in the aggregate, expect to result in material expenditures or remediation costs by the Company or its Subsidiaries; (ii) there is no claim, action or cause of action filed with a court or Governmental Authority, no investigation with respect to which the Company has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental responses costs, natural resources damages, property damages, personal injuries, attorneys' fees or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Material of Environmental Concern at any location owned, leased or operated by the Company or any of its Subsidiaries, now or in the past (collectively, "**Environmental Claims**"), pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries or any person or entity whose liability for any Environmental Claim the Company or any of its Subsidiaries has retained or assumed either contractually or by operation of law, except as would not, individually or in the aggregate expect to result in material expenditures or remediation costs by the Company or its Subsidiaries; (iii) to the Company's knowledge, there are no past, present or anticipated future actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that reasonably could result

in a violation of any Environmental Law, require expenditures to be incurred pursuant to Environmental Law, except as would not, individually or in the aggregate expect to result in material expenditures or remediation costs by the Company or its Subsidiaries; and (iv) neither the Company nor any of its Subsidiaries is subject to any pending or, to the Company's knowledge, threatened proceeding under Environmental Law to which a governmental authority is a party and which is reasonably likely to result in monetary sanctions of \$50,000 or more.

Section 3.24 Brokers. Except as otherwise disclosed in the Private Placement Memorandum, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

Section 3.25 Valid Issuance of Securities. The Purchased Securities when issued, sold and delivered in accordance with the terms hereof will be duly and validly issued, fully paid and nonassessable and, based in part upon the representations of the Purchasers in Section 4.02 of this Agreement, will be issued in compliance with all applicable federal and state securities laws regarding registration or qualification.

Section 3.26 Subsidiaries. The Subsidiaries listed on Schedule 3.26 attached hereto are the only Subsidiaries of the Company.

Section 3.27 Disclosure. The Company has fully provided the Purchasers with all the information that the Purchasers have requested for deciding whether to acquire the Purchased Securities and all information that the Company believes is reasonably necessary to enable the Purchasers to make such a decision. No representation or warranty of the Company contained in this Agreement, any certificate furnished or to be furnished to the Purchasers at the Closing, or any other documents furnished to the Purchasers when read together, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the

statements contained herein or therein not misleading in light of the circumstances under which they were made.

Section 3.28 Undisclosed Liabilities. None of the Company and its Subsidiaries has any material liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes), except for (i) liabilities set forth on the face of the most recent balance sheet (rather than in any notes thereto) and (ii) liabilities which have arisen after the most recent fiscal month end in the ordinary course of business.

Section 3.29 Employees. To the knowledge of the directors and officers of the Company and its Subsidiaries, no executive, key employee, or significant group of employees plans to terminate employment with any of the Company and its Subsidiaries during the next 12 months except for such persons who may retire in the ordinary course. Except as disclosed in the Private Placement Memorandum, none of the Company and its Subsidiaries is a party to or bound by any collective bargaining agreement, nor has any of them experienced any strike or material grievance, material claim of unfair labor practices, or other material collective bargaining dispute within the past three years.

(a) The Company and its Subsidiaries do not maintain or contribute to any Employee Benefit Plan other than those plans disclosed in the Private Placement Memorandum.

(i) To the Knowledge of the Company, each such Employee Benefit Plan (and each related trust, insurance contract, or fund) complies in form and in operation in all respects with the applicable requirements of ERISA and the Code, except where the failure to comply would not have a material adverse effect on the financial condition of the Company and its Subsidiaries taken as a whole.

(ii) All contributions (including all employer contributions and employee salary reduction contributions) which are due have been paid to each such Employee Benefit Plan which is an Employee Pension Benefit Plan.

(iii) Each such Employee Benefit Plan which is an Employee Pension Benefit Plan has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Code §401(a).

(iv) As of the last day of the most recent prior plan year, the market value of assets under each such Employee Benefit Plan which is an Employee Pension Benefit Plan (other than any Multiemployer Plan) equaled or exceeded the present value of liabilities thereunder (determined in accordance with then current funding assumptions).

(v) The Company has correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the Internal Revenue Service, the most recent Form 5500 Annual Report, and all

related trust agreements, insurance contracts, and other funding agreements which implement each such Employee Benefit Plan.

(b) With respect to each Employee Benefit Plan that any of the Company and its Subsidiaries maintains or ever has maintained or to which any of them contributes, ever has contributed, or ever has been required to contribute:

(i) No such Employee Benefit Plan which is an Employee Pension Benefit Plan (other than any Multiemployer Plan) has been completely or partially terminated or been the subject of a Reportable Event as to which notices would be required to be filed with the PBGC. No proceeding by the PBGC to terminate any such Employee Pension Benefit Plan (other than any Multiemployer Plan) has been instituted.

(ii) No action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending, except where the action, suit, proceeding, hearing, or investigation would not have a material adverse effect on the financial condition of the Company and its Subsidiaries taken as a whole.

(iii) None of the Company and its Subsidiaries has incurred any liability to the PBGC (other than PBGC premium payments) or otherwise under Title IV of ERISA (including any withdrawal liability) with respect to any such Employee Benefit Plan which is an Employee Pension Benefit Plan.

Section 3.31 Intellectual Property. [Intentionally omitted].

Section 3.32 Tax Matters.

(a) Each of the Company and its Subsidiaries has filed all U.S. federal Income Tax Returns and all other material Income Tax Returns that it was required to file. All such Income Tax Returns were correct and complete in all material respects. All material amounts of Income Taxes due and owing by any of the Company and its Subsidiaries (whether or not shown on any Income Tax Return) have been paid.

(b) Except as set forth in the Private Placement Memorandum, there is no material dispute or claim concerning any Income Tax liability of any of the Company and its Subsidiaries either (A) claimed or raised by any authority in writing or (B) as to which any of the directors and officers of the Company and its Subsidiaries has knowledge based upon personal contact with any agent of such authority.

(c) The unpaid Income Taxes of the Company and its Subsidiaries (A) did not, as of the most recent fiscal month end, exceed by any material amount the reserve for Income Tax liability (rather than any reserve for deferred taxes established to reflect timing differences between book and tax income) set forth on the face of the most recent balance sheet (rather than in any notes thereto) and (B) will not exceed by any material amount that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Income Tax Returns.

Section 3.33 Patriot Act. To the extent applicable, the Company and each Subsidiary is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Act"). No part of the proceeds of the Securities will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.34 Contracts(a) . The Company has filed all contracts required to be filed as exhibits to its periodic reports with the Commission. All such contracts are valid and enforceable against the Company in accordance with their respective terms, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting creditors' and contracting parties' rights generally, and (ii) as enforceability may be subject to general principles of equity and except as rights to indemnity and contribution may be limited by state or federal securities laws or public policy underlying such laws. The Company is not in breach of or default under any of the contracts, and to the Company's knowledge, no other party to a contract is in breach of or default under such contract, except in each case, for such breaches or defaults as

would not reasonably be expected to have a Material Adverse Effect. The Company has not received a notice of termination nor is the Company otherwise aware of any threats to terminate any of the contracts.

Section 3.35 Well-Known Seasoned Issuer. As of the date hereof, the Company is a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act and the Company is not an “ineligible issuer” as defined in Rule 405 under the Securities Act.

Section 3.36 No Material Non-Public Information. Except for the Private Placement Memorandum and the Evaluation Materials (as described in the Confidentiality Agreements), the Company has not provided the Purchasers with material non-public information. Any and all such material non-public information that has been provided to the Purchasers will be disclosed in the Current Report on Form 8-K to be filed pursuant to Section 6.07. Additionally, the Company will not provide any of the Purchasers with material non-public information in the future without the prior, written consent of such Purchaser.

Section 3.37 Manipulation of Price. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company.

Section 3.38 Foreign Corrupt Practices. Neither the Company nor any of its Subsidiaries nor any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the

Company or any of its Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF EACH PURCHASER**

Each Purchaser, severally and not jointly, represents and warrants to the Company, as to itself only, that:

Section 4.01 Authorization. Each Purchaser has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by such Purchaser, will constitute the valid and legally binding obligation of such Purchaser, enforceable in accordance with their respective terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors’ rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies, or (b) to the extent the indemnification provisions contained in the Registration Rights Agreement may be limited by applicable federal or state securities laws.

(a) Investment. The Purchased Securities are being acquired for such Purchaser's own account and with no present intention of distributing the Purchased Securities or any part thereof other than in accordance with the Securities Act and other applicable securities and blue sky laws, and such Purchaser has no present intention of selling or granting any participation in or otherwise distributing the same in any transaction in violation of the Securities Act or the securities or blue sky laws of any other jurisdiction, without prejudice, however to such Purchaser's right at all times to sell or otherwise dispose of all or any part of the Purchased Securities under a registration statement under the Securities Act and applicable state securities laws or under any exemption from such applicable securities and blue sky laws. If such Purchaser should in the future decide to dispose of any of the Purchased Securities, such Purchaser understands and hereby agrees that it may do so only in compliance with the Securities Act and applicable securities and blue sky laws of any other jurisdiction, as then in effect, which may include a sale contemplated by any registration statement pursuant to which the Purchased Securities are then being offered. The Company shall make all filings and reports relating to the offer and sale of the Purchased Securities required under applicable securities or blue sky laws of the states of the United States following the Closing.

(b) Such Purchaser understands that (i) the Purchased Securities (A) have not been registered under the Securities Act or any state securities laws, (B) will be issued in reliance upon exemptions from the registration and prospectus delivery requirements of

the Securities Act, and (C) will be issued in reliance upon exemptions from the registration and prospectus delivery requirements of state securities laws which relate to private offerings, and (ii) the Purchaser must therefore bear the economic risk of such investment indefinitely unless a subsequent disposition thereof is registered or exempted under the Securities Act and applicable state securities laws or is exempt therefrom.

(c) Nature of Purchasers. Such Purchaser represents and warrants to the Company that it is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and an institutional "accredited investor" within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act, or an "accredited investor," as defined in Section 501(a) of Regulation D, and that it is not an officer or director of the Company or, if the Purchased Securities are to be purchased for one of more accounts ("investor accounts") for which it is acting as fiduciary or agent, each such investor account is such an investor on a like basis; in the normal course of its business, it invests in or purchases securities similar to the Purchased Securities and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of purchasing the Purchased Securities; and it is aware that it (or any investor account) may be required to bear the economic risk of an investment in the Purchased Securities for an indefinite period of time and it (or such account) is able to bear such risk for an indefinite period.

(d) Receipt of Information; Authorization. Such Purchaser acknowledges that it has (a) had access to the Private Placement Memorandum and (b) been provided a reasonable opportunity to ask questions of and receive answers from Representatives of the Company, and to be furnished requested



information, regarding such matters sufficient to enable such Purchaser to evaluate the risks and merits of purchasing the Purchased Securities and consummating the transactions contemplated by this Agreement.

(e) Legend. It is understood that any certificates evidencing the Purchased Securities will bear the following legend:

**“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.**

**THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF SUBPARAGRAPHS (a)(1), (2), (3) AND (7) OF RULE 501 UNDER THE SECURITIES, AND (2) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD AS MAY BE PRESCRIBED BY RULE 144(K) (OR ANY SUCCESSOR PROVISION THEREOF) UNDER THE SECURITIES ACT) AFTER THE**

**LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR ANY PREDECESSOR OF THIS SECURITY) AND THE LAST DATE ON WHICH THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE CORPORATION OR ANY OF ITS SUBSIDIARIES, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) TO AN “ACCREDITED INVESTOR” WITHIN THE MEANING OF SUBPARAGRAPH (a) OF RULE 501 UNDER THE SECURITIES ACT OF THE TYPE REFERRED TO IN CLAUSE (1) ABOVE THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND THE SECURITIES LAWS OF ANY OTHER JURISDICTION, INCLUDING ANY STATE OF THE UNITED STATES, SUBJECT TO THE CORPORATION’S OR TRANSFER AGENT’S, AS APPLICABLE, RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (C) OR (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE OR TRANSFER AGENT, AND SHALL OTHERWISE COMPLY WITH THE REQUIREMENTS OF THE SECURITIES PURCHASE AGREEMENT AND REGISTRATION RIGHTS AGREEMENT. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER SAID ACT IN CONNECTION WITH A BONA FIDE MARGIN**

Certificates evidencing the Purchased Securities shall not be required to contain such legend or any other legend (A) after such securities are registered for resale under the Securities Act, (B) following any sale of such securities pursuant to Rule 144 under the Securities Act, (C) if such securities are eligible for sale under Rule 144(k) under the Securities Act, or (D) if such legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the Staff of the Commission).

(f) Transfer Restrictions. The legend set forth in Section 4.02(e) shall be removed and the Company shall issue a certificate without such legend or any other legend to the holder of the applicable Purchased Securities upon which it is stamped, if (i) such Securities are registered for resale under the Securities Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel, in a generally acceptable form, to the effect that such sale, assignment or transfer of such Purchased Securities may be made without registration under the applicable requirements of the Securities Act, or (iii) such holder provides the Company with reasonable assurance that such Purchased Securities can be sold, assigned or transferred

pursuant to Rule 144 under the Securities Act. Following the Effective Date or at such earlier time as a legend is no longer required for certain Purchased Securities, the Company will no later than three Business Days following the delivery by a Purchaser to the Company or the Company's transfer agent of a legended certificate representing such Purchased Securities, deliver or cause to be delivered to the Purchaser a certificate representing such Purchased Securities that is free from all restrictive and other legends. The Company shall pay all transfer agent and related fees in connection with such issuance and provided that the transfer agent is participating in The Depository Trust Company ("DTC") Fast Automated Securities Transfer Program, upon the request of the Purchaser, deliver such shares to the Purchaser's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system. Following the Effective Date and upon the delivery to the Purchaser of any certificate representing Purchased Securities that is free from all restrictive and other legends, the Purchaser agrees that any sale of such Purchased Securities shall be made pursuant to a registration statement and in accordance with the plan of distribution described therein or pursuant to an available exemption from the registration requirements of the Securities Act. The Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in Section 4.02(e).

#### ARTICLE V CONDITIONS OF THE PURCHASERS' OBLIGATIONS AT CLOSING

The obligations of each Purchaser to the Company under this Agreement are subject to the delivery of the items set forth in Section 2.03 and the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived by such Purchaser:

Section 5.01 Representations and Warranties. The representations and warranties of the Company contained herein that are qualified by materiality or Material Adverse Effect shall be true and correct on and as of the Closing and all other representations of the Company contained herein shall be true and correct in all material respects on and as of the Closing, in each case, with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

Section 5.02 Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

Section 5.03 Compliance Certificate; Secretary's Certificate. The President or the Chief Financial Officer of the Company shall deliver to the Purchasers at the Closing a certificate certifying that the conditions specified in Sections 5.01, 5.02 and 5.04 have been fulfilled. The corporate secretary of the Company shall deliver to the Purchasers at the Closing a certificate certifying to the organizational documents, resolutions, incumbency, good standing and other customary matters.

Section 5.04 Qualifications. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required to

be in effect as of the Closing in connection with the lawful issuance and sale of the shares of Purchased Securities pursuant to this Agreement shall be obtained and effective as of the Closing.

Section 5.05 Opinions of Company Counsel. The Purchasers shall have received from Steven Helmers and Morgan, Lewis & Bockius LLP, special counsel for the Company, opinions, dated as of the Closing, in substantially the forms of Exhibits B-1 and B-2 and otherwise reasonably satisfactory to the Purchasers.

Section 5.06 Registration Rights Agreement. The Company and each Purchaser shall have executed and delivered the Registration Rights Agreement in substantially the form attached as Exhibit A.

Section 5.07 Listing. The Company will have had the Common Stock approved for listing with the New York Stock Exchange.

## **ARTICLE VI MISCELLANEOUS**

Section 6.01 Use of Proceeds. The Company shall use the net proceeds it receives from the sale of the Purchased Securities as described under "Use of Proceeds" in the Private Placement Memorandum.

Section 6.02 Interpretation; Severability. Article, Section, Schedule, and Exhibit references are to this Agreement, unless otherwise specified. All references to instruments, documents, contracts, and agreements are references to such instruments, documents, contracts, and agreements as the same may be amended, supplemented, and otherwise modified from time to time, unless otherwise specified. The word "including" shall mean "including but not limited to." Whenever any party has an obligation under this Agreement, the expense of complying with that obligation shall be an expense of such party unless otherwise specified. If any provision of this Agreement is held to be illegal, invalid, not binding, or unenforceable, such provision shall be fully severable and this

Agreement shall be construed and enforced as if such illegal, invalid, not binding, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions shall remain in full force and effect.

Section 6.03 Survival of Representations and Warranties. The representations or warranties set forth in this Agreement shall survive the execution and delivery of this Agreement. The covenants made in this Agreement shall survive the Closing and remain operative and in full force and effect regardless of acceptance of any of the Purchased Securities by the Purchasers and payment therefor and repayment, conversion, exercise or repurchase thereof. The Company shall indemnify, defend, protect and hold harmless each Purchaser and the officers, directors, partners, members, agents, employees and Affiliates of each of them from and against any and all losses, claims, damages, liabilities, settlement costs and expenses, including, without limitation, costs of preparation and reasonable attorneys' fees, promptly as incurred, arising out of or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company in this Agreement or any of the Operative Agreements or any certificate, instrument or document contemplated hereby or thereby, or (ii) any breach of any covenant,

agreement or obligation of the Company contained in this Agreement or any of the Operative Agreements or any certificate, instrument or document contemplated hereby or thereby. Each Purchaser shall be responsible only for its own representations, warranties, agreements, and covenants hereunder.

Section 6.04 Waivers; Remedies; Amendments.

(a) No Waiver; Remedies Cumulative. No failure or delay on the part of any party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any right, power, or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to a party at law or in equity or otherwise.

(b) Amendments and Modifications. Except as otherwise provided herein, no amendment, waiver, consent, modification, or termination of any provision of this Agreement shall be effective unless signed by each of the parties hereto affected by such amendment, waiver, consent, modification, or termination. Any amendment, supplement or modification of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by any party hereto from the terms of any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on any party hereto in any case shall entitle any party hereto to any other or further notice or demand in similar or other circumstances. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Operative Documents unless the same consideration also is offered to all of the parties to the Operative Documents or holders of Transfer Restricted Securities, as the case may be. The Company has not, directly or indirectly, made any agreements with any Purchaser relating to the terms or conditions of the transactions contemplated by the Operative Documents except as set forth in the Operative Documents. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior

written consent of the holders of at least a majority of the aggregate number of the Purchased Securities. A Purchaser may assign some or all of its rights hereunder in connection with transfer of any of its Purchased Securities without the consent of the Company to a permitted assignee, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights.

Section 6.05 **Binding Effect; Assignment.** This Agreement shall be binding upon the Company, the Purchasers, and their respective successors and permitted assigns. Except as expressly provided in this Agreement, this Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and as provided in Section 6.03, and their respective successors and permitted assigns.

Section 6.06 **Non-Disclosure.** Notwithstanding anything herein to the contrary, each Confidentiality Agreement shall remain in full force and effect according to its terms regardless

of any termination of this Agreement until the Company discloses on Form 8-K with the Commission the transactions contemplated hereby.

Section 6.07 **Filing of Form 8-K.** On the Closing Date, the Company shall issue a press release announcing the transactions contemplated by the Operative Documents. No later than the Business Day after the public announcement of the transactions contemplated hereby, the Company shall use reasonable efforts to file a Current Report on Form 8-K with the Commission (i) furnishing as an exhibit to such Current Report on Form 8-K the press release announcing the signing of this Agreement and (ii) furnishing any material non-public information provided to the Purchasers. From and after the filing of the 8-K, the Purchasers shall not be in possession of any material, non-public information received from the Company, any of its Subsidiaries or any of its respective officers, directors, employees or agents, that is not disclosed in the Current Report on Form 8-K.

Section 6.08 **Listing.** The Company shall promptly secure the listing of the Purchased Securities upon each national securities exchange and automated exchange system, if any, upon which the Common Stock is then listed (subject to official notice of issuance), and shall maintain such listing of all Purchased Securities from time to time issuable under the terms of the Operative Documents. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the New York Stock Exchange. The Company shall pay all fees of the New York Stock Exchange and all of its expenses in connection with satisfying its obligations under this Section 6.08.

Section 6.09 **Pledge of Purchased Securities.** The Company acknowledges and agrees that the Purchased Securities may be pledged by an Holder (as defined in the Registration Rights Agreement) in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Purchased Securities. The pledge of Purchased Securities shall not be deemed to be a transfer, sale or assignment of the Purchased Securities hereunder, and no Holder effecting a pledge of Purchased Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Operative Document; provided, however, that an Holder and its pledgee shall be required to comply with

the provisions of Section 4.02(e) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee.

Section 6.10 Termination. This Agreement will terminate if the Closing Date has not occurred within ten (10) Business Days from the date of the signing of this Agreement.

Section 6.11 [Intentionally Omitted].

Section 6.12 Communications. All notices and demands provided for hereunder shall be in writing and shall be given by registered or certified mail, return receipt requested, telecopy, air courier guaranteeing overnight delivery or personal delivery to the following addresses:

(a) If to a Purchaser, to the contact information set forth on such Purchaser's signature page hereto,

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

Pillsbury Winthrop Shaw Pittman LLP  
1540 Broadway  
New York, NY 10036-4039  
Facsimile: 212-858-1500  
Attention: Jeffrey Delaney;

With an additional copy (for informational purposes) to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
Facsimile: 212-593-5955  
Attention: Eleazer Klein, Esq.; and

(b) If to the Company:

624 Ninth Street, P.O. Box 1400  
Rapid City, SD 57709  
Facsimile: (605) 721-2550  
Attention: Steven J. Helmers, Esq.

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

Morgan, Lewis & Bockius LLP

or to such other address as the Company or such Purchaser may designate in writing. All notices and communications shall be deemed to have been duly given at the time delivered by hand, if personally delivered; upon actual receipt if sent by certified mail, return receipt requested, or regular mail, if mailed; when receipt acknowledged, if sent via facsimile; and upon actual receipt when delivered to an air courier guaranteeing overnight delivery.

Section 6.13 Entire Agreement. This Agreement and the other agreements referred to herein are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, representation, warranties, covenants or undertakings, other than those set forth or referred to herein or therein with respect to the rights granted by the Company or any of its Affiliates or each of the Purchasers or any of their Affiliates set forth herein or therein. This Agreement and the other agreements and documents referred to herein supersede all prior agreements and understandings between the parties with respect to such subject matter.

Section 6.14 Governing Law. **This Agreement will be construed in accordance with and governed by the laws of the State of New York without regard to principles of conflicts of laws that would result in the application of any other laws.** Each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New York located in New York, New York and the federal courts located in New York, New York (each a "Selected Court"), for the purposes of any suit, action or other proceeding in connection with or relating to this Agreement. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of this Agreement or the transactions contemplated hereby in a Selected Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any Selected Court that any such litigation brought in any Selected Court has been brought in an inconvenient forum.

Section 6.15 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 6.16 Finder's Fee. Each party represents that it neither is nor will be obligated for any finder's fee or commission or other similar fee or commission in connection with the purchase of Purchased Securities hereunder, other than fees due pursuant to the Placement Agency Agreement. The Company agrees to indemnify and hold harmless each Purchaser from any liability for any commission or compensation in the nature of such a fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

Section 6.17 Fees and Expenses. The Company and the Purchasers shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except that the Company will reimburse the Purchasers for reasonable and documented costs and expenses of its one legal counsel, Pillsbury Winthrop Shaw Pittman LLP, incurred in connection with the negotiation, execution, and delivery of the Operative Documents and the transactions contemplated thereby and the Closing, provided that the

Company shall in no event be obligated to reimburse the Purchasers for any amounts of such costs and expenses in excess of \$75,000, and provided further that any request for reimbursement must be accompanied by a detailed invoice.

Section 6.18 Exculpation Among Purchasers. Each Purchaser acknowledges that it is not relying upon any person or entity, other than the Company and its representatives, in making its investment or decision to invest in the Company. Each Purchaser agrees that no Purchaser nor the respective controlling persons, officers, directors, partners, members, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Securities.

**SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth.

BLACK HILLS CORPORATION

By: /s/ Mark T. Thies  
Mark T. Thies  
Executive Vice President  
and Chief Financial Officer

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THE PURCHASERS:

Capital Ventures International

Capital Ventures International

(please print name exactly as it should appear on certificates)

By: /s/ Martin Kobinger

By: Heights Capital Management, Inc., its  
authorized agent

Name: Martin Kobinger

Title: Investment Manager

Amount of Purchased Securities

Number: 833,334

Purchase Price : \$36.00 per share

\$30,000,024.00

Address for Notice

c/o Heights Capital Management  
101 California Street, Suite 3250  
San Francisco, CA 94111

Facsimile: (415) 403-6525

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THE PURCHASERS:

FrontPoint Energy Horizons Fund, L.P.

FrontPoint Energy Horizons Fund, L.P.

(please print name exactly as it should appear on certificates)

By: /s/ T.A. McKinney

By: FrontPoint Energy Horizons Fund GP, LLC

Name: T.A. McKinney

Title: Authorized Signatory

Amount of Purchased Securities

Number: 180,334

Purchase Price : \$36.00 per share

\$6,492,024.00

Address for Notice

FrontPoint Energy Horizons Fund GP, LLC

c/o FrontPoint Partners LLC

Two Greenwich Plaza, 4<sup>th</sup> Floor

Greenwich, CT 06830

Facsimile: (203) 622-5450

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THE PURCHASERS:

FrontPoint Utility and Energy Fund, L.P.

FrontPoint Utility and Energy Fund, L.P.

(please print name exactly as it should appear on certificates)

By: /s/ T.A. McKinney

By: FrontPoint Utility and Energy Fund GP, LLC

Name: T.A. McKinney

Title: Authorized Signatory

Amount of Purchased Securities

Number: 653,000

Purchase Price : \$36.00 per share

\$23,508,000.00

Address for Notice

FrontPoint Utility and Energy Fund GP, LLC

c/o FrontPoint Partners LLC

Two Greenwich Plaza, 4<sup>th</sup> Floor

Greenwich, CT 06830

Facsimile: (203) 622-5450

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THE PURCHASERS:

STEELHEAD INVESTMENTS LTD.

STEELHEAD INVESTMENTS LTD.

(please print name exactly as it should appear on certificates)

By: /s/ J. Baker Gentry, Jr.

By: HBK Services LLC, Investment Advisor

Name: J. Baker Gentry, Jr.

Title: Authorized Signatory

Amount of Purchased Securities

Number: 833,334

Purchase Price : \$36.00 per share

\$30,000,024.00

Address for Notice

c/o HBK Services LLC

300 Crescent Court, Suite 700

Dallas, TX 75201

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Facsimile: (214) 758-1207

With a copy to:

Schulte Roth & Zabel LLP

919 Third Avenue

New York, New York 10022

Attention: Eleazer Klein, Esq.

Facsimile: (212) 593-5955

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THE PURCHASERS:

T. Rowe Price Associates, Inc., as

Investment Advisor to, and on behalf of

The Participating Funds in Attachment A

T. Rowe Price Small-Cap Value Fund, Inc.

T. Rowe Price New Income Fund, Inc.

T. Rowe Price Corporate Income Fund, Inc.

(please print name exactly as it should appear on certificates)

By: /s/ Andrew M. Brooks

By: T. Rowe Price Associates, Inc.

Name: Andrew M. Brooks

Title: Vice President

Amount of Purchased Securities

Number: 282,000

Purchase Price : \$36.00 per share

\$10,152,000.00

Address for Notice

T. Rowe Price Associates, Inc.

100 East Pratt Street

Baltimore, MD 21202

Attn: Darrell N. Braman

Facsimile: (410) 345-6575

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THE PURCHASERS:

ZLP Master Opportunity Fund, Ltd.

ZLP Master Opportunity Fund, Ltd.

(please print name exactly as it should appear on certificates)

By: /s/ Devin Geoghegan

By: Zimmer Lucas Capital, LLC, its  
Investment Manager

Name: Devin Geoghegan  
Title: Partner

Amount of Purchased Securities

Number: 833,333

Purchase Price : \$36.00 per share

\$29,999,988.00

Address for Notice

Zimmer Lucas Capital  
c/o ZLP Master Opportunity Fund, Ltd.  
Harborside Financial Center  
Plaza 10, Suite 301  
Jersey City, NJ 07311

Facsimile: (201) 716-1425

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THE PURCHASERS:

ZLP Master Utility Fund, Ltd.

ZLP Master Utility Fund, Ltd.

(please print name exactly as it should appear on certificates)

By: /s/ Devin Geoghegan

By: Zimmer Lucas Capital, LLC, its  
Investment Manager

Name: Devin Geoghegan  
Title: Partner

Amount of Purchased Securities

Number: 555,556

Purchase Price : \$36.00 per share

\$20,000,016.00

Address for Notice

Zimmer Lucas Capital  
c/o ZLP Master Opportunity Fund, Ltd.  
Harborside Financial Center  
Plaza 10, Suite 301  
Jersey City, NJ 07311

Facsimile: (201) 716-1425

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**SCHEDULE 2.01**

**Purchaser**

**Purchased Securities**

**Total Purchase Price**

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Capital Ventures International	833,334 shares	\$30,000,024.00
FrontPoint Utility and Energy Fund, L.P.	653,000 shares	\$23,508,000.00
FrontPoint Energy Horizons Fund, L.P.	180,334 shares	\$6,492,024.00
Steelhead Investments LTD.	833,334 shares	\$30,000,024.00
T. Rowe Price Small-Cap Value Fund, Inc.	226,500 shares	\$8,154,000.00
T. Rowe Price New Income Fund, Inc.	44,500 shares	\$1,602,000.00
T. Rowe Price Corporate Income Fund, Inc.	11,000 shares	\$396,000.00
ZLP Master Opportunity Fund, Ltd.	833,333 shares	\$29,999,988.00
ZLP Master Utility Fund, Ltd..	555,556 shares	\$20,000,016.00
Total	4,170,891 shares	\$150,152,076.00

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Schedule 2.01

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**REGISTRATION RIGHTS AGREEMENT**

**by and among**

**BLACK HILLS CORPORATION**

**and**

**THE PURCHASERS SET FORTH ON  
SCHEDULE I HERETO**

REGISTRATION RIGHTS AGREEMENT, dated as of February 22, 2007, among Black Hills Corporation, a company duly incorporated and existing under the laws of South Dakota (together with any successor entity, herein referred to as the “**Company**”), and the several purchasers (the “**Purchasers**”) under the Purchase Agreement (as defined below).

Pursuant to the Securities Purchase Agreement, dated as of February 14, 2007, among the Company and the Purchasers (the “**Purchase Agreement**”), relating to the purchase of the Common Stock (as defined below), the Purchasers have agreed to purchase from the Company \$150,152,076.00 of its common stock, par value \$1.00 per share (the “**Common Stock**”). To induce the Purchasers to purchase the Common Stock, the Company has agreed to provide the registration rights set forth in this Agreement pursuant to Section 2.03(d) of the Purchase Agreement.

The parties hereby agree as follows:

1. *Definitions.* Capitalized terms used in this Agreement without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following capitalized terms shall have the following meanings:

“**Affiliate**”: of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agreement**”: This Registration Rights Agreement, as amended from time to time.

“**Amendment Effectiveness Deadline Date**”: has the meaning set forth in Section 2(f)(i) hereof.

“**Applicable Period**”: As defined in Section 5(b).

“**Blue Sky Application**”: As defined in Section 7(a)(i) hereof.

“**Business Day**”: A day, other than a Saturday or Sunday, that in the City of New York, is not a day on which banking institutions are authorized or required by law, regulation or executive order to close.

“**Closing Date**”: The date of the first issuance of the Common Stock pursuant to the Purchase Agreement.

“**Commission**”: Securities and Exchange Commission.

“**Common Stock**”: The shares of the Company’s common stock that are being issued pursuant to the Purchase Agreement.

“**Company**”: As defined in the preamble hereto.

**“Effectiveness Period”**: As defined in Section 2(a)(iii) hereof.

**“Effectiveness Target Date”**: As defined in Section 2(a)(ii) hereof.

**“Exchange Act”**: Securities Exchange Act of 1934, as amended.

**“Holder”**: A Person who owns, beneficially or otherwise, Transfer Restricted Securities.

**“Indemnified Holder”**: As defined in Section 7(a) hereof.

**“Liquidated Damages”**: As defined in Section 4(a) hereof.

**“Liquidated Damages Payment Date”**: Each March 31, June 30, September 30 and December 31 following the date on which a Registration Default occurs until all Registration Defaults have been cured.

**“Losses”**: As defined in Section 7(e) hereof.

**“Majority of Holders”**: Holders holding over 50% of the Transfer Restricted Securities outstanding.

**“NASD”**: National Association of Securities Dealers, Inc.

**“Notice and Questionnaire”**: A written notice executed by the respective Holder and delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A hereto.

**“Notice Holder”**: On any date, any Holder of Transfer Restricted Securities that has delivered a completed Notice and Questionnaire to the Company on or prior to such date.

**“Person”**: An individual, partnership, limited liability company, corporation, company, unincorporated organization, trust, joint venture or a government or agency or political subdivision thereof.

**“Plan of Distribution”**: As defined in Section 5(b).

**“Prospectus”**: The prospectus included in a Shelf Registration Statement or Subsequent Shelf Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such prospectus.

**“Purchase Agreement”**: As defined in the preamble hereto.

**“Purchasers”**: As defined in the preamble hereto.

**“Record Holder”**: With respect to any Liquidated Damages Payment Date, each Person who is a Holder on the 15<sup>th</sup> day preceding the relevant Liquidated Damages Payment Date.

**“Registration Default”**: As defined in Section 4(a) hereof.

“**Securities Act**”: Securities Act of 1933, as amended.

“**Shelf Filing Deadline**”: As defined in Section 2(a)(i) hereof.

“**Shelf Registration Statement**”: (i) a registration statement pursuant to Rule 415 under the Securities Act or any similar rule that may be adopted by the Commission or (ii) a Prospectus filed with respect to an already filed and effective shelf registration statement.

“**Subsequent Shelf Registration Statement**” has the meaning set forth in Section 2(c) hereof.

“**Suspension Notice**”: As defined in Section 5(c) hereof.

“**Suspension Period**”: As defined in Section 5(b)(ii) hereof.

“**Transfer Agent**”: Wells Fargo Shareowner Services.

“**Transfer Restricted Securities**”: Each share of Common Stock until the earlier of:

(a) the date on which such share of Common Stock has been resold pursuant to the Shelf Registration Statement or Subsequent Shelf Registration Statement;

(b) other than for the purposes of, to the extent applicable thereto, Sections 5 and 7, the date on which such share of Common Stock is transferred in compliance with Rule 144(k) under the Securities Act or may be sold or transferred by a person who is not an affiliate of the Company pursuant to Rule 144(k) under the Securities Act (or any other similar provision then in force) without any volume or manner of sale restrictions thereunder; or

(c) the date on which such share of Common Stock ceases to be outstanding (whether as a result of repurchase and cancellation or otherwise).

“**Underwriter**”: Any person deemed to be an Underwriter of Common Stock in connection with an offer or sale thereof under the Shelf Registration Statement.

Unless the context otherwise requires, the singular includes the plural, and words in the plural include the singular.

## 2. *Shelf Registration.*

(a) The Company shall:

(i) as promptly as practicable but in no event later than 45 days after the Closing Date (the “**Shelf Filing Deadline**”), cause to be filed with the Commission a Shelf Registration Statement, which Shelf Registration Statement shall provide for the registration and resales, on a continuous or delayed basis, of all Transfer Restricted Securities, plus any additional shares of Common Stock issued in respect thereof whether by stock dividend, stock split or otherwise, held by Holders that

have provided the information required pursuant to the terms of Section 2(b) hereof);

(ii) use its reasonable best efforts to (x) cause the Shelf Registration Statement to be declared (or to otherwise become) effective under the Securities Act by the Commission and (y) prepare and file with the Commission a Prospectus that will be available for resales by the Holders of Transfer Restricted Securities no later than 90 days after the Closing Date (the “**Effectiveness Target Date**”); and

(iii) use its reasonable best efforts to keep the Shelf Registration Statement or any Subsequent Shelf Registration Statement continuously effective, supplemented and amended as required by the Securities Act and by the provisions of Section 5(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Transfer Restricted Securities and (B) conforms with the requirements of this Agreement and the Securities Act and the rules and regulations of the Commission promulgated thereunder as announced from time to time, for a period (the “**Effectiveness Period**”) from the date the Shelf Registration Statement is declared effective by the Commission until the date on which no Transfer Restricted Securities remain outstanding.

(b) Each Holder that became a Notice Holder by delivering a Notice and Questionnaire at the time of the Closing under the Purchase Agreement shall be named as a selling securityholder in the Shelf Registration Statement and/or a related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Transfer Restricted Securities in accordance with applicable law.

(c) If the Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Transfer Restricted Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Transfer Restricted Securities), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Transfer Restricted Securities (a “**Subsequent Shelf Registration Statement**”). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable, after such filing and to keep such Shelf Registration Statement (or Subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(d) The Company shall supplement and amend the Shelf Registration Statement or Subsequent Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or Subsequent Shelf Registration Statement, if required by the Securities Act or as reasonably requested by any Holder of Transfer Restricted Securities covered by such Shelf Registration Statement or Subsequent Shelf Registration Statement.

(e) The Company shall cause the Shelf Registration Statement and each Subsequent Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement and each Subsequent Shelf Registration Statement and any such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act, and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading.

(f) Each Holder (other than any initial Purchaser of Common Stock under the Purchase Agreement) that provides a completed Notice and Questionnaire to the Company pursuant to the Purchase Agreement agrees that, if such Holder wishes to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement or a Subsequent Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(f) and Section 5(b). Each such Holder wishing to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement or a Subsequent Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least ten (10) Business Days prior to any intended distribution of Transfer Restricted Securities under the Shelf Registration Statement or a Subsequent Shelf Registration Statement. From and after the date the Shelf Registration Statement or a Subsequent Shelf Registration Statement is declared effective and the Prospectus contemplated by Section 2(a)(ii)(y) is prepared and filed with the Commission, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered to it, and in any event upon the later of (x) ten (10) Business Days after such date (but no earlier than ten Business Days after effectiveness) or (y) ten (10) Business Days after the expiration of any Suspension Period in effect when the Notice and Questionnaire is delivered or put into effect within five Business Days of such delivery date:

(i) if required by applicable law, file with the Commission a post-effective amendment to the Shelf Registration Statement (or any subsequent Shelf Registration Statement) or prepare and, if required by applicable law, file a Prospectus or a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement (or any subsequent Shelf Registration Statement) and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Transfer Restricted Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the “**Amendment Effectiveness Deadline Date**”) that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed;

(ii) provide such Holder copies of any documents filed pursuant to Section 2(f)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(f)(i);

provided that if such Notice and Questionnaire is delivered during a Suspension Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Suspension Period in accordance with Section 5(b). Notwithstanding anything contained herein to the contrary, during any period during which the Company is not entitled to file a Prospectus or a supplement to a Prospectus (related to an automatic shelf registration statement) naming new selling security holders, the Amendment Effectiveness Deadline Date shall be extended by up to five Business Days from the expiration of a Suspension Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Suspension Period shall be in effect on the Amendment Effectiveness Deadline Date.

3. *[Intentionally Omitted.]*

4. *Liquidated Damages.*

(a) If:

(i) the Shelf Registration Statement is not filed with the Commission prior to or on the Shelf Filing Deadline; or

(ii) the Shelf Registration Statement has not been declared (or does not otherwise become) effective or a Prospectus has not been prepared and filed with the Commission that is available for resales by the Holders of Transfer Restricted Securities, in each case, prior to or on the Effectiveness Target Date or a post-effective amendment required to be filed by Section 2(f) is not declared effective by the applicable Amendment Effectiveness Deadline Date; or

(iii) after the Shelf Registration Statement has been declared effective, Transfer Restricted Securities may not be disposed of by a Holder as a result of the delivery of a Suspension Notice or the Shelf Registration Statement shall cease for any reason (except as provided in Section 5(b)(ii) hereof) to remain continuously effective, supplemented and amended as required by the Securities Act and by the provisions hereof to the extent necessary to ensure that it(A) is available for resales by the Holders of Transfer Restricted Securities and (B) conforms with the requirements of this Agreement and the Securities Act and the rules and regulations of the Commission promulgated thereunder as announced; or

(iv) the Company fails to comply with Section 6.08 of the Purchase Agreement at any time during the Effectiveness Period;

(each such event referred to in foregoing clauses (i) through (iv), a (“**Registration Default**”)), the Company hereby agrees to pay damages (“**Liquidated Damages**”) with respect to the Transfer Restricted Securities for a Registration Default at a per thirty-day rate of 1.00% of the purchase price of the Common Stock under the Purchase Agreement

to which such Transfer Restricted Securities relates, which shall accrue daily from the date of such Registration Default with respect to the first thirty-day period or ratable portion of a thirty-day period following the incurrence of a Registration Default, until the date on which (A) all Registration Defaults have been cured, *provided however*, that in no event will the Liquidated Damages exceed in the aggregate 10.0% of the purchase price of the Common Stock under the Purchase Agreement to which such Transfer Restricted Securities relates; and

(b) All accrued Liquidated Damages shall be paid in arrears to Record Holders by the Company on each Liquidated Damages Payment Date. Upon the cure of all Registration Defaults relating to any particular share of Common Stock or upon a particular share of Common Stock ceasing to be a Transfer Restricted Security, the accrual of Liquidated Damages with respect to such share of Common Stock will cease.

All obligations of the Company to pay Liquidated Damages set forth in this Section 4 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such Transfer Restricted Security shall have been satisfied in full.

The Liquidated Damages set forth above shall be the exclusive monetary remedy available to the Holders of Transfer Restricted Securities for each Registration Default.

5. *Registration Procedures.*

(a) In connection with the Shelf Registration Statement or Subsequent Shelf Registration Statement, the Company shall comply with all the provisions of Section 5(b) hereof and shall use its reasonable best efforts to effect such registration in accordance with the terms hereof to permit the sale of the Transfer Restricted Securities.

(b) In connection with the Shelf Registration Statement or Subsequent Shelf Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities, the Company shall:

(i) Subject to any notice by the Company in accordance with this Section 5(b) of the existence of any fact or event of the kind described in Section 5(b)(iv)(D), use its reasonable best efforts to keep the registration statement continuously effective during the Effectiveness Period (in the case of a Shelf Registration Statement or a Subsequent Shelf Registration Statement) or until all securities to be sold thereunder have been sold pursuant to such registration statement (as applicable, the “**Applicable Period**”); upon the occurrence of any event that would cause the registration statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective or usable for resale of Transfer Restricted Securities during the Effectiveness Period, the Company shall file promptly an appropriate amendment to the registration statement, a supplement to or amendment of the Prospectus or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the



case of either clause (A) or (B), use its reasonable best efforts to cause any such amendment to be declared effective and the registration statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter.

(ii) Notwithstanding Section 5(b)(i) hereof, the Company may suspend the effectiveness of the Shelf Registration Statement or any Subsequent Shelf Registration (each such period, a “**Suspension Period**”) if (i) the Company is pursuing an acquisition, merger, reorganization, disposition or other similar transaction and the Company determines in good faith that the Company’s ability to pursue or consummate such a transaction would be materially adversely affected by any required disclosure of such transaction in the Shelf Registration Statement or any subsequent Shelf Registration Statement, (ii) the Company has experienced some other material event the disclosure of which at such time, in the good faith judgment of the Company’s board of directors, based upon the advice of counsel, would materially adversely affect the Company, (iii) in the reasonable opinion of the Company’s independent auditors or the counsel for the Company, audited annual, unaudited interim and pro forma financial statements are required to be included in the Prospectus pursuant to the rules and regulations of the Commission and have not been so included, or (iv) the Commission issues a stop order in respect of the Shelf Registration Statement or otherwise prohibits the use of the Prospectus. Upon such suspension, the Company shall give notice to the Holders that the availability of the registration statement is suspended and, upon actual receipt of any such notice, each Holder agrees not to sell any Transfer Restricted Securities pursuant to the registration statement until such Holder’s receipt of copies of the supplemented or amended Prospectus provided for in Section 5(b)(i) hereof. The Suspension Period shall not exceed an aggregate of 120 days in any 360-day period. The Company shall not be required to specify in the written notice to the Holders the nature of the event giving rise to the Suspension Period and no Liquidated Damages shall accrue or be payable with respect to any Suspension Period that does not exceed the number of days specified in the preceding sentence. The Company shall promptly notify the Holders when any Suspension Period with respect to the Shelf Registration Statement has been lifted.

(iii) (x) Prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement, the Subsequent Shelf Registration Statement as may be necessary to keep the registration statement effective during the Applicable Period; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all Common Stock covered by the registration statement during the Applicable Period in accordance with the intended method or methods of distribution by the selling Holders thereof set forth in the registration statement or supplement to the Prospectus; and (y) furnish to each Holder (i) as far as in advance as reasonably practicable before filing the Prospectus or any supplement or amendment thereto,

copies of reasonably complete drafts of all such documents proposed to be filed, and provide each such Holder the opportunity to object to any information pertaining to such Holder and its plan of distribution that is contained therein and make the corrections reasonably requested by such Holder with respect to such information prior to filing the Prospectus or supplement or amendment thereto, and (ii) such number of copies of the Prospectus and any supplements and amendments thereto as such Persons may reasonably request in order to facilitate the public sale or other disposition of the Transfer Restricted Securities covered by such Prospectus.

(iv) Advise any selling Holder that has provided in writing to the Company a telephone or facsimile number and address for notice, promptly and, if requested by such selling Holder, to confirm such advice in writing (which notice pursuant to clauses (B) through (D) below shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to the registration statement or any post-effective amendment thereto, when the same has become effective,

(B) of any request by the Commission for amendments to the registration statement or amendments or supplements to the Prospectus or for additional information relating thereto,

(C) of the issuance by the Commission of any stop order suspending the effectiveness of the registration statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the threatening or initiation of any proceeding for any of the preceding purposes, or

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the registration statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the registration statement or the Prospectus in order to make the statements therein not misleading.

(v) If at any time the Commission shall issue any stop order suspending the effectiveness of the registration statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or Blue Sky laws, use its best efforts to obtain the withdrawal or lifting of such order at the earliest possible time and will provide to each Holder who is

named in the registration statement prompt notice of the withdrawal of any such order.

(vi) If requested by any selling Holders, promptly incorporate in the registration statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders may reasonably request to have included therein, including, without limitation, information relating to the "Plan of Distribution" of the Transfer Restricted Securities; *provided, however*, that nothing herein shall be deemed to require the Company to participate in any underwritten offering of any Transfer Restricted Securities or to include information relating to an underwritten offering in the Plan of Distribution;

(vii) Before any public offering of Transfer Restricted Securities, cooperate with the selling Holders and their counsel in connection with the registration and qualification of the Transfer Restricted Securities under the securities or blue sky laws of such jurisdictions in the United States as the selling Holders may reasonably request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the registration statement; *provided, however*, that the Company shall not be required (A) to register or qualify as a foreign corporation where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject, other than service of process for suits arising out of any offering pursuant to the registration statement, or (B) to subject itself to general or unlimited service of process or to taxation in any such jurisdiction if they are not now so subject.

(viii) Unless any Transfer Restricted Securities shall be in book-entry form only, cooperate with the selling Holders to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends (unless required by applicable securities laws); and use best efforts to have such Transfer Restricted Securities in such denominations and registered in such names as the Holders may request at least two Business Days before any sale of Transfer Restricted Securities.

(ix) Subject to Section 5(b)(ii) hereof, if any fact or event contemplated by Section 5(b)(iv)(B) through (D) hereof shall exist or have occurred, use its reasonable best efforts to as promptly as practicable prepare a supplement or post-effective amendment to the Shelf Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(x) Provide CUSIP numbers for all Transfer Restricted Securities not later than the effective date of the Shelf Registration Statement and provide the Transfer Agent with certificates for Common Stock.

(xi) Cooperate and assist in any filings required to be made with the NASD.

(xii) Otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the rules and regulations of the Exchange Act.

(xiii) Make generally available to its security holders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the registration statement.

(xiv) Use its reasonable best efforts to list the Transfer Restricted Securities on the same principal stock exchanges on which securities of the same class of the Company are listed, and thereafter maintain the listing on such exchange of the Transfer Restricted Securities as long as securities of the same class of the Company are so listed.

(xv) Provide to each Holder upon written request each document filed with the Commission pursuant to the requirements of Section 13 and Section 15 of the Exchange Act after the effective date of the Shelf Registration Statement, unless such document is available through the Commission's EDGAR system.

(c) Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice (a "**Suspension Notice**") from the Company of the existence of any fact of the kind described in Section 5(b)(ii) or (iv) hereof, such Holder will forthwith discontinue disposition of Transfer Restricted Securities pursuant to the Shelf Registration Statement until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 5(b)(ix) hereof; or

(ii) such Holder is advised in writing by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus.

If so directed by the Company, each Holder will deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such Suspension Notice.

(d) Each Holder agrees by acquisition of a Transfer Restricted Security, that no Holder shall be entitled to sell any of such Transfer Restricted Securities pursuant to a Shelf Registration Statement or Subsequent Shelf Registration Statement, or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a properly completed and signed Notice and Questionnaire (including the information

required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. The Company may require each Notice Holder of Common Stock to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Common Stock as the Company may from time to time reasonably require for inclusion in such Shelf Registration Statement. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Transfer Restricted Securities as the Company may from time to time reasonably request in writing. Any sale of any Transfer Restricted Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its Plan of Distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its Plan of Distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its Plan of Distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made not misleading. The Company may exclude from such Shelf Registration Statement or Subsequent Shelf Registration Statement the Common Stock of any Holder that unreasonably fails to furnish such information within five Business Days after receiving such request. The Company shall not include in any registration statement any information regarding, relating to, or referring to any Holder or its Plan of Distribution without the approval of such Holder in writing (not to be unreasonably withheld).

6. *Registration Expenses.*

All expenses incident to the Company's performance of or compliance with this Agreement shall be borne by the Company regardless of whether a registration statement becomes effective, including, without limitation:

- (a) all registration and filing fees and expenses (including filings made with the NASD);
- (b) all fees and expenses of compliance with federal securities and state blue sky or securities laws;
- (c) all expenses of printing (including printing of Prospectuses and, if applicable, certificates for the Common Stock) and the Company's expenses for messenger and delivery services and telephone;
- (d) all fees and disbursements of counsel to the Company;
- (e) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(f) all fees and disbursements of independent certified public accountants of the Company.

The Company shall bear its internal expenses (including, without limitation, all salaries and expenses of their officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Company.

7. *Indemnification And Contribution.*

(a) The Company agrees to indemnify and hold harmless each Holder of Transfer Restricted Securities, its directors, officers, and employees, Affiliates and agents and each Person, if any, who controls any such Holder within the meaning of the Securities Act or the Exchange Act (each, an “**Indemnified Holder**”), against any loss, claim, damage, liability or expense, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to resales of the Transfer Restricted Securities), to which such Indemnified Holder may become subject, insofar as any such loss, claim, damage, liability or action arises out of, or is based upon:

(i) any untrue statement or alleged untrue statement of a material fact contained in (A) the Shelf Registration Statement or any Subsequent Shelf Registration Statement as originally filed or in any amendment thereof, in any Prospectus, or in any amendment or supplement thereto, or (B) any blue sky application or other document or any amendment or supplement thereto prepared or executed by the Company (or based upon written information furnished by or on behalf of the Company expressly for use in such blue sky application or other document or amendment or supplement) filed in any jurisdiction specifically for the purpose of qualifying any or all of the Transfer Restricted Securities under the securities law of any state or other jurisdiction (such application or document being hereinafter called a “**Blue Sky Application**”); or

(ii) the omission or alleged omission to state therein any material fact required to be stated therein or necessary to make the statements therein not misleading,

and agrees to reimburse each Indemnified Holder promptly upon demand for any legal or other expenses reasonably incurred by such Indemnified Holder in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or expense arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company relating to a Holder by or on behalf of such Holder (or its related Indemnified Holder) specifically for use therein.

The Company also agrees to indemnify as provided in this Section 7(a) or contribute as provided in Section 7(e) hereof to Losses (as defined below) of each Underwriter, if any, of

Common Stock registered under a Shelf Registration Statement, any Subsequent Shelf Registration Statement, their directors, officers, employees, Affiliates or agents and each person who controls such Underwriter on substantially the same basis as that of the indemnification of the selling Holders provided in this Section 7(a) and shall, if requested by any Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 5(b)(xvi) hereof.

(b) Each Holder, severally and not jointly, agrees to indemnify and hold harmless the Company, its directors, officers and employees, Affiliates and agents and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act to the same extent as the foregoing indemnity from the Company to each such Holder, but only with respect to any material misstatements or omissions in the written information relating to such Holder furnished to the Company by or on behalf of such Holder that has been specifically included in a registration statement. In no event shall any Holder, its directors, officers and employees, Affiliates and agents or any person who controls such Holder be liable or responsible for any amount in excess of the amount by which the proceeds received by such Holder with respect to its sale of Transfer Restricted Securities pursuant to a Shelf Registration Statement or Subsequent Shelf Registration Statement exceeds the amount paid by such Holder for such Transfer Restricted Securities.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party (i) shall not relieve it from any liability which it may have under paragraphs (a) or (b) of this Section 7 unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses, and (ii) shall not, in any event, relieve it from any liability which it may have to an indemnified party otherwise than under paragraphs (a) or (b) of this Section 7. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 7 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that the Holders shall have the right to employ a single counsel to represent jointly the Holders and their officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Holders against the Company under this Section 7 if the Holders seeking indemnification shall have been advised by legal counsel that there may be one or more legal defenses available to such Holders and their respective officers, employees and controlling persons that are different from or additional to those available to the Company, and in that event, the fees and expenses of such separate counsel shall be paid by the Company.

(d) The indemnifying party under this Section 7 shall not be liable for any settlement of any proceeding effected without its written consent, which shall not be withheld unreasonably, but if settled with such consent or if there is a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 7(c) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (x) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (y) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) If the indemnification provided for in this Section 7 shall for any reason be unavailable or insufficient to hold harmless an indemnified party under Section 7(a) or 7(b) in respect of any loss, claim, damage or liability (or action in respect thereof) referred to therein, each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the aggregate amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, liability, damage or action) (collectively "**Losses**") (or action in respect thereof):

(i) in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and the Holders on the other in connection with the statements or omissions or alleged statements or alleged omissions that resulted in such loss, claim, damage or liability (or action in respect thereof), or

(ii) if the allocation provided by Section 7(e)(i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative fault referred to in Section 7(e)(i) but also the relative benefits received by the Company from the offering and sale of the Transfer Restricted Securities on the one hand and a Holder with respect to the sale by such Holder of the Transfer Restricted Securities on the other), as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and a Holder on the other with respect to such offering and such sale shall be deemed to be in the same proportion as the net proceeds from the offering of the Common Stock purchased under the Purchase



Agreement (before deducting expenses) received by the Company, on the one hand, bear to the total proceeds received by such Holder with respect to its sale of Transfer Restricted Securities on the other. The relative fault of the parties shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or written information furnished to the Company by or on behalf of the Holders specifically for use in a registration statement on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and each Holder agree that it would not be just and equitable if the amount of contribution pursuant to this Section 7(e) were determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the first sentence of this paragraph (e).

The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 7 shall be deemed to include, for purposes of this Section 7, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim.

No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute as provided in this Section 7(e) are several and not joint.

(f) The provisions of this Section 7 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive the sale by a Holder of Transfer Restricted Securities.

8. *Rule 144A and Rule 144.* The Company agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding and during any period in which the Company (i) is not subject to Section 13 or 15(d) of the Exchange Act, to make available, upon request of any Holder, to such Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities designated by such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A, and (ii) is subject to Section 13 or 15 (d) of the Exchange Act, to make all filings required thereby in a timely manner in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144.

9. [*Intentionally Omitted.*]

10. *Miscellaneous.*

(a) *Remedies.* The Company acknowledges and agrees that any failure by the Company to comply with its obligations hereunder may result in material irreparable

injury to the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely, and that, in the event of any such failure, in addition to being entitled to exercise all rights provided to it herein or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, any Holder may obtain such relief as may be required to specifically enforce the Company's obligations hereunder. The Company further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) *Actions Affecting Transfer Restricted Securities.* The Company shall not, directly or indirectly, take any action that would adversely affect the ability of the Holders of Transfer Restricted Securities to include such Transfer Restricted Securities in a registration undertaken pursuant to this Agreement.

(c) *No Inconsistent Agreements.* The Company has not, as of the date hereof, entered into, nor shall it, on or after the date hereof, enter into, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(d) *Amendments and Waivers.* This Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Company has obtained the written consent of a Majority of Holders; *provided, however,* that with respect to any matter that directly or indirectly adversely affects the rights of a Holder or Holders in a manner different than a manner in which it affects the rights of other Holders, the Company shall obtain the written consent of such adversely affected Holders. Notwithstanding the foregoing (except the foregoing proviso), a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Shelf Registration Statement and does not directly or indirectly adversely affect the rights of other Holders, may be given by a Majority of Holders, determined on the basis of Common Stock being sold rather than registered under such Shelf Registration Statement.

(e) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first class mail (registered or certified, return receipt requested), facsimile transmission, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the transfer agent of the Common Stock:

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

Pillsbury Winthrop Shaw Pittman LLP  
1540 Broadway  
New York, NY 10036-4039  
Facsimile: 212-858-1500  
Attention: Jeffrey Delaney;

With an additional copy (for informational purposes) to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
Facsimile: 212-593-5955  
Attention: Eleazer Klein, Esq.; and

(ii) if to the Company, initially at its address set forth in the Purchase Agreement,

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

Morgan, Lewis & Bockius LLP  
300 South Grand Avenue, Twenty-Second Floor  
Los Angeles, California 90071-3132  
Facsimile: 213-612-2501  
Attention: Richard A. Shortz, Esq.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Any party hereto may change the address for receipt of communications by giving written notice to the others.

(f) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders of Transfer Restricted Securities. The Company hereby agrees to extend the benefit of this Agreement to any Holder and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

(g) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so

executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) *Jurisdiction.* The Company agrees that any suit, action or proceeding against the Company brought by any Holder, the directors, officers, employees, Affiliates and agents of any Holder, or by any person who controls any Holder, arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in any State or U.S. federal court in The City of New York and County of New York, and waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Company hereby appoints Corporation Service Company as its authorized agent (the “**Authorized Agent**”) upon whom process may be served in any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated herein which may be instituted in any State or U.S. federal court in The City of New York and County of New York, by any Holder, the directors, officers, employees, Affiliates and agents of any Holder, or by any person who controls any Holder, and expressly accepts the non-exclusive jurisdiction of any such court in respect of any such suit, action or proceeding. The Company hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Company agrees to take any and all action, including the filing of any and all documents that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Company. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment in full force and effect so long as any of the securities remain Transfer Restricted Securities. To the extent that the Company may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity in respect of this Agreement, to the fullest extent permitted by law. Notwithstanding the foregoing, any action arising out of or based upon this Agreement may be instituted by any Holder, the directors, officers, employees, Affiliates and agents of any Holder, or by any Person who controls any Holder, in any court of competent jurisdiction.

(i) *Common Stock Held by the Company or Their Affiliates.* Whenever the consent or approval of Holders of a specified percentage of Transfer Restricted Securities is required hereunder, Transfer Restricted Securities held by the Company or its Affiliates (other than subsequent Holders if such subsequent Holders are deemed to be Affiliates solely by reason of their holding of such Common Stock) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(j) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(k) *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of New York.

(l) *Severability.* If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(m) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Company with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter

(n) *Form S-3.* The Company shall file the Shelf Registration Statement on Form S-3. In the event that Form S-3 is not available for the registration of the resale of the Common Stock hereunder, the Company shall (i) register the resale of the Common Stock on another appropriate form reasonably acceptable to the Holders of a majority of the Common Stock and (ii) undertake to register the Common Stock on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Shelf Registration Statement then in effect until such time as a Shelf Registration Statement on Form S-3 covering the Common Stock has been declared effective by the Commission.

(o) *Notification of Transfer Agent.* As promptly as practicable after a Prospectus or supplement thereto for resale of the Transfer Restricted Securities is ordered effective by the Commission, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Common Stock (with copies to the Holder whose Common Stock is included in such Prospectus or supplement thereto) confirmation that such Prospectus or supplement thereto has been declared effective by the Commission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**COMPANY:**

**BLACK HILLS CORPORATION**

By: /s/ Mark T. Thies  
Name: Mark T. Thies  
Title: Executive Vice President & CFO

**THE PURCHASERS:**

**Capital Ventures International**

By: Heights Capital Management, Inc.,  
its authorized agent

By: /s/ Martin Kobinger  
Name: Martin Kobinger  
Title: Investment Manager

**THE PURCHASERS:**

**FrontPoint Energy Horizons Fund, L.P.**

By: /s/ T.A. McKinney

By: FrontPoint Energy Horizons Fund GP, LLC

Name: T.A. McKinney

Title: Authorized Signatory



**THE PURCHASERS:**

**FrontPoint Utility and Energy Fund, L.P.**

By: T.A. McKinney

By: FrontPoint Utility and Energy Fund GP, LLC

Name: T.A. McKinney

Title: Authorized Signatory

**THE PURCHASERS:**

**STEELHEAD INVESTMENTS LTD.**

By: /s/J. Baker Gentry, Jr.

By: HBK SERVICES LLC,  
Investment Advisor

Name: J. Baker Gentry, Jr.  
Title: Authorized Signatory

Address for Notice

c/o HBK Services LLC  
300 Crescent Court, Suite 700  
Dallas, TX 75201

Facsimile: (214) 758-1207

With a copy to:  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Eleazer Klein, Esq.  
Facsimile: (212) 593-5955

**THE PURCHASERS:**

**T. Rowe Price Associates, Inc.**, as  
Investment Advisor to, and on behalf of  
The Participating Funds in Attachment A

By: /s/ Andrew M. Brooks

Name: Andrew M. Brooks  
Title: Vice President

Address for Notice

T. Rowe Price Associates, Inc.  
100 East Pratt Street  
Baltimore, MD 21202  
Attn: Darrell N. Braman

Facsimile: (410) 345-6575

**THE PURCHASERS:**

**ZLP Master Opportunity Fund, Ltd.**

By: Zimmer Lucas Capital, LLC, its Investment Manager

By: /s/ Devin Geoghegan  
Name: Devin Geoghegan  
Title: Partner

**THE PURCHASERS:**

**ZLP Master Utility Fund, Ltd.**

By: Zimmer Lucas Capital, LLC its Investment Manager

By: Devin Geoghegan  
Name: Devin Geoghegan  
Title: Partner

BLACK HILLS CORPORATION

FORM OF SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of securities of Black Hills Corporation (the "Company") understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Transfer Restricted Securities, in accordance with the terms of the registration rights agreement, to be dated as of February 14, 2007 (the "Registration Rights Agreement"), between the Company and the Purchasers named therein. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial holder of Transfer Restricted Securities (each a "beneficial owner"), is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Transfer Restricted Securities pursuant to the Shelf Registration Statement or any Subsequent Shelf Registration Statement, a beneficial owner of Transfer Restricted Securities generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers of Transfer Restricted Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions as described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling securityholders in the prospectus and therefore will not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement or any Subsequent Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the Shelf Registration Statement or any Subsequent Shelf Registration Statement or prior to the preparation of a prospectus that will be available for resales so that such beneficial owners may be named as selling securityholders in such prospectus at the time of effectiveness or at the time such prospectus is filed with the Commission. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement or any Subsequent Shelf Registration Statement or the preparation and filing of the initial prospectus naming the initial selling security holders, the Company will, within ten (10) business days after such receipt, file such amendments to the Shelf Registration Statement or any Subsequent Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Transfer Restricted Securities. The Company has agreed to pay liquidated damages pursuant to the Registration Rights Agreement under certain circumstances set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement or any Subsequent Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Transfer Restricted Securities are advised to consult their own securities law counsel regarding the consequences of being named

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or not being named as a selling securityholder in the Shelf Registration Statement or any Subsequent Shelf Registration Statement and the related prospectus.

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## NOTICE

The undersigned beneficial owner (the "Selling Securityholder") of Transfer Restricted Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Transfer Restricted Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under such Item 3) pursuant to the Shelf Registration Statement or any Subsequent Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors and officers and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made, with the approval of the undersigned, not to be unreasonably withheld, in the Company's Shelf Registration Statement or any Subsequent Shelf Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

If the Selling Securityholder transfers all or any portion of the Transfer Restricted Securities listed in Item 3 below after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Notice and Questionnaire and the Registration Rights Agreement.

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## QUESTIONNAIRE

Please respond to every item, even if your response is "none." If you need more space for any response, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the following questions.

If you have any questions about the contents of this Questionnaire or as to who should complete this Questionnaire, please contact the General Counsel of the Company at telephone number:

[ \_\_\_\_\_ ]

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

1. Your Identity and Background as the Beneficial Owner of the Transfer Restricted Securities.

(a) Your full legal name:

\_\_\_\_\_

(b) Your business address (including street address) (or residence if no business address), telephone number and facsimile number:

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

(c) Are you a broker-dealer registered pursuant to Section 15 of the Exchange Act?

Yes.

No.

(d) If your response to Item 1(c) above is no, are you an "affiliate" of a broker-dealer registered pursuant to Section 15 of the Exchange Act?

Yes.

No.

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For the purposes of this Item 1(d), an “affiliate” of a registered broker-dealer includes any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such broker-dealer, and does not include any individuals employed by such broker-dealer or its affiliates.

(e) Full legal name of person through which you hold the Transfer Restricted Securities — (i.e., name of your broker or the DTC participant, if applicable, through which your Transfer Restricted Securities are held):

Name of Broker: \_\_\_\_\_

DTC No.: \_\_\_\_\_

Contact person: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

2. Your Relationship with the Company.

(a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) held any position or office or have you had any other material relationship with the Company (or its predecessors or affiliates) within the past three years?

Yes.

No.

(b) If your response to Item 2(a) above is yes, please state the nature and duration of your relationship with the Company:

\_\_\_\_\_  
\_\_\_\_\_

3. Your Interest in the Transfer Restricted Securities.

(a) State the type and amount of Transfer Restricted Securities beneficially owned by you:

\_\_\_\_\_

State the CUSIP No(s). of such Transfer Restricted Securities beneficially owned by you:

\_\_\_\_\_

(b) Other than as set forth in your response to Item 3(a) above, do you beneficially own any other securities of the Company?

Yes.

No.

(c) If your answer to Item 3(b) above is yes, state the type, the aggregate amount and CUSIP No. of such other securities of the Company beneficially owned by you:

Type: \_\_\_\_\_

Aggregate amount: \_\_\_\_\_

CUSIP No.: \_\_\_\_\_

(d) Did you acquire the securities listed in Item 3(a) above in the ordinary course of business?

Yes.

No.

(e) At the time of your purchase of the securities listed in Item 3(a) above, did you have any agreements or understandings, direct or indirect, with any person to distribute the securities?

Yes.

No.

(f) If your response to Item 3(e) above is yes, please describe such agreements or understandings:

\_\_\_\_\_  
\_\_\_\_\_

4. Nature of your Beneficial Ownership.

(a) Check if the beneficial owner set forth in your response to Item 1(a) is any of the below:

(i) A reporting company under the Exchange Act.

(ii) A majority owned subsidiary of a reporting company under the Exchange Act.

(iii) A registered investment fund under the 1940 Act.

(b) If the beneficial owner of the Transfer Restricted Securities set forth in your response to Item 1(a) above is a limited partnership, state the names of the general partners of such limited partnership:

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(i) With respect to each general partner listed in Item 4(b) above who is not a natural person and is not publicly-held, name each shareholder (or holder of partnership interests, if applicable) of such general partner. If any of these named shareholders are not natural persons or publicly-held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly-held entity.

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(c) Name your controlling shareholder(s) (the "Controlling Entity"). If the Controlling Entity is not a natural person and is not a publicly-held entity, name each shareholder of such Controlling Entity. If any of these named shareholders are not natural persons or publicly-held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly-held entity.

(i) (A) Full legal name of Controlling Entity(ies) or natural person(s) who have sole or shared voting or dispositive power over the Transfer Restricted Securities:

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(B) Business address (including street address) (or residence if no business address), telephone number and facsimile number of such person(s):

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

(C) Name of shareholders: \_\_\_\_\_

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(ii) (A) Full legal name of Controlling Entity(ies):

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(B) Business address (including street address) (or residence if no business address), telephone number and facsimile number of such person(s):

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

\_\_\_\_\_

Fax No.: \_\_\_\_\_

\_\_\_\_\_

(iii) Name of shareholders:

\_\_\_\_\_

\_\_\_\_\_

5. Short Positions

(A) Do you have an existing short position in the equity securities of the Company?

Yes.

No.

(B) If the answer to (A) is "Yes," please describe the equity securities involved and the size of the short position.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(C) If the answer to (A) is “Yes” and the short position was created prior to the registration of the Transfer Restricted Securities, the short position may not be closed out with any Transfer Restricted Securities you own.

#### 6. Plan of Distribution.

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Transfer Restricted Securities listed above in Item 3 pursuant to the Shelf Registration Statement or Subsequent Shelf Registration Statement only as follows (if at all): Such Transfer Restricted Securities may be sold from time to time directly by the undersigned or, alternatively, through Underwriters, broker-dealers or agents. If the Transfer Restricted Securities are sold through Underwriters, broker-dealers or agents, the Selling Securityholder will be responsible for underwriting discounts or commissions or agents’ commissions in accordance with the Registration Rights Agreement. Such Transfer Restricted Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. Such sales may be effected in transactions (which may involve block transactions) (i) on any national securities exchange or quotation service on which the Transfer Restricted Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market. The Selling Securityholder may pledge or grant a security interest in some or all of the Transfer Restricted Securities owned by it and, if it defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the Transfer Restricted Securities from time to time pursuant to the prospectus. The Selling Securityholder also may transfer and donate the Transfer Restricted Securities in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling securityholder for purposes of this prospectus.

State any exceptions here:

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*Note:* In no event will such method(s) of distribution take the form of an underwritten offering of the Transfer Restricted Securities without the prior written agreement of the Company.

The undersigned acknowledges its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Transfer Restricted Securities pursuant to the Registration Rights Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The undersigned beneficial owner and selling securityholder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein. Pursuant to the Registration Rights Agreement, the Company has

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agreed under certain circumstances to indemnify the undersigned beneficial owner and selling securityholder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement or Subsequent Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement or Subsequent Shelf Registration Statement remains effective.

All notices to the beneficial owner hereunder and pursuant to the Registration Rights Agreement shall be made in writing to the undersigned at the address set forth in Item 1(b) of this Notice and Questionnaire.

By signing below, the undersigned acknowledges that it is the beneficial owner of the Transfer Restricted Securities set forth herein, consents to the disclosure of the information contained in this Notice and Questionnaire and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

Once this Notice and Questionnaire is executed by the undersigned beneficial owner and received by the Company, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the undersigned beneficial owner. This Notice and Questionnaire shall be governed in all respects by the laws of the State of New York, without giving effect to rules governing the conflict of laws.

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IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

NAME OF BENEFICIAL OWNER:

\_\_\_\_\_ (Please Print)

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

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

**PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO BLACK HILLS CORPORATION AS FOLLOWS:**

Black Hills Corporation  
624 Ninth Street, P.O. Box 1400  
Rapid City, SD 57709  
Attention: Steven J. Helmers, Esq.  
Facsimile: (605) 721-2550

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