

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 8-K

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

Date of Report (Date of earliest event reported) **November 17, 2015**

Black Hills Corporation

(Exact name of registrant as specified in its charter)

South Dakota

(State or other jurisdiction of incorporation)

001-31303

(Commission File Number)

46-0458824

(IRS Employer Identification No.)

625 Ninth Street

Rapid City, South Dakota

(Address of principal executive offices)

57709-1400

(Zip Code)

605.721-1700

(Registrants telephone number, indicating area code)

Not Applicable

(Former name or former address, if changed since last report)

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 materials 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(d))
- 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 under Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 2.03 **Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure under Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01 **Other Events.**

Completion of Common Stock and Equity Units Offerings

On November 23, 2015, Black Hills Corporation (the “Company”) issued 6,325,000 shares of the Company’s common stock, par value \$1.00 per share (the “Common Stock”), at a price of \$40.25 per share (the “Common Shares”). The Common Shares were issued and sold pursuant to the Underwriting Agreement dated November 17, 2015 among the Company and the several Underwriters named in Schedule A thereto (the “Common Stock Underwriting Agreement”), for whom Credit Suisse Securities (USA) LLC (“Credit Suisse”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), RBC Capital Markets, LLC (“RBC”) and Wells Fargo Securities, LLC (“Wells Fargo”) acted as representatives. Such issuance included 825,000 Common Shares that were issued and sold pursuant to the Underwriters’ option to purchase additional shares under the Common Stock Underwriting Agreement, which was exercised in full on November 19, 2015.

In addition, on November 23, 2015, the Company issued 5,980,000 Equity Units, initially consisting of Corporate Units (the “Corporate Units”), for an aggregate stated amount of \$299 million, as more fully described below. The Corporate Units were issued and sold pursuant to the Underwriting Agreement dated November 17, 2015 among the Company and the several Underwriters named in Schedule A thereto (the “Units Underwriting Agreement”) and together with the Common Stock Underwriting Agreement, the “Underwriting Agreements”), for whom Credit Suisse, Wells Fargo, RBC and Merrill

Lynch acted as representatives. Such issuance included 780,000 Corporate Units that were issued pursuant to the Underwriters' option to purchase additional Corporate Units under the Units Underwriting Agreement, which was exercised in full on November 20, 2015.

Each of the Underwriting Agreements contains representations and warranties and covenants that are customary for transactions of this type. In addition, the Company has agreed to indemnify the Underwriters against certain liabilities on customary terms. Some of the Underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings, including but not limited to commercial lending services, with the Company, its direct or indirect subsidiaries or its affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

The Common Shares and the Corporate Units have been issued pursuant to the Company's Registration Statement on Form S-3 (Registration No. 333-197895) (as amended, the "Registration Statement"), which became effective upon filing with the Securities and Exchange Commission, and the related Prospectus dated November 16, 2015 and Prospectus Supplements, each dated November 17, 2015. Copies of the Underwriting Agreements and opinions related to the Common Stock and the Corporate Units are attached hereto as exhibits and are expressly incorporated by reference herein and into the Registration Statement. The foregoing descriptions of the terms of the Underwriting Agreements are qualified in their entirety by reference to the actual terms of the applicable exhibits attached hereto.

Terms of Equity Units and Junior Subordinated Notes

Each Corporate Unit has a stated amount of \$50 and is comprised of (i) a purchase contract obligating the holder to purchase from the Company for a price in cash of \$50, on the purchase contract

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settlement date, or November 1, 2018, subject to earlier termination or settlement, a certain number of shares of Common Stock; and (ii) a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of the Company's 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 (the "Notes"). In addition to interest payable under the Notes, holders of the Corporate Units will be entitled to receive quarterly contract adjustment payments at a rate of 4.25% per year on the stated amount of \$50 per Corporate Unit, subject to the Company's right to defer such contract adjustment payments.

The Corporate Units are being issued pursuant to the Purchase Contract and Pledge Agreement dated as of November 23, 2015 (the "Purchase Contract and Pledge Agreement") between the Company and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary.

The Notes are being issued pursuant to the Junior Subordinated Indenture dated as of November 23, 2015 between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture dated as of November 23, 2015 (as supplemented, the "Indenture"). The Notes bear interest at the applicable rate per annum listed in the description of the Notes above, payable quarterly in arrears on February 1, May 1, August 1 and November 1 of each year, beginning on February 1, 2016, subject to the Company's right to defer such interest payments. The Notes are the unsecured and subordinated obligations of the Company and will rank junior in payment to all of our existing and future priority indebtedness, as defined in the Indenture. The Indenture provides for customary events of default (subject in certain cases to customary grace and cure periods), which include among other things nonpayment, breach of covenants in the Indenture and certain events of bankruptcy and insolvency. If an event of default occurs and is continuing, the Trustee or holders of at least 25% in principal amount outstanding of the Notes may declare the principal and the accrued and unpaid interest, if any, on all of the Notes to be due and payable. These events of default are subject to a number of important qualifications, limitations and exceptions that are described in the Indenture.

Under the terms of the Purchase Contract and Pledge Agreement, the Notes are being pledged as collateral to secure the holders' obligation to purchase the shares of Common Stock under the related purchase contracts that form a part of the Corporate Units. A holder of Corporate Units, at its option, may elect to create "Treasury Units" by substituting pledged U.S. Treasury securities for any pledged ownership interests in the Notes. The Notes will be remarketed, subject to certain terms and conditions, prior to the purchase contract settlement date pursuant to the terms of the Purchase Contract and Pledge Agreement and a remarketing agreement to be executed in the future. Following any successful remarketing of the Notes, as contemplated by the Indenture and the Purchase Contract and Pledge Agreement, the interest rate on the Notes may be reset, interest will be payable semi-annually in arrears on May 1 and November 1, and the Company will no longer have the right to defer interest on the Notes.

Copies of the Purchase Contract and Pledge Agreement, the Indenture, the form of remarketing agreement, the form of Corporate Units, the form of Treasury Units and the form of Note are attached hereto as exhibits and are expressly incorporated by reference herein and into the Registration Statement. The foregoing descriptions are qualified in their entirety by reference to the actual terms of the exhibits attached hereto.

Automatic Reduction of Bridge Facility Commitments

The net proceeds from the offerings of Common Stock and Corporate Units constitute "Net Cash Proceeds" arising from "Equity Issuances," each as defined in the existing Bridge Term Loan Agreement dated as of August 6, 2015 among the Company, as Borrower, the financial institutions from time to time party thereto, as Banks, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent (the "Bridge Facility"). As a result, the commitments of the Banks under our Bridge Facility, originally \$1.17 billion, have been automatically reduced by the amount of the net proceeds from these offerings.

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Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are being filed herewith:

Number

Exhibit

- 1.1 Common Stock Underwriting Agreement dated November 17, 2015 among Black Hills Corporation and the several Underwriters named in Schedule A thereto.
- 1.2 Units Underwriting Agreement dated November 17, 2015 among Black Hills Corporation and the several Underwriters named in Schedule A thereto.
- 4.1 Junior Subordinated Indenture dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as trustee.
- 4.2 First Supplemental Indenture dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as trustee.
- 4.3 Form of 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 (included in Exhibit 4.2).
- 4.4 Purchase Contract and Pledge Agreement dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary.
- 4.5 Form of Remarketing Agreement (included in Exhibit 4.4).
- 4.6 Form of Corporate Units (included in Exhibit 4.4).
- 4.7 Form of Treasury Units (included in Exhibit 4.4).
- 5.1 Opinion of Steven J. Helmers, Esq.
- 5.2 Opinion of Faegre Baker Daniels LLP.
- 23.1 Consent of Steven J. Helmers, Esq. (included in Exhibit 5.1).
- 23.2 Consent of Faegre Baker Daniels LLP (included in Exhibit 5.2).
- 23.3 Consent of Faegre Baker Daniels LLP.

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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/ Richard W. Kinzley
 Richard W. Kinzley
 Senior Vice President
 and Chief Financial Officer

Date: November 23, 2015

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Exhibit Index

Exhibit No.	Description
1.1	Common Stock Underwriting Agreement dated November 17, 2015 among Black Hills Corporation and the several Underwriters named in Schedule A thereto.
1.2	Units Underwriting Agreement dated November 17, 2015 among Black Hills Corporation and the several Underwriters named in Schedule A thereto.
4.1	Junior Subordinated Indenture dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as trustee.
4.2	First Supplemental Indenture dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as trustee.
4.3	Form of 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 (included in Exhibit 4.2).
4.4	Purchase Contract and Pledge Agreement dated as of November 23, 2015 between Black Hills Corporation and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary.
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5.2	Opinion of Faegre Baker Daniels LLP.
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23.2	Consent of Faegre Baker Daniels LLP (included in Exhibit 5.2).
23.3	Consent of Faegre Baker Daniels LLP.

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Black Hills Corporation

5,500,000 Shares of Common Stock, Par Value \$1.00 Per Share

UNDERWRITING AGREEMENT

November 17, 2015

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue
New York, N.Y. 10010-3629

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
One Bryant Park
New York, New York 10036

RBC CAPITAL MARKETS, LLC
Three World Financial Center
200 Vesey Street, 8th Floor
New York, New York 10281-8098

WELLS FARGO SECURITIES, LLC
375 Park Avenue
4th Floor
New York, New York 10152

As Representatives (the "**Representatives**") of the Several Underwriters

Ladies and Gentlemen:

1. *Introductory.* Black Hills Corporation, a South Dakota corporation (the "**Company**"), agrees with the several Underwriters named in Schedule A hereto (the "**Underwriters**") to issue and sell to the several Underwriters 5,500,000 shares (the "**Firm Securities**") of its common stock, par value \$1.00 per share (the "**Securities**") and also agrees to issue and sell to the Underwriters, at the option of the Underwriters, an aggregate of not more than 825,000 additional shares of the Securities as set forth below. The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities.**"

A wholly owned subsidiary of the Company has entered into an agreement dated as of July 12, 2015 (the "**Acquisition Agreement**") with Alinda Gas Delaware LLC, Alinda Infrastructure Fund I, L.P. and Aircraft Services Corporation (the "**Sellers**") to purchase SourceGas Holdings LLC (the "**Target**"), as described in the General Disclosure Package (as defined below). The term "**Acquisition Agreement**" as used herein shall include all exhibits, schedules and attachments to such Acquisition Agreement. The term "**Acquisition**" as used herein shall refer to the transactions contemplated by the Acquisition Agreement.

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms.* The Company has filed with the Commission a registration statement on Form S-3 (No. 333-197895), including a related prospectus or prospectuses relating to the Offered Securities, covering the registration of the Offered Securities under the Act, which has become effective. "**Registration Statement**" at any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information and all 430C Information with respect to such registration statement, that in any case

has not been superseded or modified. "**Registration Statement**" without reference to a time means the Registration Statement as of the Effective Time. For purposes of this definition, 430B Information shall be considered to be included in the Registration Statement as of the time specified in Rule 430B.

For purposes of this Agreement:

"**430B Information**" means information included in a prospectus relating to the Offered Securities then deemed to be a part of the Registration Statement pursuant to Rule 430B(e) or retroactively deemed to be a part of the Registration Statement pursuant to Rule 430B(f).

"**430C Information**" means information included in a prospectus relating to the Offered Securities then deemed to be a part of the Registration Statement pursuant to Rule 430C.

"**Act**" means the Securities Act of 1933, as amended.

"**Applicable Time**" means approximately 5:15 p.m. (Eastern time) on the date of this Agreement.

"**Closing Date**" has the meaning defined in Section 3 hereof.

"**Commission**" means the Securities and Exchange Commission.

“**Effective Time**” of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

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

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B to this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus”, as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

“**Other Securities**” means up to 5,980,000 Corporate Units of the Company, consisting of “Notes” and “Purchase Contracts,” as such terms are defined in the Underwriting Agreement dated the date hereof between the Company and such underwriters relating to the Company’s concurrent offering thereof.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the SarbanesOxley Act of 2002, as amended (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of “issuers” (as defined in SarbanesOxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange and the NASDAQ Stock Market (“**Exchange Rules**”).

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“**Statutory Prospectus**” with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information and all 430C Information with respect to the Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) *Compliance with Securities Act Requirements.* (i) (A) At the time the Registration Statement initially became effective, (B) at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether by post-effective amendment, incorporated report or form of prospectus), (C) at the Effective Time relating to the Offered Securities and (D) on each Closing Date, the Registration Statement conformed and will conform in all material respects to the requirements of the Act and the Rules and Regulations and did not and will not include any 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 and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on each Closing Date, the Final Prospectus will conform in all material respects to the requirements of the Act and the Rules and Regulations, and will not include any 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. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) *Automatic Shelf Registration Statement.* (i) *Well-Known Seasoned Issuer Status.* (A) At the time of initial filing of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a “well known seasoned issuer” as defined in Rule 405, including not having been an “ineligible issuer” as defined in Rule 405.

(ii) *Effectiveness of Automatic Shelf Registration Statement.* The Registration Statement is an “automatic shelf registration statement”, as defined in Rule 405, that initially became effective within three years of the date of this Agreement. If immediately prior to the Renewal Deadline (as hereinafter defined), any of the Offered Securities remain unsold by the Underwriters, the Company will prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Offered Securities, in a form reasonably satisfactory to the Representatives. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Offered Securities, in a form reasonably satisfactory to the Representatives, and will use its best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the expired registration statement relating to the Offered Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be. “**Renewal Deadline**” means the third anniversary of the initial effective time of the Registration Statement.

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(iii) *Eligibility to Use Automatic Shelf Registration Form.* The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (A) promptly notify the Representatives, (B) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form reasonably satisfactory to the Representatives, (C) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (D) promptly notify the Representatives of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(iv) *Filing Fees.* The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(d) *Ineligible Issuer Status.* (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Offered Securities and (ii) at the date of this Agreement, the Company was not and is not an “ineligible issuer”, as defined in Rule 405, including (A) the Company or any subsidiary of the Company in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (B) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a proceeding under Section 8 of the Act and not being the subject of a proceeding under Section 8A of the Act in connection with the offering of the Offered Securities, all as described in Rule 405.

(e) *General Disclosure Package.* As of the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time and the preliminary prospectus supplement, dated November 16, 2015, including the base prospectus of the Company, dated November 16, 2015 (which is the most recent Statutory Prospectus distributed to investors generally), and the other information, if any, stated in Schedule B to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the “**General Disclosure Package**”), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted 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. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(f) *Issuer Free Writing Prospectuses.* Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or

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as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would 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, (i) the Company has promptly notified or will promptly notify the Representatives and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(g) *Good Standing of the Company.* The Company has been duly incorporated and is existing and in good standing under the laws of the State of South Dakota, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, result in a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole (“**Material Adverse Effect**”).

(h) *Subsidiaries.* Each subsidiary of the Company has been duly incorporated or organized, as the case may be, and is existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as the case may be, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, result in a Material Adverse Effect; and each subsidiary of the Company is duly qualified to do business as a foreign corporation, limited partnership, general partnership or limited liability company, as the case may be, in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, result in a Material Adverse Effect; all of the issued and outstanding capital stock or partnership or limited liability company interests, as the case may be, of each subsidiary of the Company has been duly authorized and validly issued and, with respect to the capital stock of each subsidiary that is a corporation, is fully paid and nonassessable; and, except as disclosed in the General Disclosure Package, the capital stock or partnership or limited liability company interests, as the case may be, of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects.

(i) [Intentionally omitted]

(j) *The Offered Securities.* The Offered Securities to be issued and sold by the Company to the Underwriters hereunder have been duly authorized and, when issued and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable; and the issuance of the Offered Securities is not subject to any preemptive rights, rights of first refusal or other similar rights of any securityholder of the Company or any other person or entity. The Offered Securities delivered by the Company to the

Underwriters on the First Closing Date or each Optional Closing Date, as the case may be, will conform to the descriptions thereof in the Registration Statement, the General Disclosure Package and the Final Prospectus.

(k) *Capitalization.* The Company has an authorized equity capitalization as set forth in the Registration Statement, the General Disclosure Package and the Final Prospectus under the heading “Capitalization”; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the General Disclosure Package and the Final Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its

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subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options.

(l) *NYSE.* The outstanding shares of the Securities are listed on the NYSE and the Offered Securities being sold hereunder by the Company have been approved for listing, subject only to official notice of issuance on the NYSE.

(m) *No Finder’s Fee.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering.

(n) *Registration Rights.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act (collectively, “**registration rights**”), and any person to whom the Company has granted registration rights has agreed, if necessary, not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5 hereof.

(o) *Absence of Further Requirements.* No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required for the consummation of the transactions contemplated by this Agreement in connection with the offering, issuance and sale of the Offered Securities by the Company, except such as have been obtained or made and such as may be required under state securities laws.

(p) *Title to Property.* Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and defensible title to all interests in oil and gas properties owned by them and good and marketable title to all other real properties and all other properties and assets owned by them that are material to the Company and its subsidiaries taken as a whole, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them and, except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property that is material to the Company and its subsidiaries taken as a whole under valid and enforceable leases with no terms or provisions that would materially interfere with the use made or to be made thereof by them.

(q) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of this Agreement, and the issuance and sale of the Offered Securities and compliance with the terms and provisions thereof, will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter or by-laws or other organizational documents of the Company or any of its subsidiaries, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, in the case of clauses (ii) and (iii), as would not, individually or in the aggregate, result in a Material Adverse Effect. A “**Debt Repayment Triggering Event**” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any

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person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(r) *Absence of Existing Defaults and Conflicts.* Neither the Company nor any of its subsidiaries is in violation of its respective charter, by-laws or organizational documents or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of the properties of any of them is subject, except such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect.

(s) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(t) *Possession of Licenses.* The Company and its subsidiaries possess, and are in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits (“**Licenses**”) necessary or material to the conduct of the business now conducted or proposed in the General Disclosure Package to be conducted by them and have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(u) *Absence of Labor Dispute.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could have a Material Adverse Effect.

(v) *Possession of Intellectual Property.* The Company and its subsidiaries own, possess, or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, “**intellectual property rights**”) necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(w) *Environmental Laws.* Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(x) *Accurate Disclosure.* The statements in the Registration Statement, General Disclosure Package and the Final Prospectus under the headings “Description of Capital Stock”, “Material United States Federal Income Tax Considerations” and “Underwriting”, insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings in all material respects and present the information required to be shown.

(y) *Absence of Manipulation.* The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in

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the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(z) *Internal Controls and Compliance with the Sarbanes-Oxley Act.* Except as set forth in the General Disclosure Package, the Company, its subsidiaries and the Company’s Board of Directors (the “**Board**”) are in compliance in all material respects with Sarbanes Oxley and all applicable Exchange Rules. The Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an internal audit function and legal and regulatory compliance controls (collectively, “**Internal Controls**”) that comply in all material respects with the Securities Laws and are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls are, or upon consummation of the offering of the Offered Securities will be, overseen by the Audit Committee (the “**Audit Committee**”) of the Board in accordance with Exchange Rules. Since the date of the filing of the Company’s Annual Report on Form 10K/A for the fiscal year ended December 31, 2014, the Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 90 days the Company does not reasonably expect to publicly disclose or report to the Audit Committee or the Board, (i) any significant deficiency in the design or operation of Internal Controls that could adversely affect the Company’s ability to record, process, summarize and report financial data, any material weakness in Internal Controls, any material change in Internal Controls or any fraud involving management or other employees who have a significant role in Internal Controls (each, an “**Internal Control Event**”) or (ii) any material violation of, or failure to comply with, the Securities Laws.

(aa) *Absence of Accounting Issues.* A member of the Audit Committee has confirmed to the Chief Executive Officer, Chief Financial Officer or General Counsel of the Company that, except as set forth in the General Disclosure Package, the Audit Committee is not reviewing or investigating, and neither the Company’s independent auditors nor its internal auditors have recommended that the Audit Committee review or investigate, (i) adding to, deleting, changing the application of, or changing the Company’s disclosure with respect to, any of the Company’s material accounting policies; (ii) any matter which could result in a restatement of the Company’s financial statements for any annual or interim period during the current or prior three fiscal years; or (iii) any Internal Control Event.

(bb) *Litigation.* Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are, to the Company’s knowledge, threatened or contemplated.

(cc) *Financial Statements.* The financial statements included in the Registration Statement and the General Disclosure Package present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States applied on a consistent basis; and the schedules included in the Registration Statement present fairly the information required to be

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stated therein. The interactive data in extensible Business Reporting Language included or incorporated by reference in the Registration Statement and the General Disclosure Package fairly presents the information called for in all material respects and has been prepared in all material respects in accordance with the Commission’s rules and guidelines applicable thereto.

(dd) *No Material Adverse Change in Business.* Except as disclosed in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole that is material and adverse, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock (other than regular quarterly cash dividends in respect of the Company's common stock and declared and paid by the Company in the ordinary course of business) and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(ee) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(ff) *Ratings.* No "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 3(a)(62) (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(d) (ii) hereof, except as has been publicly disclosed by the applicable nationally recognized statistical rating organization.

(gg) *Reserve Report Data.* The oil and gas reserve estimates of the Company and its subsidiaries for the fiscal years ended December 31, 2012, December 31, 2013, and December 31, 2014, contained in the General Disclosure Package are derived from reports that have been prepared by Cawley, Gillespie & Associates, Inc., and as set forth therein, such reserve estimates fairly reflect the estimated oil and gas reserves of the Company and its subsidiaries at the dates indicated therein and are in accordance with the Commission guidelines applicable thereto at the time such estimates were prepared.

(hh) *Independent Reserve Engineers.* Cawley, Gillespie & Associates, Inc. has represented to the Company that they are, and the Company believes them to be, independent reserve engineers with respect to the Company and its subsidiaries and for the periods set forth in the General Disclosure Package.

(ii) *Acquisition.* The Acquisition Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, Black Hills Utility Holdings, Inc., enforceable in accordance with its terms, and, to the knowledge of the Company, the Acquisition Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of the Sellers and other parties thereto, enforceable in accordance with its terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. The Company expects that the Acquisition will be consummated in all material respects on the terms and by the date and as contemplated by the Acquisition Agreement and the description thereof set forth in the General Disclosure Package and the Final Prospectus. In addition, the Company has access to information regarding the Target under the Acquisition Agreement and, to the Company's knowledge, each of the representations and warranties of the Target set forth in Articles III, IV and V of the Acquisition Agreement is true and correct in all material respects as of the date hereof (except in the case of any such representation and warranty that is qualified by

materiality or by a material adverse effect, in which case such representation and warranty shall be true and correct in all respects).

(jj) *Pro Forma Financial and Other Information.* The pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto set forth in the Registration Statement and the General Disclosure Package present fairly the information contained therein, have been prepared in accordance with Article 11 of Regulation S-X with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. To the Company's knowledge, the other financial and non-financial information relating to the Acquisition included in the Registration Statement and the General Disclosure Package presents fairly in all material respects the information shown therein.

(kk) *Foreign Corrupt Practices Act.* Within the last five years, to the Company's knowledge, none of the Company, any of its subsidiaries, any director, officer, agent, employee, controlled affiliate or other controlled person acting on behalf of the Company or any of its subsidiaries has taken any action, directly or indirectly, that would reasonably be expected to result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and its subsidiaries conduct their businesses in material compliance with the FCPA.

(ll) *Money Laundering Laws.* The operations of the Company and its subsidiaries comply in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions in which the Company and its subsidiaries operate, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity applicable to the Company and its subsidiaries (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries.

(mm) *OFAC.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, controlled affiliate or other controlled representative of the Company or any of its subsidiaries is an individual or entity currently the subject or target of any international economic sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "Sanctions"). The Company will not use the proceeds of the sale of the Offered Securities in violation of Sanctions.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company agrees to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$38.84125 per Offered Security, the respective number of Firm Securities set forth opposite the names of the Underwriters in Schedule A hereto.

The Company will deliver the Firm Securities to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company at the office of

Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, at 9:30 A.M., New York time, on November 23, 2015, or at such other time not later than seven full business days thereafter as the Representatives and the Company determine, such time being herein referred to as the “**First Closing Date**”. For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Offered Securities sold pursuant to the offering. In addition, upon written notice from the Representatives given to the Company from time to time not more than 30 days subsequent to the date of the Final Prospectus, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per share to be paid for the Firm Securities, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Securities but not payable on the Optional Securities. The Company agrees to sell to the Underwriters the number of Optional Securities specified in such notice and the Underwriters agree, severally and not jointly, to purchase such Optional Securities. Such Optional Securities shall be purchased for the account of each Underwriter in the same proportion as the number of Firm Securities set forth opposite such Underwriter’s name bears to the total number of Firm Securities (subject to adjustment by the Representatives to eliminate fractions). No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representatives to the Company.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an “**Optional Closing Date**”, which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a “**Closing Date**”), shall, subject to the third sentence of the immediately preceding paragraph, be determined by the Representatives but shall be no earlier than the third business day (except in the case such time of delivery and payment would occur on the First Closing Date) and not later than the fifth business day after written notice of election to purchase Optional Securities is given. The Company will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price therefor in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company, at the above office of Davis Polk & Wardwell LLP.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Filing of Prospectuses.* The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by the Representatives, subparagraph (5), such consent not to be unreasonably withheld or delayed) not later than the second business day following the earlier of the date it is first used or the execution and delivery of this Agreement. The Company has complied and will comply with Rule 433.

(b) *Filing of Amendments; Response to Commission Requests.* The Company will promptly advise the Representatives of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus at any time and will offer the Representatives a reasonable opportunity to comment on any such amendment or supplement; and the Company will also advise the Representatives promptly of (i) the filing of any such amendment or supplement, (ii) any request by the Commission or its staff for any amendment to the Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iii) the institution by the Commission of any stop order proceedings in respect of the Registration Statement or the threatening of any proceeding for that purpose, and (iv) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company

will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Representatives of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representatives, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives’ consent to, nor the Underwriters’ delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Rule 158.* As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Act and Rule 158.

(e) *Furnishing of Prospectuses.* The Company will furnish to the Representatives copies of the Registration Statement, including all exhibits, any Statutory Prospectus, the Final Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Representatives reasonably request. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications.* The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Representatives reasonably designate and will continue such qualifications in effect so long as required for the distribution; *provided* that, in connection therewith, the Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to a general consent to service of process in any such jurisdiction.

(g) *Reporting Requirements.* During the period of five years hereafter, if any Offered Securities remain outstanding, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (ii) from time to time, such other information concerning the Company as the Representatives may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system (“**EDGAR**”), it is not required to furnish such reports or statements to the Representatives or the Underwriters.

(h) *Payment of Expenses.* The Company will pay all expenses incident to the performance of its obligations under this Agreement, including but not limited to any filing fees and other expenses (including fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives reasonably designate and the preparation and printing of memoranda relating thereto, costs and expenses relating to investor presentations or any “road show” in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company’s officers and employees and any other expenses of the Company including the chartering of airplanes (but excluding any separately-incurred travel expenses of

employees and representatives of the Representatives and the Underwriters), fees and expenses incident to listing any of the Offered Securities on the New York Stock Exchange, American Stock Exchange, NASDAQ Stock Market and other national and foreign exchanges, fees and expenses in connection with the registration of the Offered Securities under the Exchange Act, and expenses incurred in distributing preliminary prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the Underwriters and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors.

(i) *Use of Proceeds.* The Company will use the net proceeds received in connection with this offering in the manner described in the “Use of Proceeds” section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(j) *Absence of Manipulation.* The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(k) *Restriction on Sale of Securities.* The Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise dispose of, directly or indirectly, or file with the Commission a registration statement under the Act relating to, any shares of the Securities or securities convertible into or exchangeable or exercisable for any shares of the Securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of shares of the Securities or such other securities, in cash or otherwise, without the prior written consent of Credit Suisse Securities (USA) LLC, Merrill Lynch, Pierce Fenner & Smith Incorporated and Wells Fargo Securities, LLC for a period beginning on the date hereof and ending 60 days after the date of the Final Prospectus (the “**Lock-Up Period**”), other than (A) any Offered Securities issued and sold pursuant to the terms hereof or issued pursuant to the terms of the Purchase Contract and Pledge Agreement to be entered into in connection with the issuance of the Other Securities, including, without limitation, issuing shares of the Securities in connection with any early settlement right at the election of holders of Purchase Contracts (as defined in such Purchase Contract and Pledge Agreement) or any “fundamental change early settlement right” upon the occurrence of a “fundamental change” (each as defined in such Purchase Contract and Pledge Agreement), (B) issuing the Other Securities, (C) any shares of the Securities issued upon the exercise of options previously granted or delivered upon the lapsing of restrictions on restricted stock units or other equity awards under any incentive plan, (D) grants of restricted stock, stock options, performance shares, phantom stock or other equity awards pursuant to the Company’s incentive plans, (E) offers and sales of Securities pursuant to the Company’s dividend reinvestment and direct stock purchase plan, retirement savings plan and non-qualified deferred compensation plan, (F) the filing of any registration statement under the Act on Form S-8 or Form S-3 with respect to any such plan and (G) the issuance of up to an aggregate of 10% of the number of Securities to be outstanding immediately following the completion of the transactions contemplated by this Agreement and the transactions contemplated by the underwriting agreement to be entered into for the offer and sale of the Other Securities in connection with one or more acquisitions by the Company of the assets or capital stock of another person or entity, whether through merger, asset acquisition, stock purchase or otherwise; *provided* that each recipient of Securities pursuant to this clause (G) shall, on or prior to such issuance, execute a lock-up letter in substantially the form of Exhibit C-2 hereto with respect to the remaining portion of the Lock-Up Period.

(l) *Listing.* The Company will use its reasonable best efforts to effect the listing of the aggregate maximum number of shares of the Securities issuable pursuant to the Purchase Contracts comprising a part of the Corporate Units (including the aggregate maximum number of “make-whole shares” (as such term is defined in the General Disclosure Package and the Final Prospectus) issuable upon settlement of the Purchase Contracts in connection with a “fundamental change” (as such term is defined in the General Disclosure Package and the Final Prospectus)).

(m) *Reservation of Shares.* The Company will reserve and keep available at all times, free of preemptive rights, the aggregate maximum number of shares of the Securities (including the aggregate maximum number of “make-whole shares” (as such term is defined in the General Disclosure Package and the Final Prospectus) issuable upon settlement of the Purchase Contracts in connection with a “fundamental change” (as such term is defined in the General Disclosure Package and the Final Prospectus)) for the purpose of enabling the Company to satisfy any obligation to issue shares of the Securities under the Purchase Contract and Pledge Agreement.

6. *Free Writing Prospectuses.* (a) *Issuer Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus”, as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a “**Permitted Free Writing Prospectus**”. The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus”, as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(b) *Term Sheet.* The Company will prepare a final term sheet relating to the Offered Securities and the Other Securities, containing only information that describes the final terms of the Offered Securities and the Other Securities and otherwise in a form consented to by the Representatives, and will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for the offering of the Offered Securities and the Other Securities. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement. The Company also consents to the use by any Underwriter of a free writing prospectus that contains only (i) (A) information describing the preliminary terms of the Offered Securities and the Other Securities or their offering or (B) information that describes the final terms of the Offered Securities and the Other Securities or their offering and that is included in the final term sheet of the Company contemplated in the first sentence of this subsection or (ii) other information that is not “issuer information”, as defined in Rule 433, it being understood that any such free writing prospectus referred to in clause (i) or (ii) above shall not be an Issuer Free Writing Prospectus for purposes of this Agreement.

7. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) *Accountants’ Comfort Letters.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Deloitte & Touche LLP and KPMG LLP, each confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and substantially in the form of Schedules C-1 and C-2 hereto, respectively (except that, in any letter dated a Closing Date, the specified date referred to in Schedule C-1 or C-2 hereto, as applicable, shall be a date no more than three days prior to such Closing Date).

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(b) *Reserve Report Confirmation Letter.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Cawley, Gillespie & Associates, Inc., containing statements and information with respect to the estimated oil and gas reserves of the Company and its subsidiaries and substantially in the form of Schedule D hereto.

(c) *Filing of Prospectus.* The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. No stop order suspending the effectiveness of the Registration Statement or of any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or any Underwriter, shall be contemplated by the Commission.

(d) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 3(a)(62)), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. Federal or New York authorities; (vii) any major disruption of settlements of securities, payment or clearance services in the United States or any other country where such securities are listed, or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(e) *Opinion of Counsel for Company.* The Representatives shall have received an opinion, dated such Closing Date, of Faegre Baker Daniels LLP, counsel for the Company, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Exhibit A hereto.

(f) *Opinion of General Counsel to the Company.* The Representatives shall have received an opinion, such Closing Date, of Steven J. Helmers, Esq., General Counsel to the Company, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Exhibit B hereto.

(g) *Opinion of Counsel for Underwriters.* The Representatives shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to such matters as the Representatives may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters. In rendering such opinion, Davis Polk & Wardwell LLP may rely as to the incorporation of the Company and all other matters governed by South Dakota law upon the opinion of Steven J. Helmers, Esq., General Counsel to the Company, referred to above.

(h) *Officers' Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting

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officer of the Company in which such officers shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after reasonable investigation, are contemplated by the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in or contemplated by the General Disclosure Package or as described in such certificate.

(i) *Lock-up Agreements.* On or prior to the date hereof, the Representatives shall have received lockup letters from each of the executive officers and directors of the Company listed on Exhibit C-1 hereto, in each case substantially in the form of Exhibit C-2 hereto.

(j) *Approval of Listing.* At the First Closing Date and each Optional Closing Date, if any, the Offered Securities to be purchased by the Underwriters from the Company at such time shall have been approved for listing on the NYSE, subject only to official notice of issuance.

The Company will furnish the Representatives with such conformed copies of such opinions, certificates, letters and documents as the Representatives reasonably request. The Representatives may in its sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution.* (a) *Indemnification of Underwriters.* The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Indemnified Party**”), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) *Indemnification of Company.* Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an “**Underwriter Indemnified Party**”), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any

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material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the concession figure appearing in the fifth paragraph under the caption “Underwriting” and the information contained in the thirteenth (pertaining to stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids) and fourteenth (pertaining to the effect of stabilizing transactions, syndicate covering transactions and penalty bids) paragraphs under the caption “Underwriting”.

(c) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that

it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) *Contribution.* If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company

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on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, 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 or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(d).

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First Closing Date or any Optional Closing Date and the number of shares of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, the Representatives may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of shares of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of shares of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to the Representatives and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10 (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 9 hereof or the occurrence of any event specified in clause (iii), (iv), (vi), (vii) or (viii) of Section 7(d), the Company will reimburse the Underwriters for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, and the respective obligations of the Company and the Underwriters pursuant to

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Section 8 hereof shall remain in effect. In addition, if any Offered Securities have been purchased hereunder, the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives at Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, NY 10010-3629, Attention: IBD Legal, Merrill Lynch at

One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), RBC Capital Markets, LLC, Three World Financial Center, 200 Vesey Street, 8th Floor, New York, New York 10281-8098, Attention: Transaction Management — Scott Primrose (fax: (212) 658-6137), and Wells Fargo Securities, LLC, 375 Park Avenue, New York, New York 10152, Attention: Equity Syndicate Department (fax: (212) 214-5918), or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 625 Ninth Street, Rapid City, SD 57709, Attention: Steven J. Helmers, Esq., General Counsel; *provided, however*, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representatives will act for the several Underwriters in connection with this financing, and any action under this Agreement taken by the Representatives will be binding upon all the Underwriters.

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

15. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) *No Other Relationship.* The Representatives have been retained solely to act as an underwriter in connection with the sale of Offered Securities and that no fiduciary, advisory or agency relationship between the Company and the Representatives has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Representatives have advised or is advising the Company on other matters;

(b) *Arms' Length Negotiations.* The price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms' length negotiations with the Representatives and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company has been advised that the Representatives and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representatives have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company waives, to the fullest extent permitted by law, any claims it may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representatives shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

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16. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

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If the foregoing is in accordance with the Representatives' understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

BLACK HILLS CORPORATION

By: /s/ Richard Kinzley
Name: Richard Kinzley
Title: SVP-CFO

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The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Michael Proskin

Name: Michael Proskin
Title: Managing Director

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

/s/ Jason Satsky
Name: Jason Satsky
Title: Managing Director

RBC CAPITAL MARKETS, LLC

/s/ Andrew Rosenbaum
Name: Andrew Rosenbaum
Title: Managing Director

WELLS FARGO SECURITIES, LLC

/s/ Elizabeth Alvarez
Name: Elizabeth Alvarez
Title: Managing Director

Acting on behalf of themselves and as the Representatives of the several Underwriters.

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SCHEDULE A

<u>Underwriter</u>	<u>Number of Firm Securities</u>
Credit Suisse Securities (USA) LLC	1,925,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	825,000
RBC Capital Markets, LLC	660,000
Wells Fargo Securities, LLC	550,000
BMO Capital Markets Corp.	440,000
J.P. Morgan Securities LLC	275,000
Morgan Stanley & Co. LLC	275,000
Scotia Capital (USA) Inc.	275,000
Mitsubishi UFJ Securities (USA), Inc.	275,000
Total	<u>5,500,000</u>

SCHEDULE B

1. General Use Issuer Free Writing Prospectuses (included in the General Disclosure Package)

“General Use Issuer Free Writing Prospectus” includes each of the following documents:

1. Final term sheet, dated November 17, 2015, a copy of which is attached hereto.

2. Other Information Included in the General Disclosure Package

The following information is also included in the General Disclosure Package:

None.

Free Writing Prospectus Filed Pursuant to Rule 433
To Prospectus dated November 16, 2015
Preliminary Prospectus Supplements, each dated November 16, 2015
Registration Statement File No. 333-197895

BLACK HILLS CORPORATION

Concurrent Offerings of:

**5,500,000 Shares of Common Stock
(the “Common Stock Offering”)**

and

**5,200,000 Equity Units
(Initially Consisting of 5,200,000 Corporate Units)
(the “Equity Units Offering” and, together with the Common Stock Offering, the “Offerings”)**

**Pricing Term Sheet dated
November 17, 2015**

The information in this pricing term sheet relates to the Offerings and should be read together with (i) the preliminary prospectus supplement dated November 16, 2015 relating to the Common Stock Offering (the “Common Stock Preliminary Prospectus Supplement”) and (ii) the preliminary prospectus supplement dated November 16, 2015 relating to the Equity Units Offering (the “Equity Units Preliminary Prospectus Supplement”) and, together with the Common Stock Preliminary Prospectus Supplement, the “Preliminary Prospectus Supplements”), in each case, including the documents incorporated by reference therein and the related base prospectus dated November 16, 2015, filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (Registration Statement File No. 333-197895). Terms used but not defined herein, with respect to either Offering, have the meanings ascribed to them in the applicable Preliminary Prospectus Supplement.

Company	Black Hills Corporation, a South Dakota corporation
Company Stock Ticker	New York Stock Exchange “BKH”
Pricing Date	November 17, 2015
Trade Date	November 18, 2015
Closing Price of the Common Stock on November 17, 2015	\$40.25 per share
Settlement Date	November 23, 2015
Registration Format	SEC Registered

Common Stock Offering

Title of Securities	Common stock, par value \$1.00 per share, of the Company (the “Common Stock”)
Number of Shares of Common Stock Offered	5,500,000 (or 6,325,000 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full)

Common Stock Public Offering Price	\$40.25 per share of Common Stock \$221,375,000 in aggregate (or \$254,581,250 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full)
Underwriting Discounts and Commissions	\$1.40875 per share of Common Stock \$7,748,125 in aggregate (or \$8,910,343.75 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full) The underwriters of the Common Stock Offering propose to offer the shares of Common Stock to dealers at the Common Stock Public Offering Price less a concession not in excess of \$0.84525 per share of Common Stock.
Estimated Net Proceeds to the Company from the Common Stock Offering	The Company estimates that it will receive net proceeds of approximately \$212.4 million from the sale of Common Stock in the Common Stock Offering after deducting the Underwriting Discounts and Commissions and estimated offering expenses. The Company estimates that it will receive net proceeds of approximately \$244.5 million if the underwriters of the Common Stock Offering exercise their option to purchase additional shares of Common Stock in full.
Joint Bookrunning Managers	Credit Suisse Securities (USA) LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated

	RBC Capital Markets, LLC Wells Fargo Securities, LLC
Senior Co-Manager	BMO Capital Markets Corp.
Co-Managers	J.P. Morgan Securities LLC Morgan Stanley & Co. LLC Scotia Capital (USA) Inc. Mitsubishi UFJ Securities (USA), Inc.
CUSIP for the Common Stock	092113109
ISIN for the Common Stock	US0921131092
Stabilization Transactions	Prior to purchasing the shares of Common Stock being offered pursuant to the Common Stock Preliminary Prospectus Supplement, on November 17, 2015, one of the underwriters purchased, on behalf of the syndicate, 47,450 shares of Common Stock at an average price of \$40.2346 per share in stabilizing transactions.

Equity Units Offering

Title of Securities	Equity Units that will each have a stated amount of \$50.00 and will initially be in the form of a Corporate Unit consisting of a purchase contract issued by the Company and, initially, a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of 2015 Series A 3.50% Remarketable
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	Junior Subordinated Notes due 2028 to be issued by the Company (each being referred to as an "RSN")
Number of Equity Units Offered	5,200,000 (or 5,980,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Aggregate Offering Amount	\$260,000,000 (or \$299,000,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Stated Amount per Equity Unit	\$50.00
Corporate Unit Public Offering Price	\$50.00 per Corporate Unit \$260,000,000 in aggregate (or \$299,000,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Underwriting Discounts and Commissions	\$1.50 per Corporate Unit \$7,800,000 in aggregate (or \$8,970,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
	The underwriters of the Equity Units Offering propose to offer the Corporate Units to dealers at the Corporate Unit Public Offering Price less a concession not in excess of \$0.90 per Corporate Unit.
Estimated Net Proceeds to the Company from the Equity Units Offering	The Company estimates that it will receive net proceeds of approximately \$250.5 million from the sale of Corporate Units in the Equity Units Offering after deducting the Underwriting Discounts and Commissions and estimated offering expenses. The Company estimates that it will receive net proceeds of approximately \$288.3 million if the underwriters of the Equity Units Offering exercise their option to purchase additional Corporate Units in full.
Interest Rate on the RSNs	3.50% per year subject to the Company's right to defer interest payments, as described in the Equity Units Preliminary Prospectus Supplement and subject to modification in connection with a successful remarketing
Interest Payment Dates	Prior to a successful remarketing, February 1, May 1, August 1 and November 1 of each year, commencing on February 1, 2016
Deferred Interest on the RSNs	Deferred interest on the RSNs will bear interest at the interest rate applicable to the RSNs, compounded on each Interest Payment Date to, but excluding, the Interest Payment Date on which such deferred interest is paid

Contract Adjustment Payment Rate	4.25% per year or \$2.125 per year on the Stated Amount per Equity Unit subject to the Company's right to defer contract adjustment payments, as described in the Equity Units Preliminary Prospectus Supplement
Contract Adjustment Payment Dates	February 1, May 1, August 1 and November 1 of each year,
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	commencing on February 1, 2016
Deferred Contract Adjustment Payments	Deferred contract adjustment payments will accrue additional contract adjustment payments at the rate equal to 7.75% per annum, compounded on each Contract Adjustment Payment Date to, but excluding, the Contract Adjustment Payment Date on which such deferred contract adjustment payments are paid
Total Distribution Rate on the Corporate Units	7.75% per annum
Reference Price	\$40.25 (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement)
Threshold Appreciation Price	\$47.2938 (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which represents appreciation of approximately 17.5% over the Reference Price
Minimum Settlement Rate	1.0572 shares of Common Stock (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which is approximately equal to the \$50.00 Stated Amount per Equity Unit, <i>divided by</i> the Threshold Appreciation Price
Maximum Settlement Rate	1.2422 shares of Common Stock (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which is approximately equal to the \$50.00 Stated Amount per Equity Unit, <i>divided by</i> the Reference Price
Purchase Contract Settlement Date	November 1, 2018 (or if such day is not a business day, the following business day)
RSN Maturity Date	November 1, 2028
Joint Bookrunning Managers	Credit Suisse Securities (USA) LLC Wells Fargo Securities, LLC RBC Capital Markets, LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated
Co-Managers	J.P. Morgan Securities LLC Morgan Stanley & Co. LLC U.S. Bancorp Investments, Inc.
Listing	The Company intends to apply to list the Corporate Units on the New York Stock Exchange and expects trading to commence within 30 days of the date of initial issuance of the Corporate Units under the symbol "BKHU".
CUSIP for the Corporate Units	092113 125
ISIN for the Corporate Units	US0921131258
CUSIP for the Treasury Units	092113 133
ISIN for the Treasury Units	US0921131332
CUSIP for the RSNs	092113 AJ8
ISIN for the RSNs	US092113AJ83
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Allocation of the Purchase Price	At the time of issuance, the fair market value of the applicable ownership interest in the RSNs will be \$50 (or 100% of the issue price of a Corporate Unit) and the fair market value of each purchase contract will be \$0 (or 0% of the issue price of a Corporate Unit).

Subject to certain conditions described under “Description of the Purchase Contracts—Early Settlement” in the Equity Units Preliminary Prospectus Supplement, a holder of Corporate Units or Treasury Units may settle the related purchase contracts at any time prior to 4:00 p.m., New York City time, on the second business day immediately preceding the Purchase Contract Settlement Date, other than during a blackout period (as described in the Equity Units Preliminary Prospectus Supplement) in the case of Corporate Units. An early settlement may be made only in integral multiples of 20 Corporate Units or 20 Treasury Units; however, if the Treasury portfolio has replaced the RSNs as a component of the Corporate Units following a successful optional remarketing, holders of Corporate Units may settle early only in integral multiples of 16,000 Corporate Units. If a purchase contract is settled early, the number of shares of Common Stock to be issued per purchase contract will be equal to the Minimum Settlement Rate (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement).

Early Settlement Upon a Fundamental Change

Subject to certain conditions described under “Description of the Purchase Contracts—Early Settlement Upon a Fundamental Change” in the Equity Units Preliminary Prospectus Supplement, following a “fundamental change” (as defined in the Equity Units Preliminary Prospectus Supplement) that occurs prior to the 20th business day preceding the Purchase Contract Settlement Date, each holder of a purchase contract will have the right to accelerate and settle the purchase contract early on the fundamental change early settlement date (as defined in the Equity Units Preliminary Prospectus Supplement) at the settlement rate determined as if the applicable market value equaled the stock price (as defined in the Equity Units Preliminary Prospectus Supplement), plus an additional make-whole amount of shares (such additional make-whole amount of shares being hereafter referred to as the “make-whole shares”). This right is referred to as the “fundamental change early settlement right.”

The number of make-whole shares per purchase contract applicable to a fundamental change early settlement will be determined by reference to the table below, based on the date on which the fundamental change occurs or becomes effective (the “effective date”) and the “stock price” (as defined in the Equity Units Preliminary Prospectus Supplement) for the fundamental change:

Effective Date	Stock Price on Effective Date																			
	\$10.00	\$20.00	\$30.00	\$35.00	\$37.50	\$40.25	\$42.50	\$45.00	\$47.29	\$50.00	\$55.00	\$60.00	\$70.00	\$80.00	\$90.00	\$100.00	\$110.00	\$120.00	\$130.00	\$150.00
November 23, 2015	0.5325	0.2378	0.0972	0.0445	0.0220	0.0000	0.0498	0.0995	0.1406	0.1274	0.1075	0.0922	0.0709	0.0572	0.0476	0.0403	0.0346	0.0299	0.0259	0.0195
November 1, 2016	0.3406	0.1547	0.0544	0.0084	0.0000	0.0000	0.0168	0.0669	0.1085	0.0960	0.0777	0.0643	0.0472	0.0373	0.0308	0.0260	0.0222	0.0191	0.0164	0.0122
November 1, 2017	0.1719	0.0806	0.0271	0.0000	0.0000	0.0000	0.0000	0.0392	0.0791	0.0655	0.0471	0.0356	0.0241	0.0189	0.0157	0.0133	0.0114	0.0098	0.0084	0.0063
November 1, 2018	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The stock prices set forth in the second row of the table above (i.e., the column headers) will be adjusted upon the occurrence of certain events requiring anti-dilution adjustments to the fixed settlement rates in a manner inversely proportional to the adjustments to the fixed settlement rates, as described in the Equity Units Preliminary Prospectus Supplement.

The exact stock price and effective date applicable to a fundamental change may not be set forth on the table, in which case:

- if the stock price is between two stock prices on the table or the effective date is between two effective dates on the table, the amount of make-whole shares will be determined by straight line interpolation between the make-whole share amounts set forth for the higher and lower stock prices and the two effective dates based on a 365-day year, as applicable;
- if the stock price is in excess of \$150.00 per share (subject to adjustment in the same manner as the stock prices set forth in the second row of the table, as described above), then the make-whole share amount will be zero; and
- if the stock price is less than \$10.00 per share (subject to adjustment in the same manner as the stock prices set forth in the second row of the table, as described above) (the “minimum stock price”), then the make-whole share amount will be determined as if the stock price equaled the minimum stock price, using straight line interpolation, as described above in the first bullet, if the effective date is between two effective dates on the table.

Unless the Treasury portfolio has replaced the RSNs as a component of the

Corporate Units as a result of a successful optional remarketing, holders of Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 20 Corporate Units. If the Treasury portfolio has replaced the RSNs as a component of Corporate Units, holders of the Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 16,000 Corporate Units. A holder of Treasury Units may exercise the fundamental change early settlement right only in integral multiples of 20 Treasury Units.

Update to the Preliminary Prospectus Supplements

On November 17, 2015, Black Hills Utility Holdings, Inc. (“Black Hills Utility”), a subsidiary of the Company, entered into a settlement agreement with the Staff of the Colorado Public Utilities Commission and the Office of Consumer Counsel resolving the issues relating to the joint application seeking approval of the purchase of SourceGas Holdings LLC (“SourceGas”). The agreement prohibits any change in customer base rates for at least three years for SourceGas Distribution customers in Colorado and two years for Rocky Mountain Natural Gas LLC, an intrastate pipeline. The settling parties to the agreement are conditionally prohibited from challenging the rates and revenue requirements of SourceGas in Colorado for five years after the closing of the SourceGas acquisition. Black Hills Utility will not seek recovery of any acquisition premium from the acquired Colorado customers and will reduce annual SourceGas Distribution customer charges by \$200,000 per year for up to five years. The

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settlement agreement is subject to approval by the Colorado Public Utilities Commission before its terms become effective. As part of the settlement, the parties will request that the Colorado Public Utilities Commission issue a final decision by December 31, 2015.

The issuer has filed a registration statement (including a prospectus), as amended, with the SEC for the offering to which this communication relates (File No. 333-197895). Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and the Offerings. You may get these documents for free by visiting EDGAR on the SEC Website at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the relevant Offering will arrange to send you the base prospectus and the relevant Preliminary Prospectus Supplement if you request them by calling Credit Suisse Securities (USA) LLC at 800-221-1037; BofA Merrill Lynch at 866-500-5408; Wells Fargo Securities, LLC at 800-326-5897; or RBC Capital Markets, LLC at 877-822-4089.

This communication should be read in conjunction with the relevant Preliminary Prospectus Supplement and the accompanying base prospectus. The information in this communication supersedes the information in the relevant Preliminary Prospectus Supplement and the accompanying base prospectus to the extent inconsistent with the information in such Preliminary Prospectus Supplement and the accompanying base prospectus. In all other respects, this communication is qualified in its entirety by reference to the relevant Preliminary Prospectus Supplement and the accompanying base prospectus.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

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SCHEDULE C-1

[Form of Comfort Letter of Deloitte & Touche LLP]

SCHEDULE C-2

[Form of Comfort Letter of KPMG LLP]

SCHEDULE D

[Form of Comfort Letter of Cawley, Gillespie & Associates, Inc.]

SCHEDULE E

(“Significant Subsidiaries”)

Subsidiary Name	State of Organization
Black Hills Colorado IPP, LLC	South Dakota
Black Hills Electric Generation, LLC	South Dakota
Black Hills Exploration and Production, Inc.	Wyoming
Black Hills Non-regulated Holdings, LLC	South Dakota
Black Hills Plateau Production, LLC	Delaware
Black Hills Power, Inc.	South Dakota
Black Hills Utility Holdings, Inc.	South Dakota
Black Hills/Colorado Electric Utility Company, LP	Delaware
Black Hills/Colorado Gas Utility Company, LP	Delaware
Black Hills/Colorado Utility Company II, LLC	Colorado
Black Hills/Colorado Utility Company, LLC	Colorado
Black Hills/Iowa Gas Utility Company, LLC	Delaware
Black Hills/Kansas Gas Utility Company, LLC	Kansas
Black Hills/Nebraska Gas Utility Company, LLC	Delaware
Cheyenne Light, Fuel and Power Company	Wyoming

EXHIBIT A

[Form of Opinion of Faegre Baker Daniels LLP]

EXHIBIT B

[Form of Opinion of Steven J. Helmers]

EXHIBIT C-1

1. David R. Emery, Chairman
 2. Jack W. Eugster
 3. Michael H. Madison
 4. Linda K. Massman
 5. Steven R. Mills
 6. Gary L. Pechota
 7. Rebecca B. Roberts
 8. Mark A. Schober
 9. John B. Vering
 10. Thomas J. Zeller
 11. Linden R. Evans
 12. Richard W. Kinzley
 13. Steven J. Helmers
 14. Brian G. Iverson
 15. Robert A. Myers
 16. Scott A. Buccholz
-

EXHIBIT C-2

BLACK HILLS CORPORATION
625 Ninth Street
Rapid City, South Dakota 57701

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue
New York, N.Y. 10010-3629

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
One Bryant Park
New York, New York 10036

RBC CAPITAL MARKETS, LLC
Three World Financial Center
200 Vesey Street, 8th Floor
New York, New York 10281-8098

WELLS FARGO SECURITIES, LLC
375 Park Avenue
4th Floor
New York, NY 10152

As Representatives of the Several Underwriters

Dear Sirs:

As an inducement to the Underwriters to execute one or more Underwriting Agreements (the “**Underwriting Agreements**”), pursuant to which offerings will be made that are intended to result in an orderly market for (i) the common stock, \$1.00 par value per share (the “**Common Stock**”) of Black Hills Corporation, and any successor (by merger or otherwise) thereto, (the “**Company**”) and/or (ii) corporate units of the Company (the “**Corporate Units**”), the undersigned hereby agrees that during the period commencing on the date of this Lock-Up Agreement and continuing and including the date that is 60 days after the date of the final prospectus supplements used to sell the Securities and/or the Corporate Units pursuant to the Underwriting Agreements (the “**Lock-Up Period**”), the undersigned will not (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of the Securities or any securities convertible into or exercisable or exchangeable for the Securities (including, without limitation, the Corporate Units or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant) (collectively, the “**Securities**”) or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, without, in each case, the prior written consent of Credit Suisse Securities (USA) LLC, Merrill Lynch, Pierce Fenner & Smith Incorporated and Wells Fargo Securities, LLC.

The restrictions set forth in the immediately preceding paragraph shall not apply to (A) transfers of Securities as a bona fide gift or gifts or by will or intestacy, (B) transfers of Securities to immediate family members, trusts for the benefit of the undersigned or the undersigned’s immediate family members, (C) any Securities offered, sold or otherwise disposed of pursuant to a written plan for trading securities in effect on the date hereof, which was established pursuant to and in accordance with Rule 10b5-1(c) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), (D) any sale of Securities to the Company to discharge tax withholding obligations resulting from the vesting of equity awards acquired by the undersigned through the Company’s stock and incentive compensation plans, (E) any sale or transfer of Securities to the Company deemed to occur as part of a cashless exercise of stock options held by the undersigned as of the date of the prospectus supplements used to sell the Securities and Corporate Units, (F) transfers of Securities to the Company pursuant to call provisions of employment agreements and equity grant documents in existence on the date of the final prospectus supplements used to sell the Securities and/or Corporate Units, and (G) transfers of Securities acquired by the undersigned in the open market after the date of the final prospectus supplements used to sell the Securities and/or Corporate Units; *provided that* (i) in the case of a transfer in reliance on clause (A), the transferee agrees to be bound in writing by the terms of this Lock-Up Agreement prior to such transfer; (ii) in the case of transfer in reliance on clause (B), the transferee agrees to be bound in writing by the terms of this Lock-Up Agreement prior to such transfer, such transfer shall not involve a disposition for value and no filing by any party (donor, donee, transferor or transferee) under the Exchange Act shall be required or shall be voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the Lock-Up Period); and (iii) if the undersigned is required to file a report under the Exchange Act reporting a reduction in beneficial ownership of Securities during the term of this lock-up agreement as a result of a transfer in reliance on clause (D), (E) or (F), then the undersigned shall include a statement in such report that the filing relates to a transfer of Securities to the Company either (x) to discharge tax withholding obligations resulting from the vesting of equity awards acquired by the undersigned through the Company’s stock and incentive compensation plans (in the case of clause (D)), (y) deemed to occur as part of a cashless exercise of stock options held by the undersigned (in the case of clause (E)), or (z) pursuant to a call provision of an existing employment agreement or equity grant documents (in the case of clause (F)).

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Securities if such transfer would constitute a violation or breach of this Lock-Up Agreement.

If the undersigned is an officer or director of the Company, the undersigned further agrees that the foregoing restrictions in this Lock-Up Agreement shall be equally applicable to any issuer-directed Securities the undersigned may purchase in the above-referenced offering.

This Lock-Up Agreement shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. **This agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

Very truly yours,



Black Hills Corporation**5,200,000 Corporate Units****UNDERWRITING AGREEMENT**

November 17, 2015

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue
New York, N.Y. 10010-3629

WELLS FARGO SECURITIES, LLC
375 Park Avenue
4th Floor
New York, New York 10152

RBC CAPITAL MARKETS, LLC
Three World Financial Center
200 Vesey Street, 8th Floor
New York, New York 10281-8098

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

One Bryant Park
New York, New York 10036

As Representatives (the "**Representatives**") of the Several Underwriters

Ladies and Gentlemen:

1. *Introductory.* Black Hills Corporation, a South Dakota corporation (the "**Company**"), agrees with the several Underwriters named in Schedule A hereto (the "**Underwriters**") to issue and sell to the several Underwriters 5,200,000 Corporate Units (as defined below) (the "**Firm Securities**") and also agrees to issue and sell to the Underwriters, at the option of the Underwriters, an aggregate of not more than 780,000 additional Corporate Units (the "**Optional Securities**") as set forth below. The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities.**"

Each Corporate Unit will initially consist of (a) a 1/20th, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of the Company's Remarketable Junior Subordinated Notes due 2028 (the "**Notes**") and (b) a stock purchase contract (a "**Purchase Contract**") issued by the Company pursuant to which the holder of such Purchase Contract will purchase from the Company on November 1, 2018, subject to earlier termination or settlement, for an amount in cash equal to the stated amount per Security of \$50 (the "**Stated Amount**"), a number of shares of common stock, par value \$1.00 per share, of the Company (the "**Securities**"), as set forth in the Purchase Contract and Pledge Agreement. The Notes will be issued pursuant to a Subordinated Indenture (the "**Base Indenture**"), as amended by a Supplemental Indenture, each dated as of the First Closing Date (as defined below) (the "**Supplemental Indenture**" and, together with the Base Indenture, the "**Indenture**"), and each between the Company and U.S. Bank National Association, as trustee (the "**Trustee**").

In accordance with the terms of a Purchase Contract and Pledge Agreement (the "**Purchase Contract and Pledge Agreement**"), dated as of the First Closing Date, to be entered into between the Company and U.S. Bank National Association, as purchase contract agent (the "**Purchase Contract**

Agent"), attorney-in-fact for the holders of the Equity Units (as defined below), collateral agent (the "**Collateral Agent**"), custodial agent and securities intermediary, a holder of the Corporate Units will initially pledge its ownership interest in the Notes to secure such holder's obligation to purchase shares of the Securities under the Purchase Contracts. The Purchase Contracts will be issued pursuant to the Purchase Contract and Pledge Agreement. The Purchase Contracts together with the related Notes are herein referred to as "**Corporate Units.**" A holder of Corporate Units, at its option, may elect to create "**Treasury Units**" by substituting pledged U.S. Treasury securities for any pledged ownership interests in the Notes. Unless otherwise indicated, the term "**Equity Units**" includes both Corporate Units and Treasury Units.

Pursuant to a Remarketing Agreement, to be entered into by the Company, the Purchase Contract Agent, as the purchase contract agent and attorney-in-fact for the holders of the Equity Units, and the remarketing agent(s) named therein (the "**Remarketing Agents**") in such form and dated as of such date as to be determined by the parties thereto (the "**Remarketing Agreement**"), the Notes will be remarketed, subject to certain terms and conditions. The Purchase Contract and Pledge Agreement, the Indenture and the Remarketing Agreement are each herein referred to as a "**Units Agreement**" and are herein collectively referred to as the "**Units Agreements.**"

A wholly owned subsidiary of the Company has entered into an agreement dated as of July 12, 2015 (the "**Acquisition Agreement**") with Alinda Gas Delaware LLC, Alinda Infrastructure Fund I, L.P. and Aircraft Services Corporation (the "**Sellers**") to purchase SourceGas Holdings LLC (the "**Target**"), as described in the General Disclosure Package (as defined below). The term "**Acquisition Agreement**" as used herein shall include all exhibits, schedules and attachments to such Acquisition Agreement. The term "**Acquisition**" as used herein shall refer to the transactions contemplated by the Acquisition Agreement.

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms.* The Company has filed with the Commission a registration statement on Form S-3 (No. 333-197895), including a related prospectus or prospectuses relating to the Offered Securities, covering the registration of the Offered Securities under the Act, which has become effective. “**Registration Statement**” at any particular time means such registration statement in the form then filed with the Commission, including any amendment thereto, any document incorporated by reference therein and all 430B Information and all 430C Information with respect to such registration statement, that in any case has not been superseded or modified. “**Registration Statement**” without reference to a time means the Registration Statement as of the Effective Time. For purposes of this definition, 430B Information shall be considered to be included in the Registration Statement as of the time specified in Rule 430B.

For purposes of this Agreement:

“**430B Information**” means information included in a prospectus relating to the Offered Securities then deemed to be a part of the Registration Statement pursuant to Rule 430B(e) or retroactively deemed to be a part of the Registration Statement pursuant to Rule 430B(f).

“**430C Information**” means information included in a prospectus relating to the Offered Securities then deemed to be a part of the Registration Statement pursuant to Rule 430C.

“**Act**” means the Securities Act of 1933, as amended.

“**Applicable Time**” means approximately 5:15 p.m. (Eastern time) on the date of this Agreement.

“**Closing Date**” has the meaning defined in Section 3 hereof.

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

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“**Effective Time**” of the Registration Statement relating to the Offered Securities means the time of the first contract of sale for the Offered Securities.

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

“**Final Prospectus**” means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

“**General Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being so specified in Schedule B to this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus”, as defined in Rule 433, relating to the Offered Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Limited Use Issuer Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus.

“**Other Securities**” means up to 6,325,000 shares of the Securities proposed to be issued and sold to the underwriters named in and pursuant to the Underwriting Agreement dated the date hereof between the Company and such underwriters relating to the Company’s concurrent offering thereof.

“**Rules and Regulations**” means the rules and regulations of the Commission.

“**Securities Laws**” means, collectively, the SarbanesOxley Act of 2002, as amended (“**Sarbanes-Oxley**”), the Act, the Exchange Act, the Trust Indenture Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of “issuers” (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of the New York Stock Exchange and the NASDAQ Stock Market (“**Exchange Rules**”).

“**Statutory Prospectus**” with reference to any particular time means the prospectus relating to the Offered Securities that is included in the Registration Statement immediately prior to that time, including all 430B Information and all 430C Information with respect to the Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended.

Unless otherwise specified, a reference to a “rule” is to the indicated rule under the Act.

(b) *Compliance with Securities Act Requirements.* (i) (A) At the time the Registration Statement initially became effective, (B) at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether by post-effective amendment, incorporated report or form of prospectus), (C) at the Effective Time relating to the Offered Securities and (D) on each Closing Date, the Registration Statement conformed and will conform in all material respects to the requirements of the Act, the Trust Indenture Act and the Rules and Regulations and did not and will not include any 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 and (ii) (A) on its date, (B) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (C) on each Closing Date, the Final Prospectus will conform in all material respects to the requirements of the Act, the Trust Indenture Act and the Rules and Regulations, and will not include any untrue statement of a material fact or omit to state any material fact required to be

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stated therein or necessary to make the statements therein not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(c) *Automatic Shelf Registration Statement.* (i) *Well-Known Seasoned Issuer Status.* (A) At the time of initial filing of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Offered Securities in reliance on the exemption of Rule 163, the Company was a “well known seasoned issuer” as defined in Rule 405, including not having been an “ineligible issuer” as defined in Rule 405.

(ii) *Effectiveness of Automatic Shelf Registration Statement.* The Registration Statement is an “automatic shelf registration statement”, as defined in Rule 405, that initially became effective within three years of the date of this Agreement. If immediately prior to the Renewal Deadline (as hereinafter defined), any of the Offered Securities remain unsold by the Underwriters, the Company will prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Offered Securities, in a form reasonably satisfactory to the Representatives. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Offered Securities, in a form reasonably satisfactory to the Representatives, and will use its best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the expired registration statement relating to the Offered Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be. “**Renewal Deadline**” means the third anniversary of the initial effective time of the Registration Statement.

(iii) *Eligibility to Use Automatic Shelf Registration Form.* The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form. If at any time when Offered Securities remain unsold by the Underwriters the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (A) promptly notify the Representatives, (B) promptly file a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, in a form reasonably satisfactory to the Representatives, (C) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (D) promptly notify the Representatives of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Offered Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(iv) *Filing Fees.* The Company has paid or shall pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(d) *Ineligible Issuer Status.* (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Offered Securities and (ii) at the date of this Agreement, the Company was not and is not an “ineligible issuer”, as defined in Rule 405, including (A) the Company or any subsidiary of the Company in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (B) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a proceeding under Section 8 of the Act and not being the subject of a proceeding under Section 8A of the Act in connection with the offering of the Offered Securities, all as described in Rule 405.

(e) *General Disclosure Package.* As of the Applicable Time, neither (i) the General Use Issuer Free Writing Prospectus(es) issued at or prior to the Applicable Time and the preliminary prospectus supplement, dated November 16, 2015, including the base prospectus of the Company, dated November 16, 2015 (which is the most recent Statutory Prospectus distributed to investors generally), and the other information, if any, stated in Schedule B to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the “**General Disclosure Package**”), nor (ii) any individual Limited Use Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted 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. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 8(b) hereof.

(f) *Issuer Free Writing Prospectuses.* Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would 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, (i) the Company has promptly notified or will promptly notify the Representatives and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(g) *Good Standing of the Company.* The Company has been duly incorporated and is existing and in good standing under the laws of the State of South Dakota, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would

not, individually or in the aggregate, result in a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole (“**Material Adverse Effect**”).

(h) *Subsidiaries.* Each subsidiary of the Company has been duly incorporated or organized, as the case may be, and is existing and in good standing under the laws of the jurisdiction of its

incorporation or organization, as the case may be, with power and authority (corporate and other) to own its properties and conduct its business as described in the General Disclosure Package, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, result in a Material Adverse Effect; and each subsidiary of the Company is duly qualified to do business as a foreign corporation, limited partnership, general partnership or limited liability company, as the case may be, in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, result in a Material Adverse Effect; all of the issued and outstanding capital stock or partnership or limited liability company interests, as the case may be, of each subsidiary of the Company has been duly authorized and validly issued and, with respect to the capital stock of each subsidiary that is a corporation, is fully paid and nonassessable; and, except as disclosed in the General Disclosure Package, the capital stock or partnership or limited liability company interests, as the case may be, of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects.

(i) *Units Agreements.*

(i) *Authorization of the Securities.* The aggregate maximum number of shares of the Securities issuable pursuant to the Purchase Contracts comprising a part of the Corporate Units (including the aggregate maximum number of “make-whole shares” (as such term is defined in the General Disclosure Package and the Final Prospectus) issuable upon settlement of the Purchase Contracts in connection with a “fundamental change” (as such term is defined in the General Disclosure Package and the Final Prospectus)) have been duly authorized and reserved for issuance and, when issued and delivered by the Company pursuant to the Purchase Contracts and Purchase Contract and Pledge Agreement against payment of the consideration set forth therein, will be validly issued, fully paid and non-assessable; and the issuance and sale of such shares of the Securities to be sold by the Company will not be subject to any preemptive rights, rights of first refusal or other similar rights of any securityholder of the Company or any other person or entity.

(ii) *Purchase Contract and Pledge Agreement.* The Purchase Contract and Pledge Agreement has been duly authorized and, at the First Closing Date, will have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the party thereto other than the Company, will constitute a valid and binding agreement of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles; *provided, however,* that upon the occurrence of a Termination Event (as defined in the Purchase Contract and Pledge Agreement), Section 365(e)(1) of the United States Bankruptcy Code (11 U.S.C. Sections 101-1330, as amended) and Section 541 of the Bankruptcy Code should not substantively limit the provisions of the Purchase Contract and Pledge Agreement that require termination of the Purchase Contracts and release of the Collateral Agent’s security interest in the Notes (or the relevant beneficial ownership interest therein) or the Treasury Portfolio (as defined in the Purchase Contract and Pledge Agreement) or any Treasury securities comprising a part of a Treasury Unit.

(iii) *Offered Securities.* The Offered Securities and the Purchase Contracts have been duly authorized by the Company and, in the case of the Firm Securities and the Purchase Contracts constituting part of the Firm Securities, at the First Closing Date or, in the case of the Optional Securities and the Purchase Contracts constituting part of the Optional Securities, at the applicable Closing Date, will have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by parties thereto other than the Company, when issued and delivered pursuant to the Purchase Contract and Pledge Agreement to and paid for by the Underwriters in accordance with the terms of this Agreement, will constitute valid and binding obligations of the Company, enforceable in

accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

(iv) *Remarketing Agreement.* The form of the Remarketing Agreement attached as an exhibit to the Purchase Contract and Pledge Agreement has been duly authorized by the Company and, when a Remarketing Agreement is executed and delivered by the Company and assuming due authorization, execution and delivery by the Remarketing Agent, it will constitute a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

(v) *The Notes.* The Notes are in the form contemplated by the Indenture and have been duly authorized by the Company and, when issued and delivered pursuant to the Indenture to and paid for by the Underwriters in accordance with the terms of this Agreement, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles, and be entitled to the benefits provided by the Indenture.

(vi) *The Indenture.* The Indenture has been duly authorized by the Company and, when executed and delivered by the Company and assuming due authorization, execution and delivery by the Trustee, will constitute a valid and legally binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles; and at the most recent effective date of the Registration Statement, the Indenture was duly qualified under the Trust Indenture Act.

(j) [Intentionally omitted]

(k) *Capitalization.* The Company has an authorized equity capitalization as set forth in the Registration Statement, the General Disclosure Package and the Final Prospectus under the heading “Capitalization”; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except as described in or expressly contemplated by the General Disclosure Package and the Final Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options.

(l) *NYSE.* The outstanding shares of the Securities are listed on the NYSE and the Offered Securities being sold hereunder by the Company have been approved for listing, subject only to official notice of issuance on the NYSE. In addition, a number of shares of the Securities equal to the aggregate maximum number of shares of the Securities issuable pursuant to the Purchase Contracts comprising a part of the Corporate Units (including the aggregate maximum number of “make-whole shares” (as such term is defined in the General Disclosure Package) issuable upon settlement of the Purchase Contracts in connection with a “fundamental change” (as such term is defined in the General Disclosure Package)), upon issuance, will be listed on the NYSE.

(m) *No Finder’s Fee.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give

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rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering.

(n) *Registration Rights.* Except as disclosed in the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act (collectively, “**registration rights**”), and any person to whom the Company has granted registration rights has agreed, if necessary, not to exercise such rights until after the expiration of the Lock-Up Period referred to in Section 5 hereof.

(o) *Absence of Further Requirements.* No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required for the consummation of the transactions contemplated by this Agreement or the Units Agreements in connection with the offering, issuance and sale of the Offered Securities by the Company, except such as have been obtained or made and such as may be required under state securities laws.

(p) *Title to Property.* Except as disclosed in the General Disclosure Package, the Company and its subsidiaries have good and defensible title to all interests in oil and gas properties owned by them and good and marketable title to all other real properties and all other properties and assets owned by them that are material to the Company and its subsidiaries taken as a whole, in each case free from liens, charges, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them and, except as disclosed in the General Disclosure Package, the Company and its subsidiaries hold any leased real or personal property that is material to the Company and its subsidiaries taken as a whole under valid and enforceable leases with no terms or provisions that would materially interfere with the use made or to be made thereof by them.

(q) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution, delivery and performance of the Units Agreements and this Agreement, and the issuance and sale of the Offered Securities and compliance with the terms and provisions thereof, will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter or by-laws or other organizational documents of the Company or any of its subsidiaries, (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject, except, in the case of clauses (ii) and (iii), as would not, individually or in the aggregate, result in a Material Adverse Effect. A “**Debt Repayment Triggering Event**” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(r) *Absence of Existing Defaults and Conflicts.* Neither the Company nor any of its subsidiaries is in violation of its respective charter, by-laws or organizational documents or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which any of them is a party or by which any

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of them is bound or to which any of the properties of any of them is subject, except such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect.

(s) *Authorization of Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(t) *Possession of Licenses.* The Company and its subsidiaries possess, and are in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits (“**Licenses**”) necessary or material to the conduct of the business now conducted or proposed in the

General Disclosure Package to be conducted by them and have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(u) *Absence of Labor Dispute.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could have a Material Adverse Effect.

(v) *Possession of Intellectual Property.* The Company and its subsidiaries own, possess, or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, “**intellectual property rights**”) necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(w) *Environmental Laws.* Except as disclosed in the General Disclosure Package, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(x) *Accurate Disclosure.* The statements in the Registration Statement, General Disclosure Package and the Final Prospectus under the headings “Description of the Equity Units”, “Description of the Purchase Contracts”, “Certain Provisions of the Purchase Contract and Pledge Agreement”, “Description of the Remarketable Junior Subordinated Notes”, “Description of Capital Stock”, “Material United States Federal Income Tax Considerations” and “Underwriting”, insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings in all material respects and present the information required to be shown.

(y) *Absence of Manipulation.* The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(z) *Internal Controls and Compliance with the Sarbanes-Oxley Act.* Except as set forth in the General Disclosure Package, the Company, its subsidiaries and the Company’s Board of Directors (the “**Board**”) are in compliance in all material respects with Sarbanes Oxley and all applicable

Exchange Rules. The Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an internal audit function and legal and regulatory compliance controls (collectively, “**Internal Controls**”) that comply in all material respects with the Securities Laws and are sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Internal Controls are, or upon consummation of the offering of the Offered Securities will be, overseen by the Audit Committee (the “**Audit Committee**”) of the Board in accordance with Exchange Rules. Since the date of the filing of the Company’s Annual Report on Form 10K/A for the fiscal year ended December 31, 2014, the Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 90 days the Company does not reasonably expect to publicly disclose or report to the Audit Committee or the Board, (i) any significant deficiency in the design or operation of Internal Controls that could adversely affect the Company’s ability to record, process, summarize and report financial data, any material weakness in Internal Controls, any material change in Internal Controls or any fraud involving management or other employees who have a significant role in Internal Controls (each, an “**Internal Control Event**”) or (ii) any material violation of, or failure to comply with, the Securities Laws.

(aa) *Absence of Accounting Issues.* A member of the Audit Committee has confirmed to the Chief Executive Officer, Chief Financial Officer or General Counsel of the Company that, except as set forth in the General Disclosure Package, the Audit Committee is not reviewing or investigating, and neither the Company’s independent auditors nor its internal auditors have recommended that the Audit Committee review or investigate, (i) adding to, deleting, changing the application of, or changing the Company’s disclosure with respect to, any of the Company’s material accounting policies; (ii) any matter which could result in a restatement of the Company’s financial statements for any annual or interim period during the current or prior three fiscal years; or (iii) any Internal Control Event.

(bb) *Litigation.* Except as disclosed in the General Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under the Units Agreements or this Agreement, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are, to the Company’s knowledge, threatened or contemplated.

(cc) *Financial Statements.* The financial statements included in the Registration Statement and the General Disclosure Package present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States applied on a consistent basis; and the schedules included in the Registration Statement present fairly the information required to be stated therein. The interactive data in extensible Business Reporting Language included or incorporated by reference in the Registration Statement and the

(dd) *No Material Adverse Change in Business.* Except as disclosed in the General Disclosure Package, since the end of the period covered by the latest audited financial statements included in the General Disclosure Package (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole that is material and adverse, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock (other than regular quarterly cash dividends in respect of the Company's common stock and declared and paid by the Company in the ordinary course of business) and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(ee) *Investment Company Act.* The Company is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the General Disclosure Package, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(ff) *Ratings.* No "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 3(a)(62) (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(d) (ii) hereof, except as has been publicly disclosed by the applicable nationally recognized statistical rating organization.

(gg) *Reserve Report Data.* The oil and gas reserve estimates of the Company and its subsidiaries for the fiscal years ended December 31, 2012, December 31, 2013, and December 31, 2014, contained in the General Disclosure Package are derived from reports that have been prepared by Cawley, Gillespie & Associates, Inc., and as set forth therein, such reserve estimates fairly reflect the estimated oil and gas reserves of the Company and its subsidiaries at the dates indicated therein and are in accordance with the Commission guidelines applicable thereto at the time such estimates were prepared.

(hh) *Independent Reserve Engineers.* Cawley, Gillespie & Associates, Inc. has represented to the Company that they are, and the Company believes them to be, independent reserve engineers with respect to the Company and its subsidiaries and for the periods set forth in the General Disclosure Package.

(ii) *Acquisition.* The Acquisition Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, Black Hills Utility Holdings, Inc., enforceable in accordance with its terms, and, to the knowledge of the Company, the Acquisition Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of the Sellers and other parties thereto, enforceable in accordance with its terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. The Company expects that the Acquisition will be consummated in all material respects on the terms and by the date and as contemplated by the Acquisition Agreement and the description thereof set forth in the General Disclosure Package and the Final Prospectus. In addition, the Company has access to information regarding the Target under the Acquisition Agreement and, to the Company's knowledge, each of the representations and warranties of the Target set forth in Articles III, IV and V of the Acquisition Agreement is true and correct in all material respects as of the date hereof (except in the case of any such representation and warranty that is qualified by materiality or by a material adverse effect, in which case such representation and warranty shall be true and correct in all respects).

(jj) *Pro Forma Financial and Other Information.* The pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto set forth in the

Registration Statement and the General Disclosure Package present fairly the information contained therein, have been prepared in accordance with Article 11 of Regulation S-X with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. To the Company's knowledge, the other financial and non-financial information relating to the Acquisition included in the Registration Statement and the General Disclosure Package presents fairly in all material respects the information shown therein.

(kk) *Foreign Corrupt Practices Act.* Within the last five years, to the Company's knowledge, none of the Company, any of its subsidiaries, any director, officer, agent, employee, controlled affiliate or other controlled person acting on behalf of the Company or any of its subsidiaries has taken any action, directly or indirectly, that would reasonably be expected to result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and its subsidiaries conduct their businesses in material compliance with the FCPA.

(ll) *Money Laundering Laws.* The operations of the Company and its subsidiaries comply in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering statutes of all jurisdictions in which the Company and its subsidiaries operate, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity applicable to the Company and its subsidiaries (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries.

(mm) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, controlled affiliate or other controlled representative of the Company or any of its subsidiaries is an individual or entity currently the subject or target of any international economic sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "**Sanctions**"). The Company will not use the proceeds of the sale of the Offered Securities in violation of Sanctions.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein, the Company agrees to sell to the several Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$48.50 per Offered Security, the respective number of Firm Securities set forth opposite the names of the Underwriters in Schedule A hereto.

The Company will deliver the Firm Securities to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price by the Underwriters in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company at the office of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, at 9:30 A.M., New York time, on November 23, 2015, or at such other time not later than seven full business days thereafter as the Representatives and the Company determine, such time being herein referred to as the "**First Closing Date**". For purposes of Rule 15c6-1 under the Exchange Act, the First Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of

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securities for all the Offered Securities sold pursuant to the offering. In addition, upon written notice from the Representatives given to the Company from time to time, the Underwriters may purchase all or less than all of the Optional Securities at the purchase price per Corporate Unit to be paid for the Firm Securities within the 13-day period beginning on, and including, the First Closing Date. The Company agrees to sell to the Underwriters the number of Optional Securities specified in such notice and the Underwriters agree, severally and not jointly, to purchase such Optional Securities. Such Optional Securities shall be purchased for the account of each Underwriter in the same proportion as the number of Firm Securities set forth opposite such Underwriter's name bears to the total number of Firm Securities (subject to adjustment by the Representatives to eliminate fractions). No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representatives to the Company.

Each time for the delivery of and payment for the Optional Securities, being herein referred to as an "**Optional Closing Date**", which may be the First Closing Date (the First Closing Date and each Optional Closing Date, if any, being sometimes referred to as a "**Closing Date**"), shall, subject to the third sentence of the immediately preceding paragraph, be determined by the Representatives but shall be no earlier than the third business day (except in the case such time of delivery and payment would occur on the First Closing Date) and not later than the fifth business day after written notice of election to purchase Optional Securities is given. The Company will deliver the Optional Securities being purchased on each Optional Closing Date to or as instructed by the Representatives for the accounts of the several Underwriters in a form reasonably acceptable to the Representatives against payment of the purchase price therefor in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Representatives drawn to the order of the Company, at the above office of Davis Polk & Wardwell LLP.

4. *Offering by Underwriters.* It is understood that the several Underwriters propose to offer the Offered Securities for sale to the public as set forth in the Final Prospectus.

5. *Certain Agreements of the Company.* The Company agrees with the several Underwriters that:

(a) *Filing of Prospectuses.* The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) (or, if applicable and consented to by the Representatives, subparagraph (5), such consent not to be unreasonably withheld or delayed) not later than the second business day following the earlier of the date it is first used or the execution and delivery of this Agreement. The Company has complied and will comply with Rule 433.

(b) *Filing of Amendments; Response to Commission Requests.* The Company will promptly advise the Representatives of any proposal to amend or supplement the Registration Statement or any Statutory Prospectus at any time and will offer the Representatives a reasonable opportunity to comment on any such amendment or supplement; and the Company will also advise the Representatives promptly of (i) the filing of any such amendment or supplement, (ii) any request by the Commission or its staff for any amendment to the Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iii) the institution by the Commission of any stop order proceedings in respect of the Registration Statement or the threatening of any proceeding for that purpose, and (iv) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by any Underwriter or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact

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or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Representatives of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Underwriters and the dealers and any other dealers upon request of the Representatives, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Rule 158*. As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Act and Rule 158.

(e) *Furnishing of Prospectuses*. The Company will furnish to the Representatives copies of the Registration Statement, including all exhibits, any Statutory Prospectus, the Final Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Representatives reasonably request. The Company will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) *Blue Sky Qualifications*. The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Representatives reasonably designate and will continue such qualifications in effect so long as required for the distribution; *provided* that, in connection therewith, the Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to a general consent to service of process in any such jurisdiction.

(g) *Reporting Requirements*. During the period of five years hereafter, if any Offered Securities remain outstanding, the Company will furnish to the Representatives and, upon request, to each of the other Underwriters, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and the Company will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders, and (ii) from time to time, such other information concerning the Company as the Representatives may reasonably request. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on its Electronic Data Gathering, Analysis and Retrieval system (“**EDGAR**”), it is not required to furnish such reports or statements to the Representatives or the Underwriters.

(h) *Payment of Expenses*. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including but not limited to any filing fees and other expenses (including fees and disbursements of counsel to the Underwriters) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Representatives reasonably designate and the preparation and printing of memoranda relating thereto, any fees charged by investment rating agencies for the rating of the Offered Securities, costs and expenses relating to investor presentations or any “road show” in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company’s officers and employees and any other expenses of the Company including the chartering of airplanes (but excluding any separately-incurred travel expenses of employees and representatives of the Representatives and the Underwriters), fees and expenses incident to listing any of the Offered Securities or the Securities issuable upon settlement of the Purchase Contracts on the New York Stock Exchange, American Stock Exchange, NASDAQ Stock Market and other national and foreign exchanges, fees and expenses in connection with the registration of the Offered Securities under the Exchange Act, and expenses incurred in distributing preliminary prospectuses and the Final Prospectus (including any amendments and supplements thereto) to the

Underwriters and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors.

(i) *Use of Proceeds*. The Company will use the net proceeds received in connection with this offering in the manner described in the “Use of Proceeds” section of the General Disclosure Package and, except as disclosed in the General Disclosure Package, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to any affiliate of any Underwriter.

(j) *Absence of Manipulation*. The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(k) *Restriction on Sale of Securities*. The Company will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise dispose of, directly or indirectly, or file with the Commission a registration statement under the Act relating to, any shares of the Securities or securities convertible into or exchangeable or exercisable for any shares of the Securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of shares of the Securities or such other securities, in cash or otherwise, without the prior written consent of Credit Suisse Securities (USA) LLC, Wells Fargo Securities, LLC and Merrill Lynch, Pierce Fenner & Smith Incorporated, for a period beginning on the date hereof and ending 60 days after the date of the Final Prospectus (the “**Lock-Up Period**”), other than (A) any Offered Securities issued and sold pursuant to the terms hereof or Securities issued pursuant to the terms of the Purchase Contract and Pledge Agreement, including, without limitation, issuing shares of the Securities in connection with any early settlement right at the election of holders of Purchase Contracts (as defined in such Purchase Contract and Pledge Agreement) or any “fundamental change early settlement right” upon the occurrence of a “fundamental change” (each as defined in such Purchase Contract and Pledge Agreement), (B) issuing the Other Securities, (C) any shares of the Securities issued upon the exercise of options previously granted or delivered upon the lapsing of restrictions on restricted stock units or other equity awards under any incentive plan, (D) grants of restricted stock, stock options, performance shares, phantom stock or other equity awards pursuant to the Company’s incentive plans, (E) offers and sales of Securities pursuant to the Company’s dividend reinvestment and direct stock purchase plan, retirement savings plan and non-qualified deferred compensation plan, (F) the filing of any registration statement under the Act on Form S-8 or Form S-3 with respect to any such plan and (G) the issuance of up to an aggregate of 10% of the number of Securities to be outstanding immediately following the completion of the transactions contemplated by this Agreement and the transactions contemplated by the underwriting agreement to be entered into for the offer and sale of the Other Securities in connection with one or more acquisitions by the Company of the assets or capital stock of another person or entity, whether through merger, asset acquisition, stock purchase or otherwise; *provided* that each recipient of Securities pursuant to this clause (G) shall, on or prior to such issuance, execute a lock-up letter in substantially the form of Exhibit C-2 hereto with respect to the remaining portion of the Lock-Up Period.

(l) *Listing*. The Company will use its reasonable best efforts to effect the listing of the aggregate maximum number of shares of the Securities issuable pursuant to the Purchase Contracts comprising a part of the Corporate Units (including the aggregate maximum number of “make-whole

(m) *Reservation of Shares.* The Company will reserve and keep available at all times, free of preemptive rights, the aggregate maximum number of shares of the Securities (including the aggregate maximum number of “make-whole shares” (as such term is defined in the General Disclosure Package and the Final Prospectus) issuable upon settlement of the Purchase Contracts in connection with a “fundamental change” (as such term is defined in the General Disclosure Package and the Final Prospectus)) for the purpose of enabling the Company to satisfy any obligation to issue shares of the Securities under the Purchase Contract and Pledge Agreement.

6. *Free Writing Prospectuses.* (a) *Issuer Free Writing Prospectuses.* The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Offered Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus”, as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a “**Permitted Free Writing Prospectus**”. The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus”, as defined in Rule 433, and has complied and will comply with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(b) *Term Sheet.* The Company will prepare a final term sheet relating to the Offered Securities and the Other Securities, containing only information that describes the final terms of the Offered Securities and the Other Securities and otherwise in a form consented to by the Representatives, and will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for the offering of the Offered Securities and the Other Securities. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement. The Company also consents to the use by any Underwriter of a free writing prospectus that contains only (i) (A) information describing the preliminary terms of the Offered Securities and the Other Securities or their offering or (B) information that describes the final terms of the Offered Securities and the Other Securities or their offering and that is included in the final term sheet of the Company contemplated in the first sentence of this subsection or (ii) other information that is not “issuer information”, as defined in Rule 433, it being understood that any such free writing prospectus referred to in clause (i) or (ii) above shall not be an Issuer Free Writing Prospectus for purposes of this Agreement.

7. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Firm Securities on the First Closing Date and the Optional Securities to be purchased on each Optional Closing Date will be subject to the accuracy of the representations and warranties of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) *Accountants’ Comfort Letters.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Deloitte & Touche LLP and KPMG LLP, each confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and substantially in the form of Schedules C-1 and C-2 hereto, respectively (except that, in any letter dated a Closing Date, the specified date referred to in Schedule C-1 or C-2 hereto, as applicable, shall be a date no more than three days prior to such Closing Date).

(b) *Reserve Report Confirmation Letter.* The Representatives shall have received letters, dated, respectively, the date hereof and each Closing Date, of Cawley, Gillespie & Associates, Inc., containing statements and information with respect to the estimated oil and gas reserves of the Company and its subsidiaries and substantially in the form of Schedule D hereto.

(c) *Filing of Prospectus.* The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. No stop order suspending the effectiveness of the Registration Statement or of any part thereof shall have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or any Underwriter, shall be contemplated by the Commission.

(d) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to market the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 3(a)(62)), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Representatives, impractical to market or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. Federal or New York authorities; (vii) any major disruption of settlements of securities, payment or clearance services in the United States or any other country where such securities are listed, or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(e) *Opinion of Counsel for Company.* The Representatives shall have received an opinion, dated such Closing Date, of Faegre Baker Daniels LLP, counsel for the Company, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Exhibit A hereto.

(f) *Opinion of General Counsel to the Company.* The Representatives shall have received an opinion, such Closing Date, of Steven J. Helmers, Esq., General Counsel to the Company, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Exhibit B hereto.

(g) *Opinion of Counsel for Underwriters.* The Representatives shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated such Closing Date, with respect to such matters as the Representatives may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters. In rendering such opinion, Davis Polk & Wardwell LLP may rely as to the incorporation of the Company and all other matters governed by South Dakota law upon the opinion of Steven J. Helmers, Esq., General Counsel to the Company, referred to above.

(h) *Officers' Certificate.* The Representatives shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their

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knowledge and after reasonable investigation, are contemplated by the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in or contemplated by the General Disclosure Package or as described in such certificate.

(i) *Lock-up Agreements.* On or prior to the date hereof, the Representatives shall have received lockup letters from each of the executive officers and directors of the Company listed on Exhibit C-1 hereto, in each case substantially in the form of Exhibit C-2 hereto.

(j) *Approval of Listing.* At the First Closing Date and each Optional Closing Date, if any, the Offered Securities to be purchased by the Underwriters from the Company at such time shall have been approved for listing on the NYSE, subject only to official notice of issuance. In addition, an application for the listing of a number of shares of the Securities equal to the aggregate maximum number of shares of the Securities issuable pursuant to the Purchase Contracts comprising a part of the Corporate Units (including the aggregate maximum number of "make-whole shares" (as such term is defined in the General Disclosure Package and the Final Prospectus) issuable upon settlement of the Purchase Contracts in connection with a "fundamental change" (as such term is defined in the General Disclosure Package and the Final Prospectus)) shall have been approved for listing by the NYSE, subject only to official notice of issuance.

The Company will furnish the Representatives with such conformed copies of such opinions, certificates, letters and documents as the Representatives reasonably request. The Representatives may in its sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution.* (a) *Indemnification of Underwriters.* The Company will indemnify and hold harmless each Underwriter, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an "**Indemnified Party**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in subsection (b) below.

(b) *Indemnification of Company.* Each Underwriter will severally and not jointly indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, an "**Underwriter Indemnified Party**"), against any losses, claims, damages or liabilities to which such Underwriter Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or

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regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Underwriter Indemnified Party is a party

thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Final Prospectus furnished on behalf of each Underwriter: the concession figure appearing in the fifth paragraph under the caption "Underwriting" and the information contained in the thirteenth (pertaining to stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids) and fourteenth (pertaining to the effect of stabilizing transactions, syndicate covering transactions and penalty bids) paragraphs under the caption "Underwriting".

(c) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) *Contribution.* If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection

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with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, 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 or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(d).

9. *Default of Underwriters.* If any Underwriter or Underwriters default in their obligations to purchase Offered Securities hereunder on either the First Closing Date or any Optional Closing Date and the number of Offered Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of Offered Securities that the Underwriters are obligated to purchase on such Closing Date, the Representatives may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Underwriters agreed but failed to purchase on such Closing Date. If any Underwriter or Underwriters so default and the aggregate number of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total number of Offered Securities that the Underwriters are obligated to purchase on such Closing Date and arrangements satisfactory to the Representatives and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10 (provided that if such default occurs with respect to Optional Securities after the First Closing Date, this Agreement will not terminate as to the Firm Securities or any Optional Securities purchased prior to such termination). As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

10. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If the purchase of the Offered Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 9 hereof or the occurrence of any event specified in clause (iii), (iv), (vi), (vii) or (viii) of Section 7(d), the Company will reimburse the Underwriters for all out-of-pocket expenses

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(including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities, and the respective obligations of the Company and the Underwriters pursuant to Section 8 hereof shall remain in effect. In addition, if any Offered Securities have been purchased hereunder, the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect.

11. *Notices.* All communications hereunder will be in writing and, if sent to the Underwriters, will be mailed, delivered or telegraphed and confirmed to the Representatives at Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, NY 10010-3629, Attention: IBD Legal, Wells Fargo Securities, LLC, 375 Park Avenue, New York, New York 10152, Attention: Equity Syndicate Department (fax: (212) 214-5918), RBC Capital Markets, LLC, Three World Financial Center, 200 Vesey Street, 8th Floor, New York, New York 10281-8098, Attention: Transaction Management — Scott Primrose (fax: (212) 658-6137), and Merrill Lynch at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 625 Ninth Street, Rapid City, SD 57709, Attention: Steven J. Helmers, Esq., General Counsel; *provided, however*, that any notice to an Underwriter pursuant to Section 8 will be mailed, delivered or telegraphed and confirmed to such Underwriter.

12. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 8, and no other person will have any right or obligation hereunder.

13. *Representation of Underwriters.* The Representatives will act for the several Underwriters in connection with this financing, and any action under this Agreement taken by the Representatives will be binding upon all the Underwriters.

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

15. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) *No Other Relationship.* The Representatives have been retained solely to act as an underwriter in connection with the sale of Offered Securities and that no fiduciary, advisory or agency relationship between the Company and the Representatives has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Representatives have advised or is advising the Company on other matters;

(b) *Arms' Length Negotiations.* The price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arms' length negotiations with the Representatives and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company has been advised that the Representatives and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representatives have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company waives, to the fullest extent permitted by law, any claims it may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Representatives shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

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16. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

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If the foregoing is in accordance with the Representatives' understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

BLACK HILLS CORPORATION

By: /s/ Richard Kinzley
Name: Richard Kinzley
Title: SVP-CFO

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The foregoing Underwriting Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Michael Proskin
Name: Michael Proskin
Title: Managing Director

WELLS FARGO SECURITIES, LLC

/s/ Elizabeth Alvarez
Name: Elizabeth Alvarez
Title: Managing Director

RBC CAPITAL MARKETS, LLC

/s/ Andrew Rosenbaum
Name: Andrew Rosenbaum
Title: Managing Director

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

/s/ Jason Satsky
Name: Jason Satsky
Title: Managing Director

Acting on behalf of themselves and as the Representatives of the several Underwriters.

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SCHEDULE A

Underwriter	Number of Firm Securities
Credit Suisse Securities (USA) LLC	1,820,000
Wells Fargo Securities, LLC	832,000
RBC Capital Markets, LLC	728,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	572,000
J.P. Morgan Securities LLC	416,000
Morgan Stanley & Co. LLC	416,000
U.S. Bancorp Investments, Inc.	416,000
Total	5,200,000

SCHEDULE B

1. General Use Issuer Free Writing Prospectuses (included in the General Disclosure Package)

“General Use Issuer Free Writing Prospectus” includes each of the following documents:

1. Final term sheet, dated November 17, 2015, a copy of which is attached hereto.

2. Other Information Included in the General Disclosure Package

The following information is also included in the General Disclosure Package:

None.

BLACK HILLS CORPORATION

Concurrent Offerings of:

**5,500,000 Shares of Common Stock
(the “Common Stock Offering”)**

and

**5,200,000 Equity Units
(Initially Consisting of 5,200,000 Corporate Units)
(the “Equity Units Offering” and, together with the Common Stock Offering, the “Offerings”)**

**Pricing Term Sheet dated
November 17, 2015**

The information in this pricing term sheet relates to the Offerings and should be read together with (i) the preliminary prospectus supplement dated November 16, 2015 relating to the Common Stock Offering (the “Common Stock Preliminary Prospectus Supplement”) and (ii) the preliminary prospectus supplement dated November 16, 2015 relating to the Equity Units Offering (the “Equity Units Preliminary Prospectus Supplement”) and, together with the Common Stock Preliminary Prospectus Supplement, the “Preliminary Prospectus Supplements”), in each case, including the documents incorporated by reference therein and the related base prospectus dated November 16, 2015, filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (Registration Statement File No. 333-197895). Terms used but not defined herein, with respect to either Offering, have the meanings ascribed to them in the applicable Preliminary Prospectus Supplement.

Company	Black Hills Corporation, a South Dakota corporation
Company Stock Ticker	New York Stock Exchange “BKH”
Pricing Date	November 17, 2015
Trade Date	November 18, 2015
Closing Price of the Common Stock on November 17, 2015	\$40.25 per share
Settlement Date	November 23, 2015
Registration Format	SEC Registered

Common Stock Offering

Title of Securities	Common stock, par value \$1.00 per share, of the Company (the “Common Stock”)
Number of Shares of Common Stock Offered	5,500,000 (or 6,325,000 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full)

Common Stock Public Offering Price	\$40.25 per share of Common Stock \$221,375,000 in aggregate (or \$254,581,250 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full)
Underwriting Discounts and Commissions	\$1.40875 per share of Common Stock \$7,748,125 in aggregate (or \$8,910,343.75 if the underwriters of the Common Stock Offering exercise their option to purchase up to 825,000 additional shares of Common Stock in full) The underwriters of the Common Stock Offering propose to offer the shares of Common Stock to dealers at the Common Stock Public Offering Price less a concession not in excess of \$0.84525 per share of Common Stock.
Estimated Net Proceeds to the Company from the Common Stock Offering	The Company estimates that it will receive net proceeds of approximately \$212.4 million from the sale of Common Stock in the Common Stock Offering after deducting the Underwriting Discounts and Commissions and

estimated offering expenses. The Company estimates that it will receive net proceeds of approximately \$244.5 million if the underwriters of the Common Stock Offering exercise their option to purchase additional shares of Common Stock in full.

Joint Bookrunning Managers	Credit Suisse Securities (USA) LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated RBC Capital Markets, LLC Wells Fargo Securities, LLC
Senior Co-Manager	BMO Capital Markets Corp.
Co-Managers	J.P. Morgan Securities LLC Morgan Stanley & Co. LLC Scotia Capital (USA) Inc. Mitsubishi UFJ Securities (USA), Inc.
CUSIP for the Common Stock	092113109
ISIN for the Common Stock	US0921131092
Stabilization Transactions	Prior to purchasing the shares of Common Stock being offered pursuant to the Common Stock Preliminary Prospectus Supplement, on November 17, 2015, one of the underwriters purchased, on behalf of the syndicate, 47,450 shares of Common Stock at an average price of \$40.2346 per share in stabilizing transactions.

Equity Units Offering

Title of Securities	Equity Units that will each have a stated amount of \$50.00 and will initially be in the form of a Corporate Unit consisting of a purchase contract issued by the Company and, initially, a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of 2015 Series A 3.50% Remarketable
---------------------	--

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	Junior Subordinated Notes due 2028 to be issued by the Company (each being referred to as an "RSN")
Number of Equity Units Offered	5,200,000 (or 5,980,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Aggregate Offering Amount	\$260,000,000 (or \$299,000,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Stated Amount per Equity Unit	\$50.00
Corporate Unit Public Offering Price	\$50.00 per Corporate Unit \$260,000,000 in aggregate (or \$299,000,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
Underwriting Discounts and Commissions	\$1.50 per Corporate Unit \$7,800,000 in aggregate (or \$8,970,000 if the underwriters of the Equity Units Offering exercise their option to purchase up to 780,000 additional Corporate Units in full)
	The underwriters of the Equity Units Offering propose to offer the Corporate Units to dealers at the Corporate Unit Public Offering Price less a concession not in excess of \$0.90 per Corporate Unit.
Estimated Net Proceeds to the Company from the Equity Units Offering	The Company estimates that it will receive net proceeds of approximately \$250.5 million from the sale of Corporate Units in the Equity Units Offering after deducting the Underwriting Discounts and Commissions and estimated offering expenses. The Company estimates that it will receive net proceeds of approximately \$288.3 million if the underwriters of the Equity Units Offering exercise their option to purchase additional Corporate Units in full.
Interest Rate on the RSNs	3.50% per year subject to the Company's right to defer interest payments, as described in the Equity Units Preliminary Prospectus Supplement and subject to modification in connection with a successful remarketing

Interest Payment Dates	Prior to a successful remarketing, February 1, May 1, August 1 and November 1 of each year, commencing on February 1, 2016
Deferred Interest on the RSNs	Deferred interest on the RSNs will bear interest at the interest rate applicable to the RSNs, compounded on each Interest Payment Date to, but excluding, the Interest Payment Date on which such deferred interest is paid
Contract Adjustment Payment Rate	4.25% per year or \$2.125 per year on the Stated Amount per Equity Unit subject to the Company's right to defer contract adjustment payments, as described in the Equity Units Preliminary Prospectus Supplement
Contract Adjustment Payment Dates	February 1, May 1, August 1 and November 1 of each year,

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	commencing on February 1, 2016
Deferred Contract Adjustment Payments	Deferred contract adjustment payments will accrue additional contract adjustment payments at the rate equal to 7.75% per annum, compounded on each Contract Adjustment Payment Date to, but excluding, the Contract Adjustment Payment Date on which such deferred contract adjustment payments are paid
Total Distribution Rate on the Corporate Units	7.75% per annum
Reference Price	\$40.25 (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement)
Threshold Appreciation Price	\$47.2938 (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which represents appreciation of approximately 17.5% over the Reference Price
Minimum Settlement Rate	1.0572 shares of Common Stock (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which is approximately equal to the \$50.00 Stated Amount per Equity Unit, <i>divided by</i> the Threshold Appreciation Price
Maximum Settlement Rate	1.2422 shares of Common Stock (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement), which is approximately equal to the \$50.00 Stated Amount per Equity Unit, <i>divided by</i> the Reference Price
Purchase Contract Settlement Date	November 1, 2018 (or if such day is not a business day, the following business day)
RSN Maturity Date	November 1, 2028
Joint Bookrunning Managers	Credit Suisse Securities (USA) LLC Wells Fargo Securities, LLC RBC Capital Markets, LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated
Co-Managers	J.P. Morgan Securities LLC Morgan Stanley & Co. LLC U.S. Bancorp Investments, Inc.
Listing	The Company intends to apply to list the Corporate Units on the New York Stock Exchange and expects trading to commence within 30 days of the date of initial issuance of the Corporate Units under the symbol "BKHU".
CUSIP for the Corporate Units	092113 125
ISIN for the Corporate Units	US0921131258
CUSIP for the Treasury Units	092113 133
ISIN for the Treasury Units	US0921131332
CUSIP for the RSNs	092113 AJ8
ISIN for the RSNs	US092113AJ83

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Allocation of the Purchase Price

At the time of issuance, the fair market value of the applicable ownership interest in the RSNs will be \$50 (or 100% of the issue price of a Corporate Unit) and the fair market value of each purchase contract will be \$0 (or 0% of the issue price of a Corporate Unit).

Early Settlement

Subject to certain conditions described under “Description of the Purchase Contracts—Early Settlement” in the Equity Units Preliminary Prospectus Supplement, a holder of Corporate Units or Treasury Units may settle the related purchase contracts at any time prior to 4:00 p.m., New York City time, on the second business day immediately preceding the Purchase Contract Settlement Date, other than during a blackout period (as described in the Equity Units Preliminary Prospectus Supplement) in the case of Corporate Units. An early settlement may be made only in integral multiples of 20 Corporate Units or 20 Treasury Units; however, if the Treasury portfolio has replaced the RSNs as a component of the Corporate Units following a successful optional remarketing, holders of Corporate Units may settle early only in integral multiples of 16,000 Corporate Units. If a purchase contract is settled early, the number of shares of Common Stock to be issued per purchase contract will be equal to the Minimum Settlement Rate (subject to adjustment, as described in the Equity Units Preliminary Prospectus Supplement).

Early Settlement Upon a Fundamental Change

Subject to certain conditions described under “Description of the Purchase Contracts—Early Settlement Upon a Fundamental Change” in the Equity Units Preliminary Prospectus Supplement, following a “fundamental change” (as defined in the Equity Units Preliminary Prospectus Supplement) that occurs prior to the 20th business day preceding the Purchase Contract Settlement Date, each holder of a purchase contract will have the right to accelerate and settle the purchase contract early on the fundamental change early settlement date (as defined in the Equity Units Preliminary Prospectus Supplement) at the settlement rate determined as if the applicable market value equaled the stock price (as defined in the Equity Units Preliminary Prospectus Supplement), plus an additional make-whole amount of shares (such additional make-whole amount of shares being hereafter referred to as the “make-whole shares”). This right is referred to as the “fundamental change early settlement right.”

The number of make-whole shares per purchase contract applicable to a fundamental change early settlement will be determined by reference to the table below, based on the date on which the fundamental change occurs or becomes effective (the “effective date”) and the “stock price” (as defined in the Equity Units Preliminary Prospectus Supplement) for the fundamental change:

Effective Date	Stock Price on Effective Date																			
	\$10.00	\$20.00	\$30.00	\$35.00	\$37.50	\$40.25	\$42.50	\$45.00	\$47.29	\$50.00	\$55.00	\$60.00	\$70.00	\$80.00	\$90.00	\$100.00	\$110.00	\$120.00	\$130.00	\$150.00
November 23, 2015	0.5325	0.2378	0.0972	0.0445	0.0220	0.0000	0.0498	0.0995	0.1406	0.1274	0.1075	0.0922	0.0709	0.0572	0.0476	0.0403	0.0346	0.0299	0.0259	0.0195
November 1, 2016	0.3406	0.1547	0.0544	0.0084	0.0000	0.0000	0.0168	0.0669	0.1085	0.0960	0.0777	0.0643	0.0472	0.0373	0.0308	0.0260	0.0222	0.0191	0.0164	0.0122
November 1, 2017	0.1719	0.0806	0.0271	0.0000	0.0000	0.0000	0.0000	0.0392	0.0791	0.0655	0.0471	0.0356	0.0241	0.0189	0.0157	0.0133	0.0114	0.0098	0.0084	0.0063
November 1, 2018	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

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The stock prices set forth in the second row of the table above (i.e., the column headers) will be adjusted upon the occurrence of certain events requiring anti-dilution adjustments to the fixed settlement rates in a manner inversely proportional to the adjustments to the fixed settlement rates, as described in the Equity Units Preliminary Prospectus Supplement.

The exact stock price and effective date applicable to a fundamental change may not be set forth on the table, in which case:

- if the stock price is between two stock prices on the table or the effective date is between two effective dates on the table, the amount of make-whole shares will be determined by straight line interpolation between the make-whole share amounts set forth for the higher and lower stock prices and the two effective dates based on a 365-day year, as applicable;
- if the stock price is in excess of \$150.00 per share (subject to adjustment in the same manner as the stock prices set forth in the second row of the table, as described above), then the make-whole share amount will be zero; and

· if the stock price is less than \$10.00 per share (subject to adjustment in the same manner as the stock prices set forth in the second row of the table, as described above) (the “minimum stock price”), then the make-whole share amount will be determined as if the stock price equaled the minimum share price, using straight line interpolation, as described above in the first bullet, if the effective date is between two effective dates on the table.

Unless the Treasury portfolio has replaced the RSNs as a component of the Corporate Units as a result of a successful optional remarketing, holders of Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 20 Corporate Units. If the Treasury portfolio has replaced the RSNs as a component of Corporate Units, holders of the Corporate Units may exercise the fundamental change early settlement right only in integral multiples of 16,000 Corporate Units. A holder of Treasury Units may exercise the fundamental change early settlement right only in integral multiples of 20 Treasury Units.

Update to the Preliminary Prospectus Supplements

On November 17, 2015, Black Hills Utility Holdings, Inc. (“Black Hills Utility”), a subsidiary of the Company, entered into a settlement agreement with the Staff of the Colorado Public Utilities Commission and the Office of Consumer Counsel resolving the issues relating to the joint application seeking approval of the purchase of SourceGas Holdings LLC (“SourceGas”). The agreement prohibits any change in customer base rates for at least three years for SourceGas Distribution customers in Colorado and two years for Rocky Mountain Natural Gas LLC, an intrastate pipeline. The settling parties to the agreement are conditionally prohibited from challenging the rates and revenue requirements of SourceGas in Colorado for five years after the closing of the SourceGas acquisition. Black Hills Utility will not seek recovery of any acquisition premium from the acquired Colorado customers and will reduce annual SourceGas Distribution customer charges by \$200,000 per year for up to five years. The

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settlement agreement is subject to approval by the Colorado Public Utilities Commission before its terms become effective. As part of the settlement, the parties will request that the Colorado Public Utilities Commission issue a final decision by December 31, 2015.

The issuer has filed a registration statement (including a prospectus), as amended, with the SEC for the offering to which this communication relates (File No. 333-197895). Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and the Offerings. You may get these documents for free by visiting EDGAR on the SEC Website at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the relevant Offering will arrange to send you the base prospectus and the relevant Preliminary Prospectus Supplement if you request them by calling Credit Suisse Securities (USA) LLC at 800-221-1037; BofA Merrill Lynch at 866-500-5408; Wells Fargo Securities, LLC at 800-326-5897; or RBC Capital Markets, LLC at 877-822-4089.

This communication should be read in conjunction with the relevant Preliminary Prospectus Supplement and the accompanying base prospectus. The information in this communication supersedes the information in the relevant Preliminary Prospectus Supplement and the accompanying base prospectus to the extent inconsistent with the information in such Preliminary Prospectus Supplement and the accompanying base prospectus. In all other respects, this communication is qualified in its entirety by reference to the relevant Preliminary Prospectus Supplement and the accompanying base prospectus.

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SCHEDULE C-1

[Form of Comfort Letter of Deloitte & Touche LLP]

SCHEDULE C-2

[Form of Comfort Letter of KPMG LLP]

SCHEDULE D

[Form of Comfort Letter of Cawley, Gillespie & Associates, Inc.]

SCHEDULE E

("Significant Subsidiaries")

Subsidiary Name	State of Organization
Black Hills Colorado IPP, LLC	South Dakota
Black Hills Electric Generation, LLC	South Dakota
Black Hills Exploration and Production, Inc.	Wyoming
Black Hills Non-regulated Holdings, LLC	South Dakota
Black Hills Plateau Production, LLC	Delaware
Black Hills Power, Inc.	South Dakota
Black Hills Utility Holdings, Inc.	South Dakota
Black Hills/Colorado Electric Utility Company, LP	Delaware
Black Hills/Colorado Gas Utility Company, LP	Delaware
Black Hills/Colorado Utility Company II, LLC	Colorado
Black Hills/Colorado Utility Company, LLC	Colorado
Black Hills/Iowa Gas Utility Company, LLC	Delaware
Black Hills/Kansas Gas Utility Company, LLC	Kansas
Black Hills/Nebraska Gas Utility Company, LLC	Delaware
Cheyenne Light, Fuel and Power Company	Wyoming

EXHIBIT A

[Form of Opinion of Faegre Baker Daniels LLP]

EXHIBIT B

[Form of Opinion of Steven J. Helmers]

EXHIBIT C-1

1. David R. Emery, Chairman
 2. Jack W. Eugster
 3. Michael H. Madison
 4. Linda K. Massman
 5. Steven R. Mills
 6. Gary L. Pechota
 7. Rebecca B. Roberts
 8. Mark A. Schober
 9. John B. Vering
 10. Thomas J. Zeller
 11. Linden R. Evans
 12. Richard W. Kinzley
 13. Steven J. Helmers
 14. Brian G. Iverson
 15. Robert A. Myers
 16. Scott A. Buccholz
-

EXHIBIT C-2

, 2015

BLACK HILLS CORPORATION
625 Ninth Street
Rapid City, South Dakota 57701

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue
New York, N.Y. 10010-3629

WELLS FARGO SECURITIES, LLC
375 Park Avenue
4th Floor
New York, NY 10152

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

One Bryant Park
New York, New York 10036

RBC CAPITAL MARKETS, LLC
Three World Financial Center
200 Vesey Street, 8th Floor
New York, New York 10181-8098

As Representatives of the Several Underwriters

Dear Sirs:

As an inducement to the Underwriters to execute one or more Underwriting Agreements (the “**Underwriting Agreements**”), pursuant to which offerings will be made that are intended to result in an orderly market for (i) the common stock, \$1.00 par value per share (the “**Common Stock**”) of Black Hills Corporation, and any successor (by merger or otherwise) thereto, (the “**Company**”) and/or (ii) corporate units of the Company (the “**Corporate Units**”), the undersigned hereby agrees that during the period commencing on the date of this Lock-Up Agreement and continuing and including the date that is 60 days after the date of the final prospectus supplements used to sell the Securities and/or the Corporate Units pursuant to the Underwriting Agreements (the “**Lock-Up Period**”), the undersigned will not (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of the Securities or any securities convertible into or exercisable or exchangeable for the Securities (including, without limitation, the Corporate Units or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant) (collectively, the “**Securities**”) or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Securities, in cash or otherwise, or (3) make any demand for or exercise any right with respect to the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, without, in each case, the prior written consent of Credit Suisse Securities (USA) LLC, Wells Fargo Securities, LLC and Merrill Lynch, Pierce Fenner & Smith Incorporated.

The restrictions set forth in the immediately preceding paragraph shall not apply to (A) transfers of Securities as a bona fide gift or gifts or by will or intestacy, (B) transfers of Securities to immediate family members, trusts for the benefit of the undersigned or the undersigned’s immediate family members, (C) any Securities offered, sold or otherwise disposed of pursuant to a written plan for trading securities in effect on the date hereof, which was established pursuant to and in accordance with Rule 10b5-1(c) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), (D) any sale of Securities to the Company to discharge tax withholding obligations resulting from the vesting of equity awards acquired by the undersigned through the Company’s stock and incentive compensation plans, (E) any sale or transfer of Securities to the Company deemed to occur as part of a cashless exercise of stock options held by the undersigned as of the date of the prospectus supplements used to sell the Securities and Corporate Units, (F) transfers of Securities to the Company pursuant to call provisions of employment agreements and equity grant documents in existence on the date of the final prospectus supplements used to sell the Securities and/or Corporate Units, and (G) transfers of Securities acquired by the undersigned in the open market after the date of the final prospectus supplements used to sell the Securities and/or Corporate Units; *provided* that (i) in the case of a transfer in reliance on clause (A), the transferee agrees to be bound in writing by the terms of this Lock-Up Agreement prior to such transfer; (ii) in the case of transfer in reliance on clause (B), the transferee agrees to be bound in writing by the terms of this Lock-Up Agreement prior to such transfer, such transfer shall not involve a disposition for value and no filing by any party (donor, donee, transferor or transferee) under the Exchange Act shall be required or shall be voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the Lock-Up Period); and (iii) if the undersigned is required to file a report under the Exchange Act reporting a reduction in beneficial ownership of Securities during the term of this lock-up agreement as a result of a transfer in reliance on clause (D), (E) or (F), then the undersigned shall include a statement in such report that the filing relates to a transfer of Securities to the Company either (x) to discharge tax withholding obligations resulting from the vesting of equity awards acquired by the undersigned through the Company’s stock and incentive compensation plans (in the case of clause (D)), (y) deemed to occur as part of a cashless exercise of stock options held by the undersigned (in the case of clause (E)), or (z) pursuant to a call provision of an existing employment agreement or equity grant documents (in the case of clause (F)).

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Securities if such transfer would constitute a violation or breach of this Lock-Up Agreement.

If the undersigned is an officer or director of the Company, the undersigned further agrees that the foregoing restrictions in this Lock-Up Agreement shall be equally applicable to any issuer-directed Securities the undersigned may purchase in the above-referenced offering.

This Lock-Up Agreement shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. **This agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

Very truly yours,

BLACK HILLS CORPORATION
AND
U.S. BANK NATIONAL ASSOCIATION
TRUSTEE
JUNIOR SUBORDINATED INDENTURE
DATED AS OF NOVEMBER 23, 2015
JUNIOR SUBORDINATED NOTES

Reconciliation and tie between
Trust Indenture Act of 1939 (the Trust Indenture Act)
and Indenture

Trust Indenture Act Section	Indenture Section
Section 310(a)(1)	7.9
(a)(2)	7.9
(a)(3)	Not applicable
(a)(4)	Not applicable
(a)(5)	7.9
(b)	7.8
Section 311 (a)	7.13
(b)	5.4(a), 7.13
Section 312(a)	5.1
(b)	5.2
(c)	5.2
Section 313(a)	5.4(a)
(b)	5.4(a), 5.4(b)
(c)	5.4(c)
(d)	5.4(d)
Section 314(a)	4.6; 5.3
(b)	Not applicable
(c)(1)	15.4
(c)(2)	15.4
(c)(3)	Not applicable
(d)	Not applicable
(e)	15.4
(f)	15.4
Section 315(a)	7.1, 7.2
(b)	6.7
(c)	7.1
(d)	7.1(b)
(d)(1)	7.1(a)(i)
(d)(2)	7.1(b)
(d)(3)	7.1(c)
(e)	6.8
Section 316(a) (last sentence)	8.4
(a)(1)(A)	6.6
(a)(1)(B)	6.6
(a)(2)	Not applicable
(b)	6.4
(c)	10.5
Section 317(a)(1)	6.2, 6.5
(a)(2)	6.2
(b)	4.4(a)
Section 318(a)	15.6

Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

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THIS JUNIOR SUBORDINATED INDENTURE (the "Indenture"), dated as of the 23rd day of November, 2015 between BLACK HILLS CORPORATION, a South Dakota corporation (hereinafter sometimes referred to as the "Company"), party of the first part, and U.S. BANK NATIONAL ASSOCIATION, a national banking association (hereinafter sometimes referred to as the "Trustee"), party of the second part, as trustee.

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance from time to time of its unsecured junior subordinated notes or other evidences of indebtedness (hereinafter referred to as the "Securities"), without limit as to principal amount, issuable in one or more series, the amount and terms of each such series to be determined as hereinafter provided, including, without limitation, Securities issued to evidence loans made to the Company of the proceeds from the issuance from time to time by one or more statutory trusts (each a "Black Hills Trust," and collectively, the "Black Hills Trusts") of preferred interests in such Trusts, having the rights provided for in such Trusts (the "Preferred Securities" which may also be referred to, without limitation, as the "Capital Securities") and common interests in such Trusts, having the rights provided for in such Trusts (the "Common Securities," and collectively with the Preferred Securities, the "Trust Securities"); to be authenticated by the Trustee; and, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all acts and things necessary to make the Securities when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid indenture and agreement according to its terms, have been done and performed and the execution of this Indenture and the issue hereunder of the Securities have in all respects been duly authorized, and the Company, in the exercise of the legal rights and power vested in it, executes this Indenture and proposes to make, execute, issue and deliver the Securities.

NOW, THEREFORE, in order to declare the terms and conditions upon which the Securities are authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Securities by the holders thereof, the Company covenants and agrees with the Trustee, for the benefit of each other and for the equal and proportionate benefit of the respective holders from time to time of the Securities or of series thereof, and of the holders of Priority Indebtedness, as follows:

**ARTICLE I
DEFINITIONS**

1.1 Certain Terms Defined. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) All other terms used herein which are defined in the Trust Indenture Act, whether directly or by reference therein, have the meanings assigned to them therein (except as otherwise expressly provided);

(c) All accounting terms used herein and not expressly defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; *provided*, that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company; and

(d) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

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Additional Interest: means the interest, if any, that shall accrue on any interest on the Securities of any series the payment of which has not been made on the applicable interest payment date and which shall accrue at the rate per annum specified or determined as specified in such Security.

Additional Tax Sums: has the meaning specified in [Section 4.8](#).

Administrative Trustee: means, in respect of any Black Hills Trust, each Person identified as an “Administrative Trustee” in the related Trust Agreement, solely in such Person’s capacity as Administrative Trustee of such Black Hills Trust under such Trust Agreement and not in such Person’s individual capacity, or any successor administrative trustee appointed as therein provided.

Agent: means any registrar, Paying Agent, or Depository Custodian.

Applicable Procedures: means, with respect to any payment, tender, redemption, transfer or exchange of or for beneficial interests in any global Security held by the Depository, the rules and procedures of the Depository that apply to such payment, tender, redemption, transfer or exchange.

Authenticating Agent: means any Authenticating Agent appointed by the Trustee pursuant to [Section 2.9](#).

Authorized Newspaper: means a newspaper in an official language of the place of publication, customarily published at least once a day for at least five days in each calendar week and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in an Authorized Newspaper, the successive publications may be made in the same or in a different newspaper meeting the foregoing requirements and in each case on any day of the week. If it is impossible or, in the opinion of the Trustee, impracticable to publish any notice in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of such notice.

Black Hills Guarantee: means the guarantee by the Company of distributions on the Preferred Securities of a Black Hills Trust to the extent provided in the Guarantee Agreement (as defined in the related Trust Agreement).

Black Hills Trust and Black Hills Trusts: each have the meaning specified in the recitals to this Indenture.

Board of Directors: when used with reference to the Company, means the Board of Directors of the Company or any committee of or created by the Board of Directors of the Company duly authorized to act hereunder.

Business Day: means any day which is not a Saturday or Sunday or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close or a day on which the Corporate Trust Office of the Trustee or the Property Trustee is closed for business.

Capital Securities: has the meaning specified in the recitals to this Indenture.

Capital Stock: means shares of capital stock of any class of any corporation whether now or hereafter authorized regardless of whether such capital stock shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up.

Commission: means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

Common Securities: has the meaning specified in the recitals to this Indenture.

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

Company: means Black Hills Corporation, a South Dakota corporation and, subject to the provisions of Article XI, shall also include its successors and assigns.

Corporate Trust Office means the office of the Trustee at which at any particular time its corporate trust business in respect of this Indenture shall be principally administered, which office, on the date of original execution of this Indenture, is located at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Corporate Trust Services, and for purposes of Agent services and [Section 4.2](#) such office shall also include the office or agency of the Trustee located at 60 Livingston Avenue, 1st Floor—Bond Drop Window, St. Paul, MN 55107, Attn: Corporate Trust Services, or at any other time at such other address as the Trustee may designate from time to time by notice in writing to the Company, or at the principal corporate trust office of any successor trustee as to which such successor trustee may notify the Company in writing.

covenant defeasance: has the meaning specified in [Section 12.5\(c\)](#).

Declaration: means, in respect of a Black Hills Trust, the amended and restated declaration of trust of such Black Hills Trust or any other governing instrument of such Black Hills Trust.

default: means any event that is or, after notice or passage of time or both, would be an Event of Default.

defeasance: has the meaning specified in Section 12.5(b).

Depository: means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more global Securities, the person designated as Depository by the Company pursuant to Section 2.1 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter the term “Depository” shall mean or include each person who is then a Depository hereunder and if at any time there is more than one such person, the term “Depository” as used with respect to the Securities of any series shall mean the Depository with respect to the Securities of such series.

Depository Custodian: means the Trustee as custodian with respect to the global Securities held by the Depository or any successor entity thereto.

Distributions: with respect to the Trust Securities issued by a Black Hills Trust, means amounts payable in respect of such Trust Securities as provided in the related Trust Agreement and referred to therein as “Distributions.”

Dollar or \$: means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

Event of Default: with respect to Securities of any series shall mean any event specified as such in Section 6.1 and any other event as may be established with respect to the Securities of such series as contemplated by Section 2.1.

Exchange Act: has the meaning specified in Section 2.2.

Extension Period: has the meaning specified in Section 2.10.

Government Obligation: means securities which are (i) direct obligations of the United States of America where the payment or payments thereunder are supported by the full faith and credit of the United States of America or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the United States of America, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof.

Indenture: means this instrument as originally executed, or, if amended or supplemented as herein provided, then as so amended or supplemented, and shall include the form and terms of particular series of Securities established as contemplated by Sections 2.1 and 2.2.

Investment Company Event: means in respect of a Black Hills Trust, the receipt by the Company and a Black Hills Trust of an Investment Company Event Opinion (as defined in the relevant Trust Agreement) to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a “Change in 1940 Act Law”), such Black Hills Trust is or will be considered an investment company that is required to be registered under the 1940 Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities of such Black Hills Trust.

Maturity: when used with respect to any Security means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, tender for purchase, or otherwise.

1940 Act: means the Investment Company Act of 1940, as amended.

Officer: means the Chief Executive Officer, the President, any Vice President (whether or not designated by a number or word added before or after the title vice president), the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary.

Officers’ Certificate: means a certificate signed by two Officers of the Company and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 15.4, if and to the extent required by the provisions thereof and will comply with Section 314 of the Trust Indenture Act.

Opinion of Counsel: means a written opinion of counsel, who may be an employee of, or counsel to, the Company, or other counsel who shall be reasonably satisfactory to the Trustee, and delivered to the Trustee. Each such opinion shall include the statements provided for in Section 15.4, if and to the extent required by the provisions thereof and will comply with Section 314 of the Trust Indenture Act.

Original Issue Discount Security: means any Security which provides for an amount less than the principal amount thereof to be due and payable upon declaration pursuant to Section 6.1.

outstanding: when used with reference to Securities and subject to the provisions of Section 8.4, means as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except

- (a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent), *provided that* such Securities shall have reached their Stated Maturity or, if such Securities are to be redeemed prior to the Stated Maturity thereof, notice of such redemption shall have been given as in Article III provided, or provision satisfactory to the Trustee shall have been made for giving such notice;
- (c) Securities in lieu of or in substitution for which other Securities shall have been authenticated and delivered or which have been paid pursuant to the terms of Section 2.7 unless proof satisfactory to the Trustee is presented that any such Securities are held by a bona fide purchaser in whose hands any of such Securities is a valid, binding and legal obligation of the Company; and
- (d) Any such Security with respect to which the Company has effected defeasance or covenant defeasance pursuant to Section 12.5, except to the extent provided in Section 12.5.

In determining whether the holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.1.

Paying Agent: means the Trustee or any Person or Persons authorized by the Company to pay the principal or interest on any Securities on behalf of the Company.

Person or person: means any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association or government or any agency or political subdivision thereof, or any other entity of whatever nature.

Preferred Securities: has the meaning specified in the recitals to this Indenture.

Principal: whenever used with reference to the Securities or any Security or any portion thereof, shall be deemed to include “and premium, if any.”

Priority Indebtedness of the Company: means the principal, premium, interest and any other payment in respect of (i) all current and future indebtedness of the Company for borrowed or purchase money, whether or not evidenced by bonds, debentures, notes or other similar written instruments, (ii) obligations of the Company under synthetic leases, finance leases and capitalized leases, (iii) obligations of the Company for reimbursement under letters of credit, surety bonds, banker’s acceptances, security purchase facilities or similar facilities issued for the account of the Company, (iv) any indebtedness or other obligations of the Company with respect to derivative contracts, including but not limited to commodity contracts, interest rate, commodity and currency swap agreements, forward contracts, and other similar agreements or arrangements, and (v) any guarantees, endorsements, assumptions (other than by endorsement of negotiable instruments for collection in the ordinary course of business) or other similar contingent obligations in respect of obligations of others of a type described in (i), (ii), (iii) or (iv) above, whether or not such obligation is classified as a liability on a balance sheet prepared in accordance with generally accepted accounting principles, in each case listed in (i), (ii), (iii), (iv) and (v) above whether outstanding on the date of execution of this Indenture or thereafter incurred; *provided, however*, that “Priority Indebtedness of the Company” does not include (a) trade accounts payable, (b) accrued liabilities arising in the ordinary course of business, (c) any indebtedness of the Company to any of its Subsidiaries or (d) any other indebtedness that effectively by its terms, or expressly provides that it, ranks on parity with, or junior to, the Securities.

Property Trustee: means, in respect of any Black Hills Trust, the commercial bank or trust company identified as the “Property Trustee” in the related Trust Agreement, solely in its capacity as Property Trustee of such Black Hills Trust under such Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as therein provided.

ranking junior to the Securities: when used with respect to any obligation of the Company means any other obligation of the Company which (a) ranks junior to and not equally with or prior to the Securities (or any other obligations of the Company ranking on a parity with the Securities) in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 14.1, or (b) is specifically designated as ranking junior to the Securities by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking junior to the Securities, shall be deemed to prevent such obligations from constituting obligations ranking junior to the Securities.

ranking on a parity with the Securities: when used with respect to any obligation of the Company means (a) any obligation of the Company which ranks equally with and not prior to the Securities in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 14.1, (b) any Black Hills Guarantee of Preferred Securities of any Black Hills Trust or other entity affiliated with the Company that is a financing entity of the Company and holds Securities issued under this Indenture, or (c) any obligation of the Company which is specifically designated as ranking on a parity with the Securities by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company,

otherwise ranking on a parity with the Securities, shall not be deemed to prevent such obligations from constituting obligations ranking on a parity with the Securities.

record date: has the meaning specified in Section 2.3.

redemption; redeem; redeemable: when used with respect to any Security, shall include, without limitation, any prepayment or repayment provisions applicable to such Security.

Register: has the meaning specified in Section 2.5.

Resolution of the Company: means a resolution of the Company, in the form of a resolution of the Board of Directors or in the form of a resolution of a duly constituted committee of the Board of Directors, authorizing, ratifying, setting forth or otherwise validating agreements, execution and delivery of documents, the issuance, form and terms of Securities, or any other actions or proceedings pursuant or with respect to this Indenture.

Responsible Officer: when used with respect to the Trustee, means an officer of the Trustee in its Corporate Trust Office having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

Rights Plan: means a plan of the Company providing for the issuance by the Company to all holders of its Common Stock of rights entitling the holders thereof to subscribe for or purchase shares of Common Stock or any class or series of preferred stock, which rights (i) are deemed to be transferred with such shares of Common Stock, (ii) are not exercisable and (iii) are also issued in respect of future issuances of Common Stock, in each case until the occurrence of a specified event or events.

Security or Securities: means any security or securities of the Company, as the case may be, without regard to series, authenticated and delivered under this Indenture.

Securityholder, holder, holder of Securities or registered holder: or other similar term, mean any person who shall at the time be the registered holder of any Security or Securities on the Register kept for that purpose in accordance with the provisions of this Indenture.

Stated Maturity: when used with respect to any Security or any installment of principal thereof or interest thereon means the date specified pursuant to the terms of such Security as the date on which the principal of such Security or such installment of principal or interest thereon is due and payable in the case of such principal, as such date may be shortened or extended as provided pursuant to the terms of such Security and this Indenture.

Subsidiary: means any corporation (or the equivalent type of entity in other jurisdictions) more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

Tax Event: means the receipt by the Company and/or a Black Hills Trust of a Tax Event Opinion (as defined in the relevant Trust Agreement, applicable Resolution of the Company, Officers' Certificate or supplemental indenture hereto) to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or as a result of any official administrative written decision or pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of issuance of the Securities or Preferred Securities of such Black Hills Trust, there is more than an insubstantial risk that (i) the Black Hills Trust is, or will be within 90 days after the date of such Tax Event Opinion, subject to United States federal income tax with respect to income received or accrued on the corresponding series of Securities issued by the Company to such Black Hills Trust, (ii) interest payable by the Company on such corresponding series of Securities is not, or within

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90 days of the date of such Tax Event Opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes, or (iii) the Black Hills Trust is, or will be within 90 days after the date of such Tax Event Opinion, subject to more than a *de minimis* amount of other taxes, duties or other governmental charges.

Trust Agreement: means the Trust Agreement governing any Black Hills Trust, whether now existing or created in the future, which purchased the Securities of any series in each case.

Trustee: means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter means the successor serving hereunder.

Trust Indenture Act: except as herein otherwise expressly provided or unless the context requires otherwise, the term "Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this Indenture was originally executed; *provided, however*, that, in the event that the Trust Indenture Act is amended after such date, then "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

Trust Securities: has the meaning specified in the recitals to this Indenture.

ARTICLE II ISSUE, DESCRIPTION, EXECUTION, REGISTRATION OF TRANSFER AND EXCHANGE OF SECURITIES

2.1 Amount, Series and Delivery of Securities. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. The terms of each series (which terms shall not be inconsistent with the provisions of this Indenture), shall either be established in or pursuant to a Resolution of the Company and set forth in an Officers' Certificate, or set forth in one or more indentures supplemental hereto, prior to the issuance of Securities of such series and shall specify:

- (a) The designation of the Securities of such series (which shall distinguish the Securities of the series from all other Securities and which shall include the word "subordinated" or a word of like meaning);
- (b) Any limit upon the aggregate principal amount of the Securities of such series which may be executed, authenticated and delivered under this Indenture; *provided, however*, that nothing contained in this Section or elsewhere in this Indenture or in such Securities or in a Resolution of the Company or Officers' Certificate or supplemental indenture is intended to or shall limit execution by the Company or authentication and delivery by the Trustee of Securities under the circumstances contemplated by Sections 2.5, 2.6, 2.7, 3.2, 3.3 and 10.4;
- (c) The date or dates (if any) on which the principal of the Securities of such series is payable or the method or methods, if any, by which such date or dates shall be determined and the circumstances, if any, under which such date or dates may be shortened or extended, either automatically or at the election of the Company;
- (d) The rate or rates at which the Securities of such series shall bear interest, if any, the rate or rates and extent to which Additional Interest or other interest, if any, shall be payable, the date or dates from which such interest shall accrue, the dates on which such interest shall be payable, the record date for the interest payable on any interest payment date and the right of the Company to defer or extend an interest payment date;

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- (e) The place or places where Securities of such series may be presented for payment and for the other purposes provided in Section 4.2;
- (f) Any price or prices at which, any period or periods within which, and any terms and conditions upon which Securities of such series may be redeemed or prepaid, in whole or in part, at the option of the Company;
- (g) The type or types (if any) of Capital Stock of the Company into which, any period or periods within which, and any terms and conditions upon which Securities of such series may be made payable, converted or exchanged in whole or in part, at the option of the holder or of the Company;
- (h) If other than denominations of \$1,000 and any whole multiple thereof, the denominations in which Securities of such series shall be issuable;
- (i) If other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.1;
- (j) If other than such coin or currency of the United States of America as at the time of payment is legal tender for payment of public or private debts, the coin or currency (which may be a composite currency) in which payment of the principal of and interest, if any, on the Securities of such series shall be payable;
- (k) If the principal of or interest, if any, on the Securities of such series are to be payable, at the election of the Company or a holder thereof, in a coin or currency (including composite currency) other than that in which the Securities of such series are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;
- (l) If the amounts of payments of principal of or interest, if any, on the Securities of such series may be determined with reference to an index based on a coin or currency (including composite currency) other than that in which the Securities of such series are stated to be payable, or any other index (including commodity or equity indices), the manner in which such amounts shall be determined;
- (m) If the Securities of such series are payable at Maturity or upon earlier redemption in Capital Stock, the terms and conditions upon which such payment shall be made;
- (n) The person or persons who shall be registrar for the Securities of such series, and the place or places where the Register of Securities of the series shall be kept;
- (o) Any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to any of such Securities, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;
- (p) Whether any Securities of such series are to be issuable in global form with or without coupons, and, if so, the Depositary for such global Securities and whether beneficial owners of interests in any such global Security may exchange such interests for definitive Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which, and the place or places where, any such exchanges may occur, if other than in the manner provided in Section 2.5;
- (q) The form of the related Trust Agreement and Black Hills Guarantee, if applicable;
- (r) Whether any Securities of such series are subject to any securities law or other restrictions on transfer;

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- (s) If the principal of or interest, if any, on the Securities of such series are to be payable, at the election of the Company or a holder thereof or otherwise, in Capital Stock, with the proceeds of Capital Stock or from any other specific source of funds, the period or periods within which, and the terms and conditions upon which, such elections and/or payments shall be made;
- (t) If either or both of Section 12.5(b) relating to defeasance or Section 12.5(c) relating to covenant defeasance shall not be applicable to the Securities of such series, or any covenants relating to the Securities of such series which shall be subject to covenant defeasance, and any deletions from, modifications or additions to, the provisions of Article XII in respect of the Securities of such series;
- (u) If the provisions of Section 4.9 prohibiting the declaration or payment of dividends or distributions on, or redemptions, purchases, acquisitions or liquidation payments with respect to, shares of the Company's Capital Stock shall not be applicable;
- (v) if the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or analogous provision or at the option of any holder thereof and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased; and
- (w) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture);

or in any case, the method for determining such terms, the persons authorized to determine such terms and the limits, if any, within which any such determination of such terms is to be made.

The Securities of all series shall be subordinate to Priority Indebtedness of the Company as provided in Article XIV.

The applicable Resolution of the Company, Officers' Certificate or supplemental indenture may provide that Securities of any particular series may be issued at various times, with different dates on which the principal or any installment of principal is payable, with different rates of interest, if any, or different methods by which interest may be determined, with different dates from which such interest shall accrue, with different dates on which such interest may be payable or with any different terms other than Events of Default but all such Securities of a particular series shall for all purposes under this Indenture including, but not limited to, voting and Events of Default, be treated as Securities of a single series.

Notwithstanding Section 2.1(b) and unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

If any of the terms of any series of Securities are established by action taken pursuant to a Resolution of the Company, a copy of an appropriate record of such action shall be certified by the Corporate Secretary or an Assistant Corporate Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate or supplemental indenture setting forth the terms of the series.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication by it, and the Trustee shall thereupon authenticate and deliver such Securities to or upon the written order of the Company, signed by any Officer, without any further corporate action by the Company. If the form or terms of the Securities of the series have been established in or pursuant to a Resolution of the Company and set forth in an Officers' Certificate, or set forth in one or more supplemental indentures hereto, as permitted by this Section and Section 2.2, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 7.1) shall be fully protected in relying upon:

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(A) an Opinion of Counsel to the effect that:

(i) the form or forms and terms, or if all Securities of such series are not to be issued at one time, the manner of determining the terms of such Securities, have been established in conformity with the provisions of this Indenture;

(ii) all conditions precedent provided for in this Indenture to the authentication and delivery of such Securities have been complied with and that such Securities, when completed by appropriate insertions, executed by the Company, delivered by a duly authorized officer of the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, and this Indenture will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, fraudulent transfer or other similar laws relating to or affecting creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); and

(iii) if the Securities of such series have been registered under the Securities Act, that this Indenture has been qualified under the Trust Indenture Act; and

(B) an Officers' Certificate complying with Section 15.4 and stating that, to the knowledge of the Persons executing such certificate, no event which is, or after notice or lapse of time would become, an Event of Default with respect to any of the Securities shall have occurred and be continuing.

The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver either an Opinion of Counsel or an Officers' Certificate at the time of issuance of each Security, *provided that* such Opinion of Counsel and Officers' Certificate, with appropriate modifications, are instead delivered at or prior to the time of issuance of the first Security of such series.

Each Security shall be dated the date of its authentication.

2.2 Form of Securities and Trustee's Certificate. The Securities of each series shall be substantially of the tenor and terms as shall be authorized in or pursuant to a Resolution of the Company and set forth in an Officers' Certificate, or set forth in an indenture or indentures supplemental hereto in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or automated quotation system on which the Securities may be listed, or to conform to usage. If the form of Securities of any series is authorized by action taken pursuant to a Resolution of the Company, a copy of an appropriate record of such action shall be certified by the Corporate Secretary or an Assistant Corporate Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate contemplated by Section 2.1 setting forth the terms of the series.

The Securities may be printed, lithographed or fully or partly engraved.

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities, of the series designated herein, referred to in the within-mentioned Indenture.

as Trustee

By:

Authorized Signatory”

If Securities of a series are issuable in global form, as specified pursuant to Section 2.1, then, notwithstanding clause (h) of Section 2.1 and the provisions of Section 2.3, such Security shall represent such amount of the outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of outstanding Securities of such series from time to time endorsed thereon and that the aggregate amount of outstanding Securities of such series represented thereby may from time to time be increased or reduced to reflect exchanges or transfers (in any event, not to exceed the aggregate principal amount authorized from time to time pursuant to Section 2.1). Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of outstanding Securities represented thereby shall be made by the Trustee in such manner and upon instructions given by such person or persons as shall be specified in such Security or by the Company. Subject to the provisions of Section 2.4 and, if applicable, Section 2.6, the Trustee shall deliver and redeliver any Security in global form in the manner and upon written instructions given by the person or persons specified in such Security or by the Company. Any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form after the original issuance of the Securities of such series shall be in writing, and shall not be objected to in writing by the Depository, but need not comply with Section 15.4 and need not be accompanied by an Opinion of Counsel.

Unless otherwise specified pursuant to Section 2.1, payment of principal of and any premium and any interest on any Security in global form shall be made to the person or persons specified therein.

The owners of beneficial interests in any global Security shall have no rights under this Indenture with respect to any global Security held on their behalf by a Depository, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the sole holder and owner of such global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depository, or impair, as between a Depository and its participants in any global Security, the operation of customary practices governing the exercise of the rights of a holder of a Security of any series, including, without limitation, the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action that a holder is entitled to give or take under this Indenture.

None of the Company, the Trustee or any Authenticating Agent will have any responsibility or liability for any act or omission of the Depository or any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. The Company has entered into a letter of representations with the Depository in the form provided by the Depository and the Trustee and each Agent are hereby authorized to act in accordance with such letter and Applicable Procedures.

Each Depository designated pursuant to Section 2.1 for a global Security must, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and any other applicable statute or regulation.

The Company shall be responsible for making calculations called for under the Securities, including but not limited to determination of redemption price, premium, if any, and any additional amounts or other amounts payable on the Securities. The Company will make the calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Company will provide a schedule of its calculations to the Trustee when requested by the Trustee, and the Trustee is entitled to rely conclusively on the accuracy of the Company’s calculations without independent verification. The Trustee shall forward the Company’s calculations to any Holder of the Securities upon the written request of such Holder.

2.3 Denominations of and Payment of Interest on Securities. The Securities of each series shall be issuable as fully registered Securities without coupons in such denominations as shall be specified as contemplated by Section 2.1 (except as provided in Section 2.2 and Section 2.6). In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

If the Securities of any series shall bear interest, each Security of such series shall bear interest from the applicable date at the rate or rates per annum, and such interest shall be payable on the dates specified on, or determined in the manner provided in, the Security. The person in whose name any Security is registered at the close of business on any record date (as defined below) for the Security with respect to any interest payment date for such Security shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer, exchange or conversion thereof subsequent to such record date and prior to such interest payment date, unless such Security shall have been called for redemption on a date fixed for redemption subsequent to such record date and prior to such interest payment date or unless the Company shall default in the payment of interest due on such interest payment date on such Security, in which case such defaulted interest shall be paid to the person in whose name such Security (or any Security or Securities issued upon registration of transfer or exchange thereof) is registered at the close of business on the record date for the payment of such defaulted interest, or except as otherwise specified as contemplated by Section 2.1. The term “record date” as used in this Section with respect to any regular interest payment date for any Security shall mean such day or days as shall be specified as contemplated by Section 2.1; *provided, however*, that in the absence of any such provisions with respect to any Security, such term shall mean: (1) if such interest payment date is the first day of a calendar month, the fifteenth day of the calendar month next preceding such interest payment date; or (2) if such interest payment date is the fifteenth day of a calendar month, the first day of such calendar month; in each case whether or not a Business Day. Such term, as used in this Section, with respect to the payment of any defaulted interest on any Security shall mean (except as otherwise specified as contemplated by Section 2.1) the fifth day next preceding the date fixed by the Company for the payment of defaulted interest, established by notice given by first class mail by or on behalf of the Company to the holder of such Security not less than 10 days preceding such record date, or, if such fifth day is not a Business Day, the Business Day next preceding such fifth day.

2.4 Execution of Securities. The Securities shall be signed on behalf of the Company, manually or in facsimile, by any Officer. Only such Securities as shall bear thereon a certificate of authentication substantially in the form recited herein, executed by or on behalf of the Trustee manually by an authorized officer, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication

by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. Typographical or other errors or defects in the seal or facsimile signature on any Security or in the text thereof shall not affect the validity or enforceability of such Security if it has been duly authenticated and delivered by the Trustee. In case any officer of the Company who shall have signed any of the Securities, manually or in facsimile, shall cease to be such officer before the Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Securities nevertheless may be authenticated and delivered or disposed of as though the person who signed such Securities had not ceased to be such officer of the Company; and any Security may be signed on behalf of the Company, manually or in facsimile, by such person as, at the actual date of the execution of such Security, shall be the proper officer of the Company, although at the date of the execution of this Indenture any such person was not such officer.

2.5 Registration, Transfer and Exchange of Securities. Securities of any series (other than a global Security, except as set forth below) may be exchanged for a like aggregate principal amount of Securities of the same series of the same tenor and terms of other authorized denominations. Securities to be exchanged shall be surrendered at the offices or agencies to be maintained by the Company in accordance with the provisions of Section 4.2 and the Company shall execute and the Trustee shall authenticate and deliver, or cause to be authenticated and delivered, in exchange therefor the Security or Securities which the Securityholder making the exchange shall be entitled to receive.

The Company shall keep, at one of the offices or agencies to be maintained by the Company in accordance with the provisions of Section 4.2 with respect to the Securities of each series, a Register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities of such series

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and the transfer of Securities of such series as in this Article provided. Such Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the Register shall be open for inspection by the Trustee and any registrar of the Securities of such series other than the Trustee. Upon due presentment for registration of transfer of any Security of any series at the offices or agencies of the Company to be maintained by the Company in accordance with Section 4.2 with respect to the Securities of such series, the Company shall execute and register and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Securities of the same series of like tenor and terms for a like aggregate principal amount of authorized denominations.

Every Security issued upon registration of transfer or exchange of Securities pursuant to this Section shall be the valid obligation of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Security or Securities surrendered upon registration of such transfer or exchange.

All Securities of any series presented or surrendered for exchange, registration of transfer, redemption, conversion or payment shall, if so required by the Company or any registrar of the Securities of such series, be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and such registrar, duly executed by the registered holder or by its attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required to exchange or register the transfer of (a) any Securities of any series during a period beginning at the opening of business fifteen days before the day of the mailing of a notice of redemption of outstanding Securities of such series and ending at the close of business on the relevant redemption date, or (b) any Securities or portions thereof called or selected for redemption, except, in the case of Securities called for redemption in part, the portion thereof not so called for redemption.

Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for Securities in definitive form, a global Security representing all or a portion of the Securities of a series may not be transferred, except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

Notwithstanding the foregoing, except as otherwise specified pursuant to Section 2.1, any global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If at any time the Depository for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depository for the Securities of such series, or if at any time the Depository for the Securities of such series shall cease to be a "clearing agency" registered under the Exchange Act, the Company shall appoint a successor Depository with respect to the Securities of such series. If (a) a successor Depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility (thereby automatically making the Company's election pursuant to Section 2.1 no longer effective with respect to the Securities of such series), (b) the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities of such series and of the same tenor and terms, as specified pursuant to Section 2.1, (c) there shall have occurred and be continuing an Event of Default with respect to the Securities of such series, or (d) the Company in its sole discretion and subject to the procedures of the Depository determines that the Securities of any series issued in the form of one or more global Securities shall no longer be represented by such global Security or Securities, then without unnecessary delay, but, if appropriate, in any event not later than the earliest date on which such interest may be so exchanged, the Company shall deliver to the Trustee definitive Securities in aggregate principal amount equal to the principal amount of such global Security, executed by the Company and authenticated by the Trustee. On or after the earliest date on which such interests are or may be so exchanged, such global Security shall be surrendered by the Depository to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities upon payment by the beneficial owners of such interest, at the option of the Company, of a service charge for such exchange and of a proportionate share of the cost of printing such definitive Securities, and the Trustee shall authenticate and deliver, (a) to each person specified by the Depository in exchange for each portion of such global Security, an equal aggregate principal

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amount of definitive Securities of the same series of authorized denominations and of the same tenor and terms as the portion of such global Security to be exchanged, and (b) to such Depository a global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered global security and the aggregate principal amount of definitive Securities delivered to holders thereof; *provided, however*, that no such exchanges may occur

during a period beginning at the opening of business 15 days before any selection of Securities of that series to be redeemed and ending on the relevant redemption date. If a Security is issued in exchange for any portion of a global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any record date for the payment of defaulted interest and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest, then interest or default interest, as the case may be, will not be payable on such interest payment date or proposed date for payment of defaulted interest, as the case may be, in respect of such Security, but will be payable on such interest payment date or proposed date for payment of defaulted interest, as the case may be, only to the person to whom interest in respect of such portion of such global Security is payable in accordance with the provisions of this Indenture and such global Security.

2.6 Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon the written order of the Company, authenticate and deliver temporary Securities of such series (printed or lithographed) of any denomination and substantially in the form of the definitive Securities of such series, but with or without a recital of specific redemption prices or conversion provisions and with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every such temporary Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Securities. Without unreasonable delay the Company will execute and deliver to the Trustee definitive Securities of such series and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor, at the offices or agencies to be maintained by the Company as provided in Section 4.2 with respect to the Securities of such series, and the Trustee shall, upon the written order of the Company, authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder.

2.7 Mutilated, Destroyed, Lost or Stolen Securities. In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company, in the case of any mutilated Security shall, and in the case of any destroyed, lost or stolen Security in its discretion may, execute, and upon its request the Trustee shall authenticate and deliver, or cause to be authenticated and delivered, a new Security of the same series of like tenor and terms in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In case any such Security shall have matured or shall be about to mature, instead of issuing a substituted Security, the Company may pay or authorize payment of the same (without surrender thereof, except in the case of a mutilated Security). In every case the applicant for a substituted Security or for such payment shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof. The Trustee may authenticate any such substituted Security and deliver the same, or the Trustee or any Paying Agent of the Company may make any such payment, upon the written request or authorization of any officer of the Company. Upon the issue of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses connected therewith (including the fees and expenses of the Trustee).

To the extent permitted by mandatory provisions of law, every substituted Security issued pursuant to the provisions of this Section in substitution for any destroyed, lost or stolen Security shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder.

To the full extent legally enforceable, all Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or

stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute now existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

2.8 Cancellation and Disposition of Surrendered Securities. All Securities surrendered for the purpose of payment, redemption, exchange, substitution or registration of transfer, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee, and the same, together with Securities surrendered to the Trustee for cancellation, shall be canceled by it, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Securities in accordance with its customary procedures and deliver a certificate of cancellation thereof to the Company upon request. If the Company shall purchase or otherwise acquire any of the Securities, however, such purchase or acquisition shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee for cancellation.

2.9 Authenticating Agents. The Trustee may from time to time appoint one or more Authenticating Agents with respect to one or more series of Securities, which shall be authorized to act on behalf of the Trustee and subject to its direction in authenticating and delivering Securities of such series pursuant hereto in connection with exchanges, registrations of transfer, redemptions or conversions, as fully to all intents and purposes as though any such Authenticating Agent had been expressly authorized to authenticate and deliver Securities of such series, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as though authenticated by the Trustee. Wherever reference is made in this Indenture to the authentication or delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication or delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall at all times be a corporation (including a banking association) organized and doing business under the laws of the United States or any State or territory thereof or of the District of Columbia, having a combined capital and surplus of at least five million dollars (\$5,000,000) authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal, state, territorial, or District of Columbia authorities. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect herein specified in this Section.

Any corporation succeeding to the corporate agency business of an Authenticating Agent shall continue to be an Authenticating Agent, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

Any Authenticating Agent by the acceptance of its appointment shall be deemed to have agreed with the Trustee that: it will perform and carry out the duties of an Authenticating Agent as herein set forth, including among other things the duties to authenticate and deliver Securities of any series for which it has been appointed an

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Authenticating Agent when presented to it in connection with exchanges, registrations of transfer or any redemptions or conversions thereof; it will furnish from time to time as requested by the Trustee appropriate records of all transactions carried out by it as Authenticating Agent and will furnish the Trustee such other information and reports as the Trustee may reasonably require; it is eligible for appointment as Authenticating Agent under this Section and will notify the Trustee promptly if it shall cease to be so qualified; and it will indemnify the Trustee against any loss, liability or expense incurred by the Trustee and will defend any claim asserted against the Trustee by reason of any acts or failures to act of the Authenticating Agent but it shall have no liability for any action taken by it at the specific written direction of the Trustee.

2.10 Deferrals of Interest Payment Dates. If specified as contemplated by Section 2.1 or Section 2.2 with respect to the Securities of a particular series, so long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of such series, from time to time to defer the payment of interest on such Securities for such period or periods as may be specified as contemplated by Section 2.1 (each, an “Extension Period”). No Extension Period shall end on a date other than an interest payment date or extend beyond the Stated Maturity. Except as otherwise contemplated in Section 2.1 or Section 2.2, at the end of any such Extension Period the Company shall pay all interest then accrued and unpaid on the Securities (together with Additional Interest or other interest thereon, if any, at the rate specified for the Securities of such series to the extent permitted by applicable law).

2.11 Right of Set-Off. With respect to the Securities of a series issued to a Black Hills Trust, notwithstanding anything to the contrary in this Indenture (but subject to the last paragraph of Section 6.5), the Company shall have the right to set off any payment it is otherwise required to make thereunder in respect of any such Security to the extent the Company has theretofore made, or is concurrently on the date of such payment making, such payment under the Black Hills Guarantee relating to such Security or under Section 6.5 of this Indenture.

2.12 Shortening or Extension of Stated Maturity. If specified as contemplated by Section 2.1 or Section 2.2 with respect to the Securities of a particular series, the Company shall have the right to (i) shorten the Stated Maturity of the principal of the Securities of such series at any time to any date and (ii) extend the Stated Maturity of the principal of the Securities of such series at any time at its election for one or more periods; *provided that*, if the Company elects to exercise its right to shorten or extend the Stated Maturity of the principal of the Securities of such series pursuant to this Section, at the time such election is made and at the time of such shortening or extension, such conditions as may be specified in such Securities shall have been satisfied.

2.13 Agreed Tax Treatment. Each Security issued hereunder shall provide that the Company and, by its acceptance of a Security or a beneficial interest therein, the holder of, and any Person that acquires a beneficial interest in, such Security agree that for United States federal, state and local tax purposes it is intended that such Security constitute indebtedness.

2.14 CUSIP and Other Numbers. The Company in issuing the Securities may use “CUSIP” numbers, ISIN numbers or other similar identifiers (if then generally in use), and, if so, the Trustee may use such numbers in notices as a convenience to holders of Securities; *provided that* any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in CUSIP, ISIN or other numbers assigned to the Securities.

ARTICLE III REDEMPTION OF SECURITIES

3.1 Applicability of Article. Securities of any series which are redeemable prior to Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.1 for Securities of any series) in accordance with this Article.

3.2 Mailing of Notice of Redemption. In case the Company shall desire to exercise any right to redeem all or, as the case may be, any part of the Securities of any series pursuant to this Indenture, it

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shall give notice of such redemption to holders of the Securities to be redeemed as hereinafter in this Section provided.

The Company covenants that it will pay to the Trustee or one or more Paying Agents, by 11:00 a.m., New York City time, on the date of such redemption, a sum in cash sufficient to redeem on the redemption date all the Securities so called for redemption at the applicable redemption price, together with any accrued interest on the Securities to be redeemed to but excluding the date fixed for redemption.

Notice of redemption shall be given to the holders of Securities to be redeemed as a whole or in part, in the case of global Securities, by sending or causing such notice to be sent in accordance with Applicable Procedures, or in the case of Securities that are not global Securities, by mailing by first class

mail, postage prepaid, a notice of such redemption not less than 20 days nor more than 60 days prior to the date fixed for redemption to their last addresses as they shall appear upon the Register, but failure to give such notice by mailing in the manner herein provided to the holder of any Security designated for redemption as a whole or in part, or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Security.

Notice of any redemption, may, at the Company's discretion, be given subject to one or more conditions precedent, including, without limitation, upon the receipt by the Paying Agent or Agents for the Securities, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such Securities. If any such condition precedent has not been satisfied, the Company will provide notice to the Trustee not less than two Business Days prior to the redemption date that such condition precedent has not been satisfied, the notice of redemption is rescinded and the redemption subject to the satisfaction of such condition precedent shall not occur. The Trustee shall promptly send a copy of such notice to the Holders of the Notes.

Any notice which is sent in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives the notice.

Each such notice of redemption shall identify the Securities to be redeemed (including CUSIP numbers provided that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities), the paragraph of the Securities and/or Section of this Indenture pursuant to which the Securities called for redemption are being redeemed, any conditions precedent to such redemption described in reasonable detail, and specify the date fixed for redemption and the redemption price at which Securities are to be redeemed (or if the redemption price cannot be calculated prior to the time the notice is required to be given, the manner of calculation thereof), and shall state that payment of the redemption price of the Securities or portions thereof to be redeemed will be made at any of the offices or agencies to be maintained by the Company in accordance with the provisions of Section 4.2 with respect to the Securities to be redeemed, upon presentation and surrender of such Securities or portions thereof, and that, if applicable, interest accrued to the date fixed for redemption will be paid as specified in said notice and, unless the Company defaults in the payment of such Securities at the applicable redemption price, on and after said date interest thereon will cease to accrue and shall also specify, if applicable, the conversion price and the date on which the right to convert the Securities will expire and that holders must comply with the terms of the Securities in order to convert their Securities. If less than all the Securities of any series are to be redeemed, the notice of redemption to each holder shall specify such holder's Securities of such series to be redeemed as a whole or in part. In case any Security is to be redeemed in part only, the notice which relates to such Security shall state the portion of the principal amount thereof to be redeemed (which shall be equal to an authorized denomination for Securities of such series), and shall state that on and after the redemption date, upon surrender of such Security, the holder will receive the redemption price in respect to the principal amount thereof called for redemption and, without charge, a new Security or Securities of the same series of authorized denominations for the principal amount thereof remaining unredeemed.

In the case of any redemption at the election of the Company, the Company shall, at least 45 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such redemption date, the basis for such redemption and of the principal amount of Securities of the applicable series to be redeemed. At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company shall have delivered to the Trustee, at least 45 days prior to the redemption date (unless a shorter period shall be satisfactory to the Trustee), an Officers' Certificate requesting that

the Trustee give such notice together with the notice to be given setting forth the information to be stated therein as provided in the preceding paragraph. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or that is subject to compliance with conditions provided in the terms of such Securities, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or conditions. If less than all the Securities of such series are to be redeemed, and the Securities are global Securities, they will be selected for redemption in accordance with the Applicable Procedures. If the Securities are not global Securities, thereupon the Trustee shall select, by lot, or in any manner it shall deem fair, the Securities of such series to be redeemed as a whole or in part and shall thereafter promptly notify the Company in writing of the particular Securities of such series or portions thereof to be redeemed. If the Securities of any series to be redeemed consist of Securities having different dates on which the principal or any installment of principal is payable or different rates of interest, if any, or different methods by which interest may be determined or have any other different tenor or terms, then the Company may, by written notice to the Trustee, direct that Securities of such series to be redeemed shall be selected from among groups of such Securities having specified tenor or terms and the Trustee shall thereafter select the particular Securities to be redeemed in the manner set forth in the preceding sentence from among the group of such Securities so specified.

3.3 When Securities Called for Redemption Become Due and Payable. If the giving of notice of redemption shall have been completed as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together, if applicable, with any interest accrued (including any Additional Interest or other interest) to but excluding the date fixed for redemption, and on and after such date fixed for redemption (unless the Company shall default in the payment of such Securities at the applicable redemption price, together with any interest accrued to the date fixed for redemption) any interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and, except as provided in Sections 7.5 and 12.4, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and any unpaid interest accrued to but excluding the date fixed for redemption. On presentation and surrender of such Securities at said place of payment in said notice specified, such Securities or portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with any interest accrued to but excluding the date fixed for redemption; *provided, however*, that, except as otherwise specified as contemplated by Section 2.1, any regular payment of interest becoming due on the date fixed for redemption shall be payable to the holders of the Securities registered as such on the relevant record date as provided in Article II hereof. Upon surrender of any Security which is redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver at the expense of the Company a new Security of the same series of like tenor and terms of authorized denomination in principal amount equal to the unredeemed portion of the Security so surrendered; except that if a global Security is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the Depository for such global Security, without service charge, a global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the global Security so surrendered.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the date fixed for redemption at the rate borne by or prescribed therefor in the Security, or, in the case of a Security which does not bear interest, at the rate of interest set forth therefor in the Security to the extent permitted by law.

3.4 Exclusion of Certain Securities from Eligibility for Selection for Redemption. Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in an Officers' Certificate delivered to the Trustee at least 60 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by either (a) the Company or (b) an entity specifically identified in such Officers' Certificate as an affiliate of the Company.

ARTICLE IV
PARTICULAR COVENANTS OF THE COMPANY

The Company covenants as follows:

4.1 Payment of Principal of and Interest on Securities. The Company will duly and punctually pay or cause to be paid the principal of and interest (including any Additional Interest and/or Additional Tax Sums due thereon), if any, on each of the Securities at the time and places and in the manner provided herein and in the Securities. Except as otherwise specified as contemplated by Section 2.1, if the Securities of any series bear interest, each installment of interest on the Securities of such series may at the option of the Company be paid (i) by mailing a check or checks for such interest payable to the Person entitled thereto pursuant to Section 2.3 to the address of such person as it appears on the Register of Securities of such series or (ii) by transfer to an account maintained by the Person entitled thereto as specified in the Register of Securities, *provided that* proper transfer instructions have been received by the record date.

Additional Interest and Additional Tax Sums will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Securities. If Additional Interest or Additional Tax Sums is payable on the Securities, the Company shall provide an Officers' Certificate to the Trustee on or before the record date for each Interest Payment Date such Additional Interest or Additional Tax Sums is payable setting forth the accrual period and the amount of such Additional Interest or Additional Tax Sums in reasonable detail. The Trustee may provide a copy of such Officers' Certificate or other notice received from the Company relating to Additional Interest or Additional Tax Sums to any Holder upon request. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest or Additional Tax Sums is payable. If the Company has paid Additional Interest or Additional Tax Sums directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

4.2 Maintenance of Offices or Agencies for Registration of Transfer, Exchange and Payment of Securities. So long as any of the Securities shall remain outstanding, the Company will maintain an office or agency in the continental United States where the Securities may be presented for registration, conversion, exchange and registration of transfer as in this Indenture provided, and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served, and where the Securities may be presented for payment. In case the Company shall designate and maintain some office or agency other than the previously designated office or agency, it shall give the Trustee prompt written notice thereof. In case the Company shall fail to maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof to the Trustee, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Trustee.

In addition to such office or agency, the Company may from time to time constitute and appoint one or more other offices or agencies for such purposes with respect to Securities of any series, and one or more paying agents for the payment of Securities of any series, in such cities or in one or more other cities, and may from time to time rescind such appointments, as the Company may deem desirable or expedient, and as to which the Company has notified the Trustee.

4.3 Appointment to Fill a Vacancy in the Office of Trustee. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee with respect to each series of Securities hereunder.

4.4 Duties of Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee with respect to Securities of any series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section and Section 12.3,

(i) that it will hold all sums held by it as such agent for the payment of the principal of or interest, if any, on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series entitled to such principal or interest and will notify the Trustee of the receipt of sums to be so held,

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of or interest on the Securities of such series when the same shall be due and payable, and

(iii) that it will at any time during the continuance of any Event of Default, upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it.

(b) Whenever the Company shall have one or more Paying Agents with respect to the Securities of any series, it will, on or prior to each due date of the principal of or any interest on a Security of such series, deposit with a Paying Agent of such series a sum sufficient to pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the holders of Securities of such series entitled to such principal or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) If the Company shall act as its own Paying Agent with respect to the Securities of any series, it will, on or before each due date of the principal of or any interest on a Security of such series, set aside, segregate and hold in trust for the benefit of the holder of such Security, a sum

sufficient to pay such principal or interest so becoming due and will notify the Trustee of such action, or any failure by it or any other obligor on the Securities of such series to take such action and will at any time during the continuance of any Event of Default, upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such series by it, or any Paying Agent hereunder, as required by this Section, such sums are to be held by the Trustee upon the trust herein contained.

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Sections 12.3 and 12.4.

4.5 Further Assurances. From time to time whenever reasonably demanded by the Trustee, the Company will make, execute and deliver or cause to be made, executed and delivered any and all such further and other instruments and assurances and take all such further action as may be reasonably necessary or proper to carry out the intention of or to facilitate the performance of the terms of this Indenture or to secure the rights and remedies hereunder of the holders of the Securities of any series.

4.6 Officers' Certificate as to Defaults; Notices of Certain Defaults. The Company will, so long as any of the Securities are outstanding, deliver to the Trustee no later than 120 days after the end of each calendar year, a certificate that need not comply with Section 15.4 signed by the Company's principal executive officer, principal financial officer or principal accounting officer stating that a review has been made under his or her supervision of the activities of the Company during such year and of the performance under this Indenture and, to his or her knowledge, the Company has complied with all conditions and covenants under this Indenture throughout such calendar year, or if there has been a default in the fulfillment of any such obligation, specifying each such default known and the nature and status thereof. For purposes of this Section, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture. In addition, the Company shall give the notice to the Trustee as and when required by the fourth paragraph of Section 14.1.

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4.7 Waiver of Covenants. The Company may omit in any particular instance to comply with any covenant or condition specifically contained in this Indenture for the benefit of one or more series of Securities, if before the time for such compliance the holders of a majority in principal amount of the Securities of all series affected (all series voting as one class) at the time outstanding (determined as provided in Section 8.4) shall waive such compliance in such instance, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

4.8 Additional Tax Sums. In the case of the Securities of a series issued to a Black Hills Trust, so long as no Event of Default has occurred and is continuing and except as otherwise specified as contemplated by Section 2.1 or Section 2.2, in the event that (i) a Black Hills Trust is the holder of all of the Outstanding Securities of such series, (ii) a Tax Event in respect of such Black Hills Trust shall have occurred and be continuing and (iii) the Company shall not have (a) redeemed the Securities of such series or (b) terminated such Black Hills Trust pursuant to the termination provisions of the related Trust Agreement, the Company shall pay to such Black Hills Trust (and any permitted successor or assign under the related Trust Agreement) for so long as such Black Hills Trust (or its permitted successor or assignee) is the registered holder of any Securities of such series, such additional amounts as may be necessary in order that the amount of Distributions then due and payable by such Black Hills Trust on the related Preferred Securities and Common Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any additional taxes, duties and other governmental charges to which such Black Hills Trust has become subject as a result of such Tax Event (but not including withholding taxes imposed on holders of such Preferred Securities and Common Securities) (the "Additional Tax Sums"). Whenever in this Indenture or the Securities there is a reference in any context to the payment of principal of or interest on the Securities, such reference shall be deemed to include payment of the Additional Tax Sums provided for in this paragraph to the extent that, in such context, Additional Tax Sums are, were or would be payable in respect thereof pursuant to the provisions of this Section and express reference to the payment of Additional Tax Sums (if applicable) in any provisions hereof shall not be construed as excluding Additional Tax Sums in those provisions hereof where such express reference is not made; *provided, however*, that the deferral of the payment of interest pursuant to Section 2.10 or the Securities shall not defer the payment of any Additional Tax Sums that may be then due and payable.

4.9 Additional Covenants. The Company covenants and agrees with each holder of Securities of a series issued to a Black Hills Trust and, to the extent not excluded from the terms of other series of Securities pursuant to Section 2.1(u) hereof, with each holder of the Securities of other series issued hereunder, that it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any shares of the Company's Capital Stock (which includes Common Stock and preferred stock), or (ii) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank on a parity with or junior to the Securities of such series or make any guarantee payments with respect to any Black Hills Guarantee or other guarantee by the Company of debt securities of any Subsidiary that by its terms ranks on a parity with or junior to the Securities of such series (other than (a) dividends or distributions in Common Stock; (b) any declaration of a dividend in connection with the implementation of a Rights Plan, the issuance of any Capital Stock of any class or series of preferred stock of the Company under any Rights Plan or the redemption or repurchase of any rights distributed pursuant to a Rights Plan; (c) if applicable, payments under any Black Hills Guarantee relating to the Preferred Securities issued by the Black Hills Trust holding the Securities of such series; and (d) purchases of Common Stock related to the issuance of Common Stock or rights under any of the Company's benefit plans for its directors, officers, employees, consultants or advisors) if at such time (i) the Company shall be in default with respect to its payment of any obligations under a related Black Hills Guarantee or (ii) the Company shall have given notice of its election to begin an Extension Period as provided in Section 2.10 and shall not have rescinded such notice, or such Extension Period, or any extension thereof, shall be continuing.

The Company also covenants with each holder of Securities of a series issued to a Black Hills Trust (i) to maintain directly or indirectly 100% ownership of the Common Securities of such Black Hills Trust; *provided, however*, that any permitted successor or assignee of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) not to voluntarily terminate, wind up or liquidate such Black Hills Trust, except (a) in connection with a prepayment in full of the Securities or a distribution of the Securities of such series

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to the holders of Preferred Securities in liquidation of such Black Hills Trust or (b) in connection with certain mergers, consolidations or amalgamations permitted by the relevant Trust Agreement and (iii) to use its reasonable efforts, consistent with the terms and provisions of such Trust Agreement, to cause such Black Hills Trust to remain classified as a grantor trust and not an association taxable as a corporation for United States federal income tax purposes.

4.10 Calculation of Original Issue Discount. The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE V SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

5.1 Company to Furnish Trustee Information as to the Names and Addresses of Securityholders. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semiannually not more than 15 days after each record date for payment of interest, and at such other times as the Trustee may request in writing within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all information in the possession or control of the Company, or any Paying Agent or any registrar of the Securities of each series, other than the Trustee, as to the names and addresses of the holders of Securities of such series obtained (in the case of each list other than the first list) since the date as of which the next previous list was furnished; *provided, however*, that if the Trustee shall be the registrar of the Securities of such series, no such list need be furnished; and *provided further* that the Company shall not be obligated to provide such a list of Securityholders at any time the list of Securityholders does not differ from the most recent list of Securityholders given to the Trustee by the Company. Any such list may be dated as of a date not more than fifteen days prior to the time such information is furnished or caused to be furnished, and need not include information received after such date.

5.2 Trustee to Preserve Information as to the Names and Addresses of Securityholders Received by It.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Each and every holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent nor any registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the holders of Securities in accordance with Section 312(b) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

5.3 Annual and Other Reports to be Filed by Company with Trustee.

(a) The Company covenants and agrees to file with the Trustee within fifteen days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

(b) The Company covenants and agrees to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents, and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations.

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(c) The Company covenants and agrees to transmit to the holders of Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in subsection (c) of Section 5.4 with respect to reports pursuant to subsection (a) of said Section 5.4, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates and certificates delivered pursuant to Section 4.6).

5.4 Trustee to Transmit Annual Report to Securityholders.

(a) On or before July 1, 2016, and on or before July 1 in every year thereafter, if and so long as any Securities are outstanding hereunder, the Trustee shall transmit to the Securityholders as hereinafter in this Section provided, a brief report dated as of the preceding May 1 with respect to any of the following events which may have occurred within the previous twelve (12) months (but if no such event has occurred within such period no report need be transmitted):

(i) Any change to its eligibility under Section 7.9, and its qualifications under Section 7.8;

(ii) The creation of or any material change to a relationship which would create a conflicting interest within the meaning of the Trust Indenture Act;

(iii) The character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge prior to that of the Securities of any series on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than one-half of one percent of the principal amount of the Securities of all series outstanding as of the date of such report;

(iv) Any change to the amount, interest rate, and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4), or (6) of subsection (b) of Section 311 of the Trust Indenture Act;

(v) Any change to the property and funds, if any, physically in the possession of the Trustee (as such) on the date of such report;

(vi) Any additional issue of Securities which the Trustee has not previously reported to Securityholders; and

(vii) Any action taken by the Trustee in the performance of its duties under this Indenture which it has not previously reported to Securityholders and which in its opinion materially affects the Securities of any series, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with the provisions of Section 6.7.

(b) The Trustee shall transmit to the Securityholders, as hereinafter provided, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last

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report transmitted pursuant to the provisions of subsection (a) of this Section (or if such report has not yet been so transmitted, since the date of execution of this Indenture), for the reimbursement of which it claims or may claim a lien or charge prior to that of the Securities of any series on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 10 percent of the principal amount of Securities of all series outstanding as of the date of such report, such report to be transmitted within 90 days after such time.

(c) Reports pursuant to this Section shall be transmitted by mail to all holders of Securities of any series, as the names and addresses of such holders shall appear upon the Register of the Securities of such series.

(d) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which the Securities of any series are listed and also with the Commission. The Company will promptly notify the Trustee when and as the Securities of any series become listed on any stock exchange.

ARTICLE VI REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

6.1 Events of Default Defined. The term “Event of Default” whenever used herein with respect to Securities of any series shall mean any one of the following events:

(a) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an Extension Period); or

(b) default in the payment of all or any part of the principal of any of the Securities of such series as and when the same shall become due and payable whether upon Stated Maturity, upon any redemption, by declaration or otherwise; or

(c) failure on the part of the Company duly to observe or perform in any material respect any covenants or agreements (other than covenants to pay interest, principal and premium, which are subject to subsections (a) and (b) above of this Section) on the part of the Company in the Securities or in this Indenture (including any supplemental indenture or pursuant to any Officers’ Certificate as contemplated by Section 2.1) which are for the benefit of the Securities of such series, for a period of 90 days after there has been given, by registered or certified mail, or overnight air courier guaranteeing next day delivery, to the Company by the Trustee, or to the Company and the Trustee by the holders of not less than 25% in principal amount of the Securities of such series and all other series so benefited (all series voting as one class) at the time outstanding under this Indenture a written notice specifying such failure and stating that such notice is a “Notice of Default” hereunder, unless the Trustee, or the Trustee and the holders of a principal amount of Securities of such series not less than the principal amount of Securities the holders of which gave such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; *provided, however*, that it shall not constitute an Event of Default if corrective action is initiated by the Company within such period and is being diligently pursued; or

(d) the commencement by the Company of a voluntary case under Chapter 7 or Chapter 11 of the federal Bankruptcy Code or any other similar state or federal law now or hereafter in effect, or the consent by the Company to the entry of a decree or order for relief in an involuntary case under any such law, or the consent by the Company to the appointment of or the taking possession by a liquidating agent or committee, conservator or receiver for the Company or any substantial part of its property, or the general assignment by the Company for the benefit of its creditors, or the admission by the Company in writing of its inability to pay its debts as they become due; or

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(e) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Company in an involuntary case under Chapter 7 or Chapter 11 of the federal Bankruptcy Code or any other similar state or federal law now or hereafter in effect, and the continuance of any such decree or order unstayed and in effect for a period of 90 days, or the appointment of or the taking possession by a liquidating agent or committee, conservator or receiver for the Company or any substantial part of its property, and the continuance of any such appointment unstayed and in effect for a period of 90 days.

If an Event of Default shall have occurred and be continuing, unless the principal of all the Securities shall have already become due and payable, either the Trustee or (i) the holders of not less than 25% in principal amount of all the then outstanding Securities of the series as to which such Event of Default under clauses 6.1(a), 6.1(b) or 6.1(c) has occurred (each such series voting as a separate class in the case of an Event of Default under clauses 6.1(a) or 6.1(b), and all such series voting as one class in the case of an Event of Default under clause 6.1(c)), or (ii) the holders of not less than 25% in principal amount of all of the outstanding Securities in the case of an Event of Default under clauses 6.1(d) or 6.1(e), by notice in writing to the Company (and to the Trustee if given by Securityholders) may declare the principal amount (or if Securities of any series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all the Securities of such series in the case of an Event of Default under clauses 6.1(a), 6.1(b) or 6.1(c) or of all the outstanding Securities in the case of an Event of Default under clauses 6.1(d) or 6.1(e), in each case together with any accrued interest, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable; *provided, however*, that in the case of the Securities of a series issued to a Black Hills Trust, if upon an Event of Default, the Trustee or the holders of at least 25% in principal amount of the outstanding Securities of such series fail to declare the principal of all the Securities of that series to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the corresponding series of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal amount (or specified portion thereof) of the Securities of any one or more series (or of all the Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series (or upon all the Securities, as the case may be) and the principal of any and all Securities of such series (or of any and all the Securities, as the case may be) which shall have become due otherwise than by declaration (with interest on overdue installments of interest to the extent permitted by law and on such principal at the rate or rates of interest borne by, or prescribed therefor in, the Securities of each such series to the date of such payment or deposit) and the amounts payable to the Trustee under Section 7.6, and any and all defaults under the Indenture with respect to Securities of such series (or all Securities, as the case may be), other than the nonpayment of principal of and any accrued interest on Securities of such series (or any Securities, as the case may be) which shall have become due by declaration, shall have been cured, remedied or waived as provided in Section 6.6, then and in every such case the holders of a majority in principal amount of the Securities of such series (or of all the Securities, as the case may be) then outstanding and as to which such Event of Default has occurred (such series or all series voting as one class, if more than one series are so entitled) by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences. In the case of Securities issued to a Black Hills Trust, should the holders of such Securities fail to annul such declaration and waive such default, the holders of a majority in aggregate liquidation preference of related Preferred Securities shall have such right; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee, any holder of Securities or any holder of Preferred Securities shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, such holder of Securities or such holder of Preferred Securities then and in every such case the Company, the Trustee, the holders of the Securities of such series (or of all the Securities, as the case may be) and the holders of Preferred Securities shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee, the holders of the Securities of such series (or of all the Securities, as the case may be) and the holders of Preferred Securities shall continue as though no such proceedings had been taken.

6.2 Covenant of Company to Pay to Trustee Whole Amount Due on Securities on Default in Payment of Interest or Principal.

The Company covenants that (1) in case default shall be made in the payment of any installment of interest on any of the Securities of any series as and when the same shall become due and payable, and such default shall have continued for a period of 30 days (subject to the deferral of any due date in the case of an Extension Period), or (2) in case default shall be made in the payment of all or any part of the principal of any of the Securities of any series as and when the same shall become due and payable, whether upon Stated Maturity, upon any redemption, by declaration or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of such series, the whole amount that then shall have become due and payable on all such Securities of such series for principal or interest, or both, as the case may be, with interest upon the overdue principal and installments of interest (to the extent permitted by law) at the rate or rates of interest borne by or prescribed therefor in the Securities of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents and counsel, and any expenses or disbursements reasonably incurred, and all reasonable advances made hereunder by the Trustee, its agents, attorneys and counsel, except as a result of its negligence or willful misconduct.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon such Securities, and collect in the manner provided by law out of the property of the Company or any other obligor upon such Securities wherever situated the moneys adjudged or decreed to be payable.

The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for the holders of the Securities of any series, or in any one or more of such capacities (irrespective of whether the principal of the Securities of such series shall then be due and payable, whether upon Stated Maturity, upon any redemption, by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section) to file and prove a claim or claims for the whole amount of principal (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) and interest owing and unpaid in respect of the Securities of such series and to file such other documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation of the Trustee, its agents and counsel, and for reimbursement of all expenses and disbursements reasonably incurred, and all reasonable advances made hereunder by the Trustee, its agents and counsel, except as a result of its negligence or willful misconduct) and of the holders of the Securities of such series allowed in any equity receivership, insolvency, bankruptcy, liquidation, arrangement, readjustment, reorganization or any other judicial proceedings relative to the Company or any other obligor on the Securities of such series or their creditors, or their property. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Securities of each series by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Securities of such series, with authority to make and file in the respective names of the holders of the Securities of such series, or on behalf of the holders of the Securities of such series as a class, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceeding and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such holders of the Securities of such series, as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Trustee and of the

holders of the Securities of such series allowed in any such proceeding, and to receive payment of or on account of such claims and to distribute the same, and any receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due to it under Section 7.6; and to the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.6 hereof out of the estate in any such proceeding, shall be unpaid for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise; *provided, however*, that nothing herein shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any

plan of reorganization, arrangement, adjustment or composition affecting the Securities of such series or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder of Securities of such series in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Securities of any series, may be enforced by the Trustee without the possession of any of the Securities of such series, or the production thereof in any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee, shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of such Trustee, its agents and counsel, for the ratable benefit of the holders of the Securities of such series.

6.3 Application of Moneys Collected by Trustee. Any moneys or properties collected by the Trustee pursuant to this Article VI, and after an Event of Default any money or other property distributable in respect of the Company's obligations under this Indenture, shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of reasonable costs and expenses of collection, and of all amounts payable to the Trustee (including any predecessor Trustee) under Section 7.6;

Second: Subject to Article XIV, in case the principal of the outstanding Securities in respect of which moneys have been collected shall not have become due and be unpaid, to the payment of any unpaid interest on such Securities, in the order of the maturity of the installments of such interest, with interest upon the overdue installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee) at the rate or rates of interest borne by, or prescribed therefor in, such Securities, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

Third: Subject to Article XIV, in case the principal of the outstanding Securities in respect of which such moneys have been collected shall have become due and be unpaid, whether upon Stated Maturity, upon any redemption, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Securities for principal and interest, if any, with interest on the overdue principal and any installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee) at the rate or rates of interest borne by, or prescribed therefor in, such Securities; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon such Securities, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Security over any other Security, ratably to the aggregate of such unpaid principal and interest; and

Fourth: To the payment of the remainder, if any, to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment or distribution to holders of Securities pursuant to this Section.

6.4 Limitation on Suits by Holders of Securities. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than a majority in principal amount of all the Securities at the time outstanding (considered as one class) shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonably satisfactory security or indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after

its receipt of such notice, request and offer of indemnity, shall have declined to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.6; it being understood and intended, and being expressly covenanted by the taker and holder of every Security with every other taker and holder and the Trustee, that no one or more holders of Securities shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions in this Indenture, the right of any holder of any Security to receive payment of the principal of and interest on such Security, on or after the respective due dates expressed in such Security (or, in the case of redemption on or after the date fixed for redemption), or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

6.5 On Default Trustee May Take Appropriate Action; Direct Action. In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law. Except as provided in the last paragraph of Section 2.7, all powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee, of any holder of any of the Securities or any holder of Preferred Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 8.4, every power and remedy given by this Article or by law to the Trustee, to the Securityholders or the holders of Preferred Securities may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee, by the Securityholders or by the holders of Preferred Securities, as the case may be.

In the case of Securities of a series issued to a Black Hills Trust, any holder of the corresponding series of Preferred Securities issued by such Black Hills Trust shall have the right, upon the occurrence of an Event of Default described in Section 6.1(a) or (b) above, to institute a suit directly against the Company (a "Direct Action") for enforcement of payment to such holder of principal of (including premium, if any) and interest (including any Additional Interest) on the Securities having a principal amount equal to the aggregate liquidation amount of such Preferred Securities of the corresponding series held by such holder. Notwithstanding any payments made to a holder of such Preferred Securities by the Company pursuant to a Direct Action initiated by such holder, the Company shall remain obligated to pay the principal of or interest due on the Securities, and the Company shall be subrogated to the rights of the holder of such Preferred Securities with respect to payments on the Preferred Securities to the extent of any payments made by the Company to such holder in any Direct Action.

No delay or omission of the Trustee or of any holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VI or by law to the Trustee or to the holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders, as the case may be.

6.6 Rights of Holders of Majority in Principal Amount of Securities to Direct Trustee and to Waive Default. The holders of at least a majority in principal amount of the Securities of any one or more series or of all the Securities, as the case may be (voting as one class), at the time outstanding (determined as provided in Section 8.4) shall have the right to direct the time, method, and place of conducting any

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proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee under this Indenture with respect to such one or more series; *provided, however*, that subject to Section 7.1, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceedings so directed would be illegal or would conflict with this Indenture, or involve it in personal liability or be unduly prejudicial to the rights of Securityholders of such one or more series not parties to such direction (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such Holders), and *provided further* that nothing in this Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by such Securityholders of such one or more series. The holders of at least a majority in principal amount of the Securities of all series as to which a default or an Event of Default hereunder has occurred (all series voting as one class) at the time outstanding (determined as provided in Section 8.4) and, in the case of any Preferred Securities of a series issued to a Black Hills Trust, the holders of at least a majority in aggregate liquidation amount of the Preferred Securities issued by such Black Hills Trust, may waive any past default or Event of Default hereunder with respect to such series and its consequences, except a default in the payment of the principal of or interest on any of such Securities or Preferred Securities or in respect of a covenant or provision hereof which under Article X cannot be modified or amended without the consent of the holder of each Security so affected. Upon any such waiver, such default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. Any such waiver shall be deemed to be on behalf of the holders of all the Securities of such series or, in the case of a waiver by holders of Preferred Securities issued by such Black Hills Trust, on behalf of all holders of Preferred Securities issued by such Black Hills Trust.

6.7 Trustee to Give Notice of Defaults Known to It, but May Withhold in Certain Circumstances. The Trustee shall, within 90 days after the occurrence of any default or Event of Default known to a Responsible Officer hereunder with respect to the Securities of any series, give to the holders of the Securities of such series in the manner and to the extent provided in subsection (c) of Section 5.4 with respect to reports pursuant to subsection (a) of said Section 5.4, notice of such default actually known to a Responsible Officer of the Trustee unless such default shall have been cured, remedied or waived before the giving of such notice (the term "default" for the purposes of this Section being hereby defined to be the events specified in clauses (c), (d) and (e) of Section 6.1 and default in the payment of the principal of or interest on Securities of any series, not including any periods of grace provided for therein, and irrespective of the giving of written notice specified therein); *provided, however*, that, except in the case of default in the payment of the principal of or interest on any of the Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, executive committee, trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the holders of the Securities of such series.

6.8 Requirement of an Undertaking to Pay Costs in Certain Suits Under the Indenture or Against the Trustee. All parties to this Indenture agree, and each holder of any Security by its acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder of Securities of any series, or group of such Securityholders, holding in the aggregate more than 10 percent in principal amount of all the Securities (all series considered as one class) outstanding, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of or interest on any Security, on or after the due date expressed in such Security (or in the case of any redemption, on or after the date fixed for redemption).

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**ARTICLE VII
CONCERNING THE TRUSTEE**

7.1 Upon Event of Default Occurring and Continuing, Trustee Shall Exercise Powers Vested in It, and Use Same Degree of Care and Skill in Their Exercise, as a Prudent Man Would Use. The Trustee, prior to the occurrence of an Event of Default and after the curing, remedying or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured, remedied or waived) of which a Responsible Officer of the Trustee has actual notice, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct; *provided, however*, that

(a) Prior to the occurrence of an Event of Default and after the curing, remedying or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of Securities pursuant to Section 6.6 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.1; and

(e) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder.

7.2 Reliance on Documents, Opinions, Etc. Except as otherwise provided in Section 7.1:

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(a) The Trustee may rely and shall be fully protected in acting or refraining from acting in good faith upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Resolution of the Company may be evidenced to the Trustee by a copy thereof certified by the Corporate Secretary or an Assistant Corporate Secretary of the Company;

(c) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Securityholders pursuant to this Indenture, unless such Securityholders shall have offered to the Trustee reasonably satisfactory security or indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction;

(e) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture, note, other evidence of indebtedness or other paper or document, or inquire as to the performance by the Company or the Guarantors of any of their covenants in this Indenture, unless requested in

writing to do so by the holders of Securities pursuant to Section 6.6, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit; *provided, however*, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require adequate indemnity against such costs, expenses or liabilities as a condition to so proceeding; and *provided further*, that nothing in this subsection (f) shall require the Trustee to give the Securityholders any notice other than that required by Section 6.7. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it hereunder; *provided, however*, that the Trustee shall be responsible for its own negligence or willful misconduct with respect to the selection of any such agent or attorney;

(h) The Trustee shall be under no responsibility for the approval by it in good faith of any expert for any of the purposes expressed in this Indenture;

(i) The Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee in its Corporate Trust Office has actual knowledge thereof or unless written notice of any event which is in fact such a default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee from the Company or Securityholders of 25% of the aggregate principal amount of the Securities, and such notice references the Securities and this Indenture;

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(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, whether as Agent or otherwise, and to each agent, custodian and other Person employed to act hereunder;

(k) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(l) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to furnish the Trustee with Officers' Certificates, Company orders or requests and any other matters or directions pursuant to this Indenture;

(m) In no event shall the Trustee be responsible or liable for any special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(n) The permissive rights or powers of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee.

(o) The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company or any other Person. The Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions or directions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

7.3 Trustee Not Liable for Recitals in Indenture or in Securities. The recitals contained herein and in the Securities (other than the certificate of authentication on the Securities) shall be taken as the statements of the Company, and the Trustee does not assume any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of the proceeds of the Securities of any series or for funds received and disbursed in accordance with this Indenture. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of any series of the Securities.

7.4 May Hold Securities. The Trustee or any agent of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 7.8, may transact business with the Company with the same rights it would have if it were not Trustee or such agent.

7.5 Moneys Received by Trustee to be Held in Trust without Interest. Subject to the provisions of Section 12.4, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to

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the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder.

7.6 Trustee Entitled to Compensation, Reimbursement and Indemnity. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of any express trust), and, the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in connection with the acceptance or administration of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or willful misconduct. The Company also covenants and agrees to indemnify each of the Trustee, any predecessor Trustee and their officers, directors, employees and agents for, and to hold them harmless against, any loss, damage, claim, liability or expense incurred without negligence or willful misconduct on their part and arising out of or in connection with the acceptance or administration of this Indenture and performance of their duties hereunder, or the exercise of their rights and powers under the Securities including the costs and expenses (including reasonable fees and disbursements of their counsel) of enforcing this Indenture (including this Section) and the Securities and of defending themselves against any claim or liability in connection with the exercise or performance of any of the powers or duties hereunder. The obligations of the Company under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest, if any, on particular Securities.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.1(d) or (e), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law. "Trustee" for the purposes of this Section shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; *provided, however*, that the negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

7.7 Right of Trustee to Rely on Officers' Certificate where No Other Evidence Specifically Prescribed. Except as otherwise provided in Section 7.1, whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting to take any action hereunder, the Trustee (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, willful misconduct or bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Company.

7.8 Disqualification; Conflicting Interests. If the Trustee has or shall acquire any conflicting interest, within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest within 90 days, apply to the Commission for permission to continue as Trustee, or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. There shall be excluded from the operation of Trust Indenture Act Section 310(b)(1) each series of Securities under this Indenture and any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Trust Indenture Act Section 310(b)(1) are met.

7.9 Requirements for Eligibility of Trustee. There shall at all times be a Trustee hereunder that is a corporation, organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, eligible under Sections 310(a)(1) and (5) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 subject to

supervision or examination by federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

7.10 Resignation and Removal of Trustee.

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Securities by giving written notice of such resignation to the Company and by giving to the holders of Securities of the applicable series notice thereof in the manner and to the extent provided in subsection (c) of Section 5.4 with respect to reports pursuant to subsection (a) of Section 5.4. Upon receiving such notice of resignation and if the Company shall deem it appropriate evidence satisfactory to it of such mailing, the Company shall promptly appoint a successor Trustee with respect to the applicable series (it being understood that any successor Trustee may be appointed with respect to the Securities of one or more or all of such series and at any time there shall be only one Trustee with respect to the Securities of any particular series) by written instrument, in duplicate, executed pursuant to a Resolution of the Company, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no successor Trustee shall have been so appointed with respect to any series and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, or any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 6.8, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor Trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

(b) In case at any time any of the following shall occur:

(i) The Trustee shall fail to comply with Section 7.8 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months, or

(ii) The Trustee shall cease to be eligible in accordance with the provisions of Section 7.9 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(iii) The Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose

then, in any such case, the Company may remove the Trustee with respect to the applicable series and appoint a successor Trustee with respect to the applicable series by written instrument, in duplicate, executed pursuant to a Resolution of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee, or, subject to the provisions of Section 6.8, any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the applicable series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor Trustee.

(c) The holders of a majority in principal amount of the Securities of any one series voting as a separate class or all series voting as one class at the time outstanding (determined as provided in Section 8.4) may at any time remove the Trustee with respect to the applicable series or all series, as the case may be, and appoint a successor Trustee with respect to the applicable series or all series, as the case may be, by written instrument or instruments signed by such holders or their attorneys-in-fact duly authorized, or by the affidavits of the permanent chairman and permanent secretary of a meeting of the Securityholders (as elected in accordance with Section 9.5) evidencing the vote upon a resolution or

resolutions submitted thereto with respect to such removal and appointment (as provided in Article IX), and by delivery thereof to the Trustee so removed, to the successor Trustee and to the Company.

(d) Any resignation or removal of the Trustee and any appointment of a successor Trustee pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 7.11.

7.11 Acceptance by Successor Trustee. Any successor Trustee with respect to all series of Securities appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee with respect to all series shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties with respect to such series of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.6, execute and deliver an instrument transferring to such successor Trustee all the rights and powers with respect to such series of the Trustee so ceasing to act. Upon the request of any such successor Trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee or any successor Trustee to secure any amounts then due it pursuant to the provisions of Section 7.6.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of such series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of such series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-Trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of such series to which the appointment of such successor Trustee relates; but, on written request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of such series to which the appointment of such successor Trustee relates.

No successor Trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor Trustee shall be qualified under the provisions of Section 7.8 and eligible under the provisions of Section 7.9.

Upon acceptance of appointment by a successor Trustee as provided in this Section, the successor Trustee shall at the expense of the Company transmit notice of the succession of such Trustee hereunder to the holders of Securities of any applicable series in the manner and to the extent provided in subsection (c) of Section 5.4 with respect to reports pursuant to subsection (a) of said Section 5.4.

7.12 Successor to Trustee by Merger, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 7.8 and

eligible under the provisions of Section 7.9, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to

adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

7.13 Limitations on Preferential Collection of Claims by the Trustee. The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

ARTICLE VIII CONCERNING THE SECURITYHOLDERS

8.1 Evidence of Action by Securityholders. Whenever in this Indenture it is provided that the holders of a specified percentage in principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent, or waiver or the taking of any other action), the fact at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of such holders of Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article IX, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders.

If there shall be more than one Trustee acting hereunder with respect to separate series of Securities, such Trustees shall collaborate, if necessary, in acting under Article IX and in determining whether the holders of a specified percentage in principal amount of the Securities of any or all series have taken any such action.

8.2 Proof of Execution of Instruments and of Holding of Securities. Subject to the provisions of Sections 7.1, 7.2 and 9.5, proof of the execution of any instrument by a Securityholder or its agent or proxy and proof of the holding by any person of any of the Securities shall be sufficient if made in the following manner:

- (a) The fact and date of the execution by any such person of any instrument may be proved in any reasonable manner acceptable to the Trustee;
- (b) The ownership of Securities of any series shall be proved by the Register of such Securities of such series, or by certificates of the Security registrar thereof;
- (c) The Trustee shall not be bound to recognize any person as a Securityholder unless and until title to the Securities held by him is proved in the manner in this Article VIII provided;
- (d) The record of any Securityholders' meeting shall be proved in the manner provided in Section 9.6; and
- (e) The Trustee may accept such other proof or require such additional proof of any matter referred to in this Section as it shall deem reasonable.

8.3 Who may be Deemed Owners of Securities. Prior to due presentment for registration of transfer of any Security, the Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name such Security shall be registered upon the Register of Securities of the series of which such Security is a part as the absolute owner of such Security (whether or not payments in respect of such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or an account of the principal of and interest, subject to Section 2.3, on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

8.4 Securities Owned by Company or Controlled or Controlling Persons Disregarded for Certain Purposes. In determining whether the holders of the requisite principal amount of Securities have concurred in any demand, direction, request, notice, vote, consent, waiver or other action under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities shall be disregarded and deemed not to be outstanding for the purpose of any such determination, *provided that* for the purposes of determining whether the Trustee shall be protected in relying on any such demand, direction, request, notice, vote, consent, waiver or other action, only Securities which a Responsible Officer of the Trustee assigned to its principal office actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on the Securities or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities; and, subject to the provisions of Section 7.1, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are outstanding for the purpose of any such determination.

8.5 Instruments Executed by Securityholders Bind Future Holders. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.1, of the taking of any action by the holders of the percentage in principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.2, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security and any direction, demand, request, notice, waiver, consent, vote or other action of the holder of any Security which by any provisions of this Indenture is required or permitted to be given shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in lieu thereof or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Security. Any action taken by the holders of the

percentage in principal amount of the Securities of any or all series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all of the Securities of such series subject, however, to the provisions of Section 7.1.

ARTICLE IX SECURITYHOLDERS' MEETINGS

9.1 Purposes for which Meetings may be Called. A meeting of holders of Securities of any or all series may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

(a) To give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other

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action authorized to be taken by holders of Securities of any or all series, as the case may be, pursuant to any of the provisions of Article VI;

(b) To remove the Trustee and appoint a successor Trustee pursuant to the provisions of Article VII;

(c) To consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.2; or

(d) To take any other action authorized to be taken by or on behalf of the holders of any specified principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

9.2 Manner of Calling Meetings. The Trustee may at any time call a meeting of Securityholders to take any action specified in Section 9.1, to be held at such time and at such place, as the Trustee shall determine. Notice of every meeting of Securityholders setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed not less than 15 nor more than 90 days prior to the date fixed for the meeting.

9.3 Call of Meeting by Company or Securityholders. In case at any time the Company, pursuant to a resolution of its Board of Directors, or the holders of not less than 10 percent in principal amount of the Securities of any or all series, as the case may be, then outstanding, shall have requested the Trustee to call a meeting of holders of Securities of any or all series, as the case may be, to take any action authorized in Section 9.1 by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request, then the Company or such holders of Securities in the amount above specified may determine the time and place for such meeting and may call such meeting to take any action authorized in Section 9.1, by mailing notice thereof as provided in Section 9.2.

9.4 Who May Attend and Vote at Meetings. To be entitled to vote at any meeting of Securityholders a person shall (a) be a holder of one or more Securities with respect to which the meeting is being held, or (b) be a person appointed by an instrument in writing as proxy by such holder of one or more Securities. The only persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

9.5 Regulations may be made by Trustee. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 8.2 and the appointment of any proxy shall be proved in the manner specified in said Section 8.2; *provided, however*, that such regulations may provide that written instruments appointing proxies regular on their face, may be presumed valid and genuine without the proof hereinabove or in said Section 8.2 specified.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 9.3, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.4, at any meeting each Securityholder or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him or her, *provided, however*, that

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no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the permanent chairman of the meeting to be not outstanding; provided, further, that each holder of Original Issue Discount Securities shall be entitled to one vote for each \$1,000 amount which would be due upon acceleration of the Original Issue Discount Security on the date of the meeting. Neither a temporary nor a permanent chairman of the meeting shall have a right to vote other than by virtue of Securities held by him or her or instruments in writing as aforesaid duly designating him or her as the person to vote on behalf of other Securityholders. Any meeting of Securityholders duly called pursuant to the provisions of Section 9.2 or 9.3 may be adjourned from time to time, and the meeting may be held so adjourned without further notice.

At any meeting of Securityholders, the presence of persons holding or representing Securities in principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the person or persons holding or representing a majority in principal amount of the Securities represented at the meeting may adjourn such meeting with the same effect for all intents and purposes, as though a quorum had been present.

9.6 Manner of Voting at Meetings and Record to be Kept. The vote upon any resolution submitted to any meeting of Securityholders shall be by written ballots on which shall be subscribed the signatures of the holders of Securities or of their representatives by proxy and the

principal amount or principal amounts of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the permanent secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the permanent secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.2. The record shall show the principal amount or principal amounts of the Securities voting in favor of, against, or abstaining from voting on, any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and permanent secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

9.7 Exercise of Rights of Trustee, Securityholders and Holders of Preferred Securities Not to be Hindered or Delayed.

Nothing in this Article contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Securityholders or any rights expressly or impliedly conferred hereunder to make such call any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee, to the Securityholders or the holders of Preferred Securities under any of the provisions of this Indenture or of the Securities.

**ARTICLE X
SUPPLEMENTAL INDENTURES**

10.1 Purposes for which Supplemental Indentures may be Entered into Without Consent of Securityholders. Without the consent of any Securityholders or any holders of Preferred Securities, the Company, when authorized by a Resolution of the Company, and the Trustee may from time to time, and at any time enter into an indenture or indentures supplemental hereto, in form satisfactory to such Trustee (which shall comply with the provisions of the Trust Indenture Act as then in effect), for one or more of the following purposes:

(a) To evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor of the covenants, agreements and obligations of the Company pursuant to Article XI hereof;

(b) To add to the covenants of the Company such further covenants, restrictions or conditions as the Company in good faith shall consider to be for the protection of the holders of all or any series of

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Securities (and if such covenants, restrictions or conditions are to be for the benefit of less than all series of Securities, stating that such covenants, restrictions or conditions are expressly being included solely for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however*, that in respect to any such additional covenant, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(c) To add or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

(d) To change or eliminate any of the provisions of this Indenture; *provided, however*, that any such change or elimination shall become effective only when there is no Security of any series outstanding created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision;

(e) To establish the form or terms of Securities of any series as permitted by Section 2.1 and 2.2;

(f) As determined by the Company in good faith, to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture;

(g) To make such other provision in regard to matters or questions arising under this Indenture or any supplemental indenture or to make any other changes in the provisions of this Indenture; *provided, however*, that such action shall not adversely affect the interest of the holders of Securities of any series in any material respect or, in the case of the Securities of a series issued to a Black Hills Trust and for so long as any of the corresponding series of Preferred Securities issued by such Black Hills Trust shall remain outstanding, the holders of such Preferred Securities;

(h) To mortgage or pledge to the Trustee as security for the Securities any property or assets which the Company may desire to mortgage or pledge as security for the Securities;

(i) To qualify, or maintain the qualification of, the Indenture under the Trust Indenture Act;

(j) To evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, all as provided in Section 7.11; or

(k) To supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 12.5, *provided that* any such action shall not adversely affect the interests of any holder of a Security of such series or any other Security or coupon in any material respect.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, mortgage, pledge or assignment of any property

Any supplemental indenture authorized by the provisions of this Section may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time outstanding, notwithstanding any of the provisions of Section 10.2.

10.2 Modification of Indenture with Consent of Holders of a Majority in Principal Amount of Securities. With the consent of the holders of not less than a majority in principal amount of the Securities of all series at the time outstanding (determined as provided in Section 8.4) affected by such supplemental indenture (voting as one class), the Company, when authorized by a Resolution of the Company, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall be in conformity with the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of each such series; *provided, however*, that no such supplemental indenture shall (i) change the fixed Maturity of any Securities, or reduce the rate or extend the time of payment of any interest thereon or on any overdue principal amount or reduce the principal amount thereof, or change the provisions pursuant to which the rate of interest on any Security is determined if such change could reduce the rate of interest thereon, or reduce the minimum rate of interest thereon, or reduce any amount payable upon any redemption thereof, or adversely affect any right to convert the Securities in accordance therewith, or reduce the amount to be paid at Maturity or make the principal thereof or any interest thereon or on any overdue principal amount payable in any coin or currency other than that provided in the Security or impair or affect the right to institute suit for the payment thereof when due, or, if such Security shall so provide, any right of repayment at the option of the holder, in each case, without the consent of the holder of each Security so affected, (ii) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture without the consent of the holders of all Securities then outstanding, (iii) modify any of the provisions of this Section, Section 4.7 or Section 6.6, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the holders of all Securities then outstanding; *provided, however*, that this clause (iii) shall not be deemed to require the consent of any holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section, or the deletion of this proviso, in accordance with Section 7.11 or (iv) modify the provisions of Article XIV with respect to the subordination of outstanding Securities of any series in a manner adverse to the holders thereof without the consent of the holder of each Security so affected; *provided, however*, that, in the case of the Securities of a series issued to a Black Hills Trust, so long as any of the corresponding series of Preferred Securities issued by such Black Hills Trust remains outstanding, (i) no such amendment shall be made that adversely affects the holders of such Preferred Securities in any material respect, and no termination of this Indenture shall occur, and no waiver of any Event of Default with respect to such series or compliance with any covenant with respect to such series under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate liquidation amount of such Preferred Securities then outstanding unless and until the principal (and premium, if any) of the Securities of such series and all accrued and unpaid interest (including any Additional Interest) thereon have been paid in full; and (ii) no amendment shall be made to Section 6.5 of this Indenture that would impair the rights of the holders of such Preferred Securities provided therein or to this Indenture that requires the consent of each holder of the Securities of such series without the prior consent of each holder of such Preferred Securities then outstanding unless and until the principal (and premium, if any) of the Securities of such series and all accrued and unpaid interest (including any Additional Interest) thereon have been paid in full.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities or Preferred Securities, or which modifies the rights of holders of Securities or holders of Preferred Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the holders of Securities or holders of Preferred Securities of any other series.

Upon the request of the Company, accompanied by a copy of a Resolution of the Company certified by the Corporate Secretary or an Assistant Corporate Secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Company shall mail a notice to the holders of Securities of each series so affected, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

10.3 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture pursuant to the provisions of this Article, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee shall be entitled to receive, and subject to the provisions of Section 7.1 shall be entitled to rely upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article.

10.4 Securities May Bear Notation of Changes by Supplemental Indentures. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article, or after any action taken at a Securityholders' meeting pursuant to Article IX, may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture or as to any action taken at any such meeting. If the Company or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of

Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities then outstanding.

10.5 Revocation and Effect of Consents. Subject to Section 8.5, until an amendment, supplement, waiver or other action becomes effective, a consent to it by a Securityholder of a Security is a continuing consent conclusive and binding upon such Securityholder and every subsequent Securityholder of the same Security or portion thereof, and of any Security issued upon the registration of transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent or revoke such consent to such amendment, supplement or waiver, whether or not such Persons continue to be Securityholders after such record date. No such consent shall be valid or effective for more than 180 days after such record date.

After an amendment, supplement, waiver or other action becomes effective, it shall bind every Securityholder.

10.6 Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

10.7 Subordination Unimpaired. No supplemental indenture entered into under this Article X shall modify, directly or indirectly, the provisions of Article XIV or the definition of Priority Indebtedness in Section 1.1 in any manner that might alter or impair the subordination of the Securities with respect to Priority Indebtedness then outstanding in a manner adverse to the holders of Priority Indebtedness, unless each holder of such Priority Indebtedness has consented thereto in writing.

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ARTICLE XI CONSOLIDATION, MERGER, SALE OR CONVEYANCE

11.1 Company May Consolidate, etc., on Certain Terms. The Company covenants that it will not merge or consolidate with any other Person or sell or convey all or substantially all of its assets to any Person unless (i) either the Company shall be the continuing Person, or the successor (if other than the Company) shall be a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States of America or a State thereof or the District of Columbia and such Person shall expressly assume the due and punctual payment of the principal of and interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such Person, (ii) immediately after giving effect to such merger or consolidation, or such sale or conveyance, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and (iii) in the case of Securities of a series issued to a Black Hills Trust, such consolidation, merger, sale or conveyance is permitted under the relevant Trust Agreement and Black Hills Guarantee and does not give rise to any breach or violation of such Trust Agreement or Black Hills Guarantee.

11.2 Successor Substituted. Upon any consolidation or merger by the Company with or into any other Person or any sale or conveyance by the Company of all or substantially all of its assets to any Person in accordance with Section 11.1, the successor formed by such consolidation or into which the Company is merged or to which such sale or conveyance is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and in the event of any such sale or conveyance, the Company (which term shall for this purpose mean the Person named as the "Company," in the first paragraph of this Indenture or any successor which shall theretofore become such in the manner described in Section 11.1) shall be discharged from all obligations and covenants under this Indenture and the Securities and may be dissolved and liquidated. Such successor thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been delivered to the Trustee; and upon the order of such successor, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee, and any Securities which such successor thereafter shall cause to be signed and delivered to the Trustee. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

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

11.3 Opinion of Counsel to Trustee. The Trustee shall be entitled to receive, and subject to the provisions of Section 7.1 shall be entitled to rely upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or conveyance and any such assumption, complies with the provisions of this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE XII SATISFACTION AND DISCHARGE OF INDENTURE, UNCLAIMED MONEYS

12.1 Satisfaction and Discharge of Indenture. If (a) the Company shall deliver to the Trustee for cancellation all Securities of any series theretofore authenticated (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.7) and not theretofore canceled, or (b) all the Securities of such series not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit with the Trustee as trust funds the entire amount sufficient to pay at Stated Maturity or upon redemption all of such Securities not theretofore canceled or delivered to the Trustee for cancellation, including principal and any interest due or to become due to such date of Stated

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Maturity or redemption date, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to Securities of such series, then this Indenture shall cease to be of further effect with respect to Securities of such series, (except as to (i) remaining rights of registration of transfer, conversion, substitution and exchange, rights provided in [Section 2.7](#), the Company's obligation to maintain a Paying Agent pursuant to [Section 4.2](#) and the Company's right of optional redemption of Securities of such series, (ii) rights hereunder of holders to receive payments of principal of, and any interest on, the Securities of such series, and other rights, duties and obligations of the holders of Securities of such series as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee, and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on demand of the Company, and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company hereby agrees to compensate the Trustee for any services thereafter reasonably and properly rendered and to reimburse the Trustee for any costs or expenses theretofore and thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any or all series, the obligations of the Company to the Trustee under [Section 7.6](#) shall survive.

12.2 Application by Trustee of Funds Deposited for Payment of Securities. Subject to [Section 12.4](#), all moneys deposited with the Trustee pursuant to [Section 12.1](#) shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the holders of the particular Securities of such series, for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest.

12.3 Repayment of Moneys Held by Paying Agent. In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys with respect to Securities of such series then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

12.4 Repayment of Moneys Held by Trustee. Any moneys deposited with the Trustee or any Paying Agent for the payment of the principal of or any interest on any Securities of any series and not applied but remaining unclaimed by the holders of Securities of such series for two years after the date upon which such payment shall have become due and payable, shall, at the request of the Company, be repaid to the Company by the Trustee or by such Paying Agent; and the holder of any of the Securities of such series entitled to receive such payment shall thereafter look only to the Company for the payment thereof; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once a week for two successive weeks (in each case on any day of the week) in an Authorized Newspaper, or mailed to the registered holders thereof, a notice that said moneys have not been so applied and that after a date named therein any unclaimed balance of said money then remaining will be returned to the Company.

12.5 Defeasance and Covenant Defeasance.

(a) Unless, pursuant to [Section 2.1](#), either or both of (i) defeasance of the Securities of or within a series under clause (b) of this [Section 12.5](#) or (ii) covenant defeasance of the Securities of or within a series under clause (c) of this [Section 12.5](#) shall not be applicable with respect to the Securities of such series, then such provisions, together with the other provisions of this [Section 12.5](#) (with such modifications thereto as may be specified pursuant to [Section 2.1](#) with respect to any Securities), shall be applicable to such Securities, and the Company may at its option by Resolution of the Company, at any time, with respect to such Securities, elect to have [Section 12.5\(b\)](#) or [Section 12.5\(c\)](#) be applied to such outstanding Securities upon compliance with the conditions set forth below in this [Section 12.5](#).

(b) Upon the Company's exercise of the above option applicable to this [Section 12.5\(b\)](#) with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such outstanding Securities on the date the conditions set forth in clause (d) of this [Section 12.5](#) are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such outstanding Securities, which shall thereafter be deemed to be "outstanding" only for the purposes of clause

(e) of this [Section 12.5](#) and the other Sections of this Indenture referred to in clauses (i) and (ii) below, and to have satisfied all of its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of holders of such outstanding Securities to receive, solely from the trust fund described in clause (d) of this [Section 12.5](#) and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, on, and Additional Interest, if any, with respect to, such Securities when such payments are due, and any rights of such holder to convert or exchange such Securities into Capital Stock or other securities, (ii) the obligations of the Company and the Trustee with respect to such Securities under [Sections 2.5, 2.7, 4.2](#) and [12.4](#), with respect to the payment of Additional Interest, if any, on such Securities (but only to the extent that the Additional Interest payable with respect to such Securities exceeds the amount deposited in respect of such Additional Interest pursuant to [Section 12.5\(d\)\(i\)](#) below), and with respect to any rights to convert or exchange such Securities into Capital Stock or other securities, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder (including under [Section 7.6](#)) and (iv) this [Section 12.5](#). The Company may exercise its option under this [Section 12.5\(b\)](#) notwithstanding the prior exercise of its option under clause (c) of this [Section 12.5](#) with respect to such Securities.

(c) Upon the Company's exercise of the above option applicable to this [Section 12.5\(c\)](#) with respect to any Securities of or within a series, the Company shall be released from any covenant applicable to such Securities specified pursuant to [Section 2.1\(t\)](#), with respect to such outstanding Securities on and after the date the conditions set forth in clause (d) of this [Section 12.5](#) are satisfied (hereinafter, "covenant defeasance"), and such Securities shall thereafter be deemed to be not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such outstanding Securities, the Company may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under [Section 6.1\(c\)](#) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of clause (b) or (c) of this Section 12.5 to any outstanding Securities of or within a series:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.9 who shall agree to comply with the provisions of this Section 12.5 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (1) an amount in Dollars, or (2) Government Obligations applicable to such Securities which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on, and, to the extent that such Securities provide for the payment of Additional Interest thereon and the amount of any such Additional Interest is at the time of deposit reasonably determinable by the Company (in the exercise by the Company of its sole and absolute discretion), any Additional Interest with respect to, such outstanding Securities to and including the Stated Maturity of such principal or installment of principal or interest or the redemption date established pursuant to clause (iv) below, if any, and (z) any mandatory sinking fund payments or

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analogous payments applicable to such outstanding Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities.

(ii) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(iii) Solely in the case of an election under clause (b) of this Section 12.5, no Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities shall have occurred and be continuing on the date of such deposit and, with respect to defeasance only, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(iv) If the Securities are to be redeemed prior to Stated Maturity (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

(v) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under clause (b) or (c) of this Section 12.5 (as the case may be) have been complied with.

(vi) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that beneficial owners of such Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Company's exercise of its option under clause (b) or (c) of this Section 12.5, and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred, which Opinion of Counsel must be based, solely in the case of a defeasance under clause (b) of this Section 12.5, upon a ruling of the Internal Revenue Service to the same effect or a change in applicable federal income tax law or related treasury regulations after the date of this Indenture. Notwithstanding the foregoing, the Opinion of Counsel required with respect to a legal defeasance need not be delivered if all of the Securities not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

(vii) Notwithstanding any other provisions of this Section 12.5(d), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.1.

(e) Subject to the provisions of Section 7.5, all money and Government Obligations (or other property as may be provided pursuant to Section 2.1) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 12.5(d), the "Trustee") pursuant to clause (d) of Section 12.5 in respect of any outstanding Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 12.5 or the principal or interest

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received in respect thereof other than any such tax, fee or other charge which by law is for the account of the holders of such outstanding Securities.

Anything in this Section 12.5 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon request by the Company any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (d) of this Section 12.5

which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this [Section 12.5](#).

Any trustee appointed pursuant to [Section 12.5\(d\)\(i\)](#) for the purpose of holding money or Government Obligations deposited pursuant to that Subsection shall be appointed under an agreement in form acceptable to the Trustee and shall provide to the Trustee a certificate of such trustee, upon which certificate the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related defeasance or covenant defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

If the Trustee (or other qualifying trustee) is unable to apply any money or Government Obligations in accordance with [Section 12.2](#) or [12.5](#), as applicable, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to [Section 12.1](#) or [12.5](#) until such time as the Trustee (or other qualifying trustee) is permitted to apply all such money or Government Obligations in accordance with [Section 12.2](#) or [12.5](#), as applicable; *provided, however*, that if the Company has made any payment of principal or of any premium or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee (or other qualifying trustee).

ARTICLE XIII IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS, DIRECTORS AND EMPLOYEES

13.1 [Incorporators, Stockholders, Officers, Directors and Employees of Company Exempt from Individual Liability](#). No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer, director or employee, as such, past, present or future, of the Company or of any successor, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors or employees, as such, of the Company or any successor, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against every such incorporator, stockholder, officer, director or employee, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom are hereby expressly waived and released as a condition of and as a consideration for, the execution of this Indenture and the issue of such Securities.

ARTICLE XIV SUBORDINATION OF SECURITIES

14.1 [Agreement to Subordinate](#). The Company, for itself, its successors and assigns, covenants and agrees, and each holder of a Security of any series likewise covenants and agrees by its acceptance thereof, that the obligation of the Company to make any payment on account of the principal of and interest on each and all of the Securities of any series shall be subordinate and junior in right of payment to the Company's obligations to the holders of Priority Indebtedness of the Company.

In the case of any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, all obligations of the Company to holders of Priority Indebtedness of the Company shall be entitled to be paid in full before any payment shall be made on account of the principal of or interest on any of the Securities. In the event of any such proceeding, after payment in full of all sums owing with respect to Priority Indebtedness of the Company, the holders of the Securities of each series, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and interest on the Securities of any series before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Company ranking junior to the Securities. In addition, in the event of any such proceeding, if any payment or distribution of assets of the Company of any kind or character whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities of any series shall be received by the Trustee or the holders of the Securities of any series before all Priority Indebtedness of the Company is paid in full, such payment or distribution shall be held in trust for the benefit of and shall be paid over to the holders of such Priority Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Priority Indebtedness of the Company may have been issued, ratably, for application to the payment of all Priority Indebtedness of the Company remaining unpaid until all such Priority Indebtedness of the Company shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Priority Indebtedness of the Company. The obligations of the Company in respect of the Securities of all series shall rank on a parity with any obligations of the Company ranking on a parity with the Securities. Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to [Section 7.6](#).

The subordination provisions of the foregoing paragraph and [Section 14.9](#) shall not be applicable to amounts at the time due and owing on the Securities of any series on account of the unpaid principal of or interest on the Securities of such series for the payment of which funds have been deposited in trust with the Trustee or any Paying Agent or have been set aside by the Company in trust in accordance with the provisions of this Indenture; nor shall such provisions impair any rights, interests, or powers of any secured creditor of the Company in respect of any security the creation of which is not prohibited by the provisions of this Indenture.

The Company shall give written notice to the Trustee within 10 Business Days after the occurrence of (i) any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, (ii) any Event of Default described in 6.1(d) or 6.1(e), or (iii) any event specified in [Section 14.9](#). The Trustee, subject to the provisions of [Section 7.1](#), shall be entitled to assume that, and may act as if, no such event referred to in the preceding sentence has occurred unless a Responsible Officer of the Trustee assigned to the Trustee's corporate trust department has received at the principal office of the Trustee from the Company or any one or more holders of Priority Indebtedness of the Company or any trustee or representative thereof (who shall have been certified or otherwise established to the satisfaction of the Trustee to be such a holder or trustee or representative) written notice thereof. Upon

any distribution of assets of the Company referred to in this Article, the Trustee and holders of the Securities of each series shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which proceedings relating to any event specified in the first sentence of this paragraph are pending for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Priority Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to this Article, and the Trustee, subject to the provisions of Article VII, and the holders of the Securities of each series shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the holders of the Securities of each series for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Priority Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article. In the absence of any such liquidating trustee, agent or other person, the Trustee shall be entitled to rely upon a written notice by a Person representing himself to be a holder of Priority Indebtedness of the Company (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of such Priority Indebtedness (or is such a trustee or representative). In the event that the Trustee determines, in good faith, that further evidence is required with respect

to the right of any Person, as a holder of Priority Indebtedness of the Company, to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Priority Indebtedness held by such Person, as to the extent to which such Person is entitled to participation in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

14.2 Obligation of the Company Unconditional. Nothing contained in this Article or elsewhere in this Indenture is intended to or shall impair, as between the Company and the holders of the Securities of each series, the obligation of the Company, which is absolute and unconditional, to pay to such holders the principal of and interest on such Securities of each series when, where and as the same shall become due and payable, all in accordance with the terms of such Securities, or is intended to or shall affect the relative rights of such holders and creditors of the Company other than the holders of the Priority Indebtedness of the Company, nor shall anything herein or therein prevent the Trustee or the holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Priority Indebtedness of the Company in respect of cash, property, or securities of the Company received upon the exercise of any such remedy.

14.3 Limitations on Duties to Holders of Priority Indebtedness of the Company. With respect to the holders of Priority Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Priority Indebtedness of the Company shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Priority Indebtedness of the Company, except with respect to moneys held in trust pursuant to the first paragraph of Section 14.1.

14.4 Notice to Trustee of Facts Prohibiting Payment. Notwithstanding any of the provisions of this Article or any other provisions of this Indenture, the Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee unless and until a Responsible Officer of the Trustee assigned to its corporate trust department shall have received at the principal office of the Trustee written notice thereof from the Company or from one or more holders of Priority Indebtedness of the Company or from any trustee therefor or representative thereof who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such a holder or trustee or representative; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 7.1, shall be entitled in all respects to assume that no such facts exist; *provided, however*, that, if prior to the fifth Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, or in the event of the execution of an instrument pursuant to Section 12.1 or 12.5 acknowledging satisfaction and discharge of this Indenture or acknowledging a defeasance or in the event of a deposit under Section 12.5(d)(i) with respect to a covenant defeasance, then, if prior to the second Business Day preceding the date of such execution or deposit, as the case may be, the Trustee shall not have received with respect to such moneys or the moneys and/or Government Obligations deposited pursuant to Section 12.5 the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and/or Government Obligations and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date; *provided, however*, no such application shall affect the obligations under this Article of the Persons receiving such moneys from the Trustee.

14.5 Application by Trustee of Moneys Deposited with It. Anything in this Indenture to the contrary notwithstanding, any deposit of moneys by the Company with the Trustee or any agent (whether or not in trust) for any payment of the principal of or interest on any Securities shall, except as provided in Section 14.4, be subject to the provisions of Section 14.1.

14.6 Subrogation. Subject to the payment in full of all Priority Indebtedness of the Company, the holders of the Securities of each series shall be subrogated to the rights of the holders of such Priority Indebtedness to receive payments or distributions of assets of the Company applicable to such Priority Indebtedness until the Securities shall be paid in full, and none of the payments or distributions to the holders of such Priority

Indebtedness to which the holders of the Securities of any series or the Trustee would be entitled except for the provisions of this Article or of payments over pursuant to the provisions of this Article to the holders of such Priority Indebtedness by the holders of such Securities or the Trustee shall, as among the Company, its creditors other than the holders of such Priority Indebtedness, and the holders of such Securities, be deemed to be a payment by the Company to or on account of such Priority Indebtedness; it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the holders of such Securities, on the one hand, and the holders of the Priority Indebtedness of the Company, on the other hand.

14.7 Subordination Rights Not Impaired by Acts or Omissions of Company or Holders of Priority Indebtedness of the Company. No right of any present or future holders of any Priority Indebtedness of the Company to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof with which any such holder may have or be otherwise charged. The holders of Priority Indebtedness of the Company may, at any time or from time to time and in their absolute discretion, change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any such Priority Indebtedness

of the Company, or amend or supplement any instrument pursuant to which any such Priority Indebtedness of the Company is issued or by which it may be secured, or release any security therefor, or exercise or refrain from exercising any other of their rights under the Priority Indebtedness of the Company including, without limitation, the waiver of default thereunder, all without notice to or assent from the holders of the Securities of each series or the Trustee and without affecting the obligations of the Company, the Trustee or the holders of such Securities under this Article.

14.8 Authorization of Trustee to Effectuate Subordination of Securities. Each holder of a Security of any series, by its acceptance thereof, authorizes and expressly directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate, as between the holders of such Securities and the holders of Priority Indebtedness of the Company, the subordination provided in this Article. If, in the event of any proceeding or other action relating to the Company referred to in the second paragraph of Section 14.1, a proper claim or proof of debt in the form required in such proceeding or action is not filed by or on behalf of the holders of the Securities of any series prior to fifteen days before the expiration of the time to file such claim or claims, then the holder or holders of Priority Indebtedness of the Company shall have the right to file and are hereby authorized to file an appropriate claim for and on behalf of the holders of such Securities.

14.9 No Payment when Priority Indebtedness in Default. In the event and during the continuation of any default beyond any applicable grace period in the payment of principal of or interest on any Priority Indebtedness, or in the event that any event of default with respect to any Priority Indebtedness shall have occurred and be continuing and shall have resulted in such Priority Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, unless and until such event of default shall have been cured, waived or remedied or shall have ceased to exist and such acceleration shall have been rescinded or annulled or all amounts due on such Priority Indebtedness are paid in full in cash or other permitted consideration, or in the event any judicial proceeding shall be pending with respect to any such default in payment or such event or default (unless and until all amounts due on such Priority Indebtedness are paid in full in cash or other permitted consideration), then no payment or distribution of any kind or character, whether in cash, properties or securities (except Permitted Junior Securities) shall be made by the Company on account of principal of (or premium, if any) or interest (including any Additional Interest) if any, on the Securities or on account of the purchase or other acquisition of Securities by the Company or any Subsidiary.

For purposes of this Article only, the words “cash, properties or securities” shall not be deemed to include shares of stock or warrants to purchase shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which are subordinate in right of payment to all Priority Indebtedness of the Company which may at the time be outstanding to the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article (collectively, the “Permitted Junior Securities”).

The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or

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substantially as an entirety, to another Person upon the terms and conditions provided for in Article XI hereof shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 14.9 if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XI hereof.

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

14.10 Right of Trustee to Hold Priority Indebtedness of the Company. The Trustee shall be entitled to all of the rights set forth in this Article in respect of any Priority Indebtedness of the Company at any time held by it in its individual capacity to the same extent as any other holder of such Priority Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

14.11 Article XIV Not to Prevent Defaults. The failure of the Company to make a payment pursuant to the terms of Securities of any series by reason of any provision in this Article shall not be construed as preventing the occurrence of an Event of Default under this Indenture.

ARTICLE XV MISCELLANEOUS PROVISIONS

15.1 Successors and Assigns of Company Bound by Indenture. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

15.2 Acts of Board, Committee or Officer of Successor Valid. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer or officers of the Company shall and may be done and performed with like force and effect by the like governing body or bodies or authorized person or persons of any Person that shall at the time be the lawful sole successor of the Company.

15.3 Required Notices or Demands may be Served by Mail. Any notice or demand which by any provisions of this Indenture is required or permitted to be given or served by the Trustee, by the holders of Securities or by the holders of Preferred Securities to or on the Company may be given or served by registered mail postage prepaid addressed (until another address is filed by the Company with the Trustee for such purpose), or overnight air courier guaranteeing next day delivery as follows: Black Hills Corporation, 625 Ninth Street, Rapid City, South Dakota 57709. Any notice, direction, request, demand, consent or waiver by the Company, by any Securityholder or by any holder of a Preferred Security to or upon the Trustee shall be deemed to have been sufficiently given, made or filed, for all purposes, if given, made or filed in writing at its Corporate Trust Office.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the registrar. Any notice or communication shall also be so mailed to any Person described in TIA Section 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a holder or any defect in it shall not affect its sufficiency with respect to other holders. Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption or repurchase) to a holder of a global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with Applicable Procedures.

15.4 Officers' Certificate and Opinion of Counsel to be Furnished upon Applications or Demands by the Company. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action

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have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.6) shall comply with the provisions of TIA Section 314(e) and shall include:

- (i) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (iii) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

15.5 Payments Due on Saturdays, Sundays, and Holidays. In any case where the date of payment of interest on or principal of the Securities of any series or the date fixed for any redemption of any Security of any series shall not be a Business Day, then payment of interest or principal need not be made on such date, but shall be made on the next succeeding Business Day with the same force and effect as if made on the date fixed for the payment of interest on or principal of the Security or the date fixed for any redemption of any Security of such series, and no additional interest shall accrue for the period after such date and before payment.

15.6 Provisions Required by Trust Indenture Act to Control. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act through operation of Section 318 thereof, such required provision shall control.

15.7 Indenture and Securities to be Construed in Accordance with the Laws of the State of New York. This Indenture and each Security shall be governed by the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State (without regard to conflicts of laws principles thereof).

15.8 Provisions of the Indenture and Securities for the Sole Benefit of the Parties and the Securityholders. Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give any person, firm or corporation, other than the parties hereto, their successors and assigns, the holders of the Securities, and the holders of any Priority Indebtedness of the Company, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition and provision herein contained; all its covenants, conditions and provisions being for the sole benefit of the parties hereto and their successors and assigns and of the holders of the Securities and, to the extent expressly provided in Sections 4.9, 6.1, 6.5, 6.6, 9.7, 10.1 and 10.2, the holders of Preferred Securities.

15.9 Indenture may be Executed in Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

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15.10 Securities in Foreign Currencies. Whenever this Indenture provides for any action by, or any distribution to, holders of Securities denominated in United States dollars and in any other currency, in the absence of any provision to the contrary in the form of Security of any particular series, the relative amount in respect of any Security denominated in a currency other than United States dollars shall be treated for any such action or distribution as that amount of United States dollars that could be obtained for such amount on such reasonable basis of exchange and as of such date as the Company may specify in a written notice to the Trustee.

15.11 Table of Contents, Headings, etc. The Table of Contents, cross reference table and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

15.12 Patriot Act Requirements of Trustee. The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Indenture agree that they will provide to the Trustee such information as it may request, from time to time, in order for the Trustee to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

15.13 Jury Trial Waiver. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, BLACK HILLS CORPORATION, the party of the first part, has caused this Indenture to be signed and acknowledged by its Vice President - Treasurer, and U.S. BANK NATIONAL ASSOCIATION, the party of the second part, has caused this Indenture to be signed by its Vice President, all as of the day and year first written above.

BLACK HILLS CORPORATION

By: /s/ Kimberly F. Nooney

Name: Kimberly F. Nooney

Title: Vice President - Treasurer

U.S. BANK NATIONAL ASSOCIATION, as trustee

By: /s/ Linda E. Garcia

Name: Linda E. Garcia

Title: Vice President

FIRST SUPPLEMENTAL INDENTURE

BETWEEN

BLACK HILLS CORPORATION

AND

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE

DATED AS OF NOVEMBER 23, 2015

2015 SERIES A 3.50% REMARKETABLE JUNIOR SUBORDINATED NOTES DUE 2028

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Exhibit A: Form of Series A Note and the Trustee’s Certificate of Authentication

Exhibit B: Form of Put Notice

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of November 23, 2015 (the “**First Supplemental Indenture**”), is between BLACK HILLS CORPORATION, a South Dakota corporation, having its principal office at 625 Ninth Street, Rapid City, South Dakota 57701 (the “**Company**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee under the Base Indenture (as defined below), having a corporate trust office at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Corporate Trust Services (herein called the “**Trustee**”).

WHEREAS, the Company has heretofore entered into a Junior Subordinated Indenture, dated as of November 23, 2015, between the Company and the Trustee (the “**Base Indenture**”);

WHEREAS, the Base Indenture is incorporated herein by this reference and the Base Indenture, as supplemented and amended by this First Supplemental Indenture, and as may be hereafter supplemented or amended from time to time in accordance herewith and therewith, is herein called the “**Indenture**”;

WHEREAS, under the Base Indenture, a new series of Securities may at any time be established in accordance with the provisions of the Base Indenture and the terms of such series may be described by a supplemental indenture executed by the Company and the Trustee;

WHEREAS, the Company proposes to create under the Base Indenture a new series of Securities;

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture and all requirements necessary to make this First Supplemental Indenture a valid instrument in accordance with its terms, and to make the Series A Notes (as defined herein), when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects;

NOW, THEREFORE, in consideration of the purchase and acceptance of the Series A Notes by the Holders (as defined herein), and for the purpose of setting forth, as provided in the Base Indenture, the form and substance of the Series A Notes and the terms, provisions and conditions thereof, the Company covenants and agrees with the Trustee as follows:

ARTICLE I DEFINITIONS

1.1 **Definition of Terms.** For all purposes of this First Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the capitalized terms not otherwise defined herein shall have the meanings set forth in the Base Indenture or, if not defined in the Base Indenture, in the Purchase Contract and Pledge Agreement (as defined below);

(b) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(c) all other terms used herein which are defined in the Trust Indenture Act of 1939, as amended, whether directly or by reference therein, have the meanings assigned to them therein;

(d) a reference to a Section or Article is to a Section or Article of this First Supplemental Indenture unless otherwise stated;

(e) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this First Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision;

(f) headings are for convenience of reference only and do not affect interpretation;

“**Business Day**” shall have the meaning set forth in the Base Indenture except that, solely with respect to the Series A Notes, the words “or the Property Trustee” shall be deemed deleted.

“**Coupon Rate**” has the meaning set forth in Section 2.5.

“**Corporate Trust Office of the Trustee**” means the office of the Trustee at which at any particular time its corporate trust business with respect to the series of Securities herein described shall be principally administered, which office at the date of original execution of this First Supplemental Indenture is located at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Corporate Trust Services, and for purposes of Agent services and Section 4.2 of the Base Indenture such office shall also include the office or agency of the Trustee located at 60 Livingston Avenue, 1st Floor — Bond Drop Window, St. Paul, MN 55107, Attention: Corporate Trust Services.

“**Deferral Period**” means the period beginning on the Interest Payment Date for which the Company has elected to defer the Interest Payment in accordance with Section 4.1 and ending on the earlier of (a) the next Interest Payment Date on which all Deferred Interest (including compounded interest thereon) has been paid in full and (b)(i) the Purchase Contract Settlement Date, in the case of a Deferral Period that begins prior to the Purchase Contract Settlement Date, or (ii) the Stated Maturity, in the case of a Deferral Period that begins after the Purchase Contract Settlement Date.

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“**Deferred Interest**” shall have the meaning set forth in Section 4.1.

“**Equity Unit**” shall have the meaning set forth in the Underwriting Agreement.

“**Global Note**” shall have the meaning set forth in Section 2.4.

“**Holder**” means (i) with respect to the Corporate Units or the Treasury Units, such term as defined in the Purchase Contract and Pledge Agreement and (ii) with respect to the Series A Notes, the Person in whose name at the time a particular Series A Note is registered on the books of the Trustee kept for that purpose.

“**Increased Principal Amount**” shall have the meaning set forth in Section 2.9.

“**Interest Payment**” means, with respect to any Interest Payment Date, the interest payment on the Series A Notes due on such Interest Payment Date.

“**Interest Payment Date**” shall have the meaning set forth in Section 2.5.

“**Interest Period**” means, with respect to any Interest Payment Date, the period from and including the immediately preceding Interest Payment Date (or if none, November 23, 2015) to, but excluding, such Interest Payment Date.

“**Original Issue Date**” means November 23, 2015.

“**Pledged Notes**” shall have the meaning set forth in Section 2.9.

“**Purchase Contract and Pledge Agreement**” means the Purchase Contract and Pledge Agreement, dated as of November 23, 2015, between the Company and U.S. Bank National Association, as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary, as amended from time to time.

“**Put Price**” shall have the meaning specified in Section 9.5.

“**Put Right**” shall have the meaning set forth in Section 9.5.

“**Put Right Default**” shall have the meaning set forth in Section 2.6.

“**Redemption**” means the redemption of the Series A Notes pursuant to the terms of Article III.

“**Redemption Date**” shall have the meaning set forth in Section 3.1.

“**Redemption Price**” means, for any Series A Note, the principal amount of such Series A Note, plus accrued and unpaid interest (including Deferred Interest and compounded interest thereon), if any, to but excluding the Redemption Date.

“**Reduced Principal Amount**” shall have the meaning set forth in Section 2.9.

“**Regular Record Date**” means, with respect to any Interest Payment Date for the Series A Notes, the fifteenth day of the calendar month immediately preceding the calendar month in which the applicable Interest Payment Date falls (whether or not a Business Day).

“**Released Note**” shall have the meaning set forth in Section 2.9.

“**Remarketed Notes**” means, with respect to all Remarketings during any Applicable Remarketing Period, the aggregate principal amount of Series A Notes underlying the Pledged Applicable Ownership Interests in Notes and the Separate Notes, if any, subject to Remarketing as identified to the Remarketing Agent(s) by the Purchase Contract Agent and the Custodial Agent, respectively, in each case pursuant to the terms of the Purchase Contract and Pledge Agreement.

“**Remarketing Agent(s)**” means the Remarketing Agent(s) appointed by the Company, pursuant to the Remarketing Agreement.

“**Reset Rate**” shall have the meaning specified in Section 9.3.

“**Series A Notes**” shall have the meaning specified in Section 2.1.

“**Stated Maturity**” shall have the meaning specified in Section 2.2.

“**Subjected Note**” shall have the meaning set forth in Section 2.9.

“**Underwriters**” means Credit Suisse Securities (USA) LLC, Wells Fargo Securities, LLC, RBC Capital Markets, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC and U.S. Bancorp Investments, Inc.

“**Underwriting Agreement**” means the Underwriting Agreement, dated as of November 17, 2015, by and among the Company and the Underwriters, for the sale of up to 5,980,000 of the Company’s Corporate Units.

The terms “Company,” “Trustee,” “Base Indenture,” and “Indenture” shall have the respective meanings set forth in the recitals to this First Supplemental Indenture.

ARTICLE II GENERAL TERMS AND CONDITIONS OF THE SERIES A NOTES

2.1 **Designation and Principal Amount.** There is hereby authorized a new series of Securities, to be designated the “2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028” (the “**Series A Notes**”), in the initial aggregate principal amount of \$299,000,000, which amount shall be set forth in any written orders of the Company for the authentication and delivery of Series A Notes pursuant to Section 2.1 of the Base Indenture and Section 6.1 hereof. For the avoidance of doubt, no additional Series A Notes may be issued following the Original Issue Date.

2.2 **Stated Maturity.** The “**Stated Maturity**” of the Series A Notes is November 1, 2028, which may not be shortened or extended. For the avoidance of doubt, with respect to the

Series A Notes, the term “Stated Maturity” refers only to the date on which principal is due and payable as set forth in this Section 2.2.

2.3 **Form and Payment; Minimum Transfer Restriction.**

(a) Except as provided in Section 2.4, the Series A Notes shall be issued in fully registered definitive form without coupons. All Series A Notes shall have identical terms. Series A Notes corresponding to Applicable Ownership Interests in Notes that are components of Corporate Units shall be registered in the name of the Purchase Contract Agent or its nominee. Principal of the Series A Notes will be payable (subject to the last sentence of this Section 2.3(a)), the transfer of such Series A Notes will be registrable, and such Series A Notes will be exchangeable for Series A Notes of a like aggregate principal amount bearing identical terms and provisions, at the Corporate Trust Office of the Trustee; *provided, however*, that, except as otherwise provided in the form of Series A Note attached hereto as Exhibit A, payment of interest will be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or, if such Person so requests and designates an account in writing to the Trustee at least five Business Days prior to the relevant Interest Payment Date, by wire transfer to such account, and *provided, further*, that the Company, in its discretion may remove the Paying Agent and may appoint one or more additional Paying Agents (including the Company or any of its affiliates). Payments with respect to any Global Note or any Series A Note corresponding to Applicable Ownership Interests in Notes that are components of Corporate Units will be made by wire transfer to the Depository or in accordance with any other applicable procedures of the Depository.

(b) The Series A Notes shall be issuable in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof; *provided, however*, that upon the release by the Collateral Agent of Series A Notes underlying the Pledged Applicable Ownership Interests in Notes in accordance with Section 3.15 of the Purchase Contract and Pledge Agreement, if any Holder or beneficial owner shall be entitled to receive Series A Notes in an aggregate principal amount that is not an integral multiple of \$1,000, upon request of the Purchase Contract Agent, on behalf of such Holder or beneficial owner, the Company shall issue Series A Notes in minimum denominations of \$50, or integral multiples thereof, in exchange for Series A Notes in minimum denominations of \$1,000 or integral multiples thereof. The first paragraph of Section 2.3 of the Base Indenture shall not apply with respect to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to this Section 2.3(b).

2.4 **Exchange and Registration of Transfer of Series A Notes; Restrictions on Transfers; Depository.** Series A Notes that corresponded to Applicable Ownership Interests in Notes but are no longer a component of the Corporate Units and are released from the Collateral Account will be initially

issued in permanent global form (a “**Global Note**”), and if issued as one or more Global Notes, the Depository shall be The Depository Trust Company or such other depository that is a clearing agency registered under Section 17A of the Exchange Act as any officer of the Company may from time to time designate. On the date on which the Series A Notes registered in the name of the Purchase Contract Agent pursuant to Section 2.3 are issued, the Company shall also issue one or more Global Notes representing Series A Notes, registered in the name of the Depository or its nominee, each having a zero principal balance. Upon the

creation of Treasury Units, or the re-creation of Corporate Units or in any other case where the Collateral Agent releases Series A Notes underlying the Pledged Applicable Ownership Interests in Notes, an appropriate annotation shall be made on the Schedule of Increases or Decreases in Series A Note on the Global Notes held by the Depository and on the Pledged Note held by the Collateral Agent. Except upon recreation of Corporate Units, Series A Notes represented by the Global Notes will be exchangeable for Series A Notes in certificated form only (x) if the Depository (A) has notified the Company that it is unwilling or unable to continue as depository for the Global Notes or (B) has ceased to be a “clearing agency” registered under the Exchange Act and, in either case, a successor depository that is a clearing agency registered under Section 17A of the Exchange Act is not appointed by the Company within 90 days after such notice or cessation, or (y) upon the occurrence and during the continuance of Event of Default or any other event that after notice or lapse of time, would constitute an Event of Default with respect to the Series A Notes and any beneficial owner of a Global Note requests that its beneficial interest be exchanged for a Series A Note in certificated form; *provided*, subject to Section 2.3, that the Series A Notes in certificated form so issued in exchange for the Global Notes shall be in denominations of \$1,000 or any whole multiple of \$1,000 above that amount and shall be of like aggregate principal amount and tenor as the portion of the Global Note to be exchanged. Except as provided above, owners of beneficial interests in a Global Note will not be entitled to receive physical delivery of Series A Notes in certificated form and will not be considered the Holders thereof for any purpose under the Indenture. Any Global Note that is exchangeable pursuant to clause (x) of the fourth sentence of this Section 2.4 shall be exchangeable for Series A Notes in certificated form registered in such names as the Depository shall direct. The third sentence of the last paragraph of Section 2.5 of the Base Indenture shall not apply with respect to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to the fourth sentence of this Section 2.4.

2.5 Interest.

(a) Subject to Article IV, interest on the Series A Notes shall be payable quarterly in arrears on February 1, May 1, August 1 and November 1 of each year (each, subject to adjustment in accordance with Section 2.5(b), an “**Interest Payment Date**”), commencing February 1, 2016 and at Stated Maturity, to the Person in whose name the relevant Series A Notes are registered at the close of business on the Regular Record Date for such Interest Payment Date except that interest payable at the Stated Maturity shall be paid to the Person to whom principal is payable. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months, and with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed during a 30-day month. If any Interest Payment Date, Redemption Date, the Stated Maturity or the date (if any) on which the Company is required to purchase the Series A Notes pursuant to Section 9.5 is not a Business Day, then the applicable payment shall be made on the next succeeding day that is a Business Day and no interest shall accrue or be paid in respect of such delay. Section 15.5 of the Base Indenture is hereby superseded in its entirety, with respect to the Series A Notes, by the immediately preceding sentence.

(b) The Series A Notes will bear interest initially at the rate of 3.50% per year (the “**Coupon Rate**”) from and including November 23, 2015 to, but excluding, the date the

principal amount thereof is paid or made available for payment, or in the event of a Successful Remarketing, the Remarketing Settlement Date. In the event of a Successful Remarketing of the Series A Notes, the interest rate applicable to the Series A Notes may be reset by the Remarketing Agent(s) to the applicable Reset Rate with effect from the Remarketing Settlement Date, as set forth in Section 9.3. If the interest rate is so reset, the Series A Notes will bear interest at the applicable Reset Rate from, and including, the Remarketing Settlement Date to, but excluding, the date the principal amount thereof is paid or made available for payment. In the event of a Successful Remarketing, following the applicable Remarketing Settlement Date, interest on Series A Notes will be payable semi-annually on May 1 and November 1. If there is no Successful Remarketing, the interest rate applicable to the Series A Notes will not be reset, the Interest Payment Dates shall remain the same and the Series A Notes shall continue to bear interest at the Coupon Rate. The Series A Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Coupon Rate, unless a Successful Remarketing shall have occurred, in which case on and after the Remarketing Settlement Date the Series A Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Reset Rate. The second paragraph of Section 2.3 of the Base Indenture (except for the last sentence thereof, which sentence shall be deemed to apply to the term “Regular Record Date” as defined herein) shall not apply with respect to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to this Section 2.5.

2.6 **Events of Default.** An Event of Default as defined in the Base Indenture shall be an Event of Default with respect to the Series A Notes; *provided* that the nonpayment of interest for so long as and to the extent that interest is permitted to be deferred pursuant to Article IV herein shall not be deemed to be a default in the payment of interest for the purposes of Article VI of the Base Indenture and shall not otherwise be deemed an Event of Default with respect to the Series A Notes. In addition, an Event of Default with respect to the Series A Notes will occur if the Company fails to pay the Put Price of any Series A Note on the Purchase Contract Settlement Date after a Holder’s Put Right has been exercised pursuant to Section 9.5 (a “**Put Right Default**”).

2.7 No Defeasance; No Discharge.

(a) Prior to the Purchase Contract Settlement Date, the provisions of Section 12.5 of the Base Indenture shall not apply to the Series A Notes.

(b) Prior to the Purchase Contract Settlement Date, the provisions of Section 12.1 of the Base Indenture shall not apply to the Series A Notes.

2.8 **No Sinking Fund or Repayment at Option of the Holder.** The Series A Notes shall not be subject to any sinking fund or analogous provision and, except in the case of the Put Right, shall not be repayable at the option of a Holder thereof prior to the Stated Maturity.

2.9 **Increase and Decrease in Pledged Notes.** In the event that any Series A Notes underlying Pledged Applicable Ownership Interests in Notes with respect to any Corporate Units evidenced by a Global Certificate are to be released from the Pledge following a Termination Event, Collateral Substitution, Cash Settlement, Successful Remarketing, Early Settlement or

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Fundamental Change Early Settlement pursuant to the Purchase Contract and Pledge Agreement (a “**Released Note**”), such release and delivery shall be evidenced by an endorsement by the Collateral Agent on the Series A Note held by the Collateral Agent (the “**Pledged Note**”) reflecting a reduction in the principal amount of such Pledged Note equal in amount (the “**Reduced Principal Amount**”) to the principal amount of the Released Note. The Collateral Agent shall confirm any such Reduced Principal Amount by telecopying or otherwise delivering a photocopy of such endorsement made on the Pledged Note evidencing such Reduced Principal Amount to the Trustee at the telecopier number, e-mail address or other address of the Trustee provided for notices to the Trustee in [Section 11.6](#) (or at such other telecopier number, e-mail address or other address as the Trustee shall provide to the Collateral Agent). Upon receipt of such confirmation, the Trustee shall increase the principal amount of a Global Note held by the Trustee in an amount equal to the Reduced Principal Amount by an endorsement made by the Trustee on such Global Note to reflect such increase. In the event that a Series A Note is transferred to the Collateral Agent pursuant to Section 3.14 of the Purchase Contract and Pledge Agreement (a “**Subjected Note**”) in connection with the re-creation of Corporate Units, such transfer shall be evidenced by an endorsement by the Collateral Agent on the Pledged Note held by the Collateral Agent reflecting an increase in the principal amount of such Pledged Note equal in amount (the “**Increased Principal Amount**”) to the principal amount of such Subjected Note. The Collateral Agent shall confirm any such Increased Principal Amount by telecopying or otherwise delivering a photocopy of such endorsement made on the Pledged Note evidencing such Increased Principal Amount to the Trustee at the telecopier number, e-mail address or other address of the Trustee provided for notices to the Trustee in [Section 11.6](#) (or at such other telecopier number, e-mail address or other address as the Trustee shall provide to the Collateral Agent). Upon receipt of such confirmation, the Trustee shall decrease the principal amount of the Global Note held by the Trustee in an amount equal to the Increased Principal Amount by an endorsement made by the Trustee on such Global Note to reflect such decrease.

2.10 **No Additional Amounts.** The Company will not pay any additional amounts to any Holder who is not a United States person in respect of any tax, assessment or governmental charge.

2.11 **Acceleration; Rescission.** If an Event of Default for the Series A Notes shall have occurred and be continuing, unless the principal of the Series A Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Series A Notes then outstanding (determined as provided in Section 8.4 of the Base Indenture) may declare the entire principal amount of the Series A Notes to be due and payable immediately, and upon such declaration the same shall become due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal amount of the Series A Notes shall have been so declared due and payable, and before any judgment or decree for the payment of moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Series A Notes and the principal of all Series A Notes which shall have become due otherwise than by declaration (with interest on overdue installments of interest to the extent permitted by law and on such principal at the rate or rates of interest borne by, or prescribed therefor in, the Series A Notes to the date of such payment or deposit) and the amounts payable to the Trustee under Section 7.6 of the Base

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Indenture, and any and all defaults under the Indenture with respect to Series A Notes, other than the nonpayment of principal of and any accrued interest on Series A Notes which shall have become due by declaration, shall have been cured, remedied or waived as provided in [Section 2.12](#) below, then and in every such case the holders of a majority in principal amount of the Series A Notes then outstanding (determined as provided in Section 8.4 of the Base Indenture) and as to which such Event of Default has occurred by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences.

The two paragraphs immediately following clause (e) of Section 6.1 of the Base Indenture shall not apply to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to the applicable provision of this [Section 2.11](#).

2.12 **Waiver of Defaults.** The Holders of at least a majority in principal amount of the Series A Notes at the time outstanding (determined as provided in Section 8.4 of the Base Indenture) shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee under the Indenture with respect to the Series A Notes; *provided, however*, that, subject to Section 7.1 of the Base Indenture, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken, or would conflict with the Indenture, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceedings so directed would be illegal or involve it in personal liability or be unduly prejudicial to the rights of Holders of the Series A Notes not parties to such direction (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such Holders); and *provided, further*, that nothing in the Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the Holders of the Series A Notes. The Holders of at least a majority in principal amount of the Series A Notes at the time outstanding (determined as provided in Section 8.4 of the Base Indenture), may waive any past default or Event of Default under the Indenture with respect to the Series A Notes, except a default or Event of Default in the payment of the principal of or interest on any of the Series A Notes (including the Redemption Price or the Put Price, if applicable) or in respect of a covenant or provision of the Indenture which under Article X of the Base Indenture (as amended hereby) cannot be modified or amended without the consent of the Holder of each Series A Note so affected. Upon any such waiver, such default shall cease to exist and any default or Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Indenture, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Any such waiver shall be deemed to be on behalf of the Holders of all the Series A Notes.

Section 6.6 of the Base Indenture shall not apply to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to the applicable provision in this [Section 2.12](#).

2.13 **Waiver of Covenants.** The Company may omit in any particular instance to comply with any covenant or condition specifically contained in the Indenture for the benefit of

the Series A Notes (other than the covenant to pay principal of or interest on any of the Series A Notes in the manner and on the dates provided herein or any covenant or provision of the Indenture which under Article X of the Base Indenture (as amended hereby) cannot be modified or amended without the consent of the Holder of each Series A Note so affected), if before the time for such compliance the Holders of a majority in principal amount of the Series A Notes at the time outstanding (determined as provided in Section 8.4 of the Base Indenture) shall waive such compliance in such instance, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 4.7 of the Base Indenture shall not apply to the Series A Notes, and any reference in the Base Indenture to such provision shall, for purposes of the Series A Notes, be deemed to refer instead to the applicable provision in this [Section 2.13](#).

2.14 **Conveyance by Lease.** Notwithstanding anything to the contrary in Section 11.2 of the Base Indenture, the Company shall not be discharged from its obligations and covenants (with respect to the Series A Notes) under the Indenture or the Series A Notes, and may not be dissolved or liquidated, in connection with any conveyance by the Company of all or substantially all of its assets to any other Person by way of a lease.

2.15 **Ranking; Subordination.** For the avoidance of doubt, the Series A Notes shall rank on a parity with all Securities of other series issued under the Base Indenture.

ARTICLE III REDEMPTION OF THE SERIES A NOTES

3.1 **Optional Redemption by Company in Event of Failed Final Remarketing.** The Company may redeem the Series A Notes at its option only if there has been a Failed Final Remarketing. In the event of a Failed Final Remarketing, any Series A Notes that remain outstanding after the Purchase Contract Settlement Date will be redeemable on or after November 1, 2020 at the Company's option, in whole or in part, at any time and from time to time, at a price per Series A Note equal to the Redemption Price, payable on the date of redemption (such date, the "**Redemption Date**"). If the Company redeems fewer than all of the outstanding Series A Notes, and the Series A Notes are Global Notes, they will be selected for redemption in accordance with Applicable Procedures. If the Series A Notes are not Global Notes, the Trustee will select the Series A Notes to be redeemed pursuant to Section 3.2 of the Base Indenture. The Company may at any time irrevocably waive the right to redeem the Series A Notes for any specified period (including the remaining term of the Series A Notes). The Company shall not redeem the Series A Notes if the Series A Notes have been accelerated and such acceleration has not been rescinded or unless all accrued and unpaid interest has been paid in full on all outstanding Series A Notes for all Interest Periods terminating on or prior to the Redemption Date. The Company may block the transfer or exchange of (i) all Series A Notes during a period of 15 days prior to the date on which notice of selection of the Series A Notes for redemption is given, or (ii) any Series A Note being redeemed, except with respect to the unredeemed portion of any Series A Note being redeemed solely in part. Following a Successful Remarketing of the Series A Notes, the Series A Notes will cease to be redeemable at the

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Company's option. The third to last paragraph of Section 2.5 of the Base Indenture shall not apply with respect to the Series A Notes.

3.2 **Effect of Redemption.** Unless the Company defaults in the payment of the Redemption Price, on and after the Redemption Date, once notice of Redemption is given and funds are irrevocably deposited, in each case, in accordance with Sections 3.2 and 3.3 of the Base Indenture, (i) interest shall cease to accrue on the Series A Notes to be redeemed on and after the Redemption Date (unless there is a default in payment of the Redemption Price), (ii) the Series A Notes to be redeemed shall no longer be outstanding and (iii) all rights of the Holders in respect of the Series A Notes to be redeemed shall terminate and lapse (other than the right to receive any amount owed in connection with a Redemption but without interest on such amount).

3.3 **Notice of Redemption.** Subject to Article III of the Base Indenture, notice of any Redemption pursuant to this [Article III](#) will be sent not less than 20 days and not more than 60 days prior to the Redemption Date to each Holder of Series A Notes to be redeemed at such Holder's registered address.

3.4 **Amendments to Article III of Base Indenture.** Solely for purposes of the Series A Notes, (i) Sections 3.2 and 3.3 of the Base Indenture are hereby deemed amended by removing any reference therein to accrued and unpaid interest to the date fixed for redemption being payable on any Series A Notes upon Redemption (in addition to the applicable redemption price) and (ii) for the avoidance of doubt, the "applicable redemption price" referred to therein shall be the Redemption Price.

ARTICLE IV OPTION TO DEFER INTEREST PAYMENTS

4.1 **Option to Defer Interest Payments.**

(a) The Company may elect at one or more times to defer payment of interest on the Series A Notes (such unpaid interest, the "**Deferred Interest**") for one or more consecutive Interest Periods; *provided* that the interest payable on the Purchase Contract Settlement Date or the Stated Maturity may not be deferred, and no Interest Payment may be deferred beyond the Purchase Contract Settlement Date, in the case of a Deferral Period that begins prior to the Purchase Contract Settlement Date, or the Stated Maturity, in the case of a Deferral Period that begins after the Purchase Contract Settlement Date. Furthermore, in the event of a Successful Remarketing, following the applicable Remarketing Settlement Date, the Company shall have no right to defer the payment of interest on the Series A Notes. If all Deferred Interest has been paid (including compounded interest thereon) and the Company still has the right to defer the payment of interest, the Company may again defer Interest Payments subject to and in accordance with the terms of this [Section 4.1](#).

(b) Deferred Interest on the Series A Notes will bear interest at the interest rate applicable to the Series A Notes, and subject to applicable law, such interest will be compounded on each Interest Payment Date to, but excluding, the Interest Payment Date on which such Deferred Interest is paid.

- (c) If a Deferral Period is continuing with respect to the Series A Notes or the Company has given notice of a Deferral Period but such Deferral Period has not yet commenced, then until all Deferred Interest (including compounded interest thereon) has been paid, the Company shall not:
- (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of its Capital Stock; or
 - (ii) make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of its debt securities ranking on a parity with, or ranking junior to, the Series A Notes (including debt securities of other series issued under the Base Indenture); or
 - (iii) make any guarantee payments on any guarantee of debt securities if the guarantee ranks on a parity with or junior to the Series A Notes.
- (d) However, the foregoing provisions of Section 4.1(c) shall not prevent or restrict the Company from making:
- (i) purchases, redemptions or other acquisitions of its Capital Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors, agents, consultants or independent contractors or a stock purchase or dividend reinvestment plan, or the satisfaction of its obligations pursuant to any contract or security outstanding on the date that the payment of interest is deferred requiring it to purchase, redeem or acquire its Capital Stock;
 - (ii) any payment, repayment, redemption, purchase, acquisition or declaration of dividends described in clause (c)(i) above as a result of a reclassification of its Capital Stock, or the exchange or conversion of all or a portion of one class or series of its Capital Stock for another class or series of its Capital Stock;
 - (iii) the purchase of fractional interests in shares of its Capital Stock pursuant to the conversion or exchange provisions of its Capital Stock or the security being converted or exchanged, or in connection with the settlement of stock purchase contracts outstanding on the date that the payment of interest is deferred;
 - (iv) dividends or distributions paid or made in its Capital Stock (or rights to acquire its Capital Stock), or repurchases, redemptions or acquisitions of its Capital Stock in connection with the issuance or exchange of its Capital Stock (or of securities convertible into or exchangeable for shares of its Capital Stock) and distributions in connection with the settlement of stock purchase contracts outstanding on the date that the payment of interest is deferred;
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- (v) redemptions, exchanges or repurchases of, or with respect to, any rights outstanding under a shareholder rights plan outstanding on the date that the payment of interest is deferred or the declaration or payment thereunder of a dividend or distribution of or with respect to rights in the future;
 - (vi) payments on the Series A Notes, any trust preferred securities, subordinated debentures, junior subordinated debentures or junior subordinated notes, or any guarantees of any of the foregoing, in each case ranking on a parity with the Series A Notes, so long as the amount of payments made on account of such securities or guarantees is paid on all such securities and guarantees then outstanding on a pro rata basis in proportion to the full payment to which each series of such securities and guarantees is then entitled if paid in full; *provided* that, for the avoidance of doubt, the Company shall not make interest payments on the Series A Notes in part;
 - (vii) purchases of any Series A Notes upon exercise of the Put Right in the event of a Failed Final Remarketing; or
 - (viii) any payment of deferred interest or principal on, or repayment, redemption or repurchase of, securities ranking on a parity with or ranking junior to the Series A Notes that, if not made, would cause the Company to breach the terms of the instrument governing such parity or junior securities.
- (e) In the event that the Company elects to defer any Interest Payment, the Company shall notify the Trustee and the Holders in writing of such election at least one Business Day prior to the Regular Record Date for the Interest Payment Date on which the Company intends to begin a Deferral Period; *provided, however*, that the Company's failure to pay the interest owed on a particular Interest Payment Date shall also constitute the commencement of a Deferral Period, unless the Company pays such interest within five Business Days after such Interest Payment Date, whether or not the Company provides a notice of deferral.
- (f) The Company may pay Deferred Interest (including compounded interest thereon) in cash on any scheduled Interest Payment Date occurring on or prior to (i) the Purchase Contract Settlement Date, in the case of a Deferral Period that begins prior to the Purchase Contract Settlement Date, or (ii) the Stated Maturity, in the case of a Deferral Period that begins after the Purchase Contract Settlement Date; *provided* that in order to end a Deferral Period on any scheduled Interest Payment Date other than the Purchase Contract Settlement Date or the Stated Maturity, the Company must deliver written notice thereof to Holders of the Series A Notes and the Trustee on or before the relevant Regular Record Date. Deferred Interest paid on any Interest Payment Date shall be payable to the Person in whose name the Series A Notes are registered at the close of business on the Regular Record Date next preceding such Interest Payment Date.
- (g) In the event there is any Deferred Interest outstanding, the Company may not elect to conduct an Optional Remarketing.

(h) Notwithstanding anything to the contrary herein, in connection with any Successful Final Remarketing of the Series A Notes, all accrued and unpaid Deferred Interest (including compounded interest thereon), calculated to, but excluding, the Purchase Contract Settlement Date at the Coupon Rate, shall be paid to the Holders of Series A Notes (whether or not such Series A Notes were remarketed in such Remarketing), as of the applicable Regular Record Date, on the Purchase Contract Settlement Date in cash.

(i) The provisions of Section 4.9 of the Base Indenture shall not apply to the Series A Notes.

ARTICLE V FORM OF SERIES A NOTE

5.1 **Form of Series A Note.** The Series A Notes and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the form attached hereto as Exhibit A.

ARTICLE VI ORIGINAL ISSUE OF SERIES A NOTES

6.1 **Original Issue of Series A Notes.** Series A Notes in the initial aggregate principal amount of up to \$299,000,000 may be executed by the Company and delivered to the Trustee for authentication by it, and the Trustee shall thereupon authenticate and deliver said Series A Notes to or upon the written order of the Company, signed by any Officer of the Company, without any further corporate action by the Company.

ARTICLE VII [RESERVED]

ARTICLE VIII MODIFICATION OF INDENTURE

8.1 **Modification of Indenture without Consent of Holders of Series A Notes.** In addition to subsections (a) through (k) of Section 10.1 of the Base Indenture, without the consent of any Holder of a Series A Note, the Company and the Trustee may (1) modify the form and terms of the Series A Notes in connection with a Successful Remarketing solely to set forth the modifications to the terms of the Series A Notes pursuant to Section 9.4 and (2) amend the Series A Notes, the Base Indenture (insofar as it relates to the Series A Notes) and this First Supplemental Indenture to conform the provisions thereof or hereof to the descriptions thereof or hereof contained in the preliminary prospectus supplement dated November 16, 2015 for the Series A Notes, as supplemented by the related pricing term sheet used in connection with the offering of the Equity Units, under the sections entitled "Description of the Equity Units," "Description of the Purchase Contracts," "Certain Provisions of the Purchase Contract and Pledge Agreement" and "Description of the Remarketable Junior Subordinated Notes." Notwithstanding anything to the contrary in the Base Indenture, Section 10.1(k) of the Base

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Indenture will only apply with respect to the Series A Notes following the Purchase Contract Settlement Date.

8.2 **Modification of Indenture with Consent of Holders of Series A Notes.** With the consent of the Holders of not less than a majority in the principal amount of Series A Notes then outstanding (except as otherwise provided in Section 10.2 of the Base Indenture), the Company, when authorized by a Resolution of the Company, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto or to the Base Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Base Indenture or this First Supplemental Indenture or of modifying in any manner the rights of the Holders of the Series A Notes; *provided, however*, that, in addition to the restrictions set forth in the first proviso contained in Section 10.2 of the Base Indenture (which shall apply to this Section 8.2, *mutatis mutandis*), no supplemental indenture may without the consent of the Holders of each outstanding Series A Note directly affected thereby: (i) modify the Put Right of Holders of the Series A Notes upon a Failed Remarketing in a manner materially adverse to the Holders, (ii) modify the Remarketing provisions of the Series A Notes in a manner materially adverse to the Holders or (iii) modify Section 2.15 hereof in a manner adverse to Holders, it being understood that any modification of the terms of the Series A Notes permitted pursuant to Section 9.4 in connection with a Remarketing that is made in accordance with the terms of the Indenture may be made without the consent of any Holders of the Series A Notes. The first paragraph of Section 10.2 of the Base Indenture shall not apply with respect to the Series A Notes (other than the first proviso therein, which shall apply as set forth in the immediately preceding sentence), and any reference in the Base Indenture to the provisions therein shall, for purposes of the Series A Notes, be deemed to refer instead to the applicable provision in this Section 8.2.

ARTICLE IX REMARKETING

9.1 **Remarketing Procedures.**

(a) In the case of an Optional Remarketing, unless a Termination Event has occurred prior to the Optional Remarketing Period, or in the case of a Final Remarketing, unless a Successful Optional Remarketing or Termination Event has occurred prior to the Final Remarketing Period, the Company shall engage the Remarketing Agent(s) pursuant to the Remarketing Agreement for the Remarketing of the Series A Notes as set forth under Section 9.2. The Company shall, no later than (a) in the case of an Optional Remarketing, five Business Days prior to the first day of the Optional Remarketing Period or (b) in the case of a Final Remarketing, seven days prior to the first day of the Final Remarketing Period, request that the Depository or its nominee notify the beneficial owners or Depository Participants holding Separate Notes, Corporate Units and Treasury Units, and shall provide a copy of such request to the Collateral Agent and the Purchase Contract Agent, in the case of an Optional Remarketing, of the Company's intent to attempt an Optional Remarketing in the Applicable Remarketing Period, and in all cases, of the proposed Remarketing Dates and the procedures to be followed in each Remarketing, including the procedures to be followed by Holders of Separate Notes to participate in a Remarketing, the applicable procedures for Holders of Corporate Units to create Treasury Units or Holders of Treasury Units to recreate Corporate Units, as the case may be, the

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applicable procedures for Holders of Corporate Units to effect an Early Settlement and, in the case of a Final Remarketing, applicable procedures to effect a Cash Settlement and the applicable procedures that must be followed by a Holder of Separate Notes if such Holder wishes to exercise its Put Right or by a Holder of Corporate Units if such Holder elects not to exercise its Put Right.

(b) At any time after notice is given by the Company in accordance with Section 9.1(a), other than during a Blackout Period, each Holder of Separate Notes may elect to have Separate Notes held by such Holder remarketed in the applicable Remarketing for which notice was given. A Holder making such an election must notify the Custodial Agent and deliver such Separate Notes to the Custodial Agent in accordance with the provisions set forth in the Purchase Contract and Pledge Agreement. Any such notice and delivery may not be conditioned upon the level at which the Reset Rate is established in the Remarketing. Any such notice and delivery may be withdrawn, other than during a Blackout Period, by notifying the Custodial Agent on or prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period in accordance with the Purchase Contract and Pledge Agreement. Any such notice and delivery not withdrawn in accordance with the immediately preceding sentence will be irrevocable with respect to each Remarketing to occur during the Applicable Remarketing Period. Pursuant to Section 5.02 of the Purchase Contract and Pledge Agreement, by (or, in the case of a Final Remarketing, promptly after) 4:00 p.m., New York City time on the Business Day immediately preceding the first day of the Applicable Remarketing Period, the Custodial Agent, based on the notices and deliveries received by it prior to such time, shall notify the Remarketing Agent(s) of the aggregate principal amount of Separate Notes surrendered for Remarketing. Pursuant and subject to Section 5.02 of the Purchase Contract and Pledge Agreement, Series A Notes that underlie Applicable Ownership Interests in Notes included in Corporate Units will be deemed surrendered for Remarketing (unless in the case of a Final Remarketing, the Holder thereof has duly notified the Purchase Contract Agent of its intent to effect a Cash Settlement and timely paid the Purchase Price) and will be remarketed in accordance with the terms of the Remarketing Agreement and the Purchase Contract and Pledge Agreement.

(c) The right of each Holder of Remarketed Notes to have such Series A Notes remarketed on any Remarketing Date and sold on any Optional Remarketing Date or Final Remarketing Date, as the case may be, shall be subject to the conditions that (i)(A) the Remarketing Agent(s) conducts any Optional Remarketing or (i)(B) in the case of a Final Remarketing, that no Successful Optional Remarketing has occurred pursuant to the terms of the Remarketing Agreement and the Purchase Contract and Pledge Agreement, (ii) a Termination Event has not occurred prior to the Optional Remarketing Date or Final Remarketing Date, as the case may be, (iii) the Remarketing Agent(s) is able to find a purchaser or purchasers for Remarketed Notes at the Remarketing Price based on the Reset Rate and (iv) each condition precedent to settlement of the Remarketed Notes set forth in the Remarketing Agreement is satisfied or waived.

(d) Neither the Trustee, the Company, nor the Remarketing Agent(s) shall be obligated in any case to provide funds to make payment upon surrender of Series A Notes for remarketing.

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9.2 Remarketing.

(a) Unless a Termination Event has occurred prior to such date, if the Company elects to conduct an Optional Remarketing during an Optional Remarketing Period selected by the Company pursuant to the Purchase Contract and Pledge Agreement, the Remarketing Agent(s) shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price as provided in the Remarketing Agreement.

(b) In the case there is no Successful Optional Remarketing during the Optional Remarketing Period, either because the Remarketing Agent(s) is unable to remarket the Series A Notes at the applicable Remarketing Price or because a condition precedent to the Remarketing has not been satisfied, and unless a Termination Event has occurred prior to such date, during the Final Remarketing Period, the Remarketing Agent(s) shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price as provided in the Remarketing Agreement.

(c) The Remarketing on any Remarketing Date will be considered successful if the resulting proceeds are at least equal to the applicable Remarketing Price. The Company has the right to postpone any Optional Remarketing for any reason in its sole and absolute discretion.

(d) The Company has the right to postpone the Final Remarketing in its sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

9.3 Reset Rate.

(a) In connection with each Remarketing, in order to remarket the Series A Notes, the Remarketing Agent(s), in consultation with the Company, may reset the interest rate on the Series A Notes either upward or downward, as provided in the Remarketing Agreement, the new interest rate being referred to herein as the “Reset Rate.”

(b) Anything herein to the contrary notwithstanding, no Reset Rate shall in any event exceed the maximum rate permitted by applicable law.

(c) In the event of a Successful Remarketing, the interest rate for the Series A Notes shall be reset on the Remarketing Settlement Date to the applicable Reset Rate as determined by the Remarketing Agent(s), in consultation with the Company, under the Remarketing Agreement, and the Company shall (1) notify the Trustee by an Officers’ Certificate delivered to the Trustee and (2) request the Depository to notify its Depository Participants holding Series A Notes, in each case, of the Reset Rate no later than 9:00 a.m. New York City time on the Business Day following the date of the Successful Remarketing. Upon a Successful Remarketing, the Reset Rate shall apply to all outstanding Series A Notes, whether or not the Holders of all outstanding Series A Notes participated in such Remarketing.

(d) If a reset of the interest rate on the Series A Notes occurs pursuant to a Successful Optional Remarketing, the Reset Rate shall be the interest rate determined by the

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Remarketing Agent(s), in consultation with the Company, pursuant to the Remarketing Agreement, as the interest rate the Series A Notes should bear in order for the Remarketing proceeds to equal at least 100% of the sum of the Treasury Portfolio Purchase Price and the Separate Notes Purchase Price (if any).

(e) If a reset of the interest rate on the Series A Notes occurs pursuant to a Successful Final Remarketing, the Reset Rate shall be the interest rate determined by the Remarketing Agent(s), in consultation with the Company, pursuant to the Remarketing Agreement, as the interest rate the Series A Notes should bear in order for the Remarketing proceeds to equal at least 100% of the aggregate principal amount of Series A Notes to be remarketed.

(f) In the event of a Failed Remarketing, or if no Applicable Ownership Interests in Notes are included in Corporate Units (or the Holder of each such Corporate Unit has duly notified the Purchase Contract Agent of its intent to effect a Cash Settlement and timely paid the Purchase Price) and none of the Holders of the Separate Notes elect to have their Series A Notes remarketed in any Remarketing, the applicable interest rate on the Series A Notes will not be reset and will continue to be the Coupon Rate.

(g) If there is a Failed Remarketing, the Company shall cause a notice of the unsuccessful Remarketing to be published not later than 9:00 a.m., New York City time on the Business Day following the Applicable Remarketing Period. This notice shall be validly published by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

9.4 **Modification of Terms in Connection with a Successful Remarketing.**

Following any Successful Remarketing of the Series A Notes:

(a) the interest rate on the Series A Notes may be reset, pursuant to Section 9.3;

(b) interest will be payable on the Series A Notes semi-annually, on May 1 and November 1 of each year;

(c) the Series A Notes will cease to be redeemable at the Company's option, and the provisions under Article III and Article III of the Base Indenture will no longer apply to the Series A Notes; and

(d) the Company will cease to have the ability to defer interest payments on the Series A Notes, and the provisions under Article IV will no longer apply to the Series A Notes.

All such modifications shall take effect on the Optional Remarketing Settlement Date or the Purchase Contract Settlement Date, as the case may be, and shall apply to all outstanding Series A Notes, whether or not included in such Successful Remarketing.

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9.5 **Put Right.**

(a) If there has not been a Successful Remarketing on or prior to the last day of the Final Remarketing Period, Holders of Series A Notes will, subject to this Section 9.5, have the right (the "**Put Right**") to require the Company to purchase such Series A Notes for cash on the Purchase Contract Settlement Date, at a price per Series A Note to be purchased equal to the principal amount of the applicable Series A Note (the "**Put Price**").

(b) The Put Right of a Holder of a Separate Note shall only be exercisable upon delivery of a notice substantially in the form attached as Exhibit B hereto (or, in the case of Global Notes, in accordance with applicable procedures of the Depository), together with such Holder's Separate Notes, to the Trustee by such Holder at or prior to 5:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date. Such Put Right for a Holder of a Separate Note may be exercised with respect to all or a portion of such Holder's Separate Notes (so long as such portion is an integral multiple of \$1,000 principal amount). Prior to the Purchase Contract Settlement Date, the Company shall deposit with the Trustee immediately available funds in an amount sufficient to pay, on the Purchase Contract Settlement Date, the aggregate Put Price of all Separate Notes with respect to which a Holder has exercised a Put Right. In exchange for any Separate Notes surrendered pursuant to the Put Right, the Trustee shall then distribute such amount to the Holders of such Separate Notes.

(c) If there has not been a Successful Remarketing on or prior to the last day of the Final Remarketing Period, the Put Right of Holders with respect to Series A Notes relating to Applicable Ownership Interests in Notes included in Corporate Units will be deemed to be automatically exercised in accordance with Section 5.02(b) of the Purchase Contract and Pledge Agreement (unless any such Holder has duly notified the Purchase Contract Agent of its intent to effect a Cash Settlement and timely paid the Purchase Price).

(d) Series A Notes purchased pursuant to the Put Right shall be cancelled by the Trustee.

ARTICLE X TAX TREATMENT

10.1 **Tax Treatment.** The Company agrees, and by acceptance of a Corporate Unit or a Separate Note, each Holder (or beneficial owner) will be deemed to have agreed for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (a) to treat each beneficial owner of a Corporate Unit as the owner of each of the applicable stock purchase contract and the applicable interests in the Collateral, including the Series A Notes underlying the Applicable Ownership Interest in Notes constituting a part of such Corporate Unit, (b) to treat the Series A Notes as indebtedness, (c) with respect to Holders (or beneficial owners) who purchase Corporate Units upon issuance, to allocate, as of the Original Issue Date, 100% of a Holder's (or beneficial owner's) purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes and 0% to each Purchase Contract, which will establish each Holder's (or beneficial owner's) initial tax basis in each Purchase Contract as \$0 and each Holder's (or beneficial owner's) initial tax basis in each Applicable Ownership Interest in Notes

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as \$50, and (d) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

ARTICLE XI THE TRUSTEE

11.1 **[Reserved]**

11.2 **[Reserved]**

11.3 **Security Registrar and Paying Agent.** Pursuant to the Base Indenture, the Company hereby appoints the Trustee as registrar and “Paying Agent” with respect to the Series A Notes.

11.4 **Concerning the Trustee.** The Trustee assumes no duties, responsibilities or liabilities by reason of this First Supplemental Indenture other than as set forth in the Base Indenture or as expressly set forth herein and, in carrying out its responsibilities hereunder, shall have all of the rights, powers, privileges, protections, duties and immunities which it possesses under the Base Indenture.

11.5 **Patriot Act Requirements of Trustee.** The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this First Supplemental Indenture agree that they will provide to the Trustee such information as it may request, from time to time, in order for the Trustee to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

11.6 **Notice upon Trustee.** Any notice, direction, request, demand, consent or waiver by the Company or any Holder to or upon the Trustee, registrar or Paying Agent for the Series A Notes shall be deemed to have been sufficiently given, made or filed, for all purposes, if given, made or filed in writing at the Corporate Trust Office of the Trustee.

ARTICLE XII MISCELLANEOUS

12.1 **Ratification of Indenture; First Supplemental Indenture Controls.** The Base Indenture, as supplemented and (solely for purposes of the Series A Notes) amended by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided. The provisions of this First Supplemental Indenture shall supersede the provisions of the Base Indenture to the extent the Base Indenture is inconsistent herewith. For all purposes under the Base Indenture, the Series A Notes shall constitute a single series of

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Securities, and with regard to any matter requiring the consent under the Base Indenture of holders of multiple series of Securities voting together as a single class, the consent of Holders of the Series A Notes voting as a separate class shall also be required and the same threshold shall apply.

12.2 **Recitals.** The recitals herein contained are made by the Company only and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture or the Series A Notes. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of the Series A Notes. The Trustee shall have no responsibility or liability with respect to the interest rate on the Series A Notes and whether at any time it complies with applicable law. All of the provisions contained in the Base Indenture in respect of the rights, powers, privileges, protections, duties and immunities of the Trustee shall be applicable as fully and with like effect as if set forth herein in full.

12.3 **Governing Law.** This First Supplemental Indenture and each Series A Note shall be governed by the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State (without regard to the conflicts of law principles thereof).

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

12.5 **Counterparts.** This First Supplemental Indenture may be executed in any number of counterparts each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this First Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto and may be used in lieu of the original First Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

12.6 **Jury Trial Waiver.** EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST SUPPLEMENTAL INDENTURE, THE SERIES A NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

BLACK HILLS CORPORATION

By: /s/ Kimberly F. Nooney
Name: Kimberly F. Nooney
Title: Vice President - Treasurer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Linda E. Garcia
Name: Linda E. Garcia
Title: Vice President

EXHIBIT A

**FORM OF
2015 SERIES A 3.50% REMARKETABLE JUNIOR SUBORDINATED NOTE
DUE 2028**

[THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR SERIES A NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF [CEDE & CO.] OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO [CEDE & CO.], ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, [CEDE & CO.], HAS AN INTEREST HEREIN.]

THE NOTES EVIDENCED HEREBY WILL BE ISSUED, AND MAY BE TRANSFERRED, ONLY IN DENOMINATIONS OF \$1,000 AND ANY GREATER INTEGRAL MULTIPLE OF \$1,000, EXCEPT AS PROVIDED IN THE FIRST SUPPLEMENTAL INDENTURE. ANY ATTEMPTED TRANSFER, SALE OR OTHER DISPOSITION OF NOTES IN A DENOMINATION OF LESS THAN \$1,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER EXCEPT AS PROVIDED IN THE FIRST SUPPLEMENTAL INDENTURE. ANY SUCH TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH NOTES FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO THE RECEIPT OF PAYMENTS IN RESPECT OF SUCH NOTES, AND SUCH TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH NOTES.

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BLACK HILLS CORPORATION

[Up to] \$[]

2015 SERIES A 3.50% REMARKETABLE JUNIOR SUBORDINATED NOTE DUE 2028

Dated: [] [], 20[]

NUMBER R-[]

CUSIP NO: 092113 AJ8

Registered Holder:

ISIN NO: US092113AJ83

BLACK HILLS CORPORATION, a South Dakota corporation (herein referred to as the “**Company**,” which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to the Registered Holder named above, the principal sum [of _____ Dollars] [specified in the Schedule of Increases or Decreases in this Note annexed hereto] on November 1, 2028 (the “**Stated Maturity**”), and to pay (subject to deferral as set forth herein) interest thereon at the rate of 3.50% per annum, such interest to accrue from November 23, 2015, subject to any reset of such interest rate in connection with a Successful Remarketing, as described below. Subject to the Company’s right to defer interest payments as set forth in the

First Supplemental Indenture (as defined on the reverse hereof) and to changes in the interest payment dates as set forth in the First Supplemental Indenture in connection with a Successful Remarketing, interest is payable quarterly in arrears on each February 1, May 1, August 1 and November 1, commencing on February 1, 2016 (the “**Interest Payment Dates**”), until the principal thereof is paid or made available for payment. On and after the Purchase Contract Settlement Date or, if earlier, the Optional Remarketing Settlement Date, interest on this Note will be payable at the relevant Reset Rate or, if the interest rate has not been reset, at the Coupon Rate of 3.50% per annum. The Reset Rate, if any, shall be established pursuant to the terms of the Indenture (as defined on the reverse hereof) and the Remarketing Agreement. If Interest Payments are deferred or otherwise not paid, they will accrue and compound on each Interest Payment Date until paid at the annual rate of 3.50% per annum, to the extent permitted by applicable law, unless a Successful Remarketing shall have occurred, in which case on and after the Remarketing Settlement Date the Series A Notes shall bear interest, to the extent permitted by law, on any overdue principal and interest at the Reset Rate.

The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed during a 30-day month. The interest so payable on an Interest Payment Date will be paid to the Person in whose name this Note is registered, at the close of business on the Regular Record Date next preceding such Interest Payment Date; *provided* that interest payable at Stated Maturity will be paid to the Person to whom principal is payable. Any such interest that is not so punctually paid or duly provided for, and that is not deferred as described below, will forthwith cease to be payable to the Holder on such Regular

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Record Date and may either be paid (i) to the Person in whose name this Note (or any Series A Note issued upon registration of transfer or exchange thereof) is registered at the close of business on the record date for the payment of such defaulted interest established in accordance with Section 2.3 of the Base Indenture or (ii) at any time in any other lawful manner not inconsistent with the requirements of the securities exchange, if any, on which the Series A Notes may be listed, and upon such notice as may be required by such exchange. The “**Regular Record Date**” with respect to any Interest Payment Date for the Series A Notes will be the fifteenth day of the calendar month immediately preceding the calendar month in which the applicable Interest Payment Date falls (whether or not a Business Day).

If an Interest Payment Date, Redemption Date or the Stated Maturity of the Series A Notes or the date (if any) on which the Company is required to purchase the Series A Notes falls on a day that is not a Business Day, the applicable payment will be made on the next succeeding Business Day, and no interest shall accrue or be paid in respect of such delay.

This Note may be presented for payment of principal and interest at the office of the Paying Agent, in the continental United States; *provided, however,* that payment of interest will be made by the Company (i) by check mailed to such address of the person entitled thereto as the address shall appear on the Register of the Series A Notes or (ii) if such Person so requests and designates an account in writing to the Trustee at least five Business Days prior to the relevant Interest Payment Date, by wire transfer to such account. Payment of the principal and interest on this Note shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

The indebtedness of the Company evidenced by this Note, including the principal hereof and interest hereon, is, to the extent and in the manner set forth in the Indenture, subordinate and junior in right of payment to the Company’s obligations to holders of Priority Indebtedness of the Company and each Holder of this Note, by acceptance hereof, agrees to and shall be bound by such provisions of the Indenture and all other provisions of the Indenture.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be entitled to any benefit under the Indenture, or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by or on behalf of the Trustee under the Indenture.

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IN WITNESS WHEREOF, Black Hills Corporation has caused this instrument to be duly executed.

Dated:

BLACK HILLS CORPORATION

By: _____

Name:

Title:

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TRUSTEE’S CERTIFICATE OF AUTHENTICATION

This is one of the Securities, of the series designated herein, referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

REVERSE OF NOTE

This Note is one of a duly authorized issue of securities of the Company (herein called the “**Securities**”), issued and to be issued in one or more series pursuant to the Junior Subordinated Indenture, dated as of November 23, 2015, between the Company and U.S. Bank National Association (herein called the “**Trustee**”) (the “**Base Indenture**”), as supplemented and amended by a First Supplemental Indenture dated as of November 23, 2015 by and between the Company and the Trustee (the “**First Supplemental Indenture**” and together with the Base Indenture, as it may be hereafter supplemented or amended from time to time, the “**Indenture**”). Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders (the word “**Holder**” or “**Holder**” meaning the registered holder or registered holders) of the Notes. This Note is one of the series designated on the face hereof (the “**Series A Notes**”) which is limited in aggregate principal amount to \$299,000,000.

Capitalized terms used herein but not defined herein shall have the respective meanings assigned thereto in the Indenture.

As provided in and subject to the provisions in the Indenture, if there has been a Failed Final Remarketing, the Company may, at its option, redeem the Series A Notes, in whole or in part, from time to time on or after November 1, 2020, at a price equal to the Redemption Price, in accordance with Article III of the Base Indenture and Article III of the First Supplemental Indenture.

The Series A Notes shall be remarketed as provided in the First Supplemental Indenture and the Purchase Contract and Pledge Agreement. In connection with a Successful Remarketing, the Remarketing Agent(s), in consultation with the Company, may reset the interest rate. Following any Successful Remarketing of the Series A Notes, the interest will be payable semi-annually, on May 1 and November 1 of each year, the Series A Notes will cease to be redeemable at the Company’s option and the Company will cease to have the ability to defer interest payments on the Series A Notes.

Pursuant to the First Supplemental Indenture, if there has not been a Successful Remarketing prior to the end of the Final Remarketing Period, Holders of the Series A Notes will have the right to require the Company to purchase such Series A Notes for cash on the Purchase Contract Settlement Date at a price per Series A Note to be purchased equal to the principal amount of the applicable Series A Note.

The Series A Notes are not subject to the operation of any sinking fund and, except as set forth in the First Supplemental Indenture, are not repayable at the option of a Holder thereof prior to the Stated Maturity.

In the case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Series A Notes may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

Prior to the Purchase Contract Settlement Date, the provisions of Section 12.1 and Section 12.5 of the Base Indenture shall not apply to the Series A Notes.

The Company will not pay any additional amounts to any Holder who is not a United States person in respect of any tax, assessment or governmental charge.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Series A Notes by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Series A Notes outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Series A Notes at the time outstanding, on behalf of the Holders of all outstanding Series A Notes, to waive compliance by the Company with certain provisions of the Indenture, and contains provisions permitting the Holders of specified percentages in principal amount in certain instances of the outstanding Series A Notes, to waive on behalf of all of the Holders of Series A Notes, certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Series A Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, no Holder of Series A Notes shall have any right by virtue or by availing of any provision of the Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to the Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as provided in the Indenture, and unless also the Holders of the requisite principal amount of all the Securities at the time outstanding, determined pursuant to Section 6.4 of the Base Indenture and Section 12.1 of the First Supplemental Indenture, shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee under the Indenture and shall have offered to the Trustee such reasonably satisfactory security or indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, shall have declined to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 2.12 of the First Supplemental Indenture; it being understood and intended, and being expressly covenanted by the taker and Holder of every Series A Note with every other taker and Holder and the Trustee, that no one or more Holders of Series A Notes shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the Holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under the Indenture, except in the manner therein provided and for the equal, ratable and common benefit of all Holders of Securities. For the protection and enforcement of the provisions of Section 6.4 of the Base Indenture, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Nothing contained in the Indenture is intended to or shall impair, as between the Company and the Holders of the Series A Notes, the obligation of the Company, which is absolute and unconditional, to pay to such Holders the principal of and interest on such Series A Notes when, where and as the same shall become due and payable, all in accordance with the terms of the Series A Notes, or is intended to or shall affect the relative rights of such Holders and creditors of the Company other than the holders of the Priority Indebtedness of the Company, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under the Indenture, subject to the rights, if any, under Article XIV of the Base Indenture of the holders of Priority Indebtedness of the Company in respect of cash, property, or securities of the Company received upon the exercise of any such remedy.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note may be registered on the Register of the Series A Notes upon surrender of this Note for registration of transfer at the offices maintained by the Company or its agent for such purpose, duly endorsed by the Holder hereof or its attorney duly authorized in writing, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities registrar duly executed by the Holder hereof or its attorney duly authorized in writing, but without payment of any charge other than a sum sufficient to reimburse the Company for any tax or other governmental charge incident thereto. Upon any such registration of transfer, a new Series A Note or Notes of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange herefor.

No service charge shall be made for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

Pursuant to the First Supplemental Indenture, Series A Notes that corresponded to Applicable Ownership Interests in Series A Notes but are no longer a component of the Corporate Units and are released from the Collateral Account will be initially issued as Global Notes. Except upon recreation of Corporate Units and except as otherwise provided in the Indenture, Series A Notes represented by Global Notes will not be exchangeable for, and will not otherwise be issuable as, Series A Notes in certificated form. Unless and until such Global Notes are exchanged for Series A Notes in certificated form, Global Notes may be transferred, in whole but not in part, and any payments on the Series A Notes shall be made, only to the Depository or a nominee of the Depository, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository.

By acceptance of this Note or a beneficial interest in this Note, each Holder hereof and any Person acquiring a beneficial interest herein, for United States federal, state and local tax purposes, agrees to treat this Note as indebtedness and to take other positions for such tax purposes as set forth in the First Supplemental Indenture.

Prior to due presentment for registration of transfer of this Note, the Company, the Trustee, and any agent of the Company or the Trustee may deem and treat the person in whose name this Note shall be registered upon the Register of the Securities of this series as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any

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notation of ownership or other writing hereon) for the purpose of receiving payment of or on account of the principal hereof and, subject to the provisions on the face hereof, interest due hereon and for all other purposes; and neither the Company nor the Trustee nor any such agent shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer, director or employee, as such, past, present or future, of the Company or of any successor, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as a part of the consideration for the issue hereof, expressly waived and released.

This Note shall be governed by the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State (without regard to the conflicts of law principles thereof).

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s) and transfer(s) unto

(please insert Social Security or other identifying number of assignee)

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE OF ASSIGNEE

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

agent to transfer said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____,

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within instrument in every particular without alteration or enlargement, or any change whatever.

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SCHEDULE OF INCREASES OR DECREASES IN THIS NOTE

The initial principal amount of this Note is: \$

Changes to Principal Amount of [Global] Note

Date	Principal Amount by which this Note is to be Decreased or Increased and the Reason for the Decrease or Increase	Remaining Principal Amount Of this Note	Signature of Trustee
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EXHIBIT B
FORM OF PUT NOTICE

TO: Black Hills Corporation
U.S. Bank National Association

Please refer to the Junior Subordinated Indenture, dated as of November 23, 2015, among Black Hills Corporation (the "Company") and U.S. Bank National Association (herein called the "Trustee") (the "Base Indenture"), as supplemented and amended by a First Supplemental Indenture dated as of November 23, 2015, by and between the Company and the Trustee (the "First Supplemental Indenture" and together with the Base Indenture, as it may be hereafter supplemented or amended from time to time, the "Indenture"). Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

The undersigned registered Holder of the Series A Note designated below, which is being delivered to the Trustee herewith, hereby requests and instructs the Company to purchase such Series A Note or the portion thereof specified below (so long as such portion is in a principal amount of \$1,000 or an integral multiple thereof), in accordance with the terms of the Indenture, at the price of 100% of the principal amount of such Series A Note (or portion thereof). The Series A Note (or portion thereof) shall be purchased by the Company as of the Purchase Contract Settlement Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature: _____

NOTICE: The above signature of the Holder hereof must correspond with the name as written upon the face of the Series A Note in every particular without alteration or enlargement or any change whatever.

Signature Guarantee: _____

Note Certificate Number (if applicable): _____

Principal Amount: _____

Portion to be purchased if other than the Principal Amount set forth above: _____

Social Security or Other Taxpayer Identification Number: _____

DTC Account Number (if applicable): _____

Name of Account Party (if applicable): _____

PAYMENT INSTRUCTIONS: The purchase price of the Series A Note should be paid by check in the name of the person(s) set forth below and mailed to the address set forth below.

Name(s): _____
(Please Print)

Address: _____
(Please Print)

(Zip Code)

(Tax Identification or Social Security Number)

BLACK HILLS CORPORATION

and

U.S. BANK NATIONAL ASSOCIATION,

as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary

PURCHASE CONTRACT AND PLEDGE AGREEMENT

Dated as of November 23, 2015

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PURCHASE CONTRACT AND PLEDGE AGREEMENT, dated as of November 23, 2015, among BLACK HILLS CORPORATION, a corporation duly organized and existing under the laws of the State of South Dakota (the “Company”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, acting as purchase contract agent for, and, for purposes of the Pledge created hereby, as attorney-in-fact of, the Holders from time to time of the Units (in such capacities, together with its successors and assigns in such capacities, the “Purchase Contract Agent”), as collateral agent hereunder for the benefit of the Company (in such capacity, together with its successors in such capacity, the “Collateral Agent”), as custodial agent (in such capacity, together

with its successors in such capacity, the “Custodial Agent”), and as securities intermediary (as defined in Section 8-102(a)(14) of the UCC) with respect to the Collateral Account (in such capacity, together with its successors in such capacity, the “Securities Intermediary”).

RECITALS

WHEREAS, the Company has duly authorized the execution and delivery of this Agreement and the Certificates evidencing the Units; and

WHEREAS, all things necessary to make the Purchase Contracts, when the Certificates are executed by the Company and authenticated, executed on behalf of the Holders and delivered by the Purchase Contract Agent, as provided in this Agreement, the valid obligations of the Company, and to constitute these presents a valid agreement of the Company, in accordance with its terms, have been done; and

WHEREAS, pursuant to the terms of this Agreement and the Purchase Contracts, the Holders have irrevocably authorized the Purchase Contract Agent, as attorney-in-fact of such Holders, among other things, to execute and deliver this Agreement on behalf of such Holders and to grant the Pledge provided herein of the Collateral to secure the Obligations.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders;
- (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States;
- (c) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or other subdivision;

(d) the following terms, which are defined in the UCC, shall have the meanings set forth therein: “certificated security,” “control,” “financial asset,” “entitlement order,” “securities account” and “security entitlement”;

(e) unless the context otherwise requires, any reference to an “Article” or “Section” or an “Exhibit” refers to an Article or Section of, or an Exhibit to, as the case may be, this Agreement; and

(f) the following terms have the meanings given to them in this Section 1.01(f):

“Act” has the meaning, with respect to any Holder, set forth in Section 1.04(a).

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agent” has the meaning set forth in Section 1.05; provided that, solely for purposes of Section 15.03, “Agent” shall have the meaning set forth therein.

“Agreement” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

“Applicable Market Value” has the meaning set forth in Section 5.01(a).

“Applicable Ownership Interest in Notes” means a 1/20 or 5% undivided beneficial ownership interest in \$1,000 principal amount of Notes that is a component of a Corporate Unit.

“Applicable Ownership Interest in the Treasury Portfolio” means:

(i) a 1/20 or 5% undivided beneficial ownership interest in \$1,000 face amount of U.S. Treasury securities (or principal or interest strips thereof) included in the Treasury Portfolio that mature on or prior to the Purchase Contract Settlement Date; and

(ii) for the scheduled Interest Payment Date on the Notes occurring on the Purchase Contract Settlement Date, a 0.04375% undivided beneficial ownership interest in \$1,000 face amount of U.S. Treasury securities (or principal or interest strips thereof) included in the Treasury Portfolio that mature on or prior to the Purchase Contract Settlement Date.

If U.S. Treasury securities (or principal or interest strips thereof) that are to be included in the Treasury Portfolio in connection with a Successful Optional Remarketing have a yield that is less than zero on the Optional Remarketing Date, the Treasury Portfolio will consist of an amount in cash equal to the aggregate principal amount at maturity of the U.S. Treasury

securities described in clauses (i) and (ii) above. If the provisions set forth in this paragraph apply, for all purposes herein, references to “Treasury security” and “U.S. Treasury securities (or principal or interest strips thereof)” in connection with the Treasury Portfolio will be deemed to be references to such aggregate amount of cash, and any reference to clause (i) or (ii) in the definition of “Applicable Ownership Interest in the Treasury Portfolio” shall be deemed to be a reference to the portion of such aggregate cash amount equal to the aggregate principal amount at maturity of the undivided beneficial ownership interest in the U.S. Treasury securities described in clause (i) above or clause (ii) above, respectively.

“Applicable Procedures” means, with respect to any payment, tender, redemption, transfer or exchange of or for beneficial interests in any Global Certificate, the rules and procedures of the Depository that apply to such payment, tender, redemption, transfer or exchange.

“Applicable Remarketing Period” means any of (i) any Optional Remarketing Period for which the Company has elected to conduct an Optional Remarketing pursuant to Section 5.02(a) or (ii) the Final Remarketing Period, as the context requires.

“Authorized Officer” means the Chief Executive Officer, the President, any Vice President, the Treasurer or an Assistant Treasurer, or any other Person duly authorized by the Company to act in respect of the matters relating to this Agreement.

“Bankruptcy Code” means Title 11 of the United States Code, or any other law of the United States that from time to time provides a uniform system of bankruptcy laws.

“Base Indenture” means the Junior Subordinated Indenture, dated as of November 23, 2015, between the Company and U.S. Bank National Association, as trustee.

“Beneficial Owner” means, with respect to a Book-Entry Interest, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with such Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of such Depository).

“Blackout Period” means the period (i) if the Company elects to conduct an Optional Remarketing, from 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of an Optional Remarketing Period until the corresponding Remarketing Settlement Date or the date the Company announces that such Optional Remarketing was unsuccessful and (ii) after 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period.

“Board of Directors” means the board of directors of the Company or a duly authorized committee of that board or, to the extent duly authorized by such board of directors to act on its behalf, an Authorized Officer of the Company.

“Board Resolution” means one or more resolutions of the Board of Directors, a copy of which has been certified by the Secretary or an Assistant Secretary of the Company to have been

duly adopted by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Purchase Contract Agent.

“Book-Entry Interest” means a beneficial interest in a Global Certificate, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository as described in Section 3.06.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close or a day on which the Corporate Trust Office is closed for business.

“CAP Obligations” has the meaning set forth in Section 5.11(d).

“Cash” means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

“Cash Settlement” means any settlement by a Holder of its Obligations to pay the Purchase Price on the Purchase Contract Settlement Date with separate cash pursuant to Section 5.02(b)(ix) or 5.03(a)(i).

“Certificate” means a Corporate Units Certificate or a Treasury Units Certificate, as the case may be.

“Clause (i) Distribution” has the meaning set forth in Section 5.05(a)(iv).

“Clause (ii) Distribution” has the meaning set forth in Section 5.05(a)(iv).

“Clause (iv) Distribution” has the meaning set forth in Section 5.05(a)(iv).

“Closing Price” has the meaning set forth in Section 5.01(a).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means the collective reference to:

(i) the Collateral Account and all investment property and other financial assets from time to time credited to the Collateral Account and all security entitlements with respect thereto (other than the Applicable Ownership Interests in the Treasury Portfolio as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), including, without limitation, (A) the Applicable Ownership Interests in Notes and security entitlements relating thereto (and the Notes and security entitlements relating thereto delivered to the Collateral Agent in respect of such Applicable Ownership Interests in Notes), (B) the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the

Transferred to the Securities Intermediary from time to time in connection with the creation of Treasury Units in accordance with Section 3.13 hereof and (D) payments made by Holders pursuant to Section 5.02(b)(ix) or 5.03;

(ii) all Proceeds of any of the foregoing (whether such Proceeds arise before or after the commencement of any proceeding under any applicable bankruptcy, insolvency or other similar law, by or against the pledgor or with respect to the pledgor), other than Interest Payments on the Notes and any other income or distributions in respect of any Notes, Pledged Applicable Ownership Interest in the Treasury Portfolio or Permitted Investments that Holders are entitled to receive pursuant to Section 4.01(a); and

(iii) all powers and rights now owned or hereafter acquired under or with respect to the Collateral.

“Collateral Account” means the securities account of the Collateral Agent, maintained on the books of the Securities Intermediary and designated “Black Hills Corporation Collateral Account”, or any successor securities account of a successor Collateral Agent.

“Collateral Agent” means the Person named as “Collateral Agent” in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Collateral Agent shall have become such pursuant to this Agreement, and thereafter “Collateral Agent” shall mean the Person who is then the Collateral Agent hereunder.

“collateral event of default” has the meaning set forth in Section 13.01(b).

“Collateral Substitution” means (i) with respect to the Corporate Units, the substitution of the Pledged Applicable Ownership Interests in Notes included in such Corporate Units with Treasury Securities in an aggregate principal amount at maturity equal to the aggregate principal amount of such Pledged Applicable Ownership Interests in Notes, or (ii) with respect to the Treasury Units, the substitution of the Pledged Treasury Securities included in such Treasury Units with Notes in an aggregate principal amount equal to the aggregate principal amount at stated maturity of the Pledged Treasury Securities.

“Common Stock” means the common stock, \$1.00 par value per share, of the Company, subject to Section 5.05(b)(i).

“Company” means the Person named as the “Company” in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provision of this Agreement, and thereafter “Company” shall mean such successor.

“Compounded Contract Adjustment Payments” has the meaning set forth in Section 5.12(a).

“Constituent Person” has the meaning set forth in Section 5.05(b)(i).

“Contract Adjustment Payment Date” means February 1, May 1, August 1 and November 1 of each year, commencing on February 1, 2016.

“Contract Adjustment Payments” means amounts payable by the Company on each Contract Adjustment Payment Date in respect of each Purchase Contract, at a rate per year of 4.25% on the Stated Amount per Purchase Contract.

“Corporate Trust Office” means the office of the Purchase Contract Agent at 190 South LaSalle Street, 10th Floor, MK-IL-SLTR, Chicago, IL 60603, Attention: Corporate Trust Services, and such office shall also include the office or agency of the Indenture Trustee located at 60 Livingston Avenue, 1st Floor — Bond Drop Window, St. Paul, MN 55107, Attention: Corporate Trust Services, or such other address as the Purchase Contract Agent may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Purchase Contract Agent as designated by written notice to the Holders and the Company (or such other address as such successor Purchase Contract Agent may designate from time to time by notice to the Holders and the Company), which office must be located in the continental United States of America.

“Corporate Unit” means the collective rights and obligations of a Holder of a Corporate Units Certificate in respect of the Applicable Ownership Interest in Notes or the Applicable Ownership Interest in the Treasury Portfolio, as the case may be, subject in each case to the Pledge thereof (except that the Applicable Ownership Interest in the Treasury Portfolio as specified in clause (ii) of the definition thereof shall not be subject to the Pledge) and the related Purchase Contract.

“Corporate Units Certificate” means a certificate evidencing the rights and obligations of a Holder in respect of the number of Corporate Units specified on such certificate.

“Current Market Price”:

(a) for purposes of Section 5.05(a)(ii) and (iv) (except with respect to Spin-Offs), means, in respect of a share of Common Stock or any other security on any day of determination, the average VWAP of the Common Stock or such other security on the principal U.S. securities exchange or quotation system on which the Common Stock or such other security, as applicable, is listed or quoted at that time for the 10 consecutive Trading Days preceding the earlier of the Trading Day preceding the day in question and the Trading Day before the Ex Date with respect to the issuance or distribution requiring such computation;

(b) for purposes of Section 5.05(a)(iv), with respect to Spin-Offs, has the meaning set forth in the portion of such Section relating to Spin-Offs;

(c) for purposes of Section 5.05(a)(v), means, in respect of a share of Common Stock, the Closing Price of the Common Stock on the Trading Day immediately preceding the Ex Date for the relevant cash dividend or distribution; and

(d) for purposes of Section 5.05(a)(vi), means, in respect of a share of Common Stock, the Closing Price of the Common Stock on the Trading Day next succeeding the last date

on which tenders or exchanges may be made pursuant to the relevant tender offer or exchange offer.

“Custodial Agent” means the Person named as Custodial Agent in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Custodial Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “Custodial Agent” shall mean the Person who is then the Custodial Agent hereunder.

“Deferred Interest” has the meaning set forth in the Supplemental Indenture.

“Depository” means a clearing agency registered under Section 17A of the Exchange Act that is designated to act as Depository for the Units as contemplated by Sections 3.06 and 3.08.

“Depository Participant” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book entry transfers and pledges of securities deposited with the Depository.

“DTC” means The Depository Trust Company.

“Early Settlement” has the meaning set forth in Section 5.08(a).

“Early Settlement Amount” has the meaning set forth in Section 5.08(b).

“Early Settlement Date” has the meaning set forth in Section 5.08(b).

“Effective Date” has the meaning set forth in Section 5.05(b)(iii).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Event of Default” has the meaning set forth in the Indenture.

“Ex Date,” with respect to any issuance or distribution on the Common Stock or any other security, means the first date on which the Common Stock or such other security, as applicable, trades, regular way, on the principal U.S. securities exchange or quotation system on which the Common Stock or such other security, as applicable, is listed or quoted at that time, without the right to receive such issuance or distribution.

“Exchange Act” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“Exchange Property Unit” has the meaning set forth in Section 5.05(b)(i).

“Expiration Date” has the meaning set forth in Section 1.04(e).

“Expiration Time” has the meaning set forth in Section 5.05(a)(vi).

“Extension Period” has the meaning set forth in Section 5.12(a).

“Failed Final Remarketing” has the meaning set forth in Section 5.02(b)(ix).

“Failed Optional Remarketing” has the meaning set forth in Section 5.02(a)(x).

“Failed Remarketing” means, as applicable, a Failed Optional Remarketing or a Failed Final Remarketing.

“Fair Market Value” has the meaning set forth in Section 5.05(a)(iv).

“Final Remarketing” means any Remarketing of the Notes that occurs during the Final Remarketing Period by the Remarketing Agent(s) pursuant to the Remarketing Agreement.

“Final Remarketing Date” means the date the Company prices the Notes offered in the Final Remarketing.

“Final Remarketing Period” means the five (5) Business Day period ending on, and including, the third Business Day immediately preceding the Purchase Contract Settlement Date.

“Fixed Settlement Rates” means the Minimum Settlement Rate and the Maximum Settlement Rate, collectively.

“Fundamental Change” means:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company or its wholly-owned subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of the Common Stock representing more than 50% of the voting power of the Common Stock (provided that a person shall not be deemed a beneficial owner of, or to own beneficially, (x) any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person’s affiliates until such tendered securities are accepted for purchase or exchange thereunder, or (y) any securities if such beneficial ownership (i) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (ii) is not also then reportable on Schedule 13D, Schedule 13G or any successor schedule under the Exchange Act);

(b) (i) the Company is involved in a consolidation with or merger into any other Person, or any merger of another Person into the Company, or any other similar transaction or series of related transactions (other than a merger, consolidation or similar transaction or series of related transactions that does not result in the conversion or exchange of outstanding shares of Common Stock), in each case, in which 90% or more of the outstanding shares of Common Stock are exchanged for or converted into cash, securities or other property, greater than 10% of the value of which (determined pursuant to Section 5.05(b)(i) and excluding cash payments for fractional shares and cash payments made pursuant to dissenters’ appraisal rights) consists of cash, securities or other property that is not (or will not be upon or immediately following the

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effectiveness of such consolidation, merger or other transaction or series of related transactions) common stock listed on the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or (ii) the consummation of any sale, lease or other transfer in one transaction or a series of related transactions of all or substantially all of the Company’s consolidated assets to any Person other than one of the Company’s subsidiaries;

(c) the Common Stock ceases to be listed on at least one of the New York Stock Exchange, the NASDAQ Global Select Market and the NASDAQ Global Market (or any of their respective successors); or

(d) the shareholders of the Company approve a liquidation, dissolution or termination of the Company.

“Fundamental Change Early Settlement” has the meaning set forth in Section 5.05(b)(ii).

“Fundamental Change Early Settlement Date” has the meaning set forth in Section 5.05(b)(ii).

“Fundamental Change Early Settlement Right” has the meaning set forth in Section 5.05(b)(ii).

“Fundamental Change Exercise Period” has the meaning set forth in Section 5.05(b)(ii).

“Global Certificate” means a Certificate that evidences all or part of the Units and is registered in the name of the Depository or a nominee thereof.

“Holder” means, with respect to a Unit, the Person in whose name the Unit evidenced by a Certificate is registered in the Security Register; provided, however, that solely for the purpose of determining whether the Holders of the requisite number of Units have voted on any matter (and not for any other purpose hereunder), if the Unit remains in the form of one or more Global Certificates and if the Depository that is the registered holder of such Global Certificate has sent an omnibus proxy assigning voting rights to the Depository Participants to whose accounts the Units are credited on the record date, the term “Holder” shall mean such Depository Participant acting at the direction of the Beneficial Owners.

“Indemnitees” has the meaning set forth in Section 7.07(c).

“Indenture” means the Base Indenture, as amended and supplemented by the Supplemental Indenture, as it may be further amended and/or supplemented from time to time.

“Indenture Trustee” means U.S. Bank National Association, as trustee.

“Initial Public Offering” has the meaning set forth in Section 5.05(a)(iv).

“Interest Payment” has the meaning set forth in the Supplemental Indenture.

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“Interest Payment Date” has the meaning set forth in the Supplemental Indenture.

“Issuer Order” or “Issuer Request” means a written order or request signed in the name of the Company by an Authorized Officer of the Company, and delivered to the Purchase Contract Agent.

“Losses” has the meaning set forth in Section 15.08(b).

“Make-Whole Shares” has the meaning set forth in Section 5.05(b)(ii).

“Market Disruption Event” has the meaning set forth in Section 5.01(a).

“Market Value Averaging Period” has the meaning set forth in Section 5.01(a).

“Maximum Settlement Rate” has the meaning set forth in Section 5.01(a).

“Merger Common Stock” has the meaning set forth in Section 5.05(b)(i)(A).

“Merger Valuation Percentage” means, with respect to any Reorganization Event:

(i) if the Merger Common Stock is listed, quoted or traded on any securities exchange or quotation system during the Merger Valuation Period, a percentage equal to (x) the arithmetic average of the Closing Prices of one share of such Merger Common Stock over the relevant Merger Valuation Period (determined as if references to “Common Stock” in the definition of “Closing Price” were references to such Merger Common Stock), divided by (y) the arithmetic average of the Closing Prices of one share of Common Stock over the relevant Merger Valuation Period; and

(ii) otherwise, a percentage equal to (x) the Closing Price of one share of such Merger Common Stock (determined as if references to “Common Stock” in the definition of “Closing Price” were references to such Merger Common Stock), divided by (y) the value of one Exchange Property Unit (determined pursuant to Section 5.05(b)(i));

in each case, as of the effective date of such Reorganization Event (or, if such effective date is not a Trading Day, the immediately succeeding Trading Day).

“Merger Valuation Period” for any Reorganization Event means the five consecutive Trading Day period immediately preceding, but excluding, the effective date for such Reorganization Event.

“Minimum Settlement Rate” has the meaning set forth in Section 5.01(a).

“Minimum Stock Price” has the meaning set forth in Section 5.05(b)(iii).

“Notes” means the series of notes designated the 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 of the Company.

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“Obligations” means, with respect to each Holder, the obligation of such Holder under such Holder’s Unit (including the Purchase Contract contained therein) and this Agreement to pay the Purchase Price with respect to each Purchase Contract being settled, whether pursuant to an Early Settlement, a Fundamental Change Early Settlement or on the Purchase Contract Settlement Date.

“Officers’ Certificate” means a certificate signed by two Authorized Officers of the Company and delivered to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Agreement (other than the Officers’ Certificate provided for in Section 10.05) shall include the information set forth in Section 1.02 hereof.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel to the Company (and who may be an employee of the Company). An opinion of counsel may rely on certificates as to matters of fact.

“Optional Remarketing” means any Remarketing of the Notes that occurs during the Optional Remarketing Period by the Remarketing Agent(s) pursuant to the Remarketing Agreement.

“Optional Remarketing Date” means the date the Company prices the Notes offered in an Optional Remarketing.

“Optional Remarketing Period” has the meaning set forth in Section 5.02(a).

“Outstanding” means, as of any date of determination, all Units evidenced by Certificates theretofore authenticated, executed and delivered under this Agreement, except:

- (i) all Units, if a Termination Event has occurred;
- (ii) Units evidenced by Certificates theretofore cancelled by the Purchase Contract Agent or delivered to the Purchase Contract Agent for cancellation or deemed cancelled pursuant to the provisions of this Agreement; and
- (iii) Units evidenced by Certificates in exchange for or in lieu of which other Certificates have been authenticated, executed on behalf of the Holder and delivered pursuant to this Agreement, other than any such Certificate in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Certificate is held by a protected purchaser in whose hands the Units evidenced by such Certificate are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite number of the Units have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Units owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding Units, except that, in determining whether the Purchase Contract Agent shall be authorized and protected in relying upon any such request, demand, authorization,

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direction, notice, consent or waiver, only Units that a Responsible Officer of the Purchase Contract Agent actually knows to be so owned shall be so disregarded. Units so owned that have been pledged in good faith may be regarded as Outstanding Units if the pledgee establishes to the satisfaction of the Purchase Contract Agent the pledgee’s right so to act with respect to such Units and that the pledgee is not the Company or any Affiliate of the Company. For the avoidance of doubt, a Purchase Contract shall be considered “Outstanding” if the Unit containing such Purchase Contract is Outstanding.

“Payment Date” means each February 1, May 1, August 1 and November 1, commencing February 1, 2016.

“Permitted Investments” means any one of the following, in each case maturing on the Business Day following the date of acquisition:

(1) any evidence of indebtedness with an original maturity of 365 days or less issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support of the timely payment thereof or such indebtedness constitutes a general obligation of it);

(2) deposits, certificates of deposit or acceptances with an original maturity of 365 days or less of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500 million at the time of deposit (and which may include the Collateral Agent);

(3) investments with an original maturity of 365 days or less of any Person that are fully and unconditionally guaranteed by a bank referred to in clause (2) of this definition;

(4) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any agency thereof and backed as to timely payment by the full faith and credit of the United States of America;

(5) investments in commercial paper, other than commercial paper issued by the Company or its affiliates, of any corporation incorporated under the laws of the United States or any State thereof, which commercial paper has a rating at the time of purchase at least equal to “A-1” by Standard & Poor’s Ratings Services (“S&P”) or at least equal to “P-1” by Moody’s Investors Service, Inc. (“Moody’s”); and

(6) investments in money market funds (including, but not limited to, money market funds managed by the Collateral Agent or an affiliate of the Collateral Agent) registered under the Investment Company Act of 1940, as amended, rated in the highest applicable rating category by S&P or Moody’s.

“Person” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated

organization or government or any agency or political subdivision thereof or any other entity of whatever nature.

“Plan” means (i) an employee benefit plan that is subject to Title I of ERISA, (ii) a plan or individual retirement account that is subject to Section 4975 of the Code, (iii) any entity whose underlying assets include the assets of any such employee benefit plan, plan or individual retirement account by reason of such employee benefit plan’s, plan’s or individual retirement account’s investment in such entity or (iv) any governmental plan, nonelecting Church Plan (each defined under ERISA) or foreign plan that is not subject to the provisions of Title I of ERISA or Section 4975 of the Code but is subject to Similar Laws.

“Pledge” means the lien and security interest in the Collateral created by this Agreement.

“Pledge Indemnitees” has the meaning set forth in Section 15.08(b).

“Pledged Applicable Ownership Interests in Notes” means the Applicable Ownership Interests in Notes and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

“Pledged Applicable Ownership Interests in the Treasury Portfolio” means the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of such term) and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

“Pledged Treasury Securities” means Treasury Securities and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge and any Proceeds thereon.

“Predecessor Certificate” means a Predecessor Corporate Units Certificate or a Predecessor Treasury Units Certificate.

“Predecessor Corporate Units Certificate” of any particular Corporate Units Certificate means every previous Corporate Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Corporate Units evidenced thereby; and, for the purposes of this definition, any Corporate Units Certificate authenticated and delivered under Section 3.10 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Corporate Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Corporate Units Certificate.

“Predecessor Treasury Units Certificate” of any particular Treasury Units Certificate means every previous Treasury Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Treasury Units evidenced thereby; and, for the purposes of this definition, any Treasury Units Certificate authenticated and delivered under Section 3.10 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Treasury Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Treasury Units Certificate.

“Priority Indebtedness of the Company” has the meaning set forth in the Base Indenture (as in effect on the date on which the Units are first issued).

“Pro Rata” or “pro rata” shall mean, unless otherwise specified, pro rata to each Holder according to the aggregate number of the Units held by such Holder in relation to the aggregate number of all Units Outstanding.

“Proceeds” has the meaning ascribed thereto in the UCC and includes, without limitation, all interest, dividends, cash, instruments, securities, financial assets and other property received, receivable or otherwise distributed upon the sale (including, without limitation, any Remarketing), exchange, collection or disposition of any financial assets from time to time credited to the Collateral Account.

“Prospectus” means the prospectus relating to the shares or any securities deliverable in connection with an Early Settlement pursuant to Section 5.08, if so required as contemplated by Section 5.08, or a Fundamental Change Early Settlement of Purchase Contracts pursuant to Section 5.05(b)(ii), if so required as contemplated by Section 5.05(b)(ii), in the form in which first filed, or transmitted for filing, with the Securities and Exchange Commission after the effective date of the Registration Statement pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein as of the date of such Prospectus.

“Purchase Contract” means, with respect to any Unit, the contract forming a part of such Unit and obligating the Company to (i) sell, and the Holder of such Unit to purchase (with settlement on the Purchase Contract Settlement Date, unless a Termination Event, Early Settlement Date or Fundamental Change Early Settlement has previously occurred), a number of shares of Common Stock equal to the applicable Settlement Rate, and (ii) pay to the Holder thereof Contract Adjustment Payments, subject to the Company’s right to defer Contract Adjustment Payments pursuant to Section 5.12, in each case, on the terms and subject to the conditions set forth in Article 5. Unless the context otherwise requires, any reference herein (x) to a Purchase Contract shall be deemed to refer to a Purchase Contract with a stated amount equal to the Stated Amount, or (y) to a particular number of Purchase Contracts shall be deemed to refer to Purchase Contract(s) with a stated amount equal to the product of such number and the Stated Amount.

“Purchase Contract Agent” means the Person named as the “Purchase Contract Agent” in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Purchase Contract Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “Purchase Contract Agent” shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement.

“Purchase Contract Settlement Date” means November 1, 2018 (or if such day is not a Business Day, the following Business Day).

“Purchase Contract Settlement Fund” has the meaning set forth in Section 5.04.

“Purchase Price” has the meaning set forth in Section 5.01(a).

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“Purchased Shares” has the meaning set forth in Section 5.05(a)(vi).

“Put Price” has the meaning set forth in the Supplemental Indenture.

“Put Right” has the meaning set forth in the Supplemental Indenture.

“Quotation Agent” means any primary United States government securities dealer in New York City selected by the Company.

“ranking junior to the CAP Obligations” means, with respect to any obligation of the Company, that such obligation (a) ranks junior to, and not equally with or prior to, the CAP Obligations (or any other obligations of the Company ranking on a parity with the CAP Obligations) in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 5.11(d) or (b) is specifically designated as ranking junior to the CAP Obligations by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking junior to the CAP Obligations, shall be deemed to prevent such obligations from constituting obligations ranking junior to the CAP Obligations.

“ranking on a parity with the CAP Obligations” means, with respect to any obligation of the Company, that such obligation (a) ranks equally with and not prior to the CAP Obligations in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph of Section 5.11(d) or (b) is specifically designated as ranking on a parity with the CAP Obligations by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking on a parity with the CAP Obligations, shall not be deemed to prevent such obligations from constituting obligations ranking on a parity with the CAP Obligations.

“Record Date” for any distribution and any Contract Adjustment Payment and any deferred Contract Adjustment Payment (and any Compounded Contract Adjustment Payment thereon) payable on any Contract Adjustment Payment Date means the fifteenth day of the calendar month immediately preceding the calendar month in which the relevant distribution date or Contract Adjustment Payment Date falls, whether or not a Business Day.

“Reference Dividend” has the meaning set forth in Section 5.05(a)(v).

“Reference Price” has the meaning set forth in Section 5.01(a).

“Registration Statement” means a registration statement under the Securities Act prepared by the Company covering, inter alia, the securities deliverable by the Company in connection with an Early Settlement on the applicable Settlement Date under Section 5.08, if so required as contemplated by Section 5.08, or a Fundamental Change Early Settlement on the Fundamental Change Early Settlement Date under Section 5.05(b)(ii), if so required as contemplated by Section 5.05(b)(ii), including all exhibits thereto and the documents incorporated by reference in the prospectus contained in such registration statement, and any post-effective amendments thereto.

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“Remarketing” means any remarketing of the Notes pursuant to the Remarketing Agreement.

“Remarketing Agent(s)” has the meaning set forth in the Supplemental Indenture.

“Remarketing Agreement” means the Remarketing Agreement, in substantially the form set forth in Exhibit P hereof, to be entered into among the Company, the Purchase Contract Agent and the Remarketing Agent(s), as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time.

“Remarketing Date” means each of the Business Days selected for Remarketing in an Optional Remarketing Period or the Final Remarketing Period.

“Remarketing Fee” means, in the event of a Successful Remarketing, a remarketing fee paid to the Remarketing Agent(s) to be agreed upon in writing by the Company and the Remarketing Agent(s) prior to any such Remarketing pursuant to the Remarketing Agreement.

“Remarketing Price” means (i) in the case of an Optional Remarketing, 100% of the aggregate of the Treasury Portfolio Purchase Price and the Separate Notes Purchase Price; and (ii) in the case of a Final Remarketing, 100% of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes (other than any such Notes that are not remarketed in such Final Remarketing, pursuant to Section 5.03) and Separate Notes to be remarketed.

“Remarketing Price Per Note” means, with respect to any Optional Remarketing, for each \$1,000 principal amount of Notes, an amount in cash equal to the quotient of (i) the Treasury Portfolio Purchase Price divided by (ii) (a) the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are held as components of Corporate Units and remarketed in such Optional Remarketing divided by (b) \$1,000.

“Remarketing Settlement Date” means (i) in the case of a Successful Optional Remarketing, (x) if the remarketed Notes are priced before 4:30 p.m. New York City time on the Optional Remarketing Date for such Successful Optional Remarketing, the third Business Day immediately following such Optional Remarketing Date and (y) otherwise, the fourth Business Day following the relevant Optional Remarketing Date, and (ii) in the case of a Final Remarketing, the Purchase Contract Settlement Date.

“Reorganization Event” means:

(i) any consolidation or merger of the Company with or into another Person or of another Person with or into the Company or a similar transaction (other than a consolidation, merger or similar transaction in which the Company is the continuing corporation and in which the shares of Common Stock outstanding immediately prior to the merger, consolidation or transaction are not exchanged for cash, securities or other property of the Company or another Person);

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(ii) any sale, transfer, lease or conveyance to another Person of the property of the Company as an entirety or substantially as an entirety, as a result of which the shares of Common Stock are exchanged for cash, securities or other property;

(iii) any statutory exchange of the Common Stock of the Company with another corporation (other than in connection with a merger or acquisition); or

(iv) any liquidation, dissolution or termination of the Company (other than as a result of or after the occurrence of a Termination Event).

“Reset Rate” means, in connection with a Remarketing, the rate per annum (as determined by the Remarketing Agent(s) in consultation with the Company pursuant to the Remarketing Agreement) rounded to the nearest one thousandth (0.001) of one percent that the Notes shall bear.

“Responsible Officer” means, when used with respect to the Purchase Contract Agent, any officer of the Purchase Contract Agent assigned to the Corporate Trust Administration unit (or any successor unit, department or division of the Purchase Contract Agent) of the Purchase Contract Agent located at the Corporate Trust Office of the Purchase Contract Agent who has direct responsibility for the administration of the Agreement and also means, with respect to a particular corporate trust matter, any other officer, trust officer or person performing similar functions to whom such matter is referred because of his or her knowledge of and familiarity of the particular subject and who shall have direct responsibility for this Agreement. The same definition applies equally to any Responsible Officer of the Collateral Agent, Custodial Agent and Securities Intermediary.

“Rights” has the meaning set forth in Section 5.05(a)(x).

“Securities Act” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“Securities Intermediary” means the Person named as Securities Intermediary in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “Securities Intermediary” shall mean such successor or any subsequent successor.

“Security Register” and “Securities Registrar” have the respective meanings set forth in Section 3.05.

“Separate Notes” means Notes that have been released from the Pledge pursuant to the terms hereof and therefore no longer underlie Corporate Units.

“Separate Notes Account” has the meaning set forth in Section 5.02(a)(vi).

“Separate Notes Purchase Price” means, for any Optional Remarketing, the amount in cash equal to the product of (i) the Remarketing Price Per Note and (ii) (a) the aggregate

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principal amount of Separate Notes remarketed in such Optional Remarketing divided by (b) \$1,000.

“Settlement Date” means, as applicable, (i) the Purchase Contract Settlement Date, (ii) the third Business Day following the Early Settlement Date or (iii) the Fundamental Change Early Settlement Date.

“Settlement Rate” has the meaning set forth in Section 5.01(a).

“Similar Laws” means the provisions under any federal, state, local, non-U.S. laws or regulations that are similar to Title I of ERISA or Section 4975 of the Code.

“Spin-Off” has the meaning set forth in Section 5.05(a)(iv).

“Stated Amount” means \$50.00.

“Stock Price” has the meaning set forth in Section 5.05(b)(iii).

“Successful Final Remarketing” has the meaning set forth in Section 5.02(b)(v).

“Successful Optional Remarketing” has the meaning set forth in Section 5.02(a)(vi).

“Successful Remarketing” means, as applicable, a Successful Optional Remarketing or a Successful Final Remarketing.

“Supplemental Indenture” means the First Supplemental Indenture, dated as of November 23, 2015, pursuant to which the Notes are issued.

“Term Sheet” means the pricing term sheet related to the offering of the Units, as filed with the Securities and Exchange Commission as a “free writing prospectus” on November 18, 2015.

“Termination Date” means the date, if any, on which a Termination Event occurs.

“Termination Event” means the occurrence of any of the following events:

(i) at any time on or prior to the Purchase Contract Settlement Date, a decree or order by a court having jurisdiction in the premises shall have been entered adjudicating the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization arrangement, adjustment or composition of or in respect of the Company under the Bankruptcy Code or any other similar applicable Federal or state law and such decree or order shall have been entered more than 90 days prior to the Purchase Contract Settlement Date and shall have continued undischarged and unstayed for a period of 90 consecutive days;

(ii) at any time on or prior to the Purchase Contract Settlement Date, a decree or order of a court having jurisdiction in the premises shall have been entered for the

appointment of a receiver, liquidator, trustee, assignee, sequestrator or other similar official in bankruptcy or insolvency of the Company or of all or any substantial part of the Company’s property, or for the winding up or liquidation of the Company’s affairs, and such decree or order shall have been entered more than 90 days prior to the Purchase Contract Settlement Date and shall have continued undischarged and unstayed for a period of 90 consecutive days; or

(iii) at any time on or prior to the Purchase Contract Settlement Date, the Company shall institute proceedings to be adjudicated a bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Code or any other similar applicable Federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, liquidator, trustee, assignee, sequestrator or other similar official of the Company or of all or any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“Threshold Appreciation Price” means \$47.2938, subject to adjustment as set forth in Section 5.05(a)(vii)(1).

“TIA” means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

“TRADES” means the Treasury/Reserve Automated Debt Entry System maintained by the Federal Reserve Bank of New York pursuant to the TRADES Regulations.

“TRADES Regulations” means the regulations of the United States Department of the Treasury, published at 31 C.F.R. Part 357, as amended from time to time. Unless otherwise defined herein, all terms defined in the TRADES Regulations are used herein as therein defined.

“Trading Day” has the meaning set forth in Section 5.01(a).

“Transfer” means (i) in the case of certificated securities in registered form, delivery as provided in Section 8-301(a) of the UCC, indorsed to the transferee or in blank by an effective indorsement; (ii) in the case of Treasury Securities, registration of the transferee as the owner of such Treasury Securities on TRADES; (iii) in the case of security entitlements, including, without limitation, security entitlements with respect to Treasury Securities or Notes, a securities intermediary indicating by book entry that such security entitlement has been credited to the transferee’s securities account; and (iv) in the case of Notes in registered form, in the manner contemplated by Section 2.4 of the Supplemental Indenture and Section 2.5 of the Base Indenture.

“Treasury Portfolio” means:

(i) U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date in an aggregate amount at maturity

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equal to the principal amount of the Notes underlying Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date; and

(ii) U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date in an aggregate amount at maturity equal to the aggregate Interest Payment (assuming no reset of the interest rate on the Notes) that would have been paid to the Holders of the Corporate Units on the Purchase Contract Settlement Date on the principal amount of the Notes underlying the Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date;

provided that if on the Optional Remarketing Date U.S. Treasury securities (or principal or interest strips thereof) that are to be included in the Treasury Portfolio have a yield that is less than zero, “Treasury Portfolio” means Cash in an amount equal to (i) the principal amount of the Notes underlying Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date and (ii) the aggregate Interest Payment (assuming no reset of the interest rate on the Notes) that would have been paid to the Holders of the Corporate Units on the Purchase Contract Settlement Date on the principal amount of the Notes underlying the Applicable Ownership Interests in Notes included in the Corporate Units on the Optional Remarketing Date.

“Treasury Portfolio Purchase Price” means the lowest aggregate ask-side price quoted by a primary U.S. government securities dealer in New York City to the Quotation Agent between 9:00 a.m. and 4:00 p.m., New York City time, on the Optional Remarketing Date for the purchase of the Treasury Portfolio for settlement on the relevant Remarketing Settlement Date; provided that if the Treasury Portfolio consists of cash, “Treasury Portfolio Purchase Price” means the amount thereof.

“Treasury Securities” means zero-coupon U.S. Treasury securities that mature on October 31, 2018 (including, without limitation, the U.S. Treasury securities with CUSIP No. 912820ZE0).

“Treasury Unit” means, following the substitution of Treasury Securities for Pledged Applicable Ownership Interests in Notes as Collateral to secure a Holder’s Obligations under the Purchase Contract, the collective rights and obligations of a Holder of a Treasury Units Certificate in respect of such Treasury Securities, subject to the Pledge thereof, and the related Purchase Contract.

“Treasury Units Certificate” means a certificate evidencing the rights and obligations of a Holder in respect of the number of Treasury Units specified on such certificate.

“Trigger Event” has the meaning set forth in Section 5.05(a)(iv).

“UCC” means the Uniform Commercial Code as in effect in the State of New York from time to time.

“Unit” means a Corporate Unit or a Treasury Unit, as the case may be.

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“Vice President” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

“VWAP” has the meaning set forth in Section 5.01(a).

Section 1.02. Compliance Certificates and Opinions. Upon any application or request by the Company to the Purchase Contract Agent to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent an Officers’ Certificate stating that all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement (other than the Officers’ Certificate provided for in Section 10.05) shall include:

- (i) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;
- (ii) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such condition or covenant has been complied with; and
- (iii) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. Form of Documents Delivered to Purchase Contract Agent. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which its certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual

matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Agreement, they may, but need not, be consolidated and form one instrument.

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Section 1.04. Acts of Holders; Record Dates. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Purchase Contract Agent and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 7.01) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Purchase Contract Agent deems sufficient.

(c) The ownership of Units shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Unit shall bind every future Holder of the same Unit and the Holder of every Certificate evidencing such Unit issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Purchase Contract Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Certificate.

(e) The Company may set any date as a record date for the purpose of determining the Holders of Outstanding Units entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given, made or taken by Holders. If any record date is set pursuant to this paragraph, the Holders of the Outstanding Corporate Units and the Outstanding Treasury Units, as the case may be, on such record date, and no other Holders, shall be entitled to take the relevant action with respect to the Corporate Units or the Treasury Units, as the case may be, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken prior to or on the applicable Expiration Date by Holders of the requisite number of Outstanding Units on such record date. Nothing contained in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and be of no effect), and nothing contained in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite number of Outstanding Units on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Purchase Contract Agent in writing and to each Holder in the manner set forth in Section 1.06.

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With respect to any record date set pursuant to this Section 1.04(e), the Company may designate any date as the “Expiration Date” and from time to time may change the Expiration Date to any later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the Purchase Contract Agent in writing, and to each Holder in the manner set forth in Section 1.06, prior to or on the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the Company shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Section 1.05. Notices. All notices, requests, consents and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by facsimile or unsecured email, if, except as provided in the following paragraph, promptly confirmed by telephone) mailed or delivered to the intended recipient at the “Address for Notices” specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or other electronic methods or personally delivered or mailed by first-class mail (registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery.

The Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary (collectively, the “Agent”) agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (in PDF format), facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such written instructions or directions, subsequent to such transmission, shall provide the originally executed instructions or directions to the Agent in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Agent in its discretion elects to act upon such instructions or directions, the Agent’s understanding of such instructions or directions, vis a vis such party, shall be deemed controlling. The Agent shall not be liable, vis a vis such party, for any losses, costs or expenses arising directly or indirectly from the Agent’s reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or the subsequent written instruction or direction is never received. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Agent, including without limitation the risk of the Agent acting on unauthorized instructions or directions, and the risk of interception and misuse by third parties.

The Purchase Contract Agent (if other than the Indenture Trustee) shall send to the Indenture Trustee at the following address a copy of any notices in the form of Exhibits C, D, E, F, H, J, M, N or O it sends or receives:

U.S. Bank National Association
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Section 1.06. Notice to Holders; Waiver. Where this Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Purchase Contract Agent, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Purchase Contract Agent shall constitute a sufficient notification for every purpose hereunder.

Section 1.07. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.08. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, and the Holders from time to time of the Units, by their acceptance of the same, shall be deemed to have agreed to be bound by the provisions hereof and to have ratified the agreements of, and the grant of the Pledge hereunder by, the Purchase Contract Agent.

Section 1.09. Separability Clause. In case any provision in this Agreement or in the Units shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.10. Benefits of Agreement. Nothing contained in this Agreement or in the Units, express or implied, shall give to any Person, other than (w) the parties hereto and their successors hereunder, (x) to the extent set forth in Section 5.11, the holders of Priority Indebtedness of the Company, (y) to the extent provided hereby, the Holders, and (z) to the extent set forth in Section 3.06, the Beneficial Owners, any benefits or any legal or equitable right, remedy or claim under this Agreement. The Holders from time to time shall be beneficiaries of this Agreement and shall be bound by all of the terms and conditions hereof and of the Units evidenced by their Certificates by their acceptance of delivery of such Certificates.

Section 1.11. Governing Law; Waiver of Jury Trial. THIS AGREEMENT, THE UNITS AND THE PURCHASE CONTRACTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF). The Company, the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Purchase Contract Agent, hereby submit to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York state court sitting in New York City for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Company, the Collateral Agent, the Custodial Agent, the Securities Intermediary and the Purchase Contract Agent, irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 1.12. Legal Holidays. In any case where any Contract Adjustment Payment Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), and other distributions shall not be paid on such date, but Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), and other distributions shall be paid on the next succeeding Business Day with the same force and effect as if made on such Contract Adjustment Payment Date; provided that no interest shall accrue or be payable by the Company or to any Holder in respect of such delay.

In any case where the Purchase Contract Settlement Date or the Settlement Date relating to any Early Settlement Date or any Fundamental Change Early Settlement Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Purchase Contracts shall not be performed and Early Settlement and Fundamental Change Early Settlement shall not be effected on such date, but Purchase Contracts shall be performed or Early Settlement or Fundamental Change Early Settlement shall be effected, as applicable, on the next succeeding Business Day with the same force and effect as if made on such Purchase Contract Settlement Date, the Settlement Date relating to such Early Settlement Date or such Fundamental Change Early Settlement Date, as applicable;

Section 1.13. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 1.14. Inspection of Agreement. Upon reasonable prior written notice, a copy of this Agreement shall be available at all reasonable times during normal business hours at the Corporate Trust Office for inspection by any Holder or Beneficial Owner.

Section 1.15. Appointment of Financial Institution as Agent for the Company. The Company may appoint a financial institution (which may be the Collateral Agent) to act as its agent in performing its obligations and in accepting and enforcing performance of the obligations of the Purchase Contract Agent and the Holders, under this Agreement and the Purchase Contracts, by giving notice of such appointment in the manner provided in Section 1.05 hereof. Any such appointment shall not relieve the Company in any way from its obligations hereunder.

Section 1.16. No Waiver. No failure on the part of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

ARTICLE 2

CERTIFICATE FORMS

Section 2.01. Forms of Certificates Generally. The Certificates shall be in substantially the form set forth in Exhibit A hereto (in the case of Corporate Units Certificates) or Exhibit B hereto (in the case of Treasury Units Certificates), with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units are listed (if any) or any Depository therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

The definitive Certificates shall be produced in any manner as determined by the officers of the Company executing the Units evidenced by such Certificates, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

Every Global Certificate authenticated, executed on behalf of the Holders and delivered hereunder shall bear a legend substantially in the form set forth in Exhibit A and Exhibit B for a Global Certificate.

Section 2.02. Form of Purchase Contract Agent's Certificate of Authentication. The form of the Purchase Contract Agent's certificate of authentication of the Units shall be in substantially the form set forth on the form of the applicable Certificates.

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ARTICLE 3

THE UNITS

Section 3.01. Amount; Form and Denominations. The aggregate number of Units evidenced by Certificates authenticated, executed on behalf of the Holders and delivered hereunder will initially consist of 5,980,000 Units, except for Certificates authenticated, executed and delivered upon registration of transfer of, in exchange for, or in lieu of, other Certificates to the extent expressly permitted hereunder.

The Certificates shall be issuable only in registered form (which, for the avoidance of doubt, in the case of Global Certificates, shall be registered in the name of the Depository or its nominee) and only in denominations of a single Corporate Unit or Treasury Unit and any integral multiple thereof.

Section 3.02. Rights and Obligations Evidenced by the Certificates. Each Corporate Units Certificate shall evidence the number of Corporate Units specified therein, with each such Corporate Unit representing (1) the ownership by the Holder thereof of an Applicable Ownership Interest in Notes or an Applicable Ownership Interest in the Treasury Portfolio, as the case may be, subject to the Pledge of such Applicable Ownership Interest in Notes or Applicable Ownership Interest in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio), as the case may be, by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract.

The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Corporate Unit, to pledge, pursuant to Article 11, the Applicable Ownership Interest in Notes, or the Applicable Ownership Interest in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio) forming a part of such Corporate Unit, to the Collateral Agent for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Applicable Ownership Interest in Notes or Applicable Ownership Interest in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio) to secure the Obligations of the Holder under each Purchase Contract to purchase shares of Common Stock. To effect such Pledge and grant such security interest, the Purchase Contract Agent on behalf of the Holders of Corporate Units has, on the date hereof, delivered to the Securities Intermediary the Notes underlying the Applicable Ownership Interests in Notes by delivering such Notes indorsed in blank.

Upon the formation of a Treasury Unit pursuant to Section 3.13, each Treasury Units Certificate shall evidence the number of Treasury Units specified therein, with each such Treasury Unit representing (1) the ownership by the Holder thereof of a 1/20 or 5% undivided beneficial ownership interest in a Treasury Security with a principal amount at maturity equal to \$1,000, subject to the Pledge of such interest by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase

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Contract. The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Treasury Unit, to pledge, pursuant to Article 11, such Holder's interest in the Treasury Security forming a part of such Treasury Unit to the Collateral Agent, for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Treasury Security to secure the Obligations of the Holder under each Purchase Contract to purchase shares of Common Stock.

Prior to the purchase and delivery of shares of Common Stock under each Purchase Contract, such Purchase Contract shall not entitle the Holder of a Unit to any of the rights of a holder of shares of Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or distributions or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors of the Company or for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03. Execution, Authentication, Delivery and Dating. Subject to the provisions of Section 3.13 and Section 3.14 hereof, upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Certificates executed by the Company to the Purchase Contract Agent for authentication, execution on behalf of the Holders and delivery, together with its Issuer Order for authentication of such Certificates, and the Purchase Contract Agent in accordance with such Issuer Order shall authenticate, execute on behalf of the Holders and deliver such Certificates.

The Certificates shall be executed on behalf of the Company by an Authorized Officer of the Company. The signature of any such Authorized Officer on the Certificates may be manual or facsimile.

Certificates bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Certificates or did not hold such offices at the date of such Certificates.

No Purchase Contract evidenced by a Certificate shall be valid until such Certificate has been executed on behalf of the Holder by the manual or facsimile signature of an authorized signatory of the Purchase Contract Agent, as such Holder's attorney-in-fact. Such signature by an authorized signatory of the Purchase Contract Agent shall be conclusive evidence that the Holder of such Certificate has entered into the Purchase Contracts evidenced by such Certificate.

Each Certificate shall be dated the date of its authentication.

No Certificate shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose unless there appears on such Certificate a certificate of authentication substantially in the form provided for herein executed by an authorized signatory of the Purchase Contract Agent by manual signature, and such certificate of authentication upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly authenticated and delivered hereunder.

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Section 3.04. Temporary Certificates. Pending the preparation of definitive Certificates, the Company may execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the Holders, and deliver, in lieu of such definitive Certificates, temporary Certificates which are in substantially the form set forth in Exhibit A or Exhibit B hereto, as the case may be, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Corporate Units or Treasury Units, as the case may be, are listed (if any), or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

If temporary Certificates are issued, the Company will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the Corporate Trust Office, at the expense of the Company and without charge to the Holder. Upon surrender for cancellation of any one or more temporary Certificates, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the Holder, and deliver in exchange therefor, one or more definitive Certificates of like tenor and denominations and evidencing a like number of Units as the temporary Certificate or Certificates so surrendered. Until so exchanged, the temporary Certificates shall in all respects evidence the same benefits and the same obligations with respect to the Units evidenced thereby as definitive Certificates.

Section 3.05. Registration; Registration of Transfer and Exchange. The Purchase Contract Agent shall keep at the Corporate Trust Office, a register (the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Purchase Contract Agent shall provide for the registration of Certificates and of transfers of Certificates (the Purchase Contract Agent, in such capacity, the "Security Registrar"). The Security Registrar shall record separately the registration and transfer of the Certificates evidencing Corporate Units and Treasury Units.

Upon surrender for registration of transfer of any Certificate at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Certificates of any authorized denominations, of like tenor, and evidencing a like number of Corporate Units or Treasury Units, as the case may be.

At the option of the Holder, Certificates may be exchanged for other Certificates, of any authorized denominations and evidencing a like number of Corporate Units or Treasury Units, as the case may be, upon surrender of the Certificates to be exchanged at the Corporate Trust Office. Whenever any Certificates are so surrendered for exchange, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the Holder, and deliver to the Holder the Certificates which the Holder making the exchange is entitled to receive.

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All Certificates issued upon any registration of transfer or exchange of a Certificate shall evidence the ownership of the same number of Corporate Units or Treasury Units, as the case may be, and be entitled to the same benefits and subject to the same obligations under this Agreement as the Corporate

Units or Treasury Units, as the case may be, evidenced by the Certificate surrendered upon such registration of transfer or exchange.

Every Certificate presented or surrendered for registration of transfer or exchange shall if so required by the Purchase Contract Agent be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Contract Agent duly executed by the Holder thereof or its attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of a Certificate, but the Company and the Purchase Contract Agent may require payment from the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Certificates, other than any exchanges not involving any transfer to a person other than the Holder.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder and deliver any Certificate in exchange for any other Certificate presented or surrendered for registration of transfer or for exchange on or after any Early Settlement Date or any date on which the Fundamental Change Early Settlement Right is exercised with respect to such Certificate, any Termination Date or the Business Day immediately preceding the Purchase Contract Settlement Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

(i) if the Purchase Contract Settlement Date or an Early Settlement Date or a Fundamental Change Early Settlement Date with respect to such other Certificate (or portion thereof) has occurred, deliver the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such other Certificate (or portion thereof) on the applicable Settlement Date; and

(ii) if a Termination Event, Early Settlement, or Fundamental Change Early Settlement shall have occurred prior to the Purchase Contract Settlement Date, or a Cash Settlement shall have occurred, transfer the Notes, the Treasury Securities, or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Certificate, in each case subject to the applicable conditions and in accordance with the applicable provisions of Section 3.15 and Article 5.

The Purchase Contract Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to any transfer of any interest in any Certificate (including any transfers between or among Beneficial Owners of interests in any Global Certificate) other than to require delivery of such certificates and other documentation or evidence as are expressly

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required by, and to do so if and when expressly required by the terms of, this Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 3.06. Book-Entry Interests. The Certificates will be initially issued in the form of one or more fully registered Global Certificates, to be delivered to the Depository or its custodian by, or on behalf of, the Company. The Company hereby designates DTC as the initial Depository. The Company has entered into a letter of representations with DTC in the form provided by DTC and the Purchase Contract Agent in each of its capacities is hereby authorized to act in accordance with such letter and Applicable Procedures. Such Global Certificates shall initially be registered on the Security Register in the name of Cede & Co., the nominee of the Depository, and no Beneficial Owner will receive a definitive Certificate representing such Beneficial Owner's interest in such Global Certificate, except as provided in Section 3.09. The Purchase Contract Agent shall enter into an agreement with the Depository if so requested by the Company. Following the issuance of such Global Certificates and unless and until definitive, and fully registered Certificates have been issued to Beneficial Owners pursuant to Section 3.09:

(i) the provisions of this Section 3.06 shall be in full force and effect;

(ii) the Company shall be entitled to deal with the Depository for all purposes of this Agreement (including, without limitation, making Contract Adjustment Payments, providing notices and receiving approvals, votes or consents hereunder) as the Holder of the Units and the sole holder of the Global Certificates and shall have no obligation to the Beneficial Owners; *provided* that a Beneficial Owner may directly enforce against the Company, without any consent, proxy, waiver or involvement of the Depository of any kind, such Beneficial Owner's right to receive a definitive Certificate representing the Units beneficially owned by such Beneficial Owner, as set forth in Section 3.09;

(iii) to the extent that the provisions of this Section 3.06 conflict with any other provisions of this Agreement, the provisions of this Section 3.06 shall control; and

(iv) except as set forth in the proviso of clause (ii) of this Section 3.06, the rights of the Beneficial Owners shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Owners and the Depository or the Depository Participants.

The Depository will make book-entry transfers among Depository Participants and receive and transmit Contract Adjustment Payments to such Depository Participants. Transfers of securities evidenced by Global Certificates shall be made through the facilities of the Depository, and any cancellation of, or increase or decrease in the number of, such securities (including the creation of Treasury Units and the recreation of Corporate Units pursuant to Section 3.13 and Section 3.14 respectively) shall be accomplished by making appropriate annotations on the Schedule of Increases and Decreases set forth in such Global Certificate.

Section 3.07. Notices to Holders. Whenever a notice or other communication to the Holders is required to be given under this Agreement, the Company or the Company's agent shall

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give such notices and communications to the Holders and, with respect to any Units registered in the name of the Depository or the nominee of the Depository, the Company or the Company's agent shall, except as set forth herein, have no obligations to the Beneficial Owners.

Section 3.08. Appointment of Successor Depository. If the Depository elects to discontinue its services as securities depository with respect to the Units, the Company may, in its sole discretion, appoint a successor Depository with respect to the Units, as long as such successor Depository constitutes a "clearing agency" registered under Section 17A of the Exchange Act.

Section 3.09. Definitive Certificates.

If:

- (i) the Depository notifies the Company that it is unwilling or unable to continue its services as securities depository with respect to the Units and no successor Depository has been appointed pursuant to Section 3.08 within 90 days after the Company's receipt of such notice;
- (ii) the Depository ceases to be a "clearing agency" registered under Section 17A of the Exchange Act when the Depository is required to be so registered to act as the Depository and the Company receives notice of such cessation, and no successor Depository has been appointed pursuant to Section 3.08 within 90 days after the Company's receipt of such notice or the Company's becoming aware of such cessation; or
- (iii) any Event of Default with respect to the Notes, or any event that after notice or lapse of time would constitute an Event of Default with respect to the Notes, has occurred and is continuing, or the Company has failed to perform any of its obligations under this Agreement, the Units or the Purchase Contracts, and any Beneficial Owner requests that its beneficial interest be exchanged for a definitive Certificate;

then (x) definitive Certificates shall be prepared by the Company with respect to such Units and delivered to the Purchase Contract Agent, together with an Issuer Order for authentication and (y) upon surrender of the Global Certificates representing the Units by the Depository, accompanied by registration instructions, the Company shall cause definitive Certificates to be delivered to Beneficial Owners in accordance with instructions provided by the Depository; *provided* that in the case of clause (iii) only the beneficial interests of the Beneficial Owners so requesting shall be exchanged for definitive Certificates, and the aggregate number of Units represented by the Global Certificate will be reduced accordingly, in accordance with Applicable Procedures and standing arrangements between the Purchase Contract Agent and the Depository. The Company and the Purchase Contract Agent shall not be liable for any delay in delivery of such instructions and may conclusively rely on and shall be authorized and protected in relying on, such instructions. Each definitive Certificate so delivered shall evidence Units of the same kind and tenor as the Global Certificate (or beneficial interests in a Global Certificate) so surrendered in respect thereof.

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Section 3.10. Mutilated, Destroyed, Lost and Stolen Certificates. If any mutilated Certificate is surrendered to the Purchase Contract Agent or its agent at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the Holder, and deliver to the Holder in exchange therefor, a new Certificate, evidencing the same number of Corporate Units or Treasury Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

If there shall be delivered to the Company and the Purchase Contract Agent (i) evidence to their satisfaction of the destruction, loss or theft of any Certificate, and (ii) such indemnity as may be required by them to hold each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Purchase Contract Agent that such Certificate has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall authenticate, execute on behalf of the Holder, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Certificate, a new Certificate, evidencing the same number of Corporate Units or Treasury Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder, and deliver to the Holder, with respect to such mutilated, destroyed, lost or stolen Certificate a new Certificate on or after the Business Day immediately preceding the Purchase Contract Settlement Date or the Termination Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

- (i) if the Purchase Contract Settlement Date with respect to such lost, stolen, destroyed or mutilated Certificate has occurred, deliver the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such Certificate; and
- (ii) if a Termination Event with respect to such mutilated, destroyed, lost or stolen Certificate shall have occurred prior to the Purchase Contract Settlement Date, transfer the Notes, the Treasury Securities or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Certificate, subject to the applicable conditions and in accordance with the applicable provisions of Section 3.15 and Article 5.

Upon the issuance of any new Certificate under this Section, the Company and the Purchase Contract Agent may require the payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other fees and expenses (including, without limitation, the fees and expenses of the Purchase Contract Agent) connected therewith.

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Every new Certificate issued pursuant to this Section in lieu of any destroyed, lost or stolen Certificate shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Units evidenced thereby, whether or not the destroyed, lost or stolen Certificate (and the Units evidenced thereby) shall be at any time enforceable by anyone, and shall be entitled to all the benefits and be subject to all the obligations of this Agreement equally and proportionately with any and all other Certificates delivered hereunder.

The provisions of this Section are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates.

Section 3.11. Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name such Certificate is registered as the owner of the Units evidenced thereby for purposes of (subject to any applicable record date) any payment or distribution with respect to the Notes underlying the Applicable Ownership Interests in Notes, on the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio) or payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with such Units (subject to the *proviso* contained in clause (ii) of Section 3.06), whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary.

None of the Purchase Contract Agent or the Securities Registrar shall have any responsibility or obligation to any Beneficial Owner in Units represented by a Global Certificate or other Person with respect to the accuracy of the records of the Depository or its nominee or of any agent member, with respect to any ownership interest in the Units or with respect to the delivery to any agent member, Beneficial Owner or other Person (other than the Depository) of any notice or the payment of any amount, under or with respect to such Units. All notices and communications to be given to the Holders and all payments to be made to Holders pursuant to the Units and this Agreement shall be given or made only to or upon the order of the registered holders (which shall be the Depository or its nominee in the case of a Global Certificate). The rights of Beneficial Owners in the Units underlying a Global Certificate shall be exercised only through the Depository subject to its Applicable Procedures. The Purchase Contract Agent and the Securities Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any Beneficial Owners. The Purchase Contract Agent and the Securities Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered holder of any Global Certificate for all purposes of this Agreement relating to such Global Certificate (including the making of any payment or delivery hereunder and the giving of instructions or directions by or to the Beneficial Owner in any Units underlying such Global Certificate) as the sole Holder of such Global Certificate and shall have no obligations to the Beneficial Owners thereof (subject to the *proviso* contained in clause (ii) of Section 3.06). None of the Purchase Contract Agent or the Securities Registrar shall have any responsibility or liability for any acts or omissions of the

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Depository with respect to any Units underlying such Global Certificate, for the records of the Depository, including records in respect of beneficial ownership interests in respect of Units underlying such Global Certificate, for any transactions between the Depository and any agent member or between or among the Depository, any such agent member and/or any Holder or Beneficial Owner in any Units underlying such Global Certificate, or for any transfers of beneficial interests in any Units underlying such Global Certificate.

Notwithstanding the foregoing, with respect to any Global Certificate, nothing contained herein shall prevent the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent, from giving effect to any written certification, proxy or other authorization furnished by the Depository (or its nominee), as a Holder, with respect to such Global Certificate, or impair, as between such Depository and the related Beneficial Owner, the operation of customary practices governing the exercise of rights of the Depository (or its nominee) as Holder of such Global Certificate. None of the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Certificate or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.12. Cancellation. All Certificates surrendered for delivery of shares of Common Stock on or after the Purchase Contract Settlement Date or in connection with an Early Settlement or a Fundamental Change Early Settlement or for delivery of the Notes underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, as the case may be, after the occurrence of a Termination Event or pursuant to a Cash Settlement, an Early Settlement or a Fundamental Change Early Settlement, a Collateral Substitution, or upon the registration of transfer or exchange of a Unit, shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent along with appropriate written instructions regarding the cancellation thereof and shall be promptly cancelled by it. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Certificates previously authenticated, executed and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Certificates so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent. No Certificates shall be authenticated, executed on behalf of the Holder and delivered in lieu of or in exchange for any Certificates cancelled as provided in this Section 3.12, except as expressly permitted by this Agreement. All cancelled Certificates held by the Purchase Contract Agent shall be disposed of in accordance with its customary practices.

If the Company or any Affiliate of the Company shall acquire any Certificate, such acquisition shall not operate as a cancellation of such Certificate unless and until such Certificate is delivered to the Purchase Contract Agent for cancellation.

Section 3.13. Creation of Treasury Units by Substitution of Treasury Securities. (a) Subject to the conditions set forth in this Agreement, a Holder of Corporate Units may, at any time from and after the date of this Agreement, other than during a Blackout Period or after a Successful Remarketing, effect a Collateral Substitution and separate the Notes underlying the Pledged Applicable Ownership Interests in Notes in respect of such Holder's Corporate Units by

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substituting for such Pledged Applicable Ownership Interests in Notes for which Collateral Substitution is being made, Treasury Securities in an aggregate principal amount at maturity equal to the aggregate principal amount of the Notes underlying the Pledged Applicable Ownership Interests in Notes; provided that Holders may make Collateral Substitutions only in integral multiples of 20 Corporate Units. To effect such substitution, the Holder must:

- (1) Transfer to the Collateral Agent, for credit to the Collateral Account, Treasury Securities or security entitlements with respect thereto having an aggregate principal amount at maturity equal to the aggregate principal amount of the Notes underlying the Pledged Applicable Ownership Interests in Notes for which such Collateral Substitution is made; and

(2) Transfer the related Corporate Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit C hereto, whereupon the Purchase Contract Agent shall promptly provide an instruction to such effect to the Collateral Agent, substantially in the form of Exhibit F hereto.

Upon confirmation that the Treasury Securities described in clause (1) above or security entitlements with respect thereto have been credited to the Collateral Account and receipt of the instruction to the Collateral Agent described in clause (2) above, the Collateral Agent shall promptly release such Pledged Applicable Ownership Interests in Notes from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit G hereto, to Transfer the Notes underlying such Pledged Applicable Ownership Interests in Notes to the Purchase Contract Agent for distribution to such Holder, free and clear of the Pledge created hereby.

The substituted Treasury Securities will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

Upon credit to the Collateral Account of Treasury Securities or security entitlements with respect thereto delivered by a Holder of Corporate Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Notes underlying the appropriate Pledged Applicable Ownership Interests in Notes to the Purchase Contract Agent for distribution to such Holder, free and clear of the Pledge created hereby.

Upon receipt of the Notes underlying such Pledged Applicable Ownership Interests in Notes, the Purchase Contract Agent shall promptly:

- (i) cancel the related Corporate Units;
- (ii) Transfer the Notes to the Holder; and
- (iii) deliver Treasury Units in book-entry form, or if applicable, authenticate, execute on behalf of such Holder and deliver Treasury Units in the form of a Treasury Units Certificate executed by the Company in accordance with Section 3.03 evidencing

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the same number of Purchase Contracts as were evidenced by the cancelled Corporate Units.

Holders who elect to separate the Notes by substituting Treasury Securities for Applicable Ownership Interest in Notes shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, fees and expenses payable to the Collateral Agent) attributable to such Collateral Substitution, and neither the Company nor the Purchase Contract Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) In the event a Holder making a Collateral Substitution pursuant to this Section 3.13 fails to effect a book-entry transfer of the Corporate Units or fails to deliver Corporate Units Certificates to the Purchase Contract Agent after depositing Treasury Securities with the Securities Intermediary, any distributions on the Notes underlying the Applicable Ownership Interests in Notes constituting a part of such Corporate Units, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until such Corporate Units are so transferred or the Corporate Units Certificate is so delivered, as the case may be, or such Holder provides evidence satisfactory to the Company and the Purchase Contract Agent that such Corporate Units Certificate has been destroyed, lost or stolen, together with any indemnity that may be required by the Purchase Contract Agent and the Company.

(c) Except as provided for in this Section 3.13, or in connection with a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Corporate Unit remains in effect, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder in respect of the Applicable Ownership Interests in Notes or Applicable Ownership Interests in the Treasury Portfolio, as the case may be, and the Purchase Contract comprising such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit.

Section 3.14. Recreation of Corporate Units. (a) Subject to the conditions set forth in this Agreement, a Holder of Treasury Units may effect a Collateral Substitution and recreate Corporate Units at any time from and after the date of this Agreement, other than during a Blackout Period or after a Successful Remarketing; provided that Holders of Treasury Units may only recreate Corporate Units in integral multiples of 20 Treasury Units. To recreate Corporate Units, the Holder must:

- (1) Transfer to the Collateral Agent for credit to the Collateral Account Notes having an aggregate principal amount equal to the aggregate principal amount at maturity of the Pledged Treasury Securities to be released; and
- (2) Transfer the related Treasury Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit C hereto, whereupon the Purchase Contract Agent shall promptly provide an instruction to such effect to the Collateral Agent, substantially in the form of Exhibit H hereto.

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Upon confirmation that the Notes described in clause (1) above have been credited to the Collateral Account and receipt of the instruction from the Purchase Contract Agent described in clause (2) above, the Collateral Agent shall promptly release such Pledged Treasury Securities from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit I hereto, to Transfer such Pledged Treasury Securities to the Purchase Contract Agent for distribution to such Holder, free and clear of the Pledge created hereby.

The substituted Notes will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

Upon credit to the Collateral Account of Notes delivered by a Holder of Treasury Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Pledged Treasury Securities to the Purchase Contract Agent for distribution to such Holder,

free and clear of the Pledge created hereby.

Upon receipt of such Treasury Securities, the Purchase Contract Agent shall promptly:

- (i) cancel the related Treasury Units;
- (ii) transfer the Treasury Securities to the Holder; and
- (iii) deliver Corporate Units in book-entry form or, if applicable, authenticate, execute on behalf of such Holder and deliver Corporate Units in the form of a Corporate Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Treasury Units.

Holders who elect to recreate Corporate Units shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, fees and expenses payable to the Collateral Agent), attributable to such Collateral Substitution and neither the Company nor the Purchase Contract Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) Except as provided in this Section 3.14 or in connection with a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Treasury Unit remains in effect, such Treasury Unit shall not be separable into its constituent parts and the rights and obligations of the Holder of such Treasury Unit in respect of the interest in the Treasury Security and Purchase Contract composing such Treasury Unit may be acquired, and may be transferred and exchanged, only as a Treasury Unit.

Section 3.15. Transfer of Collateral Upon Occurrence of Termination Event. (a) Upon receipt by the Collateral Agent of written notice pursuant to Section 5.07 from the Company or the Purchase Contract Agent that a Termination Event has occurred, the Collateral Agent shall promptly release all Collateral from the Pledge and shall promptly instruct the Securities Intermediary to Transfer:

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- (i) any Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto or Applicable Ownership Interests in the Treasury Portfolio;
- (ii) any Pledged Treasury Securities;
- (iii) any payments made by Holders (or the Permitted Investments, if any, of such payments) pursuant to Section 5.02(b)(ix) or 5.03; and
- (iv) any Proceeds and all other payments the Collateral Agent receives in respect of the foregoing,

to the Purchase Contract Agent for the benefit of the Holders for distribution to such Holders, in accordance with their respective interests, free and clear of the Pledge created hereby; provided, however, if any Holder or Beneficial Owner shall be entitled to receive Notes in an aggregate principal amount of less than \$1,000, or greater than \$1,000 but not in an integral multiple of \$1,000, the Purchase Contract Agent shall request, on behalf of such Holder or Beneficial Owner, that the Company issue, and promptly following such request the Company shall issue, Notes in denominations of \$50, or integral multiples thereof, in exchange for Notes in denominations of \$1,000 or integral multiples thereof; and provided further, if any Holder shall be entitled to receive, with respect to its Applicable Ownership Interests in the Treasury Portfolio or its Pledged Treasury Securities, any securities having a principal amount at maturity of less than \$1,000, the Purchase Contract Agent shall dispose of such Applicable Ownership Interests in the Treasury Portfolio or Pledged Treasury Securities for cash and deliver to such Holder cash in lieu of delivering the Applicable Ownership Interests in the Treasury Portfolio or Pledged Treasury Securities, as the case may be.

(b) Notwithstanding anything to the contrary in Section 3.15(a), if such Termination Event shall result from the Company becoming a debtor under the Bankruptcy Code, and if the Collateral Agent shall for any reason fail promptly to effectuate the release and Transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and payments by Holders (or the Permitted Investments purchased with such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, as the case may be, as provided by this Section 3.15, the Company shall use its best efforts to obtain an opinion of a nationally recognized law firm to the effect that, notwithstanding the Company's being the debtor in such a bankruptcy case, the Collateral Agent will not be prohibited from releasing or Transferring the Collateral as provided in this Section 3.15, and shall deliver or cause to be delivered such opinion to the Collateral Agent within ten days after the occurrence of such Termination Event, and if (A) the Company shall be unable to obtain such opinion within 10 days after the occurrence of such Termination Event or (B) the Collateral Agent shall continue, after delivery of such opinion, to refuse to effectuate the release and Transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments, if any, of such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the

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foregoing, as the case may be, as provided in this Section 3.15, then the Purchase Contract Agent shall within 15 days after the occurrence of such Termination Event commence an action or proceeding in the court having jurisdiction of the Company's case under the Bankruptcy Code seeking an order requiring the Collateral Agent to effectuate the release and transfer of all Notes underlying Pledged Applicable Ownership Interests in Notes, Applicable Ownership Interests in the Treasury Portfolio, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments, if any, purchased with such payments) pursuant to Section 5.02(b)(ix) or 5.03 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, or as the case may be, as provided by this Section 3.15.

(c) Upon the occurrence of a Termination Event and the Transfer to the Purchase Contract Agent of the Notes underlying Pledged Applicable Ownership Interests in Notes, the appropriate Applicable Ownership Interests in the Treasury Portfolio and/or the Pledged Treasury Securities, as the case may be, pursuant to this Section 3.15, the Purchase Contract Agent shall request transfer instructions with respect to such Notes, Applicable Ownership

Interests in the Treasury Portfolio and/or Pledged Treasury Securities, as the case may be, from each Holder by written request, substantially in the form of Exhibit D hereto, mailed to such Holder at its address as it appears in the Security Register.

(d) Upon book-entry transfer of the Corporate Units or the Treasury Units or delivery of a Corporate Units Certificate or Treasury Units Certificate to the Purchase Contract Agent with such transfer instructions in connection with a Termination Event, the Purchase Contract Agent shall transfer the Notes underlying Pledged Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or Pledged Treasury Securities, as the case may be, underlying such Corporate Units or Treasury Units, as the case may be, to such Holder by book-entry transfer, or other appropriate procedures, in accordance with such instructions and, in the case of the Notes underlying Pledged Applicable Ownership Interests in Notes, in accordance with the terms of the Indenture. In the event a Holder of Corporate Units or Treasury Units fails to deliver transfer instructions or effect such transfer or delivery, the Notes underlying Pledged Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or Pledged Treasury Securities, as the case may be, underlying such Corporate Units or Treasury Units, as the case may be, and any distributions thereon, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until the earlier to occur of:

(i) the transfer of such Corporate Units or Treasury Units or surrender of the Corporate Units Certificate or Treasury Units Certificate or the receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Corporate Units Certificate or Treasury Units Certificate has been destroyed, lost or stolen, together with any indemnity that may be required by the Purchase Contract Agent and the Company; and

(ii) the expiration of the time period specified by the applicable law governing abandoned property in the state in which the Purchase Contract Agent holds such property.

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Section 3.16. No Consent to Assumption. Each Holder of a Unit, by acceptance thereof, shall be deemed to have expressly withheld any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise, of the Purchase Contract by the Company or its trustee, receiver, liquidator or a person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation.

Section 3.17. Substitutions. Whenever a Holder has the right to substitute Treasury Securities or Notes underlying Applicable Ownership Interests in Notes, as the case may be, or security entitlements for any of them, for financial assets held in the Collateral Account, such substitution shall not constitute a novation of the security interest created hereby.

ARTICLE 4

THE NOTES

Section 4.01. Interest Payments; Rights to Interest Payments Preserved. (a) The Collateral Agent shall transfer all income and distributions (other than those described in Section 4.02(a)) received by it on account of the Notes underlying Pledged Applicable Ownership Interests in Notes (if the Notes underlying Pledged Applicable Ownership Interests in Notes are registered in the name of the Collateral Agent), the Pledged Applicable Ownership Interests in the Treasury Portfolio or Permitted Investments from time to time held in the Collateral Account to the Purchase Contract Agent, according to transfer instructions to be provided by the Purchase Contract Agent to the Collateral Agent in writing, for distribution to the applicable Holders as provided in this Agreement and the Purchase Contracts, free and clear of the Pledge created hereby.

(b) Any payment on any Note underlying Applicable Ownership Interests in Notes or any distribution on any Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interest in the Treasury Portfolio) (in each case other than those described in Section 4.02(a)), as the case may be, which is paid in respect of any Payment Date shall, subject to receipt thereof by the Purchase Contract Agent from the Company or from the Collateral Agent as provided in Section 4.01(a), be paid on such Payment Date to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) of which such Applicable Ownership Interest in Notes or Applicable Ownership Interests in the Treasury Portfolio, as the case may be, forms a part is registered at the close of business on the Record Date for such Payment Date. If the book-entry system for the Units has been terminated, any such payment will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or, if such Person so requests and designates an account in writing to the Purchase Contract Agent at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

(c) Each Corporate Units Certificate evidencing Applicable Ownership Interests in Notes or Applicable Ownership Interests in the Treasury Portfolio delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of any other Corporate

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Units Certificate shall carry the right to accrued and unpaid interest or distributions, and to accrued interest or distributions, which were carried by Applicable Ownership Interests in Notes or Applicable Ownership Interests in the Treasury Portfolio underlying such other Corporate Units Certificate.

(d) In the case of any Corporate Unit with respect to which (1) Cash Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.02(b)(ix) or 5.03(a), (2) Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.08, (3) Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.05(b)(ii) or (4) a Collateral Substitution is properly effected pursuant to Section 3.13, in each case, on a date that is after any Record Date and prior to or on the next succeeding Payment Date, interest in respect of the Notes underlying Applicable Ownership Interests in Notes or distributions on Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying such Corporate Unit otherwise payable on such Payment Date shall be payable on such Payment Date notwithstanding such Cash Settlement, Early Settlement, Fundamental Change Early Settlement or Collateral Substitution, and such payment or distributions shall, subject to receipt thereof by the Purchase Contract Agent, be payable to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) was registered at the close of business on the Record Date.

(e) Except as otherwise expressly provided in Section 4.01(d), in the case of any Corporate Unit with respect to which Cash Settlement, Early Settlement or Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected, or with respect to which a Collateral Substitution is properly effected, payments attributable to the Notes underlying Applicable Ownership Interests in Notes or distributions on Applicable Ownership Interests in the Treasury Portfolio, as the case may be, that would otherwise be payable or made after the applicable Settlement Date or the date of the Collateral Substitution, as the case may be, shall not be payable hereunder to the Holder of such Corporate Units; provided, however, that to the extent that such Holder continues to hold Separate Notes or Applicable Ownership Interests in the Treasury Portfolio that formerly comprised a part of such Holder's Corporate Units, such Holder shall be entitled to receive interest on such Separate Notes or distributions on such Applicable Ownership Interests in the Treasury Portfolio, as applicable.

Section 4.02. Payments Prior to or on Purchase Contract Settlement Date. (a) Subject to the provisions of Section 5.03(a), Section 5.05(b) (ii) and Section 5.08, and except as provided in Section 4.02(b) below, if no Termination Event shall have occurred, all payments received by the Securities Intermediary in respect of (1) the Put Price for, or the proceeds received in a Successful Final Remarketing attributable to, Notes underlying Pledged Applicable Ownership Interests in Notes, (2) the Pledged Applicable Ownership Interests in the Treasury Portfolio, and (3) the Pledged Treasury Securities, shall be credited to the Collateral Account to be invested as directed in writing by the Company (if applicable) in Permitted Investments until the Purchase Contract Settlement Date, and such payments (or the proceeds of such Permitted Investments, if applicable) shall be transferred to the Company on the Purchase Contract Settlement Date as provided in Sections 5.02 and 5.03 hereof to the extent necessary to satisfy the Holder's obligation pursuant to Section 5.01 to pay the Purchase Price to settle the Purchase

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Contracts. Any balance thereafter remaining in the Collateral Account shall be released from the Pledge and transferred to the Purchase Contract Agent for distribution to the applicable Holders for distribution to such Holders in accordance with their respective interests pursuant to Section 11.02, free and clear of the Pledge created hereby. If the Company fails to deliver investment instructions by 10:30 a.m. (New York City time) on the day such payments are received by the Securities Intermediary, the Collateral Agent may instruct the Securities Intermediary to invest such payments in the Permitted Investments (if any), which have been designated by the Company in writing from time to time in a standing instruction to the Securities Intermediary which shall be effective until revoked or superseded. If no such standing instruction exists, such funds shall remain uninvested. In no event shall the Collateral Agent or the Securities Intermediary be liable for the selection of Permitted Investments or for investment losses incurred thereon. The Collateral Agent and the Securities Intermediary shall have no liability in respect of losses incurred as a result of the failure of the Company to provide timely written investment direction.

(b) All payments received by the Securities Intermediary in respect of (1) the Notes, (2) the Applicable Ownership Interests in the Treasury Portfolio and (3) the Treasury Securities or security entitlements with respect thereto, that, in each case, have been released from the Pledge hereunder shall be transferred to the Purchase Contract Agent for the benefit of the applicable Holders for distribution to such Holders in accordance with their respective interests.

Section 4.03. Notice and Voting. (a) Subject to Section 4.03(b) hereof, the Purchase Contract Agent shall exercise, or refrain from exercising, any and all voting and other consensual rights pertaining to the Notes underlying Pledged Applicable Ownership Interests in Notes or any part thereof for any purpose not inconsistent with the terms of this Agreement. Upon receipt of any notices and other communications in respect of any Notes underlying Pledged Applicable Ownership Interests in Notes, including either notice of any meeting at which holders of the Notes are entitled to vote or the solicitation of consents, waivers or proxies of holders of the Notes, the Collateral Agent shall use commercially reasonable efforts to send promptly to the Purchase Contract Agent such notice or communication, and as soon as reasonably practicable after receipt of a written request therefor from the Purchase Contract Agent, to execute and deliver to the Purchase Contract Agent such proxies and other instruments in respect of such Notes underlying Pledged Applicable Ownership Interests in Notes as are prepared by the Company and delivered to the Purchase Contract Agent with respect to the Notes underlying Pledged Applicable Ownership Interests in Notes.

(b) Upon receipt of notice of any meeting at which holders of Notes are entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Notes, the Purchase Contract Agent shall, as soon as practicable thereafter, mail, first class, postage prepaid, to the Holders of Corporate Units a notice:

(i) containing such information as is contained in the notice or solicitation;

(ii) stating that each Holder on the record date set by the Purchase Contract Agent therefor (which, to the extent possible, shall be the same date as the record date set by the Company for determining the holders of Notes entitled to vote) shall be entitled to

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instruct the Purchase Contract Agent as to the exercise of the voting rights pertaining to such Notes underlying the Applicable Ownership Interests in Notes that are a component of their Corporate Units; and

(iii) stating the manner in which such instructions may be given.

Upon the written request of the Holders of Corporate Units on such record date received by the Purchase Contract Agent at least six days prior to such meeting, the Purchase Contract Agent shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum aggregate principal amount of Notes (rounded down to the nearest integral multiple of \$1,000) as to which any particular voting instructions are received. In the absence of specific instructions from the Holder of Corporate Units, the Purchase Contract Agent shall abstain from voting the Notes underlying Applicable Ownership Interests in Notes that are a component of such Corporate Units. The Company hereby agrees, if applicable, to solicit Holders of Corporate Units to timely instruct the Purchase Contract Agent as to the exercise of such voting rights in order to enable the Purchase Contract Agent to vote such Notes.

(c) The Holders of Corporate Units and the Holders of Treasury Units, in their capacity as such Holders, shall have no voting or other rights in respect of the Common Stock.

Section 4.04. Payments and Deliveries to Purchase Contract Agent. The Securities Intermediary shall use commercially reasonable efforts to deliver any payments required to be made by it to the Purchase Contract Agent hereunder to the account designated by the Purchase Contract Agent for such purpose not later than 10:00 a.m. (New York City time) on the Business Day such payment is received by the Securities Intermediary; provided, however, that if such payment is received on a day that is not a Business Day or after 10:00 a.m. (New York City time) on a Business Day, then the Securities Intermediary shall use commercially reasonable efforts to deliver such payment to the Purchase Contract Agent no later than 10:00 a.m. (New York City time) on the next succeeding Business Day. In connection with the Transfer of any Treasury Securities to the Purchase Contract Agent hereunder, the Collateral Agent shall cause such Transfer to be made at the Corporate Trust Office.

Section 4.05. Payments Held in Trust. If the Purchase Contract Agent or any Holder shall receive any payments on account of the repayment of principal with respect to financial assets credited to the Collateral Account (other than, for the avoidance of doubt, interest on the Notes or distributions on the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition thereof)) and not released therefrom in accordance with this Agreement, the Purchase Contract Agent or such Holder shall hold such payments as trustee of an express trust for the benefit of the Company and, upon receipt of an Officers' Certificate of the Company so directing, promptly deliver such payments to the Securities Intermediary for credit to the Collateral Account or, if the Obligations have become due and payable, to the Company for application to the Obligations of the applicable Holder or Holders, and the Purchase Contract Agent and Holders shall acquire no right, title or interest in any such payments of principal amounts so received.

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ARTICLE 5

THE PURCHASE CONTRACTS

Section 5.01. Purchase of Shares of Common Stock. (a) Each Purchase Contract shall obligate the Holder of the related Unit to purchase, and the Company to issue and deliver, on the Purchase Contract Settlement Date at a price equal to the Stated Amount (the "Purchase Price"), a number of shares of Common Stock equal to the Settlement Rate, together with cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 5.09, unless an Early Settlement Date, a Fundamental Change Early Settlement or a Termination Event with respect to the Units of which such Purchase Contract is a part shall have occurred, subject to Section 5.05(b)(ii).

The "Settlement Rate" is determined as follows:

(i) If the Applicable Market Value is equal to or greater than the Threshold Appreciation Price, the Settlement Rate will be 1.0572 shares of Common Stock (such Settlement Rate, subject to adjustment as provided in Section 5.05(a), being referred to as the "Minimum Settlement Rate");

(ii) if the Applicable Market Value is less than the Threshold Appreciation Price but greater than \$40.25 (subject to adjustment, as set forth in Section 5.05(a)(vii)(1), the "Reference Price"), the Settlement Rate will be a number of shares of Common Stock equal to the Stated Amount, divided by the Applicable Market Value, rounded to the nearest 1/10,000th of a share; and

(iii) if the Applicable Market Value is less than or equal to the Reference Price, the Settlement Rate will be 1.2422 shares of Common Stock (such Settlement Rate, subject to adjustment as provided in Section 5.05(a), being referred to as the "Maximum Settlement Rate").

The Maximum Settlement Rate, Minimum Settlement Rate and the Applicable Market Value (as defined below) are subject to adjustment as provided in Section 5.05 (and, in the case of each Fixed Settlement Rate, shall be rounded upward or downward to the nearest 1/10,000th of a share).

The "Applicable Market Value" means, as determined by the Company, the average VWAP of the Common Stock for the Trading Days during the Market Value Averaging Period, subject to Section 5.05(b)(i); provided that if 20 Trading Days for the Common Stock have not occurred during the Market Value Averaging Period, all remaining Trading Days shall be deemed to occur on the third scheduled Trading Day immediately prior to the Purchase Contract Settlement Date and the VWAP for each of the remaining Trading Days will be the VWAP on such third scheduled Trading Day or, if such day is not a Trading Day, the Closing Price of the Common Stock as of such day.

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The "VWAP" means, in respect of Common Stock, for the relevant Trading Day, the per share volume weighted average price on the principal exchange or quotation system on which the Common Stock is listed or admitted for trading as displayed under the heading Bloomberg VWAP on Bloomberg page "BKH <EQUITY> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading on the relevant Trading Day until the scheduled close of trading on the relevant Trading Day (or if such volume weighted-average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company).

The "Market Value Averaging Period" means the 20 consecutive scheduled Trading Day period ending on the third scheduled Trading Day immediately preceding the Purchase Contract Settlement Date.

The "Closing Price" per share of Common Stock means, on any date of determination, the closing sale price or, if no closing sale price is reported, the last reported sale price per share of Common Stock on the principal U.S. securities exchange on which the Common Stock is listed, or if the Common Stock is not so listed on a U.S. securities exchange, the average of the last quoted bid and ask prices for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization, or, if those bid and ask prices are not available, the market value of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

A "Trading Day" means, for purposes of determining a VWAP or Closing Price, a day (i) on which the principal exchange or quotation system on which the Common Stock is listed or admitted for trading is scheduled to be open for business and (ii) on which there has not occurred or does not exist a Market Disruption Event.

A “Market Disruption Event” means any of the following events:

- (1) any suspension of, or limitation imposed on, trading by the principal exchange or quotation system on which the Common Stock is listed or admitted for trading during the one-hour period prior to the close of trading for the regular trading session on such exchange or quotation system (or for purposes of determining VWAP any period or periods prior to 1:00 p.m. New York City time aggregating one half hour or longer) and whether by reason of movements in price exceeding limits permitted by the relevant exchange or quotation system or otherwise relating to the Common Stock or in futures or options contracts relating to the Common Stock on the relevant exchange or quotation system; or
- (2) any event (other than a failure to open or, except for purpose of determining VWAP, a closure as described below) that disrupts or impairs the ability of market participants during the one-hour period prior to the close of trading for the regular trading session on the principal exchange or quotation system on which the Common Stock is listed or admitted for trading (or for purposes of determining VWAP any period or periods prior to 1:00 p.m. New York City time aggregating one half hour or longer) in

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general to effect transactions in, or obtain market values for, the Common Stock on the relevant exchange or quotation system or futures or options contracts relating to the Common Stock on any relevant exchange or quotation system; or

(3) the failure to open of the principal exchange or quotation system on which futures or options contracts relating to the Common Stock are traded or, except for purposes of determining VWAP, the closure of such exchange or quotation system prior to its respective scheduled closing time for the regular trading session on such day (without regard to after hours or other trading outside the regular trading session hours) unless such earlier closing time is announced by such exchange or quotation system at least one hour prior to the earlier of the actual closing time for the regular trading session on such day and the submission deadline for orders to be entered into such exchange or quotation system for execution at the actual closing time on such day.

(b) Each Holder of a Corporate Unit or a Treasury Unit, by its acceptance of such Unit shall be deemed to have:

(i) irrevocably appointed the Purchase Contract Agent as its attorney-in-fact to enter into and perform the related Purchase Contract and this Agreement on its behalf and in the name of and on behalf of such Holder (including, without limitation, the execution of Certificates on behalf of such Holder);

(ii) agreed to be bound by the terms and provisions of such Unit, including, but not limited to, the terms and provisions of the Purchase Contract and this Agreement, for so long as such Holder remains a Holder of such Unit;

(iii) consented to, and agreed to be bound by, the Pledge of such Holder’s right, title and interest in and to its applicable portion of the Collateral, including the Pledged Applicable Ownership Interests in Notes, the Pledged Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities, as the case may be, pursuant to this Agreement, and the delivery of such Collateral by the Purchase Contract Agent to the Collateral Agent; and

(iv) agreed that to the extent and in the manner provided herein, but subject to the terms hereof, on the Purchase Contract Settlement Date, Proceeds of the Pledged Applicable Ownership Interests in Notes, the Pledged Applicable Ownership Interests in the Treasury Portfolio or the Pledged Treasury Securities, as applicable, equal to the Purchase Price shall be paid by the Collateral Agent to the Company in satisfaction of such Holder’s obligations under the Purchase Contract included in such Unit.

(c) [Reserved]

(d) Upon registration of transfer of a Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee) by the terms of this Agreement and the Purchase Contracts underlying such Certificate and the transferor shall be released from the obligations under this Agreement and the Purchase Contracts underlying the

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Certificate so transferred. The Company covenants and agrees, and each Holder of a Certificate, by its acceptance thereof, likewise shall be deemed to have covenanted and agreed, to be bound by the provisions of this paragraph.

(e) Promptly after the calculation of the Settlement Rate and the Applicable Market Value, the Company shall give the Purchase Contract Agent notice thereof. All calculations and determinations of the Settlement Rate and the Applicable Market Value and any adjustments to the Reference Price or the Threshold Appreciation Price shall be made by the Company or its agent based on their good faith calculations, and the Purchase Contract Agent shall have no responsibility with respect thereto.

(f) If a Market Disruption Event occurs on any scheduled Trading Day during the Market Value Averaging Period, the Company shall give the Holders and the Purchase Contract Agent notice thereof on the calendar day on which such event occurs.

Section 5.02. Remarketing.

(a) Optional Remarketing. (i) Unless a Termination Event has occurred, the Company may elect, at its option, to engage the Remarketing Agent(s), pursuant to the terms of the Remarketing Agreement, to remarket the aggregate Notes underlying the aggregate Applicable Ownership Interests in Notes that are components of Corporate Units, along with any Separate Notes, the holders of which have elected to participate in such remarketing pursuant to the Indenture and Section 5.02(d), over a period of one or more days selected by the Company that begins on or after the second Business Day immediately preceding the Interest Payment Date immediately prior to the Purchase Contract Settlement Date and ends any time on or before the eighth calendar day immediately preceding the first day of the Final Remarketing Period (such period, the “Optional Remarketing Period”); provided that, notwithstanding anything to the contrary herein, the Company may only elect to conduct an Optional Remarketing if it is not then deferring interest on the Notes.

(ii) The Company shall request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Notes of the Company's election to conduct an Optional Remarketing no later than five Business Days prior to the first day of the Optional Remarketing Period, and the Company shall provide a copy of such request to the Purchase Contract Agent, Collateral Agent and Custodial Agent.

(iii) If the Company elects to conduct an Optional Remarketing on an Optional Remarketing Date, by 4:00 p.m. (New York City time) on the Business Day immediately preceding the first day of the related Optional Remarketing Period, the Purchase Contract Agent shall notify the Remarketing Agent(s) in writing of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are a part of the Corporate Units to be remarketed, and the Custodial Agent shall notify in writing the Remarketing Agent(s) of the aggregate principal amount of Separate Notes (if any) to be remarketed pursuant to Section 5.02(d). Pursuant to the Remarketing Agreement, upon receipt of such notices from the Purchase Contract Agent and the Custodial Agent,

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the Remarketing Agent(s) will use its commercially reasonable efforts to remarket such Notes at the applicable Remarketing Price.

(iv) [Reserved]

(v) [Reserved]

(vi) If the Remarketing Agent(s) is able to remarket the Notes being remarketed for at least the applicable Remarketing Price in any Optional Remarketing in accordance with the Remarketing Agreement (a "Successful Optional Remarketing"), the Collateral Agent shall cause the Securities Intermediary to Transfer to the Remarketing Agent(s) the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes upon confirmation of deposit to the Collateral Account of proceeds of such Successful Optional Remarketing attributable to such Notes underlying the Pledged Applicable Ownership Interests in Notes, and the Custodial Agent shall Transfer the remarketed Separate Notes to the Remarketing Agent(s) upon confirmation of deposit to the account established by the Custodial Agent for the purpose of receiving such proceeds (the "Separate Notes Account") of receipt of proceeds of such Successful Optional Remarketing attributable to such Separate Notes. Settlement shall occur on the Remarketing Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interest in Notes, the Collateral Agent shall (A) unless the Treasury Portfolio shall consist of Cash, (x) instruct the Securities Intermediary to apply an amount equal to the Treasury Portfolio Purchase Price to purchase the Treasury Portfolio from the dealer identified by the Quotation Agent pursuant to the definition of "Treasury Portfolio Purchase Price" (the amount and issue of the U.S. Treasury securities (or principal or interest strips thereof) constituting the Treasury Portfolio to be determined by the Remarketing Agent(s), who shall provide such information to the Collateral Agent and the Quotation Agent, who will then determine, and notify the Collateral Agent of, the Treasury Portfolio Purchase Price) and (y) credit to the Collateral Account the Applicable Ownership Interests in the Treasury Portfolio, (B) if the Treasury Portfolio shall consist of Cash, credit to the Collateral Account Cash in an amount equal to the Treasury Portfolio Purchase Price and (C) promptly remit any remaining portion of such proceeds to the Purchase Contract Agent for payment to the Holders of Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Remarketing Settlement Date to such Holders *pro rata* in accordance with their interests. With respect to any Separate Notes remarketed, upon receipt of proceeds of such Successful Optional Remarketing attributable to the remarketed Separate Notes, the Custodial Agent shall remit the proceeds of such Separate Notes sold in the Successful Optional Remarketing received from the Remarketing Agent(s) *pro rata* to the holders of such Separate Notes on the Remarketing Settlement Date in accordance with the instructions provided in the form of Exhibit K.

(vii) If there is a Successful Optional Remarketing, the Company shall cause a notice of the Successful Optional Remarketing to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the Optional

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Remarketing Date. This notice shall include the Reset Rate. This notice shall be validly published by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(viii) Following the occurrence of a Successful Optional Remarketing, the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of such term) will be substituted as Collateral for the Pledged Applicable Ownership Interests in Notes and will be held by the Collateral Agent in accordance with the terms hereof to secure the Obligations of each Holder of Corporate Units, and the Holders of Corporate Units and the Collateral Agent shall have such security interests, rights and obligations with respect to the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) as the Holder of Corporate Units and the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Notes and the underlying Notes, subject to the Pledge thereof. Unless the context otherwise requires, any reference in this Agreement or the Certificates to the Pledged Applicable Ownership Interests in Notes shall thereupon be deemed to be a reference to such Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term). The Company may cause to be made in any Corporate Units Certificates thereafter to be issued such change in phraseology and form (but not in substance) as may be appropriate to reflect the substitution of the Applicable Ownership Interests in the Treasury Portfolio (as defined in clause (i) of such term) for the Pledged Applicable Ownership Interests in Notes as Collateral.

(ix) Following a Successful Optional Remarketing, the Remarketing Agent(s) shall remit (1) the proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interest in Notes to the Collateral Agent and (2) the proceeds attributable to the remarketed Separate Notes to the Custodial Agent for the benefit of the Holders of Separate Notes that had their Notes remarketed.

(x) If, in spite of its commercially reasonable efforts, the Remarketing Agent(s) cannot remarket the Notes as set forth above during the Optional Remarketing Period at a price not less than the applicable Remarketing Price or a condition precedent set forth in the Remarketing Agreement is not fulfilled, the Optional Remarketing will be deemed to have failed (a "Failed Optional Remarketing"). Promptly after a Failed Optional Remarketing and receipt of notice thereof from the Company, the Custodial Agent will return Separate Notes that were to be subject to such Optional Remarketing to the appropriate holders pursuant to the instructions provided in the form of Exhibit K.

(xi) If the Company elects to remarket the Notes during the Optional Remarketing Period and a Successful Optional Remarketing has not occurred on or prior to the eighth calendar day prior to the first day of the Final Remarketing Period, the Company shall cause notice of the Failed Optional Remarketing to be provided to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the last date of the Optional Remarketing Period. Any such notice shall be

validly published by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(xii) The Company will pay the Remarketing Fee in connection with any Successful Optional Remarketing. Holders whose Notes are part of a Successful Optional Remarketing will not be responsible for payment of the Remarketing Fee.

(xiii) At any time and from time to time during any Optional Remarketing Period, prior to the announcement of a Successful Optional Remarketing, the Company has the right to postpone such Optional Remarketing in the Company's sole and absolute discretion.

(b) Final Remarketing. (i) Unless a Termination Event or a Successful Optional Remarketing has previously occurred, in order to dispose of the Notes underlying Pledged Applicable Ownership Interests in Notes of any Holders of Corporate Units who have not notified the Purchase Contract Agent of their intention to effect a Cash Settlement as provided in Section 5.03(a)(i), or who have so notified the Purchase Contract Agent but failed to make such payment as required by Section 5.03(a)(ii), the Company shall engage the Remarketing Agent(s), pursuant to the terms of the Remarketing Agreement, to remarket such Notes, along with any Separate Notes, the holders of which have elected to participate in a Final Remarketing pursuant to Section 5.02(d), over a period of one or more days selected by the Company that fall during the Final Remarketing Period.

(ii) The Company shall request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Notes of the Final Remarketing no later than seven calendar days prior to the first day of the Final Remarketing Period, and the Company shall provide a copy of such request to the Purchase Contract Agent, Collateral Agent and Custodial Agent. In such notice, the Company shall set forth the dates of the Final Remarketing Period, the applicable procedures for holders of Separate Notes to participate in the Final Remarketing, the applicable procedures for Holders of Corporate Units to create Treasury Units, the applicable procedures for Holders of Treasury Units to recreate Corporate Units, the applicable procedures for Holders of Corporate Units to effect Early Settlement with respect to their Purchase Contracts and any other applicable procedures, including the procedures that must be followed by a holder of a Separate Note in the case of a Failed Remarketing if such holder of Separate Notes wishes to exercise its Put Right.

(iii) The Purchase Contract Agent, based on the notices specified pursuant to Section 5.03(a)(iv), shall notify the Remarketing Agent(s) in writing, promptly after 4:00 p.m. (New York City time) on the Business Day immediately preceding the first day of the Final Remarketing Period, of the aggregate principal amount of Notes underlying the Pledged Applicable Ownership Interests in Notes that are to be remarketed, and the Custodial Agent shall notify in writing the Remarketing Agent(s) of the aggregate principal amount of Separate Notes (if any) to be remarketed pursuant to Section 5.02(d). Upon receipt of notice from the Purchase Contract Agent and the Custodial Agent, in each case, as set forth in this Section 5.02(b)(iii), the Remarketing Agent(s) shall, on each

Remarketing Date in the Final Remarketing Period, use commercially reasonable efforts to remarket, as provided in the Remarketing Agreement, such Notes and such Separate Notes at the applicable Remarketing Price.

(iv) [Reserved]

(v) If the Remarketing Agent(s) is able to remarket such Notes and the Separate Notes (if any) for at least the applicable Remarketing Price in any Final Remarketing in accordance with the Remarketing Agreement (a "Successful Final Remarketing"), the Collateral Agent shall cause the Securities Intermediary to Transfer to the Remarketing Agent(s) the remarketed Notes underlying the Pledged Applicable Ownership Interests in Notes upon confirmation of deposit to the Collateral Account of proceeds of such Successful Final Remarketing attributable to such Notes, and the Custodial Agent shall Transfer the remarketed Separate Notes to the Remarketing Agent(s) upon confirmation of deposit to the Separate Notes Account of proceeds of such Successful Final Remarketing attributable to such Separate Notes. Settlement shall occur on the Remarketing Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership in Notes, the Collateral Agent shall, on the Purchase Contract Settlement Date instruct the Securities Intermediary to (1) remit to the Company a portion of such proceeds equal to the aggregate principal amount of remarketed Notes underlying Pledged Applicable Ownership Interests in Notes to satisfy in full the Obligations of Holders of the related Corporate Units to pay the Purchase Price for the shares of Common Stock under the related Purchase Contracts and (2) promptly remit the balance of such proceeds to the Purchase Contract Agent for payment to the Holders of such Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Purchase Contract Settlement Date to such Holders *pro rata* in accordance with their interests. In addition, on the Purchase Contract Settlement Date, the Securities Intermediary shall deliver to the Collateral Agent for distribution to the Holders of Corporate Units who have elected Cash Settlement, and paid the Purchase Price as required by Section 5.03(a)(ii), the Notes underlying the Applicable Ownership Interest in Notes underlying such Corporate Units. With respect to any Separate Notes remarketed, upon receipt of proceeds attributable to remarketed Separate Notes, the Custodial Agent shall remit such proceeds of the Successful Final Remarketing received from the Remarketing Agent(s) *pro rata* to the holders of such Separate Notes on the Purchase Contract Settlement Date in accordance with the instructions provided in the form of Exhibit K.

(vi) Following a Successful Final Remarketing, the Remarketing Agent(s) shall remit (1) the proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership Interest in Notes to the Collateral Agent and (2) the proceeds attributable to the remarketed Separate Notes to the Custodial Agent for the benefit of the Holders of Separate Notes that had their Notes remarketed.

(vii) If there is a Successful Final Remarketing, the Company shall cause a notice of the Successful Final Remarketing to be provided to the Purchase Contract

Agent, Collateral Agent and Custodial Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the Final Remarketing Date. This notice shall include the Reset Rate. This notice shall be validly published by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(viii) In connection with any Successful Final Remarketing, the Company shall cause all accrued and unpaid interest, including all Deferred Interest (and compounded interest thereon), to be paid to the Holders of the Notes, as of the relevant Record Date (as defined in the Indenture) (whether or not such Notes were remarketed in such Successful Final Remarketing), on the Purchase Contract Settlement Date in Cash.

(ix) If, in spite of its commercially reasonable efforts, the Remarketing Agent(s) cannot remarket the Notes during the Final Remarketing Period at a price equal to or greater than the applicable Remarketing Price, a condition precedent set forth in the Remarketing Agreement is not fulfilled or a Successful Final Remarketing has not occurred for any other reason, the Remarketing will be deemed to have failed (a "Failed Final Remarketing").

Following a Failed Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Notes, unless such Holder has (A) provided written notice in substantially the form of Exhibit M hereto prior to 4:00 p.m. (New York City time) on the second Business Day immediately preceding the Purchase Contract Settlement Date of its intention to settle the related Purchase Contract with separate cash, (B) surrendered the Certificate evidencing the Corporate Units (if they are in certificated form) or the related Book-Entry Interests, to the Purchase Contract Agent prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date and (C) on or prior to the Business Day immediately preceding the Purchase Contract Settlement Date delivered the Purchase Price in Cash to the Securities Intermediary for deposit in the Collateral Account by certified or cashier's check or wire transfer in immediately available funds payable to or upon the order of the Securities Intermediary (which settlement may only be effected in integral multiples of 20 Corporate Units), shall be deemed to have exercised such Holder's Put Right with respect to the Notes underlying such Pledged Applicable Ownership Interests in Notes and to have elected to apply the proceeds of the Put Price against such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts in full satisfaction of such Holders' Obligations under such Purchase Contracts. Following such application, each such Holder's Obligations will be deemed to be satisfied in full, and the Collateral Agent shall cause the Securities Intermediary to release the Notes underlying such Pledged Applicable Ownership Interests in Notes from the Collateral Account and shall promptly transfer such Notes to the Company.

Upon (x) receipt by the Collateral Agent of a notice from the Purchase Contract Agent in substantially the form of Exhibit N hereto promptly after the receipt by the Purchase Contract Agent of a notice from a Holder of Corporate Units that such Holder has elected, in accordance with the first sentence of the immediately preceding paragraph, to settle the related Purchase Contract with separate cash and (y) payment by such Holder to the Securities Intermediary of the

Purchase Price in accordance with the first sentence of the immediately preceding paragraph, in lieu of exercise of such Holder's Put Right, the Securities Intermediary shall give the Purchase Contract Agent and the Collateral Agent notice of the receipt of such payment in substantially the form of Exhibit O hereto and the Collateral Agent shall, and is hereby authorized to, or to cause the Securities Intermediary to (X) deposit the separate cash received from such Holder in the Collateral Account and, if the Company so requests and the Collateral Agent and Securities Intermediary consent thereto, invest such separate cash received in Permitted Investments consistent with the instructions of the Company with respect to Cash Settlement, (Y) promptly release from the Pledge the Notes underlying the Applicable Ownership Interest in Notes related to the Corporate Units as to which such Holder has paid such separate cash and (Z) promptly Transfer all such Notes to the Purchase Contract Agent for distribution to such Holder, in each case, free and clear of the Pledge created hereby, whereupon the Purchase Contract Agent shall Transfer such Notes in accordance with written instructions provided by the Holder thereof or, if no such instructions are given to the Purchase Contract Agent by the Holder, the Purchase Contract Agent shall hold such Notes, and any interest payment thereon, in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder until the expiration of the time period specified in the relevant abandoned property laws of the state where such Notes and interest payments thereon, if any, are held. On the Purchase Contract Settlement Date, the Collateral Agent shall, and is hereby authorized to, (A) instruct the Securities Intermediary to remit to the Company the separate cash amount or such portion of the proceeds of such Permitted Investments as is equal to the aggregate Purchase Price under all Purchase Contracts in respect of which separate cash has been paid as provided in this Section 5.02(b)(ix), as the case may be, to the Company, and (B) release any amounts in excess of such amount earned from such Permitted Investments (if any) to the Purchase Contract Agent for distribution to the Holders who have paid such separate cash *pro rata* in proportion to the amount paid by such Holders under this Section 5.02(b)(ix), as adjusted to reflect the period of time that each such Holder's cash was invested in such Permitted Investments. For the avoidance of doubt, nothing in this Section 5.02(b)(ix) shall prevent holders of Separate Notes from exercising their Put Right after a Failed Final Remarketing.

(x) The Company has the right to postpone the Final Remarketing in the Company's sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

(xi) If a Successful Remarketing has not occurred on or prior to the last day of the Final Remarketing Period, the Company shall cause a notice of the Failed Remarketing to be provided to the Purchase Contract Agent, Collateral Agent and Custodial Agent and to be published no later than 9:00 a.m., New York City time, on the Business Day immediately following the last day of the Final Remarketing Period. This notice shall be validly published by making a timely release to any appropriate news agency, including Bloomberg Business News and the Dow Jones News Service.

(xii) The Company will pay the Remarketing Fee in connection with any Successful Final Remarketing. Holders whose Notes are part of a Successful Final Remarketing will not be responsible for payment of the Remarketing Fee.

(xiii) Following the occurrence of a Successful Final Remarketing, proceeds attributable to the remarketed Notes underlying the Pledged Applicable Ownership in Notes will be substituted as Collateral for the Pledged Applicable Ownership Interests in Notes and will be held by the Collateral Agent in accordance with the terms hereof to secure the Obligations of each Holder of Corporate Units, and the Collateral Agent shall have such security interests, rights and obligations with respect to such proceeds as the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Notes.

(c) [Reserved]

(d) At any time following notice by the Company of a Remarketing, other than during a Blackout Period, holders of Separate Notes may elect to have their Separate Notes remarketed in such Remarketing in the same manner as the Notes included in Corporate Units by delivering their Separate Notes along with a notice of this election, substantially in the form of Exhibit K attached hereto, to the Custodial Agent. The Custodial Agent shall hold the Separate Notes in an account separate from the Collateral Account in which any Pledged Applicable Ownership Interests in Notes and/or any Pledged Treasury Securities shall be held. Holders electing to have their Separate Notes remarketed shall also have the right to withdraw the election, other than during a Blackout Period, by written notice to the Collateral Agent, substantially in the form of Exhibit L hereto, at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period. In the event of a Successful Remarketing during the Optional Remarketing Period, each holder of Separate Notes that elects to have its Notes remarketed shall receive for each \$1,000 principal amount of Notes, the Remarketing Price Per Note. In the event of a Successful Remarketing during the Final Remarketing Period, each holder of Separate Notes that elects to have its Notes remarketed shall receive its *pro rata* portion of the proceeds of such Successful Remarketing attributable to remarketed Separate Notes pursuant to 5.02(b)(v), which shall be, for each \$1,000 principal amount of Notes, at least equal to \$1,000 in cash. Any accrued and unpaid interest on such Notes, including any accrued and unpaid Deferred Interest (including compounded interest thereon), shall be paid in cash by the Company on the Purchase Contract Settlement Date.

(e) For the avoidance of doubt, the right of each holder of the Notes underlying the aggregate Applicable Ownership Interests in Notes that are components of Corporate Units (who, in the case of a Final Remarketing, have not elected Cash Settlement, and paid the Purchase Price in Cash to the Securities Intermediary, pursuant to Section 5.03) and the Separate Notes, the holders of which have elected to participate in any Remarketing, to have such Notes remarketed during the Applicable Remarketing Period and sold on the Optional Remarketing Date or Final Remarketing Date, as the case may be, shall be subject to the conditions that (i) (1) the Remarketing Agent(s) conducts an Optional Remarketing, or (2) in the case of a Final Remarketing, that no Successful Optional Remarketing has occurred, each pursuant to the terms of this Agreement, (ii) a Termination Event has not occurred prior to the Optional Remarketing Date or Final Remarketing Date, as the case may be, (iii) the Remarketing Agent(s) is able to find a purchaser or purchasers for such Notes at the applicable Remarketing Price based on the Reset Rate and (iv) each condition precedent to settlement of the remarketed Notes set forth in the Remarketing Agreement is satisfied or waived.

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(f) The Company agrees to use its commercially reasonable efforts to ensure that, if required by applicable law, a registration statement, including a prospectus, under the Securities Act with regard to the full amount of the Notes to be remarketed in any Remarketing shall be effective with the Securities and Exchange Commission in a form that may be used by the Remarketing Agent(s) in connection with such Remarketing (unless such registration statement is not required under the applicable laws and regulations that are in effect at that time or unless the Company conducts any Remarketing in accordance with an exemption under the Securities Act).

Section 5.03. Cash Settlement; Payment of Purchase Price. (a) (i) Unless (1) a Termination Event has occurred, (2) a Holder effects an Early Settlement or a Fundamental Change Early Settlement of the underlying Purchase Contract or (3) a Successful Optional Remarketing has occurred, each Holder of Corporate Units shall have the right, subject to the conditions set forth below and Section 5.02(b)(ix), to satisfy such Holder's Obligations on the Purchase Contract Settlement Date with separate cash. Each Holder of Corporate Units who intends to pay separate cash to satisfy such Holder's Obligations under the Purchase Contract on the Purchase Contract Settlement Date must so notify the Purchase Contract Agent by presenting and surrendering at the Corporate Trust Office (1) the Certificate evidencing the Corporate Units (if they are in certificated form) or the related Book-Entry Interests, and (2) a "Notice to Settle with Cash" substantially in the form of Exhibit E hereto completed and executed as indicated, in each case, at any time on or after the date the Company gives notice of a Final Remarketing and prior to 4:00 p.m. (New York City time) on the second Business Day immediately preceding the first day of the Final Remarketing Period. Corporate Units Holders may only effect such a Cash Settlement pursuant to this Section 5.03(a) in integral multiples of 20 Corporate Units.

(ii) A Holder of a Corporate Unit who has so notified the Purchase Contract Agent of its intention to effect a Cash Settlement in accordance with Section 5.03(a)(i) above shall pay the Purchase Price to the Securities Intermediary for deposit in the Collateral Account prior to 4:00 p.m. (New York City time) on the first Business Day immediately preceding the first day of the Final Remarketing Period, in Cash by certified or cashier's check or wire transfer in immediately available funds payable to or upon the order of the Securities Intermediary.

(iii) If a Holder of a Corporate Unit fails to notify the Purchase Contract Agent of its intention to make a Cash Settlement in accordance with Section 5.03(a)(i), or does notify the Purchase Contract Agent as provided in Section 5.03(a)(i) of its intention to pay the Purchase Price with separate cash but fails to make such payment as required by Section 5.03(a)(ii), such Holder shall be deemed to have consented to the disposition of the Notes underlying the Pledged Applicable Ownership Interests in Notes pursuant to any Remarketing occurring in the Final Remarketing Period as set forth in Section 5.02(b).

(iv) Promptly after 4:00 p.m. (New York City time) on the first Business Day immediately preceding the first day of the Final Remarketing Period, the Purchase Contract Agent, based on notices received by the Purchase Contract Agent pursuant to Section 5.03(a)(i) and notice from the Securities Intermediary regarding cash received by

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it prior to such time, shall notify the Collateral Agent of the aggregate principal amount of Notes to be remarketed in any Remarketing occurring in the Final Remarketing Period in a notice substantially in the form of Exhibit J hereto.

(v) Upon (1) receipt by the Collateral Agent of a notice in the form of Exhibit J from the Purchase Contract Agent (delivered pursuant to clause (iv) above) after the receipt by the Purchase Contract Agent of a notice in the form of Exhibit E from a Holder of Corporate Units that such Holder has elected, in accordance with Section 5.03(a)(i), to effect a Cash Settlement and (2) the payment by such Holder of the Purchase Price in accordance with Section 5.03(a)(ii) above, then the Collateral Agent shall:

(A) if the Company so requests, and the Collateral Agent and Securities Intermediary consent thereto, instruct the Securities Intermediary promptly to invest any such Cash in Permitted Investments consistent with the instructions of the Company as provided for below in this Section 5.03(a)(v);

(B) release from the Pledge the Notes underlying the Applicable Ownership Interest in Notes related to the Corporate Units as to which such Holder has effected a Cash Settlement; and

(C) instruct the Securities Intermediary to Transfer all such Notes to the Purchase Contract Agent for distribution to such Holder, in each case free and clear of the Pledge created hereby, whereupon the Purchase Contract Agent shall promptly Transfer such Notes in accordance with written instructions provided by the Holder thereof or, if no such instructions are given to the Purchase Contract Agent by the Holder, the Purchase Contract Agent shall hold such Notes, and any interest payment thereon, in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder until the expiration of the time period specified in the relevant abandoned property laws of the state where such Notes and interest payments thereon, if any, are held.

The Company shall instruct the Collateral Agent in writing as to the type of Permitted Investments (if any) in which any such Cash shall be invested; provided, however, that if the Company fails to deliver such written instructions by 12:00 p.m. (New York City time) on the day such Cash is received by the Collateral Agent or to be reinvested by the Securities Intermediary, the Collateral Agent may instruct the Securities Intermediary to invest such Cash in the Permitted Investments (if any) which have been designated by the Company in writing from time to time in a standing instruction to the Collateral Agent which shall be effective until revoked or superseded. If no such standing instruction exists, such Cash shall remain uninvested. In no event shall the Collateral Agent or Securities Intermediary be liable for the selection of Permitted Investments or for investment losses incurred thereon. The Collateral Agent and Securities Intermediary shall have no liability in respect of losses incurred as a result of the failure of the Company to provide timely written investment direction.

On the Purchase Contract Settlement Date, the Collateral Agent shall, and is hereby authorized to, (A) instruct the Securities Intermediary to remit to the Company the separate cash

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amount or such portion of the proceeds of such Permitted Investments as is equal to the aggregate Purchase Price under all Purchase Contracts in respect of which Cash Settlement has been effected as provided in this Section 5.03, as the case may be, and (B) release any amounts in excess of such amount earned from such Permitted Investments to the Purchase Contract Agent for distribution to the Holders who have effected Cash Settlement, *pro rata* in proportion to the amount paid by such Holders under Section 5.03(a)(ii), as adjusted to reflect the period of time that each such Holder's cash was invested in such Permitted Investments.

(b) In the case of a Treasury Unit or a Corporate Unit (if Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of such Corporate Unit), if the Pledged Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio held by the Securities Intermediary mature during the period from, and including, the fifth Business Day immediately preceding the Purchase Contract Settlement Date to, and including, the Business Day immediately preceding the Purchase Contract Settlement Date, the principal amount of the Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio received by the Securities Intermediary may be invested in Permitted Investments (if any), which have been designated by the Company in writing from time to time in a standing instruction to the Securities Intermediary which shall be effective until revoked or superseded. If no such standing instruction exists, such Cash shall remain uninvested. On the Purchase Contract Settlement Date, an amount equal to the Purchase Price for all related Purchase Contracts shall be remitted to the Company as payment of such Holder's Obligations under such Purchase Contracts without receiving any instructions from the Holder. In the event the sum of the Proceeds from either the related Pledged Treasury Securities or the related Pledged Applicable Ownership Interests in the Treasury Portfolio and the Proceeds from such Permitted Investments is in excess of the aggregate Purchase Price, the Collateral Agent shall cause the Securities Intermediary to distribute such excess, when received by the Securities Intermediary, to the Purchase Contract Agent for the benefit of the Holders of the related Treasury Units or Corporate Units, as applicable.

(c) The Obligations of the Holders to pay the Purchase Price are non-recourse obligations and, except to the extent satisfied by Early Settlement, Fundamental Change Early Settlement or Cash Settlement or terminated upon a Termination Event, are payable solely out of the proceeds of any Collateral pledged to secure the Obligations of the Holders, and in no event will Holders be liable for any deficiency between the proceeds of the disposition of Collateral and the Purchase Price.

(d) The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates in respect thereof to the Holder of the related Units unless the Company shall have received payment of the aggregate Purchase Price for the Common Stock to be purchased thereunder in the manner set forth herein.

Section 5.04. Issuance of Shares of Common Stock. Unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement shall have occurred, subject to Section 5.05(b), on the Purchase Contract Settlement Date, upon the Company's receipt of the aggregate Purchase Price payable on all Outstanding Units in accordance with Section 5.02 or

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5.03, the Company shall issue and deposit with the Purchase Contract Agent, for the benefit of the Holders of the Outstanding Units, one or more certificates representing newly issued shares of Common Stock registered in the name of the Purchase Contract Agent (or its nominee) as custodian for the Holders or their designees (such certificates for shares of Common Stock, together with any dividends or distributions for which a record date and payment date for such

dividend or distribution has occurred on or after the Purchase Contract Settlement Date, being hereinafter referred to as the “Purchase Contract Settlement Fund”) to which the Holders are entitled hereunder.

Subject to the foregoing, following book-entry transfer of a Unit or surrender of a Certificate, as the case may be, to the Purchase Contract Agent on or after the Purchase Contract Settlement Date, Early Settlement Date or the date on which the Fundamental Change Early Settlement Right is exercised, as the case may be, together with settlement instructions thereon duly completed and executed, the Holder of the relevant Unit shall on the applicable Settlement Date (or, if later, the date of such book-entry transfer of the Unit or such surrender of the Certificate) be entitled to receive forthwith in exchange therefor book-entry transfer of beneficial interests in, or a certificate representing, that number of newly issued whole shares of Common Stock which such Holder is entitled to receive pursuant to the provisions of this Article 5 (after taking into account all Units then held by such Holder), together with cash in lieu of fractional shares as provided in Section 5.09 and, in the case of a settlement on the Purchase Contract Settlement Date, any dividends or distributions with respect to such shares constituting part of the Purchase Contract Settlement Fund, but without any interest thereon, and the number of Units represented by the Global Certificate shall be appropriately reduced in accordance with Applicable Procedures and standing arrangements between the Depository and the Purchase Contract Agent, or the Certificate so surrendered shall forthwith be cancelled, as the case may be. Such shares shall be registered in the name of, or book-entry interests therein shall be transferred to, the Holder or the Holder’s designee as specified in the settlement instructions provided by the Holder to the Purchase Contract Agent. If any shares of Common Stock issued in respect of a Purchase Contract are to be registered in the name of, or beneficial interests therein are transferred to, a Person other than the Person in whose name the Certificate evidencing such Purchase Contract is registered or the beneficial owner thereof, no such registration or transfer shall be made unless and until the Person requesting such registration or transfer shall have paid to the Company the amount of any transfer and other taxes (including any applicable stamp taxes) required by reason of such registration in a name other than that of, or transfer to a Person other than, the registered Holder of the Certificate evidencing such Purchase Contract or beneficial owner thereof or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 5.05. Adjustment of each Fixed Settlement Rate. (a) Each Fixed Settlement Rate shall be subject to the following adjustments:

(i) If the Company pays or makes a dividend or other distribution on the Common Stock in shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be increased by dividing each Fixed Settlement Rate by a fraction,

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(A) the numerator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination; and

(B) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Any adjustment made under this clause (i) shall become effective immediately after the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution. If any dividend or distribution of the type described in this clause (i) is declared but not so paid or made, each Fixed Settlement Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) If the Company issues to all or substantially all holders of the Common Stock rights, options, warrants or other securities (other than pursuant to a dividend reinvestment, share purchase or similar plan), entitling them to subscribe for or purchase shares of the Common Stock for a period expiring within 45 days from the date of issuance of such rights, options, warrants or other securities at a price per share of Common Stock less than the Current Market Price calculated as of the date fixed for the determination of shareholders entitled to receive such rights, options, warrants or other securities, each Fixed Settlement Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate consideration expected to be received by the Company upon the exercise of such rights, options, warrants or other securities would purchase at such Current Market Price; and

(B) the denominator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase.

Any increase in the Fixed Settlement Rates made pursuant to this clause (ii) shall become effective immediately after the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such rights, options, warrants or other securities. To the extent such rights, options, warrants or other securities are not exercised or converted prior to their expiration of the exercisability or convertibility thereof (and as a result no additional shares of Common Stock are delivered or issued pursuant to such rights, options, warrants or other securities), each new Fixed Settlement Rate shall be readjusted, effective as of

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the date of such expiration, to the Fixed Settlement Rate that would then be in effect had the increase with respect to the issuance of such rights, options, warrants or other securities been made on the basis of delivery or issuance of only the number of shares of Common Stock actually delivered.

For purposes of this clause (ii), in determining whether any rights, options, warrants or other securities entitle the holders thereof to subscribe for or purchase shares of the Common Stock at less than the Current Market Price per share of Common Stock on the date fixed for the determination of shareholders entitled to receive such rights, options, warrants or other securities, and in determining the aggregate price payable to exercise such rights, options, warrants or other securities, there shall be taken into account any consideration the Company receives for such rights, options, warrants or other securities and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

(iii) If outstanding shares of the Common Stock shall be subdivided, split or reclassified into a greater number of shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the day upon which such subdivision, split or reclassification becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of the Common Stock shall each be combined or reclassified into a smaller number of shares of Common Stock, each Fixed Settlement Rate in effect at the opening of business on the day following the day upon which such combination or reclassification becomes effective shall be proportionately reduced.

(iv) If the Company, by dividend or otherwise, distributes to all or substantially all holders of the Common Stock evidences of the Company's indebtedness, assets, or securities (but excluding any rights, options, warrants or other securities referred to in clause (ii) of this Section 5.05(a), any dividend or distribution paid exclusively in cash referred to in clause (v) below of this Section 5.05(a) (in each case, whether or not an adjustment to the Fixed Settlement Rates is required by such clause), and any dividend paid in shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit of the Company in the case of a Spin-Off referred to below, or dividends or distributions referred to in clause (i) of this Section 5.05(a)), each Fixed Settlement Rate in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such dividend or distribution shall be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which shall be the Current Market Price of the Common Stock calculated as of the date fixed for such determination less the then fair market value (as determined in good faith by the Board of Directors) of the portion of the assets, securities or evidences of indebtedness so distributed applicable to one share of the Common Stock; and

(B) the denominator of which shall be such Current Market Price.

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Any increase made under the portion of this clause (iv) shall become effective immediately after the close of business on the date fixed for the determination of shareholders entitled to receive such dividend or distribution. Notwithstanding the foregoing, if the fair market value (as determined in good faith by the Board of Directors) of the portion of the assets, securities or evidences of indebtedness so distributed applicable to one share of the Common Stock exceeds the Current Market Price of the Common Stock on the date fixed for the determination of shareholders entitled to receive such distribution, in lieu of the foregoing increase, each Holder shall receive, for each Purchase Contract included in such Holder's Units, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of such distributed assets, securities or evidences of indebtedness that such Holder would have received if such Holder owned a number of shares of the Common Stock equal to the Maximum Settlement Rate on the record date for such dividend or distribution.

In the case of the payment of a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit of the Company, which are or will, upon issuance, be listed on a U.S. securities exchange or quotation system (a "Spin-Off"), each Fixed Settlement Rate in effect immediately before the close of business on the date fixed for determination of shareholders entitled to receive such dividend or distribution will be increased by dividing each Fixed Settlement Rate by a fraction,

(A) the numerator of which is the Current Market Price of the Common Stock; and

(B) the denominator of which is such Current Market Price plus the Fair Market Value (determined as set forth below) of those shares of capital stock or similar equity interests so distributed applicable to one share of Common Stock.

The adjustment to each Fixed Settlement Rate under the immediately preceding paragraph will occur on (A) the 10th Trading Day from and including the effective date of the Spin-Off; or (B) if the Spin-Off is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off and the Ex Date for the Spin-Off occurs on or before the date that the Initial Public Offering price of the securities being distributed in the Spin-Off is determined, the issue date of the securities being offered in such Initial Public Offering. For purposes of this section, "Initial Public Offering" means the first time securities of the same class or type as the securities being distributed in the Spin-Off are offered to the public for cash.

Subject to the immediately following paragraph, the "Fair Market Value" of the securities to be distributed to holders of Common Stock means the average of the closing sale prices of those securities on the principal U.S. securities exchange or quotation system on which such securities are listed or quoted at that time over the first 10 Trading Days following the effective date of the Spin-Off. For purposes of such a Spin-Off, the "Current Market Price" of the Common Stock means the average of the closing sale prices of the Common Stock on the principal U.S. securities exchange or quotation system on which the Common Stock is listed or quoted at that time over the first 10 Trading Days following the effective date of the Spin-Off.

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If, however, an Initial Public Offering of the securities being distributed in the Spin-Off is to be effected simultaneously with the Spin-Off and the Ex Date for the Spin-Off occurs on or before the date that the Initial Public Offering price of the securities being distributed in the Spin-Off is determined, the "Fair Market Value" of the securities being distributed in the Spin-Off means the Initial Public Offering price, while the "Current Market Price" of the Common Stock means the closing sale price of the Common Stock on the principal U.S. securities exchange or quotation system on which the Common Stock is listed or quoted at that time on the Trading Day on which the Initial Public Offering price of the securities being distributed in the Spin-Off is determined.

If any dividend or distribution described in this clause (iv) is declared but not so paid or made, the new Fixed Settlement Rates shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Settlement Rates that would then be in effect if such dividend or distribution had not been declared.

For purposes of this clause (iv) (and subject in all respect to clause (x) below), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (a) are deemed to be transferred with such shares of the Common Stock; (b) are not exercisable; and (c) are also issued in respect of future issuances of the Common Stock, shall

be deemed not to have been distributed for purposes of this clause (iv) (and no adjustment to the Fixed Settlement Rates under this clause (iv) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Fixed Settlement Rates shall be made under this clause (iv). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Agreement, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Fixed Settlement Rates under this clause (iv) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Fixed Settlement Rates shall be readjusted as if such rights, options or warrants had not been issued and (y) the Fixed Settlement Rates shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall

have expired or been terminated without exercise by any holders thereof, the Fixed Settlement Rates shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of clause (i), clause (ii) and this clause (iv), if any dividend or distribution to which this clause (iv) is applicable also includes one or both of:

- (A) a dividend or distribution of shares of Common Stock to which clause (i) is applicable (the “Clause (i) Distribution”); or
- (B) a dividend or distribution of rights, options or warrants to which clause (ii) is applicable (the “Clause (ii) Distribution”),

then, in either case, (1) such dividend or distribution, other than the Clause (i) Distribution and the Clause (ii) Distribution, shall be deemed to be a dividend or distribution to which this clause (iv) is applicable (the “Clause (iv) Distribution”) and any Fixed Settlement Rate adjustment required by this clause (iv) with respect to such Clause (iv) Distribution shall then be made, and (2) the Clause (i) Distribution and Clause (ii) Distribution shall be deemed to immediately follow the Clause (iv) Distribution and any Fixed Settlement Rate adjustment required by clause (i) and clause (ii) with respect thereto shall then be made, except that, if determined by the Company (I) the record date of the Clause (i) Distribution and the Clause (ii) Distribution shall be deemed to be the record date of the Clause (iv) Distribution and (II) any shares of Common Stock included in the Clause (i) Distribution or Clause (ii) Distribution shall be deemed not to be “outstanding at the close of business on the date fixed for such determination” within the meaning of clause (i) or clause (ii).

(v) If the Company, by dividend or otherwise, makes distributions to all or substantially all holders of the Common Stock exclusively in cash during any quarterly period in an amount that exceeds \$0.405 per share per quarter in the case of a regular quarterly dividend (such per share amount being referred to as the “Reference Dividend”), then immediately after the close of business on the date fixed for determination of the shareholders entitled to receive such distribution, each Fixed Settlement Rate in effect immediately prior to the close of business on such date shall be increased by dividing each Fixed Settlement Rate by a fraction,

- (A) the numerator of which shall be equal to the Current Market Price on the date fixed for such determination less the amount, if any, by which the per share amount of the distribution exceeds the Reference Dividend; and
- (B) the denominator of which shall be equal to such Current Market Price.

Such increase shall become effective immediately after the close of business on the date fixed for determination of the shareholders entitled to receive such distribution. Notwithstanding the foregoing, if (x) the amount by which the per share amount of the cash distribution exceeds the Reference Dividend exceeds (y) the Current Market Price of the Common Stock on the date fixed for the determination of shareholders entitled to receive such distribution, in lieu of the

foregoing increase, each Holder shall receive, for each Purchase Contract included in such Holder’s Units, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of distributed cash that such Holder would have received if such Holder owned a number of shares of the Common Stock equal to the Maximum Settlement Rate on the record date for such cash distribution. If such distribution is declared but not so paid or made, each Fixed Settlement Rate shall be decreased, effective as of the date the Board of Directors determines not to pay or make such distribution, to the Fixed Settlement Rate that would then be in effect if such distribution had not been declared.

The Reference Dividend will be subject to an inversely proportional adjustment (determined in the same manner as the adjustment to the Reference Price and Threshold Appreciation Price set forth below in clause (vii) of this Section 5.05(a)) whenever each Fixed Settlement Rate is adjusted, other than pursuant to this clause (v). For the avoidance of doubt, the Reference Dividend shall be zero in the case of a cash dividend that is not a regular quarterly dividend.

(vi) In the case that a tender offer or exchange offer made by the Company or any subsidiary thereof for all or any portion of shares of the Common Stock shall expire and such tender or exchange offer (as amended through the expiration thereof) shall require the payment to shareholders (based on the acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of Purchased Shares) of an aggregate consideration having a fair market value per share of the Common Stock that exceeds the Closing Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, then, immediately prior to the opening of business on the day after the date of the last time (the “Expiration Time”) tenders or exchanges could have been

made pursuant to such tender offer or exchange offer (as amended through the expiration thereof), each Fixed Settlement Rate in effect immediately prior to the close of business on the date of the Expiration Time shall be increased by dividing each Fixed Settlement Rate, by a fraction,

(A) the numerator of which shall be equal to (x) the product of (i) the Current Market Price on the date of the Expiration Time and (ii) the number of shares of Common Stock outstanding (including any Purchased Shares) on the date of the Expiration Time less (y) the amount of cash plus the fair market value of the aggregate consideration payable to shareholders pursuant to the tender offer or exchange offer (assuming the acceptance of Purchased Shares); and

(B) the denominator of which shall be equal to the product of (x) the Current Market Price on the date of the Expiration Time and (y) the result of (i) the number of shares of the Common Stock outstanding (including any Purchased Shares) on the date of the Expiration Time less (ii) the number of all shares validly tendered, not withdrawn and accepted for payment on the date of the Expiration Time (such actually validly tendered or exchanged shares, up to any maximum acceptance amount specified by the Company in the terms of the tender offer or exchange offer, the "Purchased Shares").

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In the event the Company is, or one of the Company's subsidiaries is, obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Company is, or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then each Fixed Settlement Rate shall be readjusted to the Fixed Settlement Rate that would then be in effect if such tender or exchange offer had not been made.

(vii) (1) If any adjustments are made to each Fixed Settlement Rate pursuant to this Section 5.05(a), an adjustment shall also be made to the Reference Price and the Threshold Appreciation Price solely to determine which of the clauses of the definition of Settlement Rate in Section 5.01(a) will be applicable to determine the Settlement Rate with respect to the Purchase Contract Settlement Date or any Fundamental Change Early Settlement Date. Such adjustment shall be made by multiplying the Reference Price by a fraction, the numerator of which is the Maximum Settlement Rate immediately before such adjustment and the denominator of which shall be the Maximum Settlement Rate immediately after such adjustment and by multiplying the Threshold Appreciation Price by a fraction, the numerator of which is the Minimum Settlement Rate immediately before such adjustment and the denominator of which shall be the Minimum Settlement Rate immediately after such adjustment (rounded, in each case, to the nearest \$0.0001). In addition, if any adjustment to the Fixed Settlement Rates becomes effective, or any effective date, Expiration Time, Ex Date or record date for any stock split or reverse stock split, tender or exchange offer, issuance, dividend or distribution (relating to a required Fixed Settlement Rate adjustment) occurs, during the period beginning on, and including, (i) the open of business on a first Trading Day of the Market Value Averaging Period or (ii) in the case of Early Settlement or Fundamental Change Early Settlement, the relevant Early Settlement Date or the date on which the Fundamental Change Early Settlement Right is exercised and, in each case, ending on, and including, the date on which the Company delivers shares of Common Stock under the related Purchase Contract, the Company shall make appropriate adjustments to the Fixed Settlement Rates and/or the number of shares of Common Stock deliverable upon settlement of the Purchase Contract, in each case, consistent with the methodology used to determine the anti-dilution adjustments set forth above in paragraphs (a)(i) to (a)(vi) of this Section 5.05. If any adjustment to the Fixed Settlement Rates becomes effective, or any effective date, Expiration Time, Ex Date or record date for any stock split or reverse stock split, tender or exchange offer, issuance, dividend or distribution (relating to a required Fixed Settlement Rate adjustment) occurs, during the period used to determine the Stock Price or any other averaging period hereunder, the Company shall make appropriate adjustments to the applicable prices, consistent with the methodology used to determine the anti-dilution adjustments set forth above in paragraphs (a)(i) to (a)(vi) of this Section 5.05.

(2) No adjustment to the Fixed Settlement Rates will be made pursuant to this Section 5.05(a) if Holders participate, as a result of holding the Units and without having to settle the Purchase Contracts that form part of the Units, in the transaction that would otherwise give rise to an adjustment as if they held a number of shares of the

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Common Stock per Unit equal to the Maximum Settlement Rate, at the same time and upon the same terms as the holders of Common Stock participate in the transaction.

(viii) All adjustments to the Fixed Settlement Rates shall be calculated by the Company to the nearest 1/10,000th of a share of Common Stock. No adjustment to the Fixed Settlement Rates shall be required unless such adjustment would require an increase or decrease of at least one percent in one or both Fixed Settlement Rates; provided, that if any adjustment is not required to be made because it would not change one or both of the Fixed Settlement Rates by at least one percent, the adjustment shall be carried forward and taken into account in any subsequent adjustment; provided further that notwithstanding whether or not such one percent threshold shall have been met, all such adjustments under this Section 5.05(a) shall be made no later than the time at which the Company is required to determine the relevant Settlement Rate or amount of Make-Whole Shares (if applicable) in connection with any settlement of the Purchase Contracts pursuant to Section 5.01, Section 5.05(b)(ii) or Section 5.08.

(ix) The Company may increase the Fixed Settlement Rates, in addition to those required by this Section 5.05(a), if the Board of Directors deems it advisable in order to avoid or diminish any income tax to any holders of Common Stock resulting from any dividend or distribution of shares (or rights to acquire shares) or from any event treated as a dividend or distribution for income tax purposes or for any other reasons. The Company may only make such a discretionary adjustment if the Company makes the same proportionate adjustment to each Fixed Settlement Rate. Any such discretionary adjustment must be in effect for at least 20 Business Days, and the Company shall deliver written notice of the amount of such increase and the number of days for which it will be in effect to the Holders and Purchase Contract Agent at least 15 days prior to such adjustment taking effect.

(x) To the extent the Company has a shareholder rights plan involving the issuance of share purchase rights or other similar rights (the "Rights") to all or substantially all holders of the Common Stock in effect upon settlement of a Purchase Contract, a Holder shall be entitled to receive upon settlement of any Purchase Contract, in addition to the shares of Common Stock issuable upon settlement of such Purchase Contract, the related Rights for the Common Stock under the shareholder rights plan, unless prior to such settlement, such Rights under the shareholder rights

plan have separated from the Common Stock, in which case each Fixed Settlement Rate shall be adjusted at the time of separation as if the Company made a distribution to all holders of the Common Stock as provided in Section 5.05(a)(iv), subject to readjustment in the event of the expiration, termination or redemption of the Rights.

(b) (i) Following the effective date of a Reorganization Event, the Settlement Rate shall be determined by reference to the value of an Exchange Property Unit, and the Company shall deliver, upon settlement of any Purchase Contract, a number of Exchange Property Units equal to the number of shares of Common Stock that the Company would otherwise be required to deliver hereunder. An “Exchange Property Unit” is the kind and amount of common stock, other securities, other property or assets (including cash or any combination thereof) receivable

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in such Reorganization Event (without any interest thereon, and without any right to dividends or distributions thereon that have a record date that is prior to the applicable Settlement Date) per share of Common Stock by a holder of Common Stock that is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (any such Person, a “Constituent Person”), or an Affiliate of a Constituent Person to the extent such Reorganization Event provides for different treatment of Common Stock held by a Constituent Person and/or the Affiliates of a Constituent Person, on the one hand, and non-Affiliates of a Constituent Person, on the other hand. In the event holders of Common Stock (other than any Constituent Person or Affiliate thereof) have the opportunity to elect the form of consideration to be received in such transaction, the Exchange Property Unit that Holders of the Corporate Units or Treasury Units would have been entitled to receive shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make an election or (y) if no holders of the Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock.

In the event of such a Reorganization Event, the Person formed by such consolidation or merger or the Person which acquires the assets of the Company shall execute and deliver to the Purchase Contract Agent an agreement supplemental hereto providing that the Holder of each Unit that remains Outstanding after the Reorganization Event (if any) shall have the rights provided by this Section 5.05(b). Such supplemental agreement shall provide for adjustments to the amount of any securities constituting all or a portion of an Exchange Property Unit and/or adjustments to the Fixed Settlement Rates, which, for events subsequent to the effective date of such Reorganization Event, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5.05. The provisions of this Section 5.05(b)(i) shall similarly apply to successive Reorganization Events.

When the Company executes a supplemental agreement pursuant to this Section 5.05(b)(i), the Company shall promptly file with the Purchase Contract Agent an Officers’ Certificate and an Opinion of Counsel briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise an Exchange Property Unit after any such Reorganization Event, any adjustments to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental agreement to be mailed to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental agreement. The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 5.05(b)(i).

In connection with any Reorganization Event, the Reference Dividend shall be subject to adjustment as described in clause (A), clause (B) or clause (C) below, as the case may be.

(A) In the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters’ appraisal rights) is composed entirely of shares of common stock (the “Merger Common Stock”), the Reference Dividend at and after the effective time of such Reorganization Event will be equal to (x) the

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Reference Dividend immediately prior to the effective time of such Reorganization Event, *divided* by (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Reorganization Event (such quotient rounded to the nearest \$0.0001).

(B) In the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters’ appraisal rights) is composed in part of shares of Merger Common Stock, the Reference Dividend at and after the effective time of such Reorganization Event will be equal to (x) the Reference Dividend immediately prior to the effective time of such Reorganization Event, *multiplied* by (y) the Merger Valuation Percentage for such Reorganization Event (such product rounded to the nearest \$0.0001).

(C) For the avoidance of doubt, in the case of a Reorganization Event in which the Exchange Property Unit (determined, as appropriate, as set forth above and excluding any dissenters’ appraisal rights) is composed entirely of consideration other than shares of common stock, the Reference Dividend at and after the effective time of such Reorganization Event will be equal to zero.

For purposes of calculating the “value” of an Exchange Property Unit, or any cash, securities or other property included therein, for purposes of (I) this Section 5.05(b)(i) and (II) the definitions of “Merger Valuation Percentage” and “Fundamental Change,” (x) the value of any cash shall be the face amount thereof, (y) the value of any common stock shall be (A) in the case of clause (I) above, the average of the volume-weighted average prices of such common stock on each Trading Day during the Market Value Averaging Period (subject to Section 5.05(a)(vii)(1)) and (B) in the case of clause (II) above, the Closing Price of such common stock (determined as if references in the definition of “Closing Price” to “Common Stock” referred instead to such common stock) on the relevant effective date (or, if such day is not a Trading Day, the immediately following Trading Day) and (z) the value of any other property, including securities other than any such common stock, included in the Exchange Property Unit, shall be the fair market value of such property over the Market Value Averaging Period, in the case of clause (I) above, or on the applicable effective date (or, if such day is not a Trading Day, the immediately following Trading Day), in the case of clause (II) above (in each case, as determined in good faith by the Board of Directors, whose determination shall be described in a Board Resolution).

(ii) If a Fundamental Change occurs prior to the 20th Business Day preceding the Purchase Contract Settlement Date, then following such Fundamental Change, each Holder of a Purchase Contract shall have the right (“Fundamental Change Early Settlement Right”) to accelerate and settle (“Fundamental Change Early Settlement”) such Purchase Contract, upon the conditions set forth below, on the Fundamental Change Early

Settlement Date at the Settlement Rate determined as if the Applicable Market Value equaled the Stock Price (as defined below), plus an additional make-whole amount of shares of Common Stock (the “Make-Whole Shares”), subject to adjustment under Section 5.05(a)(vii), and receive payment of cash in lieu of any fraction of a share, as provided in Section 5.09; provided that no Fundamental Change Early Settlement will be

permitted pursuant to this Section 5.05(b)(ii) unless, at the time such Fundamental Change Early Settlement is effected, there is an effective Registration Statement with respect to any securities to be issued and delivered in connection with such Fundamental Change Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, (A) the Company shall, promptly after the date on which the Holder attempts to effect a Fundamental Change Early Settlement, so notify such Holder, and (B) the Company agrees to use its commercially reasonable efforts to (x) have in effect throughout the Fundamental Change Exercise Period a Registration Statement covering the Common Stock and other securities, if any, to be delivered in respect of the Purchase Contracts being settled and (y) provide a Prospectus in connection therewith, in each case, in a form that may be used in connection with such Fundamental Change Early Settlement (it being understood that for so long as there is a material business transaction or development that has not yet been publicly disclosed (but in no event for a period longer than 90 days), the Company will not be required to file such Registration Statement or provide such a Prospectus, and a Fundamental Change Early Settlement Right will not be available, until the Company has publicly disclosed such transaction or development; *provided* that the Company shall use commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so). In the event that a Holder seeks to exercise its Fundamental Change Early Settlement Right and a Registration Statement is required to be effective in connection with the exercise of such right but no such Registration Statement is then effective or a Blackout Period is continuing, the Holder’s exercise of such right shall be void unless and until such a Registration Statement is effective and no Blackout Period is continuing. The Fundamental Change Exercise Period shall be extended by the number of days during such period on which no such Registration Statement is effective or a Blackout Period is continuing (*provided* that the Fundamental Change Exercise Period shall not be extended beyond the fourth Business Day preceding the Purchase Contract Settlement Date) and the Fundamental Change Early Settlement Date shall be postponed to the third Business Day following the end of the Fundamental Change Exercise Period. If, but for the *proviso* contained in the immediately preceding sentence, the Fundamental Change Early Settlement Date would occur on or after the Purchase Contract Settlement Date, the Company shall deliver to all Holders of Units on the Purchase Contract Settlement Date the applicable number of Make-Whole Shares in addition to a number of shares of Common Stock equal to the Settlement Rate, determined as if the Applicable Market Value were equal to the relevant Stock Price.

The Company shall provide written notice to Holders of Units and the Purchase Contract Agent of the completion of a Fundamental Change within 10 Business Days after the Effective Date (as hereinafter defined) of a Fundamental Change, which shall specify (i) an early settlement date (subject to postponement, as set forth above, the “Fundamental Change Early Settlement Date”), which shall be at least 10 days after the date of the notice but no later than the earlier of (A) 20 days after the date of such notice and (B) one Business Day prior to the Purchase Contract Settlement Date, on which date the Company will deliver shares of Common Stock to Holders who exercise the Fundamental Change Early Settlement Right, (ii) the date by which Holders must exercise the Fundamental Change Early Settlement Right, (iii) the

applicable Settlement Rate and number of Make-Whole Shares, (iv) the amount and kind (per share of Common Stock) of cash, securities and other consideration receivable by the Holder upon settlement and (v) the amount of accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon), if any, that will be paid upon settlement to Holders exercising the Fundamental Change Early Settlement Right.

Corporate Units Holders and Treasury Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.05(b)(ii) in integral multiples of 20 Corporate Units or Treasury Units, as the case may be; *provided* that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in Notes as a component of the Corporate Units, Corporate Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.05(b)(ii) in multiples of 16,000 Corporate Units.

In order to exercise the Fundamental Change Early Settlement Right with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units shall deliver to the Purchase Contract Agent at the Corporate Trust Office, during the period beginning on the date the Company delivers notice that a Fundamental Change has occurred and ending at 4:00 p.m., New York City time, on the third Business Day immediately preceding the Fundamental Change Early Settlement Date (such period, subject to extension as set forth above, the “Fundamental Change Exercise Period”) a notice of such election in the form attached thereto and such Certificate evidencing its Corporate Units or Treasury Units if they are held in certificated form, duly endorsed for transfer to the Company or in blank with the form of Election to Fundamental Change Early Settlement on the reverse thereof duly completed, and payment of the Purchase Price for each Purchase Contract being settled in immediately available funds.

In the event that Units are held by or through DTC or another Depository, the exercise of the right to effect Fundamental Change Early Settlement shall occur in conformity with the Applicable Procedures and standing arrangements between DTC or such Depository and the Purchase Contract Agent.

Upon receipt of any such Certificate and payment of such funds, the Purchase Contract Agent shall pay the Company from such funds the related Purchase Price pursuant to the terms of the related Purchase Contracts, and notify the Collateral Agent that all the conditions necessary for a Fundamental Change Early Settlement by a Holder of Units have been satisfied pursuant to which the Purchase Contract Agent has received from such Holder, and paid to the Company, as confirmed in writing by the Company, the related Purchase Price.

Upon receipt by the Collateral Agent of the notice from the Purchase Contract Agent set forth in the preceding paragraph, the Collateral Agent shall release from the Pledge, (1) the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, in the case of a Holder of Corporate Units, or (2) the Pledged Treasury Securities, in the case of a Holder of Treasury Units, in each case relating to the Units containing the Purchase Contracts as to which such Holder has elected to effect Fundamental Change Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the

Treasury Portfolio (and the related Applicable Ownership Interests in the Treasury Portfolio as specified in clause (ii) of the definition thereof) or Notes underlying Pledged Applicable Ownership Interests in Notes or Pledged Treasury Securities, as the case may be, to the Purchase Contract Agent for distribution to such Holder, in each case free and clear of the Pledge created hereby.

If a Holder exercises the Fundamental Change Early Settlement Right in accordance with the provisions of this Section 5.05(b)(ii), the Company will deliver (or will cause the Purchase Contract Agent to deliver) to the Holder on the Fundamental Change Early Settlement Date for each Purchase Contract with respect to which such Holder has elected Fundamental Change Early Settlement:

- (A) a number of shares of Common Stock (or Exchange Property Units, if applicable) equal to the Settlement Rate determined pursuant to the first paragraph of this Section 5.05(b)(ii) plus the applicable Make-Whole Shares determined as set forth in Section 5.05(b)(iii);
- (B) the amount of any accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) to, but excluding, the Fundamental Change Early Settlement Date, unless the date on which the Fundamental Change Early Settlement Right is exercised occurs following any Record Date and prior to the related scheduled Contract Adjustment Payment Date, and the Company is not deferring the related Contract Adjustment Payment, in which case the Company shall instead pay all accrued and unpaid Contract Adjustment Payments to the Holder as of such Record Date;
- (C) the Notes, the Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, as the case may be, related to each Unit with respect to which the Holder is effecting a Fundamental Change Early Settlement, free and clear of the Pledge created hereby; and
- (D) if so required under the Securities Act, a Prospectus as contemplated by this Section 5.05(b)(ii).

The Corporate Units or the Treasury Units of the Holders who do not elect Fundamental Change Early Settlement in accordance with the foregoing will continue to remain Outstanding and be subject to settlement on the Purchase Contract Settlement Date in accordance with the terms hereof. In the event that Fundamental Change Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Fundamental Change Early Settlement, the Company shall execute and the Purchase Contract Agent shall execute on behalf of the Holder, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Fundamental Change Early Settlement was not effected.

(iii) The number of Make-Whole Shares per Purchase Contract deliverable upon a Fundamental Change Early Settlement will be calculated by the Company and will be determined by reference to the table below, based on the date on which the Fundamental Change occurs or becomes effective (the “Effective Date”) and the Stock Price in such Fundamental Change. The “Stock Price” in such Fundamental Change will be:

- (A) if holders of Common Stock receive only cash in a Fundamental Change described in clause (b) of the definition of Fundamental Change, the cash amount paid per share of the Common Stock; and
- (B) otherwise, the average of the Closing Prices of the Common Stock over the 20 Trading Day period ending on the Trading Day immediately preceding the Effective Date of such Fundamental Change.

The Stock Prices set forth in the second row of the table (*i.e.*, the column headers) shall be adjusted upon the occurrence of those events set forth in Section 5.05(a) requiring anti-dilution adjustments to the Fixed Settlement Rates. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the applicable Fixed Settlement Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the same Fixed Settlement Rate as so adjusted. Each of the Make-Whole Shares amounts in the table will be subject to adjustment in the same manner and at the same time as the Fixed Settlement Rates as set forth under Section 5.05(a).

Effective Date	Stock Price on Effective Date																			
	\$10.00	\$20.00	\$30.00	\$35.00	\$37.50	\$40.25	\$42.50	\$45.00	\$47.29	\$50.00	\$55.00	\$60.00	\$70.00	\$80.00	\$90.00	\$100.00	\$110.00	\$120.00	\$130.00	\$150.00
November 23, 2015	0.5325	0.2378	0.0972	0.0445	0.0220	0.0000	0.0498	0.0995	0.1406	0.1274	0.1075	0.0922	0.0709	0.0572	0.0476	0.0403	0.0346	0.0299	0.0259	0.0195
November 1, 2016	0.3406	0.1547	0.0544	0.0084	0.0000	0.0000	0.0168	0.0669	0.1085	0.0960	0.0777	0.0643	0.0472	0.0373	0.0308	0.0260	0.0222	0.0191	0.0164	0.0122
November 1, 2017	0.1719	0.0806	0.0271	0.0000	0.0000	0.0000	0.0000	0.0392	0.0791	0.0655	0.0471	0.0356	0.0241	0.0189	0.0157	0.0133	0.0114	0.0098	0.0084	0.0063
November 1, 2018	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price and Effective Date applicable to a Fundamental Change may not be set forth on the table, in which case:

- (1) if the Stock Price is between two Stock Prices on the table or the Effective Date is between two Effective Dates on the table, the amount of Make-Whole Shares will be determined by straight line interpolation between the Make-Whole Share amounts set forth for the higher and lower Stock Prices and the two Effective Dates based on a 365-day year, as applicable;
- (2) if the Stock Price is in excess of \$150.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the second row of the table as set forth above), then the Make-Whole Share amount will be zero; and
- (3) if the Stock Price is less than \$10.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the second row of the table as set forth above) (the “Minimum Stock Price”), then the Make-Whole Share amount will be

determined as if the Stock Price equaled the Minimum Stock Price, using straight line interpolation, as set forth in clause (1) above, if the Effective Date is between two Effective Dates on the table.

(c) The Fixed Settlement Rates shall not be adjusted (subject to Section 5.05(a)(ix)):

(1) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(2) upon the issuance of options, restricted stock or other awards in connection with any present or future employment contract, executive compensation plan, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, consultants or independent contractors or the exercise of such options or other awards;

(3) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Units were first issued;

(4) upon the purchase of any shares of Common Stock pursuant to an open market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 5.05(a)(vi);

(5) for a change in the par value or no par value of the Common Stock; or

(6) for accumulated and unpaid Contract Adjustment Payments.

(d) All calculations and determinations pursuant to this Section 5.05 shall be made by the Company or its agent in good faith and the Purchase Contract Agent shall have no responsibility with respect to such calculations and determinations.

Section 5.06. Notice of Adjustments and Certain Other Events. (a) Whenever the Fixed Settlement Rates are adjusted as herein provided, the Company shall, as soon as practicable following the occurrence of an event that requires an adjustment pursuant to Section 5.05 (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware):

(i) compute each adjusted Fixed Settlement Rate in accordance with Section 5.05 and prepare and transmit to the Purchase Contract Agent an Officers' Certificate setting forth each adjusted Fixed Settlement Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and

(ii) provide a written notice to the Holders of the Units and the Purchase Contract Agent of the occurrence of such event and a statement in reasonable detail

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setting forth the method by which the adjustment to each Fixed Settlement Rate was determined and setting forth each adjusted Fixed Settlement Rate.

(b) The Purchase Contract Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment of each Fixed Settlement Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in making the same. The Purchase Contract Agent shall be fully authorized and protected in relying on any Officers' Certificate delivered pursuant to Section 5.06(a)(i) and any adjustment contained therein and the Purchase Contract Agent shall not be deemed to have knowledge of any adjustment unless and until it has received such Officers' Certificate. The Purchase Contract Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at the time be issued or delivered with respect to any Purchase Contract; and the Purchase Contract Agent makes no representation with respect thereto. The Purchase Contract Agent shall not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock pursuant to a Purchase Contract or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 5.

Section 5.07. Termination Event; Notice.

(a) The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including the Holders' obligation and right to purchase and receive shares of Common Stock and to receive accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon)), shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, prior to or on the Purchase Contract Settlement Date, a Termination Event shall have occurred. In the event of such a termination of the Purchase Contracts as a result of a Termination Event, Holders of such Purchase Contracts will not have a claim in bankruptcy under the Purchase Contract with respect to the Company's issuance of shares of Common Stock or the right to receive Contract Adjustment Payments.

(b) Upon and after the occurrence of a Termination Event, the Units shall thereafter represent the right to receive the Notes (or security entitlements with respect thereto) underlying the Applicable Ownership Interests in Notes, the Treasury Securities or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, forming part of such Units, and any other Collateral, in each case, in accordance with the provisions of Section 3.15. Upon the occurrence of a Termination Event, (i) the Company shall promptly thereafter give written notice to the Purchase Contract Agent, the Collateral Agent and the Holders, at their addresses as they appear in the Security Register and (ii) the Collateral Agent shall, in accordance with Section 3.15, release the Notes (or security entitlements with respect thereto) underlying the Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio forming a part of each Corporate Unit or the Treasury Securities forming a part of each Treasury Unit, as the case may be, and any other Collateral from the Pledge.

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Section 5.08. Early Settlement. (a) Subject to and upon compliance with the provisions of this Section 5.08, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early ("Early Settlement") at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date, other than during a Blackout Period in the case of Corporate Units; provided that no Early Settlement will be permitted unless, at the time such Early Settlement is effected, there is an effective Registration Statement with respect to any shares of Common Stock to be issued and delivered in connection with such Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, (A) the Company shall, promptly after the date on which the Holder attempts to effect an Early Settlement, so notify such Holder, and (B) the Company agrees to use its commercially reasonable efforts to (i) have in effect a Registration Statement covering those shares of Common Stock to be delivered in respect of the Purchase Contracts being settled and (ii) provide a Prospectus in connection therewith, in each case, in a form that may be used in connection with such Early Settlement (it being understood that if there is a material business transaction or development that has not yet been publicly disclosed, the Company will not be required to file such Registration Statement or provide such a Prospectus, and the right to effect Early Settlement will not be available, until the Company has publicly disclosed such transaction or development; provided that the Company shall use commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so). In the event that a Holder seeks to exercise its right to effect Early Settlement and a Registration Statement is required to be effective in connection with the exercise of such right but no such Registration Statement is then effective, the Holder's exercise of such right shall be void unless and until such a Registration Statement shall be effective.

(b) In order to exercise the right to effect Early Settlement with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units (in the case of Certificates in definitive certificated form) shall deliver, at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date, other than during a Blackout Period in the case of Corporate Units, such Certificate to the Purchase Contract Agent at the Corporate Trust Office, duly endorsed for transfer to the Company or in blank with the form of Election to Settle Early in the form attached thereto duly completed and accompanied by payment (payable to the Company in immediately available funds) in an amount (the "Early Settlement Amount") equal to:

(i) (A) the Stated Amount, multiplied by (B) the number of Purchase Contracts with respect to which the Holder has elected to effect Early Settlement in accordance with this Section 5.08, plus

(ii) if the Early Settlement Date occurs during the period from the close of business on any Record Date next preceding any Contract Adjustment Payment Date to the opening of business on such Contract Adjustment Payment Date, an amount equal to the Contract Adjustment Payments payable on such Contract Adjustment Payment Date, unless the Company elected to defer Contract Adjustment Payments which would otherwise be payable on such Contract Adjustment Payment Date.

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In the case of Book-Entry Interests, each Beneficial Owner electing Early Settlement must deliver the Early Settlement Amount to the Purchase Contract Agent along with a facsimile of the Election to Settle Early form duly completed, make book-entry transfer of such Book-Entry Interests and comply with the Applicable Procedures of the Depository.

If the foregoing requirements are first satisfied with respect to Purchase Contracts underlying any Units prior to 4:00 p.m., New York City time, on a Business Day, such day shall be the "Early Settlement Date" with respect to such Units and if such requirements are first satisfied at or after 4:00 p.m., New York City time, on a Business Day or on a day that is not a Business Day, the "Early Settlement Date" with respect to such Units shall be the next succeeding Business Day.

Upon the receipt of such Certificate and Early Settlement Amount from the Holder, the Purchase Contract Agent shall pay to the Company such Early Settlement Amount, the receipt of which payment the Company shall confirm in writing. The Purchase Contract Agent shall then notify the Collateral Agent that (A) such Holder has elected to effect an Early Settlement, which notice shall set forth the number of such Purchase Contracts as to which such Holder has elected to effect Early Settlement, and (B) the Purchase Contract Agent has received from such Holder, and paid to the Company as confirmed in writing by the Company, the related Early Settlement Amount.

Upon receipt by the Collateral Agent of the notice from the Purchase Contract Agent set forth in the preceding paragraph, the Collateral Agent shall release from the Pledge, (1) in the case of a Holder of Corporate Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes, or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, relating to the Purchase Contracts to which Early Settlement is effected, or (2) in the case of a Holder of Treasury Units, Pledged Treasury Securities, in each case relating to the Units containing the Purchase Contracts as to which such Holder has elected to effect Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the Treasury Portfolio (and the related Applicable Ownership Interests in the Treasury Portfolio as specified in clause (ii) of the definition thereof) or Notes underlying such Pledged Applicable Ownership Interests in Notes or Pledged Treasury Securities, as the case may be, to the Purchase Contract Agent for distribution to such Holder, in each case free and clear of the Pledge created hereby.

Holders of Corporate Units and Treasury Units may only effect Early Settlement pursuant to this Section 5.08 in integral multiples of 20 Corporate Units or 20 Treasury Units, as the case may be; provided that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in Notes as a component of the Corporate Units, Corporate Units Holders may only effect Early Settlement pursuant to this Section 5.08 in integral multiples of 16,000 Corporate Units.

(c) Upon Early Settlement of Purchase Contracts by a Holder of the related Units, on the applicable Settlement Date:

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(i) such Holder shall be entitled to receive, and the Company will deliver to the Purchase Contract Agent for delivery to such Holder, a number of shares of Common Stock (or in the case of an Early Settlement following a Reorganization Event, a number of Exchange Property Units) equal to the applicable Minimum Settlement Rate as in effect on the Early Settlement Date for each Purchase Contract as to which Early Settlement is effected, subject to adjustment under Section 5.05(a)(vii), together with payment in lieu of any fraction of a share, as provided in Section 5.09;

(ii) such Holder shall be entitled to receive, and the Securities Intermediary will deliver to the Purchase Contract Agent for delivery to such Holder, the Notes, the Applicable Ownership Interest in the Treasury Portfolio or the Treasury Securities, as the case may be, related to the Corporate Units or Treasury Units free and clear of the Company's security interest; and

(iii) the Holder will be entitled to receive, and the Company shall be obligated to pay, any accrued and unpaid Contract Adjustment Payments (including any accrued and unpaid deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) to, but excluding, the Contract Adjustment Payment Date immediately preceding the Early Settlement Date.

Upon any Early Settlement, the Holder's right to receive future Contract Adjustment Payments and any accrued and unpaid Contract Adjustment Payments for the period since the most recent Contract Adjustment Payment Date (including any accrued and unpaid deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) will terminate.

(d) [Reserved]

(e) Upon Early Settlement of any Purchase Contracts, and subject to receipt of shares of Common Stock or Exchange Property Units from the Company and the Notes, the Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, as the case may be, from the Securities Intermediary, as applicable, the Purchase Contract Agent shall on the applicable Settlement Date, in accordance with the instructions provided by the Holder thereof on the applicable form of Election to Settle Early on the reverse of the Certificate evidencing the related Units:

(i) transfer to the Holder (or its designee) the Notes, the Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, as the case may be, related to such Units,

(ii) deliver to the Holder (or its designee) a certificate or certificates for the full number of shares of Common Stock or Exchange Property Units deliverable upon such Early Settlement, together with payment in lieu of any fraction of a share, as provided in Section 5.09, and

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(iii) if so required under the Securities Act, deliver a Prospectus for the shares of Common Stock deliverable upon such Early Settlement as contemplated by Section 5.08(a).

(f) In the event that Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Early Settlement the Company shall execute and the Purchase Contract Agent shall execute on behalf of the Holder, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Early Settlement was not effected.

Section 5.09. No Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued or delivered upon settlement on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement of any Purchase Contracts. If Certificates evidencing more than one Purchase Contract shall be surrendered for settlement at one time by the same Holder, the number of full shares of Common Stock which shall be delivered upon settlement shall be computed on the basis of the aggregate number of Purchase Contracts evidenced by the Certificates so surrendered. Instead of any fractional share of Common Stock that would otherwise be deliverable upon settlement of any Purchase Contracts on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement, the Company, through the Purchase Contract Agent, shall make a cash payment in respect of such fractional interest in an amount equal to the percentage of a whole share represented by such fractional share multiplied by the Closing Price of the Common Stock on the Trading Day immediately preceding the Purchase Contract Settlement Date (or, in the case of any Early Settlement or Fundamental Change Early Settlement, the Closing Price of the Common Stock on the Trading Day immediately preceding the relevant Settlement Date). The Company shall provide the Purchase Contract Agent from time to time with sufficient funds and instructions to permit the Purchase Contract Agent to make all cash payments required by this Section 5.09 in a timely manner.

Section 5.10. Charges and Taxes. The Company will pay all stock transfer and similar taxes attributable to the initial issuance and delivery of the shares of Common Stock pursuant to the Purchase Contracts; provided that the Company shall not be required to pay any such tax or taxes which may be payable in respect of any exchange of or substitution for a Certificate evidencing a Unit or any issuance of a share of Common Stock in a name other than that of the registered Holder or Beneficial Owner of a Certificate surrendered in respect of the Units evidenced thereby, other than in the name of the Purchase Contract Agent, as custodian for such Holder or Beneficial Owner, and the Company shall not be required to issue or deliver such share certificates or Certificates unless or until the Person or Persons requesting the transfer or issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax either has been paid or is not payable.

Section 5.11. Contract Adjustment Payments. (a) Subject to the provisions of this Section 5.11 and Section 5.12, the Company shall pay, on each Contract Adjustment Payment Date, the Contract Adjustment Payments payable in respect of each Purchase Contract to the Person in whose name the relevant Certificate is registered at the close of business on the Record Date relating to such Contract Adjustment Payment Date. The Contract Adjustment Payments

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will be payable at the office of the Purchase Contract Agent or its agent, which agent shall maintain an office in the continental United States of America for that purpose; *provided* that, subject to any applicable laws and regulations, as long as the Units are in global form, the Contract Adjustment Payments shall be payable in accordance with Applicable Procedures of the Depository. If the book-entry system for the Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or, if such Person so requests and designates an account in writing to the Purchase Contract Agent at least five Business Days prior to the Contract Adjustment Payment Date, by wire transfer to such account. If any date on which Contract Adjustment Payments are to be made is not a Business Day, then payment of the Contract Adjustment Payments payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or payment in respect of any such delay). Contract Adjustment Payments payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. The Contract Adjustment Payments will accrue from the date of this Agreement. For the avoidance of doubt, subject to the Company's right to defer Contract Adjustment Payments pursuant to Section 5.12, each Holder on any Record Date shall be entitled to receive the full Contract Adjustment Payment

due on the related Contract Adjustment Payment Date regardless of whether such Holder elects to settle the relevant Purchase Contract early (whether pursuant to Section 5.05(b)(ii) or Section 5.08) following such Record Date.

(b) Upon the occurrence of a Termination Event, the Company's obligation to pay future Contract Adjustment Payments (including any accrued and unpaid Contract Adjustment Payments) and any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall cease.

(c) Each Certificate delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of (including as a result of a Collateral Substitution or the recreation of Corporate Units) any other Certificate shall carry the right to accrued and unpaid Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), that was carried by the Purchase Contracts underlying such other Certificates.

(d) The Company's obligations (collectively, the "CAP Obligations") with respect to Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), if any, shall be subordinated and junior in right of payment to any existing and future Priority Indebtedness of the Company. The CAP Obligations shall rank on a parity with (i) the Notes and all other securities issued under the Base Indenture, and (ii) all other indebtedness and obligations of the Company ranking on parity with the indebtedness described in the foregoing clause (i).

In the case of any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, all obligations of the Company to holders of Priority Indebtedness of the Company shall be entitled to be paid in full before any payment shall be made on account of the CAP Obligations. In the event of any such proceeding, after payment in full of all sums owing with respect to Priority Indebtedness of

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the Company, the Holders of the Units, together with the holders of any obligations of the Company ranking on a parity with the CAP Obligations, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of the CAP Obligations and such obligations ranking on a parity with the CAP Obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Company ranking junior to the CAP Obligations. In addition, in the event of any such proceeding, if any payment or distribution of assets of the Company of any kind or character whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the CAP Obligations shall be received by the Purchase Contract Agent or the Holders of the Units in respect of the CAP Obligations before all Priority Indebtedness of the Company is paid in full, such payment or distribution shall be held in trust for the benefit of and shall be paid over to the holders of such Priority Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Priority Indebtedness of the Company may have been issued, ratably, for application to the payment of all Priority Indebtedness of the Company remaining unpaid until all such Priority Indebtedness of the Company shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Priority Indebtedness of the Company. Nothing in the provisions of Section 5.11(d) through (n) shall apply to claims of, or payments to, the Purchase Contract Agent under or pursuant to Section 7.07.

The subordination provisions of this sub-section (d) and sub-section (l) below shall not be applicable to amounts at the time due and owing with respect to the CAP Obligations for the payment of which funds have been deposited in trust for the benefit of the Holders; nor shall such provisions impair any rights, interests, or powers of any secured creditor of the Company in respect of any security the creation of which is not prohibited by the provisions of this Agreement, the Units or the Purchase Contracts.

The Company shall give written notice to the Purchase Contract Agent within 10 Business Days after the occurrence of (i) any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, (ii) any "Event of Default" described in Section 6.1(d) or (e) of the Base Indenture, or (iii) any event specified in the first sentence of the second paragraph of Section 5.11(d). The Purchase Contract Agent, subject to the provisions of Section 7.01, shall be entitled to assume that, and may act as if, no such event referred to in the preceding sentence has occurred unless a Responsible Officer of the Purchase Contract Agent has received at the Corporate Trust Office from the Company or any one or more holders of Priority Indebtedness of the Company or any trustee or representative therefor (who shall have been certified or otherwise established to the satisfaction of the Purchase Contract Agent to be such a holder or trustee or representative) written notice thereof. Upon any distribution of assets of the Company referred to in the provisions of Section 5.11(d) through (n), the Purchase Contract Agent and Holders of the Units shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which proceedings relating to any event specified in the first sentence of this paragraph are pending for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of

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the Priority Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to the provisions of Section 5.11(d) through (n), and the Purchase Contract Agent, subject to the provisions of Article 7, and the Holders of the Units shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Purchase Contract Agent or to the Holders of the Units for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Priority Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to the provisions of Section 5.11(d) through (n). In the absence of any such liquidating trustee, agent or other person, the Purchase Contract Agent shall be entitled to rely upon a written notice by a Person representing himself to be a holder of Priority Indebtedness of the Company (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of such Priority Indebtedness (or is such a trustee or representative). In the event that the Purchase Contract Agent determines, in good faith, that further evidence is required with respect to the right of any Person, as a holder of Priority Indebtedness of the Company, to participate in any payment or distribution pursuant to the provisions of Section 5.11(d) through (n), the Purchase Contract Agent may request such Person to furnish evidence to the reasonable satisfaction of the Purchase Contract Agent as to the amount of such Priority Indebtedness of the Company held by such Person, as to the extent to which such Person is entitled to participation in such payment or distribution, and as to other facts pertinent to the rights of such Person under the provisions of Section 5.11(d) through (n), and if such evidence is not furnished, the Purchase Contract Agent may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

(e) Nothing contained in the provisions of Section 5.11(d) through (n) or elsewhere in this Agreement, the Units or the Purchase Contracts is intended to or shall impair, as between the Company and the Holders of the Units, the obligation of the Company, which is absolute and unconditional, to satisfy the CAP Obligations when, where and as the same shall become due and payable, all in accordance with the terms of this Agreement, the Units and the Purchase Contracts, or is intended to or shall affect the relative rights of such Holders and creditors of the Company other than the holders of the Priority Indebtedness of the Company, nor shall anything herein or therein prevent the Purchase Contract Agent or the Holder of any Unit from exercising all remedies otherwise permitted by applicable law upon a failure of the Company to satisfy the CAP Obligations, subject to the rights, if any, under the provisions of Section 5.11(d) through (n) of the holders of Priority Indebtedness of the Company in respect of cash, property, or securities of the Company received in respect of the CAP Obligations upon the exercise of any such remedy.

(f) With respect to the holders of Priority Indebtedness of the Company, the Purchase Contract Agent undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in the provisions of Section 5.11(d) through (n), and no implied covenants or obligations with respect to the holders of Priority Indebtedness of the Company shall be read into this Agreement, the Units or the Purchase Contracts against the Purchase Contract Agent. The Purchase Contract Agent shall not be deemed to owe any fiduciary duty to the holders of Priority Indebtedness of the Company.

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(g) Notwithstanding any of the provisions of Section 5.11(d) through (n) or any other provisions of this Agreement, the Units or the Purchase Contracts, the Purchase Contract Agent shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Purchase Contract Agent unless and until a Responsible Officer of the Purchase Contract Agent shall have received at the Corporate Trust Office written notice thereof from the Company or from one or more holders of Priority Indebtedness of the Company or from any trustee therefor or representative thereof who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Purchase Contract Agent to be such a holder or trustee or representative; and, prior to the receipt of any such written notice, the Purchase Contract Agent, subject to the provisions of Section 7.01, shall be entitled in all respects to assume that no such facts exist; *provided, however*, that, if prior to the fifth Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, the Purchase Contract Agent shall not have received with respect to such moneys the notice provided for in this sub-section (g), then, anything herein contained to the contrary notwithstanding, the Purchase Contract Agent shall have full power and authority to receive such moneys and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date; *provided, further*, no such application shall affect the obligations under the provisions of Section 5.11(d) through (n) of the Persons receiving such moneys from the Purchase Contract Agent.

(h) Anything in this Agreement, the Units or the Purchase Contracts to the contrary notwithstanding, any deposit of moneys by the Company with the Purchase Contract Agent or any other agent (whether or not in trust) for any payment of the CAP Obligations shall, except as provided in sub-section (g) above, be subject to the provisions of Section 5.11(d).

(i) Subject to the payment in full of all Priority Indebtedness of the Company, the Holders of the Units shall be subrogated to the rights of the holders of such Priority Indebtedness of the Company to receive payments or distributions of assets of the Company applicable to such Priority Indebtedness of the Company until the CAP Obligations shall be paid in full, and none of the payments or distributions to the holders of such Priority Indebtedness to which the holders of the Units or the Purchase Contract Agent would be entitled except for the provisions of Section 5.11(d) through (n) or of payments over pursuant to the provisions of Section 5.11(d) through (n) to the holders of such Priority Indebtedness of the Company by the Holders of the Units or the Purchase Contract Agent shall, as among the Company, its creditors other than the holders of such Priority Indebtedness of the Company, and the Holders of such Units, be deemed to be a payment by the Company to or on account of such Priority Indebtedness of the Company; it being understood that the provisions of Section 5.11(d) through (n) are and are intended solely for the purpose of defining the relative rights of the Holders of the Units, on the one hand, and the holders of the Priority Indebtedness of the Company, on the other hand.

(j) No right of any present or future holders of any Priority Indebtedness of the Company to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Agreement, the Units or the Purchase Contracts, regardless of

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any knowledge thereof with which any such holder may have or be otherwise charged. The holders of Priority Indebtedness of the Company may, at any time or from time to time and in their absolute discretion, change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any such Priority Indebtedness of the Company, or amend or supplement any instrument pursuant to which any such Priority Indebtedness of the Company is issued or by which it may be secured, or release any security therefor, or exercise or refrain from exercising any other of their rights under the Priority Indebtedness of the Company including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders of the Units or the Purchase Contract Agent and without affecting the obligations of the Company, the Purchase Contract Agent or the Holders of the Units under Section 5.11(d) through (n).

(k) Each Holder of a Unit, by its acceptance thereof, authorizes and expressly directs the Purchase Contract Agent on its behalf to take such action as may be necessary or appropriate to effectuate, as between the Holders of such Units and the holders of Priority Indebtedness of the Company, the subordination provided in Section 5.11(d) through (n). If, in the event of any proceeding or other action relating to the Company referred to in the first sentence of the second paragraph of Section 5.11(d), a proper claim or proof of debt in the form required in such proceeding or action is not filed by or on behalf of the Holders of the Units with respect to the CAP Obligations prior to fifteen days before the expiration of the time to file such claim or claims, then the holder or holders of Priority Indebtedness of the Company shall have the right to file and are hereby authorized to file an appropriate claim with respect to the CAP Obligations for and on behalf of the Holders of such Units.

(l) In the event and during the continuation of any default in the payment of principal of or interest on any Priority Indebtedness of the Company, or in the event that any event of default with respect to any Priority Indebtedness of the Company shall have occurred and be continuing and shall have resulted in such Priority Indebtedness of the Company becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, unless and until such event of default shall have been cured, waived or remedied or shall have ceased to exist and such acceleration

shall have been rescinded or annulled or all amounts due on such Priority Indebtedness of the Company are paid in full in cash or other permitted consideration, or in the event any judicial proceeding shall be pending with respect to any such default in payment or such event or default (unless and until all amounts due on such Priority Indebtedness of the Company are paid in full in cash or other permitted consideration), then no payment or distribution of any kind or character, whether in cash, properties or securities shall be made by the Company on account of the CAP Obligations.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Purchase Contract Agent or the Holder of any Unit in respect of the CAP Obligations prohibited by the foregoing provisions of this sub-section (l), and if such fact shall, at or prior to the time of such payment, have been made known to the Purchase Contract Agent or, as the case may be, such Holder, then and in such event payment shall be paid over and delivered forthwith to the Company.

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(m) The Purchase Contract Agent shall be entitled to all of the rights set forth in Section 5.11(d) through (n) in respect of any Priority Indebtedness of the Company at any time held by it in its individual capacity and with respect to any amounts owed to the Purchase Contract Agent pursuant to Section 7.07 to the same extent as any other holder of such Priority Indebtedness of the Company, and nothing in this Agreement, the Units or the Purchase Contracts shall be construed to deprive the Purchase Contract Agent of any of its rights as such holder.

(n) The failure of the Company to make a payment with respect to the CAP Obligations by reason of any provision in Section 5.11(d) through (m) shall not be construed as preventing the occurrence of a default under this Agreement, the Units or the Purchase Contracts.

Section 5.12. Deferral of Contract Adjustment Payments. (a) The Company has the right at any time, and from time to time, to defer payment of all or part of the Contract Adjustment Payments in respect of each Purchase Contract by extending the period for payment of Contract Adjustment Payments to any subsequent Contract Adjustment Payment Date (an "Extension Period"), but not beyond the Purchase Contract Settlement Date (or, with respect to Purchase Contracts for (i) which an effective Fundamental Change Early Settlement has occurred, the Fundamental Change Early Settlement Date or (ii) which an effective Early Settlement has occurred, the Contract Adjustment Payment Date immediately preceding the Early Settlement Date). Prior to the expiration of any Extension Period, the Company may further extend such Extension Period to any subsequent Contract Adjustment Payment Date, but not beyond the Purchase Contract Settlement Date (or any applicable Fundamental Change Early Settlement Date or Contract Adjustment Payment Date immediately preceding the Early Settlement Date, as the case may be).

If the Company so elects to defer Contract Adjustment Payments, the Company shall pay additional Contract Adjustment Payments on such deferred installments of Contract Adjustment Payments at a rate equal to 7.75% per annum, compounded on each Contract Adjustment Payment Date to, but excluding, the Contract Adjustment Payment Date on which such deferred Contract Adjustment Payments are paid (the accrued additional Contract Adjustment Payments thereon, being referred to herein as the "Compounded Contract Adjustment Payments"). The Company may pay any such deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on any scheduled Contract Adjustment Payment Date to the Holder on the related Record Date, subject to sub-section (c) below.

(b) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of its election to extend any period for the payment of Contract Adjustment Payments, the expected length of any such Extension Period and any extension of any Extension Period, at least one Business Day before the earlier of (i) the Record Date for the Payment Date on which Contract Adjustment Payments would have been payable except for the election to begin or extend the Extension Period or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Payment Date.

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(c) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of the end of an Extension Period (other than on the Purchase Contract Settlement Date) or its election to pay any portion of the deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on a Payment Date prior to the end of an Extension Period, at least one Business Day before the earlier of (i) the Record Date for the Payment Date on which such Extension Period shall end or such payment of deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall be made or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Payment Date.

(d) In the event the Company exercises its option to defer the payment of Contract Adjustment Payments, then, until all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) have been paid, the Company shall not (1) declare or pay any dividends on, or make any distributions on, or redeem, purchase or acquire, or make a liquidation payment with respect to any shares of its capital stock, (2) make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of the Company's debt securities ranking on a parity with the CAP Obligations or ranking junior to the CAP Obligations, or (3) make any guarantee payments under any guarantee by the Company of securities of any of its subsidiaries in the case of a guarantee ranking on a parity with the CAP Obligations or ranking junior to the CAP Obligations; provided that the foregoing does not apply to:

(i) purchases, redemptions or other acquisitions of the Company's capital stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors, agents, consultants or independent contractors or a stock purchase or dividend reinvestment plan, or the satisfaction of the Company's obligations pursuant to any contract or security outstanding on the date that the Contract Adjustment Payment is deferred requiring the Company to purchase, redeem or acquire its capital stock;

(ii) any payment, repayment, redemption, purchase, acquisition or declaration of dividends described in clause (1) above as a result of a reclassification of the Company's capital stock, or the exchange or conversion of all or a portion of one class or series of the Company's capital stock, for another class or series of the Company's capital stock;

(iii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the Company's capital stock or the security being converted or exchanged, or in connection with the settlement of stock purchase contracts outstanding on the date that the Contract Adjustment Payment is deferred;

(iv) dividends or distributions paid or made in the Company's capital stock (or rights to acquire the Company's capital stock), or repurchases, redemptions or acquisitions of the Company's capital stock in connection with the issuance or exchange

of the Company's capital stock (or of securities convertible into or exchangeable for shares of the Company's capital stock) and distributions in connection with the settlement of stock purchase contracts outstanding on the date that the Contract Adjustment Payment is deferred;

(v) redemptions, exchanges or repurchases of, or with respect to, any rights outstanding under a shareholder rights plan outstanding on the date that the Contract Adjustment Payment is deferred or the declaration or payment thereunder of a dividend or distribution of or with respect to rights in the future;

(vi) payments on the Notes, any trust preferred securities, subordinated debentures, junior subordinated debentures or junior subordinated notes, or any guarantees of any of the foregoing, in each case, ranking on a parity with the CAP Obligations, so long as the amount of payments made on account of such securities or guarantees and the Purchase Contracts is paid on all such securities and guarantees and the Purchase Contracts then outstanding on a *pro rata* basis in proportion to the full payment to which each series of such securities, guarantees or Purchase Contracts is then entitled if paid in full; provided that, for the avoidance of doubt, the Company shall not make Contract Adjustment Payments in part;

(vii) purchases of any Notes upon exercise of the Put Right in the event of a Failed Final Remarketing; or

(viii) any payment of deferred interest or principal on, or repayment, redemption or repurchase of, parity or junior securities that, if not made, would cause the Company to breach the terms of the instrument governing such parity or junior securities.

ARTICLE 6

RIGHTS AND REMEDIES OF HOLDERS

Section 6.01. Unconditional Right of Holders to Receive Contract Adjustment Payments and to Purchase Shares of Common Stock. Each Holder of a Unit shall have the right, which is absolute and unconditional, (i) except upon and following a Termination Event and subject to Article 5, to receive each Contract Adjustment Payment and deferred Contract Adjustment Payment with respect to the Purchase Contract comprising part of such Unit on the respective Contract Adjustment Payment Date for such Unit and (ii) except upon and following a Termination Event, to purchase shares of Common Stock pursuant to the Purchase Contract comprising part of such Unit and, in each such case, to institute suit for the enforcement of any such right to receive Contract Adjustment Payments and the right to purchase shares of Common Stock (including, without limitation, by effecting an Early Settlement or Fundamental Change Early Settlement in accordance with the terms hereof), and such right shall not be impaired without the consent of such Holder.

Section 6.02. Restoration of Rights and Remedies. If any Holder has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been

discontinued or abandoned for any reason, or has been determined adversely to such Holder, then and in every such case, subject to any determination in such proceeding, the Company and such Holder shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of such Holder shall continue as though no such proceeding had been instituted.

Section 6.03. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates in the last paragraph of Section 3.10, no right or remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.04. Delay or Omission Not Waiver. No delay or omission of any Holder to exercise any right upon a default or remedy upon a default shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article 6 or by law to the Holders may be exercised from time to time, and as often as may be deemed expedient, by such Holders.

Section 6.05. Undertaking for Costs. All parties to this Agreement agree, and each Holder of a Unit, by its acceptance of such Unit shall be deemed to have agreed, that any court of competent jurisdiction may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Purchase Contract Agent for any action taken, suffered or omitted by it as Purchase Contract Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and costs, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section shall not apply to any suit instituted by the Purchase Contract Agent, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% of the Outstanding Units, or to any suit instituted by any Holder for the enforcement of any interest on any Notes owed pursuant to such Holder's Applicable Ownership Interests in Notes or Contract Adjustment Payments on or after the respective Payment Date therefor in respect of any Unit held by such Holder, or for enforcement of the right to purchase shares of Common Stock under the Purchase Contracts constituting part of any Unit held by such Holder (including, without limitation, by effecting an Early Settlement or Fundamental Change Early Settlement in accordance with the terms hereof).

Section 6.06. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby

ARTICLE 7

THE PURCHASE CONTRACT AGENT

Section 7.01. Certain Duties and Responsibilities.

(a) The Purchase Contract Agent:

(i) undertakes to perform, with respect to the Units, such duties and only such duties as are specifically set forth in this Agreement and the Remarketing Agreement to be performed by the Purchase Contract Agent and no implied covenants or obligations shall be read into this Agreement or the Remarketing Agreement against the Purchase Contract Agent; and

(ii) may conclusively rely, in the absence of bad faith, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Purchase Contract Agent and conforming to the requirements of this Agreement or the Remarketing Agreement, as applicable, but in the case of any certificates or opinions which by any provision hereof are specifically required to be furnished to the Purchase Contract Agent, the Purchase Contract Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement or the Remarketing Agreement, as applicable (but need not confirm or investigate the accuracy of the mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(b) No provision of this Agreement or the Remarketing Agreement shall be construed to relieve the Purchase Contract Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this Section 7.01(b) shall not be construed to limit the effect of Section 7.01(a) and Section 7.01(c); and

(ii) the Purchase Contract Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be conclusively determined by a court of competent jurisdiction that the Purchase Contract Agent was negligent in ascertaining the pertinent facts.

(c) No provision of this Agreement or the Remarketing Agreement shall require the Purchase Contract Agent to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Agreement and the Remarketing Agreement relating to the conduct or affecting the liability of or affording protection to the Purchase Contract Agent shall be subject to the provisions of this Section.

(e) The Purchase Contract Agent is fully authorized to execute and deliver the Remarketing Agreement in its capacity as Purchase Contract Agent. The rights, privileges, protections, immunities and benefits afforded to the Purchase Contract Agent and each Indemnitee under this Agreement, including, without limitation, its and their rights to be compensated, reimbursed and indemnified, shall also extend to and cover the Purchase Contract Agent and each Indemnitee with respect to the role of the Purchase Contract Agent as Purchase Contract Agent under, including action taken, omitted to be taken or suffered by the Purchase Contract Agent pursuant to, the Remarketing Agreement.

(f) On or prior to the date that is 20 days prior to the first day of the Final Remarketing Period or, if the Company shall have elected to conduct an Optional Remarketing, the date that is 20 days prior to the first day of the Optional Remarketing Period, at the Company's request given in an Officers' Certificate at least three Business Days prior to such 20th day, the Purchase Contract Agent shall deliver to the Company and the Remarketing Agent(s) an executed counterpart of the Remarketing Agreement, signed by an authorized signatory of the Purchase Contract Agent.

Section 7.02. Notice of Default. Within 90 days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has actual knowledge, the Purchase Contract Agent shall transmit by mail to the Company and the Holders, as their names and addresses appear in the Security Register, notice of such default hereunder, unless such default shall have been cured or waived. The term "default" for the purposes of this Section being hereby defined as the failure to make any Contract Adjustment Payment when the same shall become due and payable, or any default by the Company of any of its covenants in Article 10 of this Agreement.

Section 7.03. Certain Rights of Purchase Contract Agent. Subject to the provisions of Section 7.01:

(a) the Purchase Contract Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate, Issuer Order or Issuer Request, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Agreement or the Remarketing Agreement the Purchase Contract Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting to take any action hereunder or thereunder, the Purchase Contract Agent (unless other evidence be herein or therein specifically prescribed) may conclusively rely upon an Officers' Certificate of the Company or an Opinion of Counsel;

(d) the Purchase Contract Agent may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Purchase Contract Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or inquire as to the performance by the Company of any of its covenants in this Agreement, but the Purchase Contract Agent, in its discretion, may make reasonable further inquiry or investigation into such facts or matters related to the execution, delivery and performance of the Purchase Contracts as it may see fit, and, if the Purchase Contract Agent shall determine to make such further inquiry or investigation, it shall be given a reasonable opportunity to examine the relevant books, records and premises of the Company, personally or by agent or attorney, at the sole cost of the Company;

(f) the Purchase Contract Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, or an Affiliate of the Purchase Contract Agent and the Purchase Contract Agent shall not be responsible for any misconduct or negligence on the part of any agent, attorney, or Affiliate appointed with due care by it hereunder;

(g) the Purchase Contract Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Holders pursuant to this Agreement, unless such Holders shall have offered to the Purchase Contract Agent security or indemnity reasonably satisfactory to the Purchase Contract Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(h) the Purchase Contract Agent shall not be liable for any action taken, suffered, or omitted to be taken by it in the absence of gross negligence or willful misconduct by it and believed by it to be authorized and within the discretion or rights or powers conferred upon it by this Agreement;

(i) the Purchase Contract Agent shall not be deemed to have notice of any adjustment to the Fixed Settlement Rates, the occurrence of a Termination Event or any default hereunder unless a Responsible Officer of the Purchase Contract Agent has actual knowledge thereof or unless specific written notice by the Company or any Holder of any such adjustment, Termination Event, or occurrence or event which is in fact a default is received by a Responsible Officer of the Purchase Contract Agent at the Corporate Trust Office of the Purchase Contract Agent, and such notice references the Units and this Agreement;

(j) the Purchase Contract Agent may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement along with specimen signatures, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate,

including any person specified as so authorized in any such certificate previously delivered and not superseded;

(k) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent, including, without limitation, its right to be compensated, reimbursed, and indemnified, are extended to and shall be enforceable by, each agent of, custodian of, and other Person employed by (in each case, as permitted under this Agreement), the Purchase Contract Agent to act hereunder and shall survive the resignation or removal of the Purchase Contract Agent and the termination of this Agreement;

(l) the Purchase Contract Agent shall not be required to initiate or conduct any litigation or collection proceedings hereunder and shall have no responsibilities with respect to any default hereunder, in each case, except as expressly set forth herein; and

(m) the permissive right of the Purchase Contract Agent to take or refrain from taking action hereunder shall not be construed as a duty.

Section 7.04. Not Responsible for Recitals or Issuance of Units. The recitals contained herein, in the Remarketing Agreement and in the Certificates shall be taken as the statements of the Company, and the Purchase Contract Agent assumes no responsibility for their accuracy or validity. The Purchase Contract Agent makes no representations as to the validity or sufficiency of either this Agreement or of the Units or the Pledge or the Collateral or the Remarketing Agreement and shall have no responsibility for perfecting or maintaining the perfection of any security interest in the Collateral nor for making any calculations hereunder. The Purchase Contract Agent shall not be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts or for funds received and disbursed in accordance with this Agreement. The Purchase Contract Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of the Units.

Section 7.05. May Hold Units. Any Security Registrar or any other agent of the Company, or the Purchase Contract Agent and its Affiliates, in their individual or any other capacity, may become the owner or pledgee of Units and may otherwise deal with the Company, the Collateral Agent or any other Person with the same rights it would have if it were not Security Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner or pledgee of Units.

Section 7.06. Money Held in Custody. Money or other property held by the Purchase Contract Agent in custody hereunder need not be segregated from the Purchase Contract Agent's other funds except to the extent required by law or provided herein; provided, however, that when the Purchase Contract Agent holds cash as a component of the Treasury Portfolio or a Treasury Unit, such cash shall be held in a segregated account hereunder.

The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as agreed in writing with the Company. If no standing

instruction exists at the time any funds are received by the Purchase Contract Agent, the Securities Intermediary or the Collateral Agent, such funds shall remain uninvested without liability for interest or other compensation thereon.

Section 7.07. Compensation and Reimbursement.

The Company agrees:

- (a) to pay to the Purchase Contract Agent compensation for all services rendered by it hereunder and under the Remarketing Agreement as the Company and the Purchase Contract Agent shall from time to time agree in writing;
- (b) to reimburse the Purchase Contract Agent upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Purchase Contract Agent in accordance with any provision of this Agreement and the Remarketing Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be caused by its gross negligence or willful misconduct; and
- (c) to indemnify the Purchase Contract Agent and any predecessor Purchase Contract Agent and each of its directors, officers, agents and employees (collectively, with the Purchase Contract Agent, the “Indemnitees”) for, and to hold each Indemnitee harmless against, any loss, claim, damage, liability, or expense (including reasonable fees and expenses of outside counsel) incurred solely without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance, administration or performance of its duties hereunder and under the Remarketing Agreement, including the Indemnitees’ reasonable and out-of-pocket costs and expenses of enforcing this Agreement or the Remarketing Agreement and of defending themselves against any claim or liability in connection with the exercise or performance of any of the Purchase Contract Agent’s powers or duties hereunder or thereunder (whether asserted by a Holder, the Company or otherwise) or of enforcing the provisions of this Section. The Purchase Contract Agent shall promptly notify the Company of any third-party claim of which a Responsible Officer has received written notice and which may give rise to the indemnity hereunder and give the Company the opportunity to control the defense of such claim with counsel reasonably satisfactory to the applicable Indemnitee, and the Purchase Contract Agent shall provide reasonable cooperation at the Company’s expense in the defense. Each Indemnitee may have separate counsel and the Company shall pay the fees and expenses of such counsel. Failure by the Purchase Contract Agent to so notify the Company shall not relieve the Company of its obligations hereunder.

The provisions of this Section shall survive the resignation and removal of the Purchase Contract Agent, the satisfaction or discharge of the Units and the Purchase Contracts and the termination of this Agreement.

When the Purchase Contract Agent incurs expenses or renders services in connection with an “Event of Default” specified in Section 6.1(d) or (e) of the Base Indenture or any event specified in the first sentence of the second paragraph of Section 5.11(d), the expenses (including

the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law. “Purchase Contract Agent” for the purposes of this Section 7.07 shall include any predecessor Purchase Contract Agent and the Purchase Contract Agent in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; *provided, however*, that the gross negligence or willful misconduct of any Purchase Contract Agent hereunder shall not affect the rights of any other Purchase Contract Agent hereunder.

Section 7.08. Corporate Purchase Contract Agent Required; Eligibility. There shall at all times be a Purchase Contract Agent hereunder which shall be a Person organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers and having (or being a member of a bank holding company having) a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State authority and having or having an agent having a corporate trust office in the continental United States of America, if there be such a Person in the continental United States of America, qualified and eligible under this Article and willing to act on reasonable terms. If such Person publishes or files reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published or filed. If at any time the Purchase Contract Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Purchase Contract Agent and no appointment of a successor Purchase Contract Agent pursuant to this Article shall become effective until the acceptance of appointment by the successor Purchase Contract Agent in accordance with the applicable requirements of Section 7.10.

(b) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 30 days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 shall not have been delivered to the Purchase Contract Agent within 30 days after the giving of such notice of resignation, the resigning Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) The Purchase Contract Agent may be removed at any time by Act of the Holders of a majority in number of the Outstanding Units delivered to the Purchase Contract Agent and the Company. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10 shall not have been delivered to the Purchase Contract Agent within 30 days after such Act, the Purchase Contract Agent being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(d) If at any time:

(i) the Purchase Contract Agent fails to comply with Section 310(b) of the TIA, as if the Purchase Contract Agent were an indenture trustee under an indenture qualified under the TIA, and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Unit for at least six months;

(ii) the Purchase Contract Agent shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(iii) the Purchase Contract Agent shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Purchase Contract Agent or of its property shall be appointed or any public officer shall take charge or control of the Purchase Contract Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove the Purchase Contract Agent, or (ii) any Holder who has been a bona fide Holder of a Unit for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Purchase Contract Agent and the appointment of a successor Purchase Contract Agent.

(e) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Purchase Contract Agent for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 7.10. If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 7.10, any Holder who has been a bona fide Holder of a Unit for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(f) The Company shall give, or shall cause such successor Purchase Contract Agent to give, notice of each resignation and each removal of the Purchase Contract Agent and each appointment of a successor Purchase Contract Agent by mailing written notice of such event by first-class mail, postage prepaid, to all Holders as their names and addresses appear in the applicable Security Register. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 7.10. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Purchase Contract Agent, every such successor Purchase Contract Agent so appointed shall execute, acknowledge and deliver to the Company and to the retiring Purchase Contract Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Purchase Contract Agent shall become effective and such

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successor Purchase Contract Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, agencies and duties of the retiring Purchase Contract Agent; but, on the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon payment of amounts owed to it pursuant to Section 7.07, execute and deliver an instrument transferring to such successor Purchase Contract Agent all the rights, powers and trusts of the retiring Purchase Contract Agent and duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(b) Upon request of any such successor Purchase Contract Agent, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Purchase Contract Agent all such rights, powers and agencies referred to in clause (a) of this Section 7.10.

(c) No successor Purchase Contract Agent shall accept its appointment unless at the time of such acceptance such successor Purchase Contract Agent shall be qualified and eligible under this Article 7.

Section 7.11. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Purchase Contract Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Purchase Contract Agent shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent (including the administration of this Agreement), shall be the successor of the Purchase Contract Agent hereunder, provided that such Person shall be otherwise qualified and eligible under this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been authenticated and executed on behalf of the Holders, but not delivered, by the Purchase Contract Agent then in office, any successor by merger, conversion or consolidation to such Purchase Contract Agent may adopt such authentication and execution and deliver the Certificates so authenticated and executed with the same effect as if such successor Purchase Contract Agent had itself authenticated and executed such Units.

Section 7.12. Preservation of Information. The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders received by the Purchase Contract Agent in its capacity as Security Registrar.

Section 7.13. No Obligations of Purchase Contract Agent. Except to the extent otherwise expressly provided in this Agreement, the Purchase Contract Agent assumes no obligations and shall not be subject to any liability under this Agreement, the Remarketing Agreement or any Purchase Contract in respect of the obligations of the Holder of any Unit thereunder. The Company agrees, and each Holder of a Certificate, by its acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent's execution of the Certificates on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that the Purchase Contract Agent shall have no obligation to perform such Purchase Contracts on behalf of the Holders, except to the extent expressly provided in Article 5. Anything contained in this

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Agreement to the contrary notwithstanding, in no event shall the Purchase Contract Agent or its officers, directors, employees or agents be liable under this Agreement or the Remarketing Agreement for (i) indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including lost profits, whether or not the likelihood of such loss or damage was known to the Purchase Contract Agent and regardless of the form of action or (ii) any failure or

delay in the performance of its obligations under this Agreement because of circumstances beyond its control, including, without limitation, acts of God; earthquake; fires; floods; wars; civil or military disturbances; terrorist acts; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities; labor disputes; or acts of civil or military authority or governmental actions, in each case, which delay, restrict or prohibit the providing of services contemplated by this Agreement; it being understood that the Purchase Contract Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under such circumstances.

ARTICLE 8

SUPPLEMENTAL AGREEMENTS

Section 8.01. Supplemental Agreements without Consent of Holders. Without the consent of any Holders, the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company, the Purchase Contract Agent and the Collateral Agent, the Custodial Agent and the Securities Intermediary, to:

- (a) evidence the succession of another Person to the Company's obligations in accordance with Article 9;
- (b) add to the covenants of the Company for the benefit of the Holders, or surrender any right or power herein conferred upon the Company;
- (c) evidence and provide for the acceptance of appointment hereunder by a successor Purchase Contract Agent, Collateral Agent, Securities Intermediary or Custodial Agent in accordance with Article 7 or 15, as the case may be;
- (d) make provision with respect to the rights of Holders pursuant to the requirements of Section 5.05(b)(i);
- (e) cure any ambiguity or to correct or supplement any provisions herein that may be inconsistent with any other provision herein; or
- (f) make such other provisions in regard to matters or questions arising under this Agreement or to make any other changes in the provisions of this Agreement, in each case, provided that such amendment does not adversely affect the interests of any Holders; it being understood that any amendment made to conform the provisions of this Agreement to the description of this Agreement, the Units and the Purchase Contracts contained in the preliminary

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prospectus supplement dated November 16, 2015, relating to the Units (including, without limitation, under the sections entitled "Description of the Equity Units", "Description of the Purchase Contracts", "Certain Provisions of the Purchase Contract and Pledge Agreement" and "Description of the Remarkable Junior Subordinated Notes"), as supplemented and/or amended by the Term Sheet based upon an Officers' Certificate delivered to the Purchase Contract Agent will be deemed not to adversely affect the interests of the Holders.

Section 8.02. Supplemental Agreements with Consent of Holders. With the consent of the Holders of not less than a majority of the Outstanding Units, with Holders of Corporate Units and Treasury Units voting together as one class, including without limitation the consent of the Holders obtained in connection with a tender or an exchange offer, by Act of said Holders delivered to the Company and the Purchase Contract Agent, the Company, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent may enter into an agreement or agreements supplemental hereto for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Units; provided, however, that no such supplemental agreement shall, without the consent of the Holder of each Outstanding Purchase Contract affected thereby:

- (a) subject to the Company's right to defer Contract Adjustment Payments, change any Payment Date;
- (b) impair the Holders' right to institute suit for the enforcement of any Purchase Contract or payment of any Contract Adjustment Payments or deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon);
- (c) except as required pursuant to Section 5.05(a), reduce the number of shares of Common Stock purchasable pursuant to any Purchase Contract, increase the Purchase Price of the shares of Common Stock upon settlement of any Purchase Contract, change the Purchase Contract Settlement Date or change the right to effect an Early Settlement or Fundamental Change Early Settlement in a manner adverse to the Holder;
- (d) increase the amount or change the type of Collateral required to be Pledged to secure a Holder's Obligations;
- (e) impair the right of the Holder of any Purchase Contract to receive distributions on the Collateral or otherwise adversely affect the Holder's rights in or to such Collateral;
- (f) reduce any Contract Adjustment Payments or any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) or change any place where, or the coin or currency in which, any Contract Adjustment Payment is payable; or
- (g) reduce the percentage of the Outstanding Purchase Contracts or Units, as the case may be, whose Holders' consent is required for any modification, amendment or waiver of the provisions of this Agreement or the Purchase Contracts or Units;

provided that if any such supplemental agreement would adversely affect only the Corporate Units or only the Treasury Units, then only the affected class of Holders as of the record date for

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the Holders entitled to vote thereon will be entitled to vote on such supplemental agreement, and such supplemental agreement shall not be effective except with the consent of Holders of not less than a majority of such class or, in the case of any supplemental agreement having the effects specified in

clauses (a) through (g) of this Section 8.02, each Holder affected thereby. It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such Act shall approve the substance thereof.

Section 8.03. Execution of Supplemental Agreements. In executing, or accepting the additional agencies created by any supplemental agreement permitted by this Article 8 or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent shall be provided, and (subject to Section 7.01 with respect to the Purchase Contract Agent) shall be fully authorized and protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement and that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied. The Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent may, but shall not be obligated to, enter into any such supplemental agreement that affects their own rights, duties or immunities under this Agreement or otherwise.

Section 8.04. Effect of Supplemental Agreements. Upon the execution of any supplemental agreement under this Article 8, this Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement for all purposes; and every Holder of Certificates theretofore or thereafter authenticated, executed on behalf of the Holders and delivered hereunder, shall be bound thereby.

Section 8.05. Reference to Supplemental Agreements. Certificates authenticated, executed on behalf of the Holders and delivered after the execution of any supplemental agreement pursuant to this Article may, and shall if required by the Purchase Contract Agent, bear a notation in form approved by the Purchase Contract Agent as to any matter provided for in such supplemental agreement. If the Company shall so determine, new Certificates so modified as to conform, in the opinion of the Purchase Contract Agent and the Company, to any such supplemental agreement may be prepared and executed by the Company and authenticated, executed on behalf of the Holders and delivered by the Purchase Contract Agent in exchange for Outstanding Certificates.

ARTICLE 9

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 9.01. Covenant Not to Consolidate, Merge, Convey, Transfer or Lease Property except under Certain Conditions. The Company shall not merge or consolidate with any other Person or sell or convey all or substantially all of its assets to any Person, unless

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(a) either the Company is the continuing entity, or the successor entity (if other than the Company) is a corporation organized and existing under the laws of the United States of America or a State thereof or the District of Columbia and such corporation expressly assumes all of the Company's responsibilities and liabilities under the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement, the Remarketing Agreement (if any) and the Indenture by one or more supplemental agreements in form satisfactory to the Purchase Contract Agent, the Collateral Agent and the Indenture Trustee and that complies with Article 8 hereof or the applicable provisions of the Remarketing Agreement or the Indenture, as the case may be, executed and delivered to the Purchase Contract Agent, the Collateral Agent and the Indenture Trustee by such corporation, and

(b) the Company or such successor corporation, as the case may be, will not, immediately after such merger or consolidation, or such sale or conveyance, be in default of any payment or delivery obligations under such agreements or in default in the performance of any other material covenants under such agreements.

Section 9.02. Rights and Duties of Successor Person. In case of any such consolidation, merger, sale or conveyance, and upon any such assumption by the successor corporation in accordance with Section 9.01, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named in the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement and the Remarketing Agreement (if any) as the Company and (other than in the case of a lease) the Company shall be relieved of any further obligation under the Purchase Contracts, the Corporate Units, the Treasury Units, this Agreement and the Remarketing Agreement (if any). Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Certificates evidencing Units issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Purchase Contract Agent; and, upon the order of such successor instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent shall authenticate and execute on behalf of the Holders and deliver any Certificates which previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent for authentication and execution, and any Certificate evidencing Units which such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent for that purpose. All the Certificates issued shall in all respects have the same legal rank and benefit under this Agreement as the Certificates theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Certificates had been issued at the date of the execution hereof.

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

Section 9.03. Officers' Certificate and Opinion of Counsel Given to Purchase Contract Agent. The Purchase Contract Agent, subject to Section 7.01 and Section 7.03, shall be entitled to receive an Officers' Certificate and an Opinion of Counsel and rely thereon as conclusive evidence that any such merger, consolidation, conveyance or sale, and any such

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assumption, complies with the provisions of this Article 9 and that all conditions precedent to the consummation of any such merger, consolidation, conveyance or sale have been met.

ARTICLE 10

COVENANTS

Section 10.01. Performance under Purchase Contracts. The Company covenants and agrees for the benefit of the Holders from time to time of the Units that it will duly and punctually perform its obligations under the Purchase Contracts in accordance with the terms of the Purchase Contracts and this Agreement.

Section 10.02. Maintenance of Office or Agency. (a) The Company will maintain in the continental United States of America, an office or agency, which may be the office of the Purchase Contract Agent or its agent, where Certificates may be presented or surrendered for acquisition of shares of Common Stock upon settlement of the Purchase Contracts on the Purchase Contract Settlement Date or upon Early Settlement or Fundamental Change Early Settlement and for transfer of Collateral upon occurrence of a Termination Event, Early Settlement or Fundamental Change Early Settlement, where Certificates may be surrendered for registration of transfer or exchange, or for a Collateral Substitution and where notices and demands to or upon the Company in respect of the Units and this Agreement may be served. The Company will give prompt written notice to the Purchase Contract Agent of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Purchase Contract Agent with the address thereof, such presentations, surrenders, notices and demands may be made or served at the foregoing Corporate Trust Office and the Company hereby appoints the Purchase Contract Agent as its agent to receive all such presentations, surrenders, notices and demands. The Company initially designates the Corporate Trust Office as such office of the Company and appoints the Purchase Contract Agent as paying agent.

(b) The Company may also from time to time designate one or more other offices or agencies where Certificates may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States of America for such purposes. The Company will give prompt written notice to the Purchase Contract Agent of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03. Company to Reserve Common Stock. The Company shall at all times prior to the Purchase Contract Settlement Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock the maximum number of shares of Common Stock issuable against payment (including the maximum number of Make-Whole Shares issuable upon a Fundamental Change Early Settlement) in respect of all Purchase Contracts constituting a part of the Units evidenced by Outstanding Certificates.

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Section 10.04. Covenants as to Common Stock; Listing. (a) The Company covenants that all shares of Common Stock which may be issued against tender of payment in respect of any Purchase Contract constituting a part of the Outstanding Units will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable.

(b) The Company further covenants that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, the Company shall, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon settlement of Purchase Contracts.

(c) The Company further covenants that it shall use its commercially reasonable efforts to effect the listing of the Corporate Units on the New York Stock Exchange within 30 days of the date of initial issuance of the Corporate Units.

Section 10.05. Statements of Officers of the Company as to Default. The Company will deliver to the Purchase Contract Agent, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Agreement, the Units or the Purchase Contracts and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.06. ERISA. Each Holder, by acceptance of the Units, any shares of Common Stock issuable upon settlement of the Purchase Contract or Notes, will be deemed to have represented and warranted that from and including the date of its acquisition of any such securities through and including the date of the satisfaction of the obligation under the Purchase Contract and/or the disposition of any such securities either (i) no portion of the assets used by such Holder to acquire or hold the Units, shares of Common Stock issuable upon settlement of the Purchase Contract or Notes (or by any Beneficial Owner with a Book-Entry Interest in such Units that is a Plan or that used assets of a Plan to acquire such Book-Entry Interest) constitutes assets of any Plan or (ii) (1) its acquisition, holding and disposition of the Units, shares of Common Stock issuable upon settlement of the Purchase Contract or Notes, as applicable, will not violate ERISA's fiduciary standards or other requirements under ERISA, the Code or Similar Laws, or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation of any applicable Similar Laws, and (2) neither the Company nor any of its subsidiaries is or will be deemed to be a fiduciary with respect to any Plan.

Section 10.07. Tax Treatment. The Company, the Purchase Contract Agent and the Collateral Agent covenant and agree and, by acceptance of a Unit or Book-Entry Interest, each Holder and Beneficial Owner will be deemed to have agreed for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (i) to treat each Beneficial Owner of a Corporate Unit or a Treasury Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Collateral, including the Notes

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underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities, as the case may be, (ii) to treat the Notes as indebtedness, (iii) with respect to Holders (or Beneficial Owners) who purchase Corporate Units upon issuance, to allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as \$0 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interest in Notes as \$50, and (iv) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

Section 10.08. Remarketing Agreement. On or prior to the date that is 20 days prior to the first day of the Final Remarketing Period or, if the Company shall have elected to conduct an Optional Remarketing, on or prior to the date that is 20 days prior to the first day of the Optional Remarketing Period, the Company shall have entered into, and shall have caused the Purchase Contract Agent and the Remarketing Agent(s) to have entered into, the Remarketing Agreement.

ARTICLE 11

PLEDGE

Section 11.01. Pledge. Each Holder, acting through the Purchase Contract Agent as such Holder's attorney-in-fact, and the Purchase Contract Agent, acting solely as such attorney-in-fact, hereby pledges and grants to the Collateral Agent, as agent of and for the benefit of the Company, a continuing first priority perfected security interest in and to, and a lien upon and right of set-off against, all of such Person's right, title and interest in and to the Collateral, whether now existing or hereafter arising, to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations. The Collateral Agent shall have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party by the UCC, in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Collateral Agent by this Agreement or other applicable law.

Section 11.02. Termination. As to each Holder, the Pledge created hereby shall terminate upon the payment and performance in full of such Holder's Obligations, or (if earlier) upon any Termination Event. Promptly after such termination (as notified to the Collateral Agent by the Company), the Collateral Agent shall instruct the Securities Intermediary to Transfer the portion of the Collateral attributable to such Holder to the Purchase Contract Agent for distribution to such Holder, free and clear of the Pledge created hereby. As promptly as practicable following the termination of the Pledge with respect to any Collateral pursuant to this Section 11.02 or any other provision of this Agreement, the Company shall terminate any UCC financing statements that have been filed that relate to such Collateral, and take any other action that the Purchase Contract Agent or any Holder reasonably requests, to evidence the termination of the Pledge, in each case, at the sole expense of the Company.

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ARTICLE 12

ADMINISTRATION OF COLLATERAL

Section 12.01. Initial Deposit of Notes. (a) Prior to or concurrently with the execution and delivery of this Agreement, the Purchase Contract Agent, on behalf of the initial Holders of the Corporate Units, shall Transfer to the Securities Intermediary, for credit to the Collateral Account, the Applicable Ownership Interests in Notes and the Notes underlying such Applicable Ownership Interests in Notes by delivering such Notes indorsed in blank to the Securities Intermediary. The Securities Intermediary shall indicate by book-entry that a securities entitlement with respect to such Applicable Ownership Interests in Notes (and the Notes underlying such Applicable Ownership Interests in Notes) has been credited to the Collateral Account.

(b) The Collateral Agent may, at any time or from time to time, in its sole discretion, cause any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees.

Section 12.02. Establishment of Collateral Account. The Securities Intermediary hereby confirms that:

(a) the Securities Intermediary has established the Collateral Account;

(b) the Collateral Account is a securities account;

(c) subject to the terms of this Agreement, the Securities Intermediary shall identify in its records the Collateral Agent as the entitlement holder entitled to exercise the rights that comprise any financial asset credited to the Collateral Account;

(d) all property delivered to the Securities Intermediary pursuant to this Agreement, including any Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities and the Permitted Investments, will be credited promptly to the Collateral Account; and

(e) all securities or other property underlying any financial assets credited to the Collateral Account shall be (i) registered in the name of the Purchase Contract Agent and indorsed to the Securities Intermediary or in blank, (ii) registered in the name of the Securities Intermediary or (iii) credited to another securities account maintained in the name of the Securities Intermediary.

In no case will any financial asset credited to the Collateral Account be registered in the name of the Purchase Contract Agent (in its capacity as such) or any Holder or specially indorsed to the Purchase Contract Agent (in its capacity as such) or any Holder, unless such financial asset has been further indorsed to the Securities Intermediary or in blank.

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Section 12.03. Treatment as Financial Assets. Each item of property (whether investment property, financial asset, security, instrument or cash) credited to the Collateral Account shall be deemed a financial asset.

Section 12.04. Sole Control by Collateral Agent. Except as provided in Section 15.01, at all times prior to the termination of the Pledge, the Collateral Agent shall have sole control of the Collateral Account, and the Securities Intermediary shall take instructions and directions, and comply with entitlement orders, with respect to the Collateral Account or any financial asset credited thereto solely from the Collateral Agent. If at any time the Securities Intermediary shall receive an entitlement order issued by the Collateral Agent and relating to the Collateral Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Purchase Contract Agent or any Holder or any other Person. Except as otherwise permitted under

this Agreement, until termination of the Pledge, the Securities Intermediary will not comply with any entitlement orders issued by the Purchase Contract Agent or any Holder.

Section 12.05. Jurisdiction. The Collateral Account, and the rights and obligations of the Securities Intermediary, the Collateral Agent, the Purchase Contract Agent and the Holders with respect thereto, shall be governed by the internal laws of the State of New York. Regardless of any provision in any other agreement, the Securities Intermediary's jurisdiction is the State of New York for purposes of the UCC.

Section 12.06. No Other Claims. Except for the claims and interest of the Collateral Agent and of the Purchase Contract Agent and the Holders in the Collateral Account, the Securities Intermediary (without having conducted any investigation) does not know of any claim to, or interest in, the Collateral Account or in any financial asset credited thereto. If the Securities Intermediary receives written notice at its corporate trust office identified on the signature page hereto or if a Responsible Officer has actual knowledge that any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Collateral Account or in any financial asset carried therein, the Securities Intermediary will as soon as practicable notify the Collateral Agent and the Purchase Contract Agent.

Section 12.07. Investment and Release. Proceeds of financial assets from time to time credited to the Collateral Account shall be invested and reinvested to the extent provided in this Agreement. At all times prior to termination of the Pledge, no property shall be released from the Collateral Account except in accordance with this Agreement or upon written instructions of the Collateral Agent.

Section 12.08. Statements and Confirmations. The Securities Intermediary will as soon as practicable send copies of all statements, confirmations and other correspondence concerning the Collateral Account and any financial assets credited thereto simultaneously to each of the Purchase Contract Agent and the Collateral Agent at their addresses for notices under this Agreement.

Section 12.09. [Reserved]

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Section 12.10. No Other Agreements. The Securities Intermediary has not entered into, and prior to the termination of the Pledge will not enter into, any agreement with any other Person relating to the Collateral Account or any financial assets credited thereto, including, without limitation, any agreement to comply with entitlement orders of any Person other than the Collateral Agent.

Section 12.11. Powers Coupled with an Interest. The rights and powers granted in this Agreement to the Collateral Agent have been granted in order to perfect its security interests in the Collateral Account, are powers coupled with an interest and will be affected neither by the bankruptcy of the Purchase Contract Agent or any Holder nor by the lapse of time. The obligations of the Securities Intermediary under this Purchase Contract and Pledge Agreement shall continue in effect until the termination of the Pledge.

Section 12.12. Waiver of Lien; Waiver of Set-off. The Securities Intermediary waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Collateral Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Collateral Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Company.

ARTICLE 13

RIGHTS AND REMEDIES OF THE COLLATERAL AGENT

Section 13.01. Rights and Remedies of the Collateral Agent. (a) In addition to the rights and remedies set forth herein or otherwise available at law or in equity, after a collateral event of default (as specified in Section 13.01(b)) hereunder, the Collateral Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and the TRADES Regulations and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted. Without limiting the generality of the foregoing, such remedies may include, to the extent permitted by applicable law, (1) retention of the Notes underlying Pledged Applicable Ownership Interests in Notes, the Pledged Treasury Securities and/or the Pledged Applicable Ownership Interests in the Treasury Portfolio in full satisfaction of the Holders' obligations under the Purchase Contracts and the Purchase Contract Agreement and/or (2) sale of the Notes underlying Pledged Applicable Ownership Interests in Notes, the Pledged Treasury Securities or the Pledged Applicable Ownership Interests in the Treasury Portfolio in one or more public or private sales.

(b) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent or under applicable law, in the event the Collateral Agent is unable to make payments to the Company on account of Proceeds of (i) the Notes underlying Pledged Applicable Ownership Interests in Notes (other than any interest payments thereon), (ii) Pledged Applicable Ownership Interests in the Treasury Portfolio, or (iii) the Pledged Treasury Securities as provided in this Agreement in satisfaction of the Obligations of the Holder of the Units of

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which such Notes underlying Pledged Applicable Ownership Interests in Notes, such Pledged Applicable Ownership Interests in the Treasury Portfolio or such Pledged Treasury Securities are a part under the related Purchase Contracts, the inability to make such payments shall constitute a "collateral event of default" hereunder and the Collateral Agent shall, for the benefit of the Company, have and may exercise, with reference to such Notes underlying Pledged Applicable Ownership Interests in Notes, Pledged Treasury Securities or Pledged Applicable Ownership Interests in the Treasury Portfolio, as applicable, any and all of the rights and remedies available to a secured party under the UCC and the TRADES Regulations after default by a debtor, and as otherwise granted herein or under any applicable law.

(c) Without limiting any rights or powers otherwise granted by this Agreement to the Collateral Agent or under applicable law, the Collateral Agent is hereby irrevocably authorized to receive, collect and apply to the satisfaction of the Obligations all payments with respect to (i) the Notes underlying Pledged Applicable Ownership Interests in Notes (other than any interest payments thereon), (ii) the Pledged Treasury Securities and (iii) the Pledged Applicable Ownership Interests in the Treasury Portfolio, subject, in each case, to the provisions of this Agreement, and as otherwise provided herein.

(d) The Purchase Contract Agent and each Holder agrees that, from time to time, upon the written request of the Collateral Agent, the Purchase Contract Agent, on behalf of such Holder, shall execute and deliver such further documents and do such other acts and things as the Collateral Agent may reasonably request in order to maintain the Pledge, and the perfection and priority thereof, and to confirm the rights of the Collateral Agent hereunder. The Purchase Contract Agent shall have no liability to any Holder for executing any documents or taking any such acts requested by the Collateral Agent hereunder, except for liability for its own negligent acts, its own negligent failure to act or its own willful misconduct.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES TO COLLATERAL AGENT; HOLDER COVENANTS

Section 14.01. Representations and Warranties. Each Holder from time to time, acting through the Purchase Contract Agent as attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any representation or warranty made by or on behalf of a Holder), hereby represents and warrants to the Collateral Agent and the Company (with respect to such Holder's interest in the Collateral), which representations and warranties shall be deemed repeated on each day a Holder effects a Transfer of Collateral, that:

(a) such Holder has the power to grant a security interest in and lien on the Collateral;

(b) such Holder is the sole beneficial owner of the Collateral and, in the case of Collateral delivered in physical form, is the sole holder of such Collateral and is the sole beneficial owner of, or has the right to Transfer, the Collateral it Transfers to the Collateral Agent for credit to the Collateral Account, free and clear of any security interest, lien,

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encumbrance, call, liability to pay money or other restriction other than the security interest and lien granted under Article 11;

(c) upon the Transfer of the Collateral to the Securities Intermediary for credit to the Collateral Account, the Collateral Agent, for the benefit of the Company, will have a valid and perfected first priority security interest therein (assuming that any central clearing operation or any securities intermediary or other entity not within the control of the Holder involved in the Transfer of the Collateral, including the Collateral Agent and the Securities Intermediary, gives the notices and takes the action required of it hereunder and under applicable law for perfection of that interest and assuming the establishment and exercise of control pursuant to Article 12); and

(d) the execution and performance by the Holder of its obligations under this Agreement will not result in the creation of any security interest, lien or other encumbrance on the Collateral (other than the security interest and lien granted under Article 11) or violate any provision of any existing law or regulation applicable to it or of any mortgage, charge, pledge, indenture, contract or undertaking to which it is a party or which is binding on it or any of its assets.

Section 14.02. Covenants. The Purchase Contract Agent and the Holders from time to time, acting through the Purchase Contract Agent as their attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any covenant made by or on behalf of a Holder), hereby covenant to the Collateral Agent and the Company that for so long as the Collateral remains subject to the Pledge:

(a) neither the Purchase Contract Agent nor such Holders will create or purport to create or allow to subsist any mortgage, charge, lien, pledge or any other security interest whatsoever over the Collateral or any part of it other than pursuant to this Agreement; and

(b) neither the Purchase Contract Agent nor such Holders will sell or otherwise dispose (or attempt to dispose) of the Collateral or any part of it except for the beneficial interest therein, subject to the Pledge hereunder, transferred in connection with a Transfer of the Units.

ARTICLE 15

THE COLLATERAL AGENT, THE CUSTODIAL AGENT AND THE SECURITIES INTERMEDIARY

Section 15.01. Appointment, Powers and Immunities. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall act solely as agent for the Company hereunder (and not as a fiduciary), shall not assume any obligation or relationship of agency or trust for or with any of the Holders, except for the obligations owed by a pledgee of property to the owner of the property under this Agreement and applicable law, and shall have such powers as are specifically vested in the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, by the terms of this Agreement. The Collateral Agent, the Custodial Agent and Securities Intermediary shall:

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(a) have no duties or responsibilities except those expressly set forth in this Agreement and no implied covenants or obligations shall be inferred from this Agreement against the Collateral Agent, the Custodial Agent or the Securities Intermediary, nor shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be bound by the provisions of any agreement by any party hereto (to which the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, is not a party) beyond the specific terms hereof;

(b) not be responsible for any recitals contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement or the Units, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement (other than as against the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be), the Units, any Collateral or any other document referred to or provided for herein or therein or for any failure by the Company or any other Person (except the Collateral Agent, the Custodial Agent or Securities Intermediary, as the case may be) to perform any of its obligations hereunder or thereunder or for the perfection, priority or, except as expressly required hereby, maintenance of any security interest created hereunder;

(c) not be required to initiate or conduct any litigation or collection proceedings hereunder (except pursuant to directions furnished under Section 15.02, subject to Section 15.08);

(d) not be responsible for any action taken or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith or therewith, except for its own gross negligence or willful misconduct; and

(e) not be required to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder.

Subject to the foregoing, during the term of this Agreement, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall take all reasonable action in connection with the safekeeping and preservation of the Collateral hereunder as determined by industry standards.

No provision of this Agreement shall require the Collateral Agent, the Custodial Agent or the Securities Intermediary to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder. In no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be liable for any amount in excess of the value of the Collateral.

Section 15.02. Instructions of the Company. The Company shall have the right, by one or more written instruments executed and delivered to the Collateral Agent, to direct the time, method and place of conducting any proceeding for the realization of any right or remedy available to the Collateral Agent, or of exercising any power conferred on the Collateral Agent, or to direct the taking or refraining from taking of any action authorized by this Agreement; provided, however, that (i) such direction shall not conflict with the provisions of any law or of

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this Agreement or involve the Collateral Agent in personal liability and (ii) the Collateral Agent shall be indemnified to its satisfaction as provided herein. Nothing contained in this Section 15.02 shall impair the right of the Collateral Agent in its discretion to take any action or omit to take any action which it deems proper and which is not inconsistent with such direction. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary has any obligation or responsibility to file UCC financing or continuation statements.

Section 15.03. Reliance by Collateral Agent, Custodial Agent and Securities Intermediary. Each of the Securities Intermediary, the Custodial Agent and the Collateral Agent (solely for purposes of this paragraph, the “Agents”) shall be entitled to rely conclusively upon any certification, order, judgment, opinion, notice or other written communication (including, without limitation, any thereof by e-mail or similar electronic means, telecopy or facsimile) believed by it in good faith to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons (without being required to determine the correctness of any fact stated therein) and consult with and conclusively rely upon advice, opinions and statements of legal counsel and other experts selected by the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be. As to any discretionary action or matters not expressly provided for by this Agreement, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Company or the Holders, as the case may be; provided, however, it is understood that in all cases the Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such direction from the Company or the Holders (acting in accordance with this Agreement), as such Agent deems appropriate. This provision is intended solely for the benefit of the Agents and their successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

Section 15.04. Certain Rights. (a) Whenever in the administration of the provisions of this Agreement the Collateral Agent, the Custodial Agent or the Securities Intermediary shall deem it necessary or desirable that a matter be proved or established prior to taking, or omitting to take, or suffering any action hereunder, or suffering to exist any state of events, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, be deemed to be conclusively proved and established by an Officers’ Certificate delivered to the Collateral Agent, the Custodial Agent or the Securities Intermediary and such certificate, in the absence of bad faith on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, shall be full warrant to the Collateral Agent, the Custodial Agent or the Securities Intermediary for any action taken, suffered or omitted by it under the provisions of this Agreement in reliance thereon.

(b) The Collateral Agent, the Custodial Agent or the Securities Intermediary shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document that it reasonably believes to be genuine.

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Section 15.05. Merger, Conversion, Consolidation or Succession to Business. Any Person or national association into which the Collateral Agent, the Custodial Agent or the Securities Intermediary may be merged or converted or with which it may be consolidated, or any Person or national association resulting from any merger, conversion or consolidation to which the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be a party, or any Person or national association succeeding to all or substantially all of the corporate trust business of the Collateral Agent (including the administration of this Agreement), the Custodial Agent or the Securities Intermediary shall be the successor of the Collateral Agent, the Custodial Agent or the Securities Intermediary hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 15.06. Rights in Other Capacities. The Collateral Agent, the Custodial Agent and the Securities Intermediary and their affiliates may (without having to account therefor to the Company) accept deposits from, lend money to, make their investments in and generally engage in any kind of banking, trust or other business with the Purchase Contract Agent, any other Person interested herein and any Holder (and any of their respective subsidiaries or affiliates) as if it were not acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, and the Collateral Agent, the Custodial Agent, the Securities Intermediary and their affiliates may accept fees and other consideration from the Purchase Contract Agent and any Holder without having to account for the same to the Company; provided that each of the Collateral Agent, the Custodial Agent and the Securities Intermediary covenants and agrees with the Company that it shall not accept, receive or permit there to be created in favor of itself and shall take no

affirmative action to permit there to be created in favor of any other Person, any security interest, lien or other encumbrance of any kind in or upon the Collateral other than the lien created by the Pledge.

Section 15.07. Non-reliance on the Collateral Agent, Custodial Agent And Securities Intermediary. None of the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be required to keep itself informed as to the performance or observance by the Purchase Contract Agent or any Holder of this Agreement, the Units or any other document referred to or provided for herein or therein or to inspect the properties or books of the Purchase Contract Agent or any Holder. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have any duty or responsibility to provide the Company with any credit or other information concerning the affairs, financial condition or business of the Purchase Contract Agent or any Holder (or any of their respective affiliates) that may come into the possession of the Collateral Agent, the Custodial Agent or the Securities Intermediary or any of their respective affiliates.

Section 15.08. Compensation and Indemnity. The Company agrees to:

(a) pay the Collateral Agent, the Custodial Agent and the Securities Intermediary from time to time such compensation as shall be agreed in writing between the Company and the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, for all services rendered by them hereunder;

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(b) indemnify and hold harmless the Collateral Agent, the Custodial Agent, the Securities Intermediary and each of their respective directors, officers, agents and employees (collectively, the "Pledge Indemnitees"), from and against any and all losses, damages, claims, liabilities, and expenses (including reasonable fees and out of pocket expenses of outside counsel) (collectively, "Losses" and individually, a "Loss") that may be imposed on, incurred by, or asserted against, the Pledge Indemnitees or any of them for following any instructions or other directions upon which any of the Collateral Agent, the Custodial Agent or the Securities Intermediary is entitled to rely pursuant to the terms of this Agreement, provided that the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct with respect to the specific Loss against which indemnification is sought; and

(c) in addition to and not in limitation of paragraph (b) of this Section 15.08, indemnify and hold the Pledge Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by or asserted against, the Pledge Indemnitees or any of them in connection with or arising out of the Collateral Agent's, the Custodial Agent's or the Securities Intermediary's acceptance or performance of its powers and duties under this Agreement, provided the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct with respect to the specific Loss against which indemnification is sought, including the Pledge Indemnitee's reasonable out-of-pocket costs and expenses of defending themselves against any claim or liability (whether asserted by the Company, any holder of Units, or otherwise) in connection with the exercise or performance of any of the Collateral Agent's, the Custodial Agent's or Securities Intermediary's powers or duties hereunder or thereunder or of enforcing the provisions of this Section 15.08 and Section 15.14.

The provisions of this Section 15.08 and Section 15.14 shall survive the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary and the termination of this Agreement.

Section 15.09. Failure to Act. In the event that, in the good faith, reasonable belief of the Collateral Agent, the Custodial Agent or the Securities Intermediary, an ambiguity in the provisions of this Agreement arises or any actual dispute between or conflicting claims by or among the parties hereto or any other Person with respect to any funds or property deposited hereunder has been asserted in writing, then at its sole option, each of the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled, after prompt notice to the Company and the Purchase Contract Agent, to refuse to comply with any and all claims, demands or instructions with respect to such property or funds so long as such dispute or conflict shall continue, and the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, shall not be or become liable in any way to any of the parties hereto for its failure or refusal to comply with such conflicting claims, demands or instructions. In such event, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled to refuse to act until either:

(a) such conflicting or adverse claims or demands shall have been finally determined by a court of competent jurisdiction or settled by agreement between the conflicting parties as

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evidenced in a writing reasonably satisfactory to the Collateral Agent, the Custodial Agent or the Securities Intermediary; or

(b) the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all loss, liability or reasonable out-of-pocket expense which it may incur by reason of its acting.

The Collateral Agent, the Custodial Agent and the Securities Intermediary may in addition elect to commence an interpleader action or seek other judicial relief or orders as the Collateral Agent, the Custodial Agent or the Securities Intermediary may deem necessary. Notwithstanding anything contained herein to the contrary, none of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be required to take any action that is in its opinion contrary to law or to the terms of this Agreement, or which would in its opinion subject it or any of its officers, employees or directors to personal liability.

Section 15.10. Resignation of Collateral Agent, the Custodial Agent and the Securities Intermediary. Subject to the appointment and acceptance of a successor Collateral Agent, Custodial Agent or Securities Intermediary as provided below:

(i) the Collateral Agent, the Custodial Agent or the Securities Intermediary may resign at any time by giving notice thereof to the Company and the Purchase Contract Agent as attorney-in-fact for the Holders;

(ii) the Collateral Agent, the Custodial Agent or the Securities Intermediary may be removed at any time by the Company; and

(iii) if the Collateral Agent, the Custodial Agent or the Securities Intermediary fails to perform any of its material obligations hereunder in any material respect for a period of not less than 20 days after receiving written notice of such failure by the Purchase Contract Agent and such failure shall be continuing, the Collateral Agent, the Custodial Agent and the Securities Intermediary may be removed by the Purchase Contract Agent, acting at the direction of Holders of a majority of the Units.

The Purchase Contract Agent shall promptly notify the Company upon the transmission of notice as contemplated by clause (iii) of Section 15.10 and any removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary pursuant to clause (iii) of this Section 15.10. Upon any such resignation or removal under this Section 15.10, the Company shall have the right to appoint a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, which shall not be an Affiliate of the Purchase Contract Agent. If no successor Collateral Agent, Custodial Agent or Securities Intermediary shall have been so appointed and shall have accepted such appointment within 45 days after the retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's giving of notice of resignation or the Company's or the Purchase Contract Agent's giving notice of such removal, then the retiring or removed Collateral Agent, Custodial Agent or Securities Intermediary may petition any court of competent jurisdiction, at the expense of the Company, for the appointment of a successor

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Collateral Agent, Custodial Agent or Securities Intermediary. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall each be a bank or a national banking association (which has an office or agency in the continental United States of America) with a combined capital and surplus of at least \$50,000,000. Upon the acceptance of any appointment as Collateral Agent, Custodial Agent or Securities Intermediary hereunder by a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, such successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, and the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall take all appropriate action, subject to payment of any amounts then due and payable to it hereunder, to transfer any money and property held by it hereunder (including the Collateral) to such successor. The retiring Collateral Agent, Custodial Agent or Securities Intermediary shall, upon such succession, be discharged from its duties and obligations as Collateral Agent, Custodial Agent or Securities Intermediary hereunder. After any retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's resignation hereunder as Collateral Agent, Custodial Agent or Securities Intermediary, the provisions of this Article 15 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary. Any resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary hereunder, at a time when such Person is also acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, shall be deemed for all purposes of this Agreement as the simultaneous resignation or removal of the Collateral Agent, the Securities Intermediary or the Custodial Agent, as the case may be.

Section 15.11. Right to Appoint Agent or Advisor. The Collateral Agent shall have the right to appoint agents or advisors in connection with any of its duties hereunder, and the Collateral Agent shall not be liable for any action taken or omitted by, or in reliance upon the advice of, such agents or advisors selected in good faith and with due care. The appointment of agents pursuant to this Section 15.11 shall be subject to prior written consent of the Company, which consent shall not be unreasonably withheld.

Section 15.12. Survival. The provisions of this Article 15 shall survive termination of this Agreement and the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary.

Section 15.13. Exculpation. Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary or their officers, directors, employees or agents be liable under this Agreement for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, whether or not the likelihood of such loss or damage was known to the Collateral Agent, the Custodial Agent or the Securities Intermediary, or any of them and regardless of the form of action.

Section 15.14. Expenses, Etc. The Company agrees to reimburse the Collateral Agent, the Custodial Agent and the Securities Intermediary for:

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(a) all reasonable costs, fees and out-of-pocket expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, the reasonable fees and expenses of counsel to the Collateral Agent, the Custodial Agent and the Securities Intermediary), in connection with (i) the negotiation, preparation, execution and delivery or performance of this Agreement (excluding taxes that are based on or measured by income in whole or in part (including franchise taxes)) and (ii) any modification, supplement or waiver of any of the terms of this Agreement;

(b) all reasonable costs, fees and out-of-pocket expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, reasonable fees and expenses of counsel) in connection with (i) any enforcement or proceedings resulting or incurred in connection with causing any Holder to satisfy its obligations under the Purchase Contracts forming a part of the Units and (ii) the enforcement of this Section 15.14;

(c) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated hereby;

(d) all reasonable fees and out-of-pocket expenses of any agent or advisor appointed by the Collateral Agent and consented to by the Company under Section 15.11; and

(e) any other out-of-pocket costs and expenses (excluding taxes) reasonably incurred by the Collateral Agent, the Custodial Agent and the Securities Intermediary in connection with the performance of their duties hereunder.

Section 15.15. Force Majeure. In no event shall any of the Collateral Agent, Custodial Agent and Securities Intermediary be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by circumstances beyond its control,

including, without limitation, acts of God; earthquake; fires; floods; wars; civil or military disturbances; terrorist acts; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities; acts of civil or military authority or governmental actions; or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility, in each case, which delay, restrict or prohibit the providing of services contemplated by this Agreement; it being understood that the Collateral Agent, Custodial Agent and Securities Intermediary shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under such circumstances.

ARTICLE 16

MISCELLANEOUS

Section 16.01. Security Interest Absolute. All rights of the Collateral Agent and security interests hereunder, and all obligations of the Holders from time to time hereunder pursuant to the Pledge, shall be absolute and unconditional irrespective of:

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- (a) any lack of validity or enforceability of any provision of the Purchase Contracts or the Units or any other agreement or instrument relating thereto;
- (b) any change in the time, manner or place of payment of, or any other term of, or any increase in the amount of, all or any of the Obligations of Holders of the Units under the related Purchase Contracts, or any other amendment or waiver of any term of, or any consent to any departure from any requirement of, the Purchase Contract Agreement or any Purchase Contract or any other agreement or instrument relating thereto; or
- (c) any other circumstance which might otherwise constitute a defense available to, or discharge of, a borrower, a guarantor or a pledgor.

Section 16.02. Notice of Termination Event. Upon the occurrence of a Termination Event, the Company shall deliver written notice to the Purchase Contract Agent, the Collateral Agent and the Securities Intermediary within a reasonable amount of time and to the extent permitted by law.

Section 16.03. PATRIOT ACT. The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Agent such information as it may request, from time to time, in order for the Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

The duties and obligations of the Agent shall be determined solely by the express terms of this Agreement, and no duties, obligations or responsibilities shall be implied into this Agreement against the Agent.

[SIGNATURES ON THE FOLLOWING PAGE]

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

Black Hills Corporation

U.S. Bank National Association,

as Purchase Contract Agent, Collateral Agent, Custodial Agent, Securities Intermediary and as attorney-in-fact of the Holders from time to time of the Units

By: /s/ Kimberly F. Nooney
Name: Kimberly F. Nooney
Title: Vice President - Treasurer

By: /s/ Linda E. Garcia
Name: Linda E. Garcia
Title: Vice President

Address for Notices:
Black Hills Corporation
625 Ninth Street
Rapid City, South Dakota 57701
Attn: Steven J. Helmers

Address for Notices:
U.S. Bank National Association
190 South LaSalle Street, 10th Floor
MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

[PURCHASE CONTRACT AND PLEDGE AGREEMENT]

[For inclusion in Global Certificate only — THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS THE NOMINEE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE “DEPOSITORY”), THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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No.
Number of Corporate Units:

CUSIP No. 092113 125
ISIN No. US0921131258

BLACK HILLS CORPORATION
Corporate Units

This Corporate Units Certificate certifies that [Cede & Co.] is the registered Holder of the number of Corporate Units set forth above [For inclusion in Global Certificates only — or such other number of Corporate Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto, which number, taken together with the number of all other Outstanding Corporate Units and the number of all Outstanding Treasury Units, shall not exceed 5,980,000 Units]. Each Corporate Unit consists of (i) the rights and obligations of the Holder under one Purchase Contract with the Company pursuant to which (A) the Holder will agree to purchase from the Company, and the Company will agree to sell to the Holder, on the Purchase Contract Settlement Date (unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement has occurred), for the Stated Amount in cash, a number of shares of Common Stock equal to the Settlement Rate, subject to anti-dilution adjustments and (B) the Company will pay the Holder quarterly Contract Adjustment Payments, subject to the Company’s right to defer such Contract Adjustment Payments and (ii) either (A) an Applicable Ownership Interest in Notes, subject to the pledge of the Applicable Ownership Interest in Notes or (B) upon the occurrence of a Successful Optional Remarketing during the Optional Remarketing Period, the Applicable Ownership Interest in the Treasury Portfolio, subject to the pledge of the Applicable Ownership Interest in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio) by such Holder pursuant to the Purchase Contract and Pledge Agreement.

All capitalized terms used herein that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meaning set forth therein.

In the event of any inconsistency between the provisions of this Corporate Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Applicable Ownership Interest in Notes or the Applicable Ownership Interest in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio), as the case may be, constituting part of each Corporate Unit evidenced hereby have been pledged to the Collateral Agent, for the benefit of the Company, to secure the Obligations of the Holder under the Purchase Contract comprising part of such Corporate Unit.

All payments of interest on the Pledged Applicable Ownership Interests in Notes or distributions with respect to the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, constituting part of the Corporate Units shall be paid on the dates and in the manner set forth in the Purchase Contract and Pledge Agreement. Interest on the Notes underlying the Applicable Ownership Interests in Notes or distributions on the Applicable

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Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), as the case may be, forming part of the Corporate Units evidenced hereby, which are payable on each Payment Date (or, in the case of distributions on the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), which is payable on the maturity date thereof), shall, subject to receipt thereof by the Purchase Contract Agent, be paid to the Person in whose name this Corporate Units Certificate (or a Predecessor Corporate Units Certificate) is registered at the close of business on the Record Date for the relevant Payment Date.

Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date, at a Purchase Price equal to the Stated Amount, a number of shares of Common Stock, equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of payment received in the Final Remarketing of the Notes underlying the Pledged Applicable Ownership Interests in Notes equal to the principal amount thereof or the proceeds of the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, pledged to secure the Holder’s Obligations under such Purchase Contract.

Interest on the Applicable Ownership Interests in Notes and distributions on the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition of Applicable Ownership Interests in the Treasury Portfolio), to the extent payable to the Holder pursuant to the Purchase Contract and Pledge Agreement, if the book entry system for the Units has been terminated, will be payable by check mailed to the address of the Holder as it appears on the Security Register or, if the Holder so requests and designates an account in writing to the Purchase Contract Agent at least five Business Days prior to the relevant Payment Date, by wire transfer to such account. All payments with respect to Global Certificates will be made by wire transfer of immediately available funds to the Depository.

Each Purchase Contract evidenced hereby obligates each Holder and Beneficial Owner to agree, for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority) (i) to treat each Beneficial Owner of a Corporate Unit as the owner, separately, of each of the applicable Purchase Contract and the applicable interests in the Collateral, including the Notes underlying the Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, (ii) to treat the Notes as indebtedness, (iii) with respect to Holders (or Beneficial Owners) who purchase Corporate Units upon issuance, to allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Notes and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as \$0 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interest in Notes as \$50, and (iv) in all events, not to take any position for U.S. federal, state or local income tax purposes that is inconsistent with or contrary to the above covenants.

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The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Corporate Unit evidenced hereby, an amount (the "Contract Adjustment Payments") equal to 4.25% per year of the Stated Amount, computed on the basis of a 360-day year consisting of twelve 30-day months. Such Contract Adjustment Payments shall be payable to the Person in whose name this Corporate Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company's existing and future Priority Indebtedness.

If the book-entry system for the Corporate Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register or, if such Person so requests and designates an account in writing to the Purchase Contract Agent at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual signature, this Corporate Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

Attested:

BLACK HILLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such Holder under the Purchase Contracts)

By: U.S. Bank National Association, not individually but solely as attorney-in-fact of such Holder

By: _____
Authorized Signatory

CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Corporate Units Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

By: U.S. Bank National Association, as Purchase Contract Agent

By: _____
Authorized Signatory

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(REVERSE OF CORPORATE UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (as may be supplemented from time to time, the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the Holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent, and as Securities Intermediary, to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company, and the Holders and of the terms upon which the Corporate Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred. The Settlement Rate is subject to adjustment as described in the Purchase Contract and Pledge Agreement.

No fractional shares of Common Stock will be issued upon settlement of any Purchase Contracts, as provided in Section 5.09 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Corporate Units to purchase at the Purchase Price, and the Company to sell, a number of shares of Common Stock equal to the Minimum Settlement Rate, in the case of an Early Settlement, or the Settlement Rate plus the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement), in the case of a Fundamental Change Early Settlement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, unless a Termination Event shall have occurred, the Holder of this Corporate Units Certificate shall pay the Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby by effecting a Cash Settlement, an Early Settlement, a Fundamental Change Early Settlement, from the proceeds of the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio), from the proceeds of a Final Remarketing of the Notes underlying the Pledged Applicable Ownership Interests in Notes or from the exercise of a Holder's Put Right. Unless a Termination Event has occurred, a Holder of Corporate Units who (1) does not make an effective Cash Settlement in the manner and by the time provided in Section 5.02(b)(ix) or 5.03(a) of the Purchase Contract and Pledge Agreement, (2) does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Early Settlement and (3) does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Fundamental Change Early Settlement, shall pay the

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Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be delivered under the related Purchase Contract (1) in the case of a Successful Final Remarketing, from the proceeds of the sale of the Notes underlying the Pledged Applicable Ownership Interests in Notes held by the Collateral Agent in the Final Remarketing, (2) in the case of a Successful Optional Remarketing, from the proceeds at maturity of the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio) or (3) in the case of a Failed Remarketing, from the proceeds of the exercise of a Holder's Put Right, as described below.

As provided in the Purchase Contract and Pledge Agreement, upon the occurrence of a Failed Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Notes, unless such Holder has elected Cash Settlement and delivered cash in accordance with Section 5.02(b)(ix) of the Purchase Contract and Pledge Agreement, shall be deemed to have exercised such Holder's Put Right with respect to the Notes underlying such Applicable Ownership Interests in Notes and to have elected to apply the Proceeds of the Put Price therefor against such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts in full satisfaction of such Holders' Obligations under such Purchase Contracts.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, on or prior to the Purchase Contract Settlement Date, a Termination Event shall have occurred. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent, the Collateral Agent, and to the Holders, at their addresses as they appear in the Security Register. Upon and after the occurrence of a Termination Event, the Collateral Agent shall release the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio forming a part of each Corporate Unit, and all other Collateral, from the Pledge. A Corporate Unit shall thereafter represent the right to receive the Notes underlying the Applicable Ownership Interest in the Notes or the Applicable Ownership Interests in the Treasury Portfolio forming a part of such Corporate Units in accordance with the terms of the Purchase Contract and Pledge Agreement.

Under the terms of the Purchase Contract and Pledge Agreement, the Purchase Contract Agent shall exercise the voting and any other consensual rights pertaining to the Notes underlying the Pledged Applicable Ownership Interests in Notes to the extent instructed in writing by the Holders. Upon receipt of notice of any meeting at which holders of Notes are

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entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Notes, the Purchase Contract Agent shall, as soon as practicable thereafter, mail, first class, postage prepaid, to the Corporate Units Holders the notice required by the Purchase Contract and Pledge Agreement.

Subject to the provisions of the Purchase Contract and Pledge Agreement, upon the occurrence of a Successful Optional Remarketing and receipt in the Collateral Account of the proceeds thereof, the Collateral Agent shall instruct the Securities Intermediary to apply an amount equal to the Treasury Portfolio Purchase Price to purchase the Treasury Portfolio.

Following the occurrence of a Successful Optional Remarketing, the Holders of Corporate Units and the Collateral Agent shall have such security interests, rights and obligations with respect to the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of such term) as the Holder of Corporate Units and the Collateral Agent had in respect of Applicable Ownership Interests in Notes and the underlying Notes, subject to the Pledge thereof as provided in the Purchase Contract and Pledge Agreement and any reference herein to the Notes or Applicable Ownership Interests in Notes shall be deemed to be a reference to the Treasury Portfolio or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be.

The Corporate Units Certificates are issuable only in registered form and only in denominations of a single Corporate Unit and any integral multiple thereof. The transfer of any Corporate Units Certificate will be registered and Corporate Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Treasury Securities with an aggregate principal amount at maturity equal to the aggregate principal amount of Notes underlying the Applicable Ownership Interests in Notes, thereby creating Treasury Units, shall be responsible for any fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Corporate Unit in respect of the Applicable Ownership Interest in Notes, or Applicable Ownership Interest in the Treasury Portfolio, as the case may be, and the Purchase Contract constituting such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit.

Subject to, and in compliance with, the terms and conditions set forth in the Purchase Contract and Pledge Agreement, the Holder of Corporate Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Treasury Securities secure the Holder's obligation under the Purchase Contract shall be referred to as a "Treasury Unit." Subject to certain exceptions in the Purchase Contract and Pledge Agreement, a Holder may make such Collateral Substitution only in integral multiples of 20 Corporate Units for 20 Treasury Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement as provided in the Purchase Contract and Pledge Agreement in integral multiples of 20 Corporate Units, or if

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Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of the Corporate Units, in integral multiples of 16,000 Corporate Units.

Upon Early Settlement of Purchase Contracts by a Holder of the related Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio underlying such Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock equal to the Minimum Settlement Rate for each Purchase Contract as to which Early Settlement is effected.

Upon the occurrence of a Fundamental Change, a Holder of Corporate Units may effect Fundamental Change Early Settlement of the Purchase Contracts underlying such Corporate Units pursuant to the terms of the Purchase Contract and Pledge Agreement in integral multiples of 20 Corporate Units, or if the Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Notes as a component of the Corporate Units, in integral multiples of 16,000 Corporate Units. Upon Fundamental Change Early Settlement of Purchase Contracts by a Holder of the related Corporate Units, the Notes underlying the Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio underlying such Corporate Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock or other consideration specified in the Purchase Contract and Pledge Agreement on account of each Purchase Contract that forms a part of a Corporate Unit as to which Fundamental Change Early Settlement is effected equal to the sum of the applicable Settlement Rate and the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement).

Upon registration of transfer of this Corporate Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement), under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Corporate Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Corporate Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform the related Purchase Contracts forming part of the Corporate Units evidenced hereby and the Purchase Contract and Pledge Agreement on its behalf and in its name as its attorney-in-fact; agrees to be bound by the terms and provisions of the Corporate Unit evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract forming part of such Unit, and the Purchase Contract and Pledge Agreement) for so long as it remains a Holder of such Unit; consents to, and agrees to be bound by, the Pledge of the Applicable Ownership Interests in Notes and the underlying Notes or the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio), as the case may be,

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underlying this Corporate Units Certificate pursuant to the Purchase Contract and Pledge Agreement; and expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise of the Purchase Contract forming part of the Corporate Unit evidenced hereby by the Company or its trustee, receiver, liquidator or any person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation. The Holder further covenants and agrees that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, any payments with respect to the Notes underlying the Pledged Applicable Ownership Interests in Notes (other than interest payments thereon) or the Proceeds of the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (i) of the definition of Applicable Ownership Interest in the Treasury Portfolio), as the case may be, on the Purchase Contract Settlement Date in an

amount equal to the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's Obligations under the related Purchase Contracts.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of not less than a majority of the Outstanding Units.

The Corporate Units and Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to conflicts of laws principles thereof).

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Corporate Units Certificate is registered as the owner of the Corporate Units evidenced hereby for the purpose of (subject to the applicable record date) any payment or distribution with respect to the Notes underlying the Applicable Ownership Interests in Notes, the Applicable Ownership Interests in the Treasury Portfolio (as specified in clause (ii) of the definition thereof) or payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with the Corporate Units, whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company or the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary. A copy of the Purchase Contract and Pledge Agreement is available for inspection at the offices of the Purchase Contract Agent.

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ABBREVIATIONS

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

TEN COM: as tenants in common
UNIF GIFT MIN ACT: Custodian (cust) (minor)

Under Uniform Gifts to Minors Act of

TENANT: as tenants by the entireties
JT TEN: as joint tenants with right of survivorship and not as tenants in common

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

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Corporate Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Corporate Units Certificates on the books of BLACK HILLS CORPORATION, with full power of substitution in the premises.

Dated: Signature:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Corporate Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature Guarantee:

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SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

(if assigned to another person)

Dated: REGISTERED HOLDER

If shares are to be registered in the name of and

delivered to a Person other than the Holder, please

- (i) print such Person's name and address and
- (ii) provide a guarantee of your signature:

Please print name and address of registered Holder:

Name: _____
 Address: _____

Name: _____
 Address: _____

 Social Security or other Taxpayer
 Identification Number, if any

Signature: _____
 Signature Guarantee: _____

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ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT

The undersigned Holder of this Corporate Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Corporate Units in multiples of 20 Corporate Units or an integral multiple thereof; provided that if Applicable Ownership Interests in the Treasury Portfolio have replaced Applicable Ownership Interests in the Notes as a component of the Corporate Units, Corporate Units Holders may only effect [Early Settlement] [Fundamental Change Early Settlement] in multiples of 16,000 Corporate Units. The undersigned Holder directs that a certificate for shares (including in book-entry if requested by the Holder) of Common Stock or other securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check in payment for any fractional share and (if applicable) any accrued and unpaid Contract Adjustment Payments (including deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) payable upon such [Early Settlement] [Fundamental Change Early Settlement] and any Corporate Units Certificate representing any Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected, to the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. Notes underlying Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, and any other Collateral deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

Dated: _____

Signature: _____

Signature
 Guarantee: _____

Number of Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

- If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and
- (ii) provide a guarantee of your signature:

REGISTERED HOLDER
 Please print name and address of registered Holder:

Name: _____

Name: _____

Address: _____

Address: _____

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 Social Security or other Taxpayer
 Identification Number, if any

Signature: _____

Signature
 Guarantee: _____

Transfer Instructions for Notes underlying Pledged Applicable Ownership Interests in Notes or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, transferable upon [Early Settlement] [Fundamental Change Early Settlement]:

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SCHEDULE OF INCREASES OR DECREASES IN GLOBAL CERTIFICATE

The initial number of Corporate Units evidenced by this Global Certificate is []. The following increases or decreases in this Global Certificate have been made:

Date	Amount of increase in number of Corporate Units evidenced by the Global Certificate	Amount of decrease in number of Corporate Units evidenced by the Global Certificate	Number of Corporate Units evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent

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EXHIBIT B

(FORM OF FACE OF TREASURY UNITS CERTIFICATE)

[For inclusion in Global Certificate only — THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS THE NOMINEE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “DEPOSITARY”), THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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No.
Number of Treasury Units:

CUSIP No. 092113 133
ISIN No. US0921131332

BLACK HILLS CORPORATION

Treasury Units

This Treasury Units Certificate certifies that [Cede & Co.] is the registered Holder of the number of Treasury Units set forth above [For inclusion in Global Certificates only — or such other number of Treasury Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto, which number, taken together with the number of all other Outstanding Treasury Units and the number of all Outstanding Corporate Units, shall not exceed 5,980,000 Units]. Each Treasury Unit consists of (i) a 1/20 or 5% undivided beneficial ownership interest in a Treasury Security having a principal amount at maturity equal to \$1,000, subject to the Pledge of such Treasury Security by such Holder pursuant to the Purchase Contract and Pledge Agreement, and (ii) the rights and obligations of the Holder under one Purchase Contract with the Company pursuant to which (A) the Holder will agree to purchase from the Company, and the Company will agree to sell to the Holder, on the Purchase Contract Settlement Date (unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement has occurred), for the Stated Amount in cash, a number of shares of Common Stock equal to the Settlement Rate, subject to anti-dilution adjustments and (B) the Company will pay the Holder quarterly Contract Adjustment Payments, subject to the Company’s right to defer such Contract Adjustment Payments.

All capitalized terms used herein that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meaning set forth therein.

In the event of any inconsistency between the provisions of this Treasury Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Treasury Securities underlying each Treasury Unit evidenced hereby have been pledged to the Collateral Agent, for the benefit of the Company, to secure the Obligations of the Holder under the Purchase Contract comprising part of such Treasury Unit.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date, at a Purchase Price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares

of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of the proceeds from the Treasury Securities at maturity pledged to secure the Holder's Obligations under such Purchase Contract.

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Each Purchase Contract evidenced hereby obligates each Holder and Beneficial Owner to agree, for U.S. federal, state and local income tax purposes (unless otherwise required by any taxing authority), to treat each Beneficial Owner of a Treasury Unit as the owner, separately of each of the applicable Purchase Contract and the applicable interests in the Treasury Securities.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Treasury Unit evidenced hereby, an amount (the "Contract Adjustment Payments") equal to 4.25% per year of the Stated Amount, computed on the basis of a 360-day year consisting of twelve 30-day months. Such Contract Adjustment Payments shall be payable to the Person in whose name this Treasury Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments, as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company's existing and future Priority Indebtedness.

If the book-entry system for the Treasury Units has been terminated, the Contract Adjustment Payments will be payable by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register or, if such Person so requests and designates an account in writing to the Purchase Contract Agent at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual signature, this Treasury Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

Attested:

BLACK HILLS CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such Holder under the Purchase Contracts)

By: U.S. Bank National Association, not individually but solely as attorney-in-fact of such Holder

By: _____
Authorized Signatory

CERTIFICATE OF AUTHENTICATION OF
PURCHASE CONTRACT AGENT

This is one of the Treasury Units Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

By: U.S. Bank National Association, as Purchase Contract Agent

By: _____
Authorized Signatory

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(REVERSE OF TREASURY UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by a Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (as may be supplemented from time to time, the "Purchase Contract and Pledge Agreement") among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the Holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Company and the Holders and of the terms upon which the Treasury Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred. The Settlement Rate is subject to adjustment as described in the Purchase Contract and Pledge Agreement.

No fractional shares of Common Stock will be issued upon settlement of any Purchase Contracts, as provided in Section 5.09 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Treasury Units to purchase at the Purchase Price, and the Company to sell, a number of shares of Common Stock equal to the Minimum Settlement Rate, in the case of an Early Settlement, or the Settlement Rate plus the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement), in the case of a Fundamental Change Early Settlement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, the Holder of this Treasury Units Certificate shall pay the Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby either by effecting an Early Settlement or, if applicable, a Fundamental Change Early Settlement of each such Purchase Contract or by applying the proceeds of the Pledged Treasury Securities underlying such Holder's Treasury Unit equal to the Purchase Price for such Purchase Contract to the purchase of the Common Stock. A Holder of Treasury Units who does not, in the manner and at the times provided in the Purchase Contract and Pledge Agreement, make an effective Early Settlement or Fundamental Change Early Settlement, shall pay the Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be issued under the related Purchase Contract from the proceeds of the Pledged Treasury Securities.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received

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payment of the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, on or prior to the Purchase Contract Settlement Date, a Termination Event shall have occurred. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent, the Collateral Agent and the Holders, at their addresses as they appear in the Security Register. Upon the occurrence of a Termination Event, the Collateral Agent shall release the Treasury Securities underlying each Treasury Unit, and all other Collateral, from the Pledge. A Treasury Unit shall thereafter represent the right to receive the Treasury Security underlying such Treasury Unit, in accordance with the terms of the Purchase Contract and Pledge Agreement.

The Treasury Units Certificates are issuable only in registered form and only in denominations of a single Treasury Unit and any integral multiple thereof. The transfer of any Treasury Units Certificate will be registered and Treasury Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Notes for Treasury Securities, thereby recreating Corporate Units, shall be responsible for any fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Treasury Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Treasury Unit in respect of the interest in the Treasury Security and the Purchase Contract constituting such Treasury Unit may be acquired, and may be transferred and exchanged, only as a Treasury Unit.

Subject to, and in compliance with, the terms and conditions set forth in the Purchase Contract and Pledge Agreement, the Holder of Treasury Units may effect a Collateral Substitution. From and after such substitution, each Unit for which Pledged Applicable Ownership Interests in Notes secure the Holder's obligation under the Purchase Contract shall be referred to as a "Corporate Unit." Subject to certain exceptions described in the Purchase Contract and Pledge Agreement, a Holder may make such Collateral Substitution only in integral multiples of 20 Treasury Units for 20 Corporate Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement as provided in the Purchase Contract and Pledge Agreement in integral multiples of 20 Treasury Units.

Upon Early Settlement of Purchase Contracts by a Holder of the related Units, the Pledged Treasury Securities underlying such Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock equal to the Minimum Settlement Rate for each Purchase Contract as to which Early Settlement is effected.

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Upon the occurrence of a Fundamental Change, a Holder of Treasury Units may effect Fundamental Change Early Settlement of the Purchase Contracts underlying such Treasury Units pursuant to the terms of the Purchase Contract and Pledge Agreement in integral multiples of 20 Treasury Units. Upon Fundamental Change Early Settlement of Purchase Contracts by a Holder of the related Treasury Units, the Pledged Treasury Securities underlying such Treasury Units shall be released from the Pledge as provided in the Purchase Contract and Pledge Agreement and the Holder shall be entitled to receive a number of shares of Common Stock or other consideration specified in the Purchase Contract and Pledge Agreement on account of each Purchase Contract that forms a part of a Treasury Unit as to which Fundamental Change Early Settlement is effected equal to the sum of the Settlement Rate and the applicable number of Make-Whole Shares (determined, in each case, as set forth in the Purchase Contract and Pledge Agreement).

Upon registration of transfer of this Treasury Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement), under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the

Purchase Contracts evidenced by this Treasury Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Treasury Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform the related Purchase Contracts forming part of the Treasury Units evidenced hereby and the Purchase Contract and Pledge Agreement on its behalf and in its name as its attorney-in-fact; agrees to be bound by the terms and provisions of the Treasury Unit evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract forming part of such Unit, and the Purchase Contract and Pledge Agreement) for so long as it remains a Holder of such Unit; consents to, and agrees to be bound by, the Pledge of the Pledged Treasury Securities underlying this Treasury Units Certificate pursuant to the Purchase Contract and Pledge Agreement; and expressly withholds any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise of the Purchase Contract forming part of the Treasury Unit evidenced hereby by the Company or its trustee, receiver, liquidator or any person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation. The Holder further covenants and agrees, that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, payments in respect to the aggregate principal amount at maturity of the Pledged Treasury Securities on the Purchase Contract Settlement Date equal to the aggregate Purchase Price, as described in the Purchase Contract and Pledge Agreement, for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's Obligations under such Purchase Contracts.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of not less than a majority of the Outstanding Units.

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The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York (without regard to conflicts of laws principles thereof).

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company and the Purchase Contract Agent, and any agent of the Company or the Purchase Contract Agent, may treat the Person in whose name this Treasury Units Certificate is registered as the owner of the Treasury Units evidenced hereby for the purpose of (subject to the applicable record date) any payment of Contract Adjustment Payments and performance of the Purchase Contracts and for all other purposes whatsoever in connection with the Treasury Units, whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company or the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by notice to the contrary. A copy of the Purchase Contract and Pledge Agreement is available for inspection at the offices of the Purchase Contract Agent.

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ABBREVIATIONS

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

- TEN COM: as tenants in common
- UNIF GIFT MIN ACT: Custodian (minor)
(cust) Under Uniform Gifts to Minors Act of
- TENANT: as tenants by the entireties
- JT TEN: as joint tenants with right of survivorship and not as tenants in common

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

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Treasury Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Treasury Units Certificates on the books of BLACK HILLS CORPORATION, with full power of substitution in the premises.

Dated: _____ Signature: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Signature
Guarantee: _____

SETTLEMENT INSTRUCTIONS

The undersigned Holder directs that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

(if assigned to another person)

Dated: _____

REGISTERED HOLDER

If shares are to be registered in the name of and delivered to a Person other than the Holder, please

Please print name and address of registered Holder:

- (i) print such Person's name and address and
(ii) provide a guarantee of your signature:

Name: _____
Address: _____

Name: _____
Address: _____

Social Security or other Taxpayer Identification Number, if any

Signature: _____
Signature: _____
Guarantee: _____

ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT

The undersigned Holder of this Treasury Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Treasury Units in multiples of 20 Treasury Units or an integral multiple thereof. The undersigned Holder directs that a certificate for shares (including in book-entry if requested by the Holder) of Common Stock or other securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check in payment for any fractional share and (if applicable) any accrued and unpaid Contract Adjustment Payments (including deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) payable upon such [Early Settlement] [Fundamental Change Early Settlement] and any Treasury Units Certificate representing any Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected, to the undersigned at the address indicated below (or to the securities account designated in writing by the Holder) unless a different name and address have been indicated below. Pledged Treasury Securities deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

Dated: _____

Signature: _____

Signature: _____
Guarantee: _____

Number of Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

REGISTERED HOLDER

Please print name and address of registered Holder:

Name: _____
Address: _____

Name: _____
Address: _____

Social Security or other Taxpayer Identification Number, if any

Signature: _____

Signature
Guarantee: _____

Transfer Instructions for Pledged Treasury Securities transferable upon [Early Settlement] [Fundamental Change Early Settlement]:

[TO BE ATTACHED TO GLOBAL CERTIFICATES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL CERTIFICATE

The initial number of Treasury Units evidenced by this Global Certificate is []. The following increases or decreases in this Global Certificate have been made:

Date	Amount of increase in number of Treasury Units evidenced by the Global Certificate	Amount of decrease in number of Treasury Units evidenced by the Global Certificate	Number of Treasury Units evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Purchase Contract Agent
------	--	--	---	--

EXHIBIT C

INSTRUCTION TO PURCHASE CONTRACT AGENT FROM HOLDER
(To Create Treasury Units or Corporate Units)

U.S. Bank National Association,
as Purchase Contract Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: [Corporate Units] [Treasury Units] of BLACK HILLS CORPORATION, a South Dakota corporation (the "Company").

The undersigned Holder hereby notifies you that it has deposited with U.S. Bank National Association, as Collateral Agent, for credit to the Collateral Account, \$[] principal amount at maturity of [Notes] [Treasury Securities] in exchange for an equal principal amount at maturity of [Pledged Treasury Securities] [Notes underlying Pledged Applicable Ownership Interests in Notes] held in the Collateral Account, in accordance with the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"; unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. The undersigned Holder has paid all applicable fees and expenses relating to such exchange. The undersigned Holder hereby instructs you to instruct the Collateral Agent to release to you on behalf of the undersigned Holder the [Notes underlying Pledged Applicable Ownership Interests in Notes] [Pledged Treasury Securities] related to such [Corporate Units] [Treasury Units].

Dated: _____

Signature: _____

Signature

Guarantee: _____

Please print name and address of Registered Holder:

Name

Social Security or other Taxpayer Identification Number

Address

**NOTICE FROM PURCHASE CONTRACT AGENT
TO HOLDERS UPON TERMINATION EVENT**

(Transfer of Collateral upon Occurrence of a Termination Event)

[HOLDER]

Attention:

Telecopy:

Re: [Corporate Units] [Treasury Units] of Black Hills Corporation, a South Dakota corporation (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Purchase Contract and Pledge Agreement"; unless otherwise defined herein, terms defined in the Purchase Contract and Pledge Agreement are used herein as defined therein), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary.

We hereby notify you that a Termination Event has occurred and that [the Notes underlying the Pledged Applicable Ownership Interests in Notes] [the Applicable Ownership Interests in the Treasury Portfolio] [the Treasury Securities] comprising a portion of your ownership interest in [Corporate Units] [Treasury Units] have been released and are being held by us for your account pending receipt of transfer instructions with respect to such [Notes] [Applicable Ownership Interests in the Treasury Portfolio] [Pledged Treasury Securities] (the "Released Securities").

Pursuant to Section 3.15 of the Purchase Contract and Pledge Agreement, we hereby request written transfer instructions with respect to the Released Securities. Upon receipt of your instructions and upon transfer to us of your [Corporate Units] [Treasury Units] effected through book-entry or by delivery to us of your [Corporate Units Certificate] [Treasury Units Certificate], we shall transfer the Released Securities by book-entry transfer or other appropriate procedures, in accordance with your instructions. In the event you fail to effect such transfer or delivery, the Released Securities and any distributions thereon, shall be held in our name, or a nominee in trust for your benefit, until such time as such [Corporate Units] [Treasury Units] are transferred or your [Corporate Units Certificate] [Treasury Units Certificate] is surrendered or satisfactory evidence is provided that such [Corporate Units Certificate] [Treasury Units Certificate] has been destroyed, lost or stolen, together with any indemnification that we or the Company may require.

D-1

Dated: _____

By: U.S. Bank National Association,
as Purchase Contract Agent

Name:

Title:

Authorized Signatory

D-2

NOTICE TO SETTLE WITH CASH

U.S. Bank National Association,
as Purchase Contract Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation, a South Dakota corporation (the "Company").

The undersigned Holder hereby irrevocably notifies you in accordance with Section 5.03 of the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Purchase Contract and Pledge Agreement"; unless otherwise defined herein, terms defined in the Purchase Contract and Pledge Agreement are used herein as defined therein), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that such Holder has elected, prior to 4:00 p.m. on the second Business Day immediately preceding the first day of the Final Remarketing Period, to pay to or upon the order of the Securities Intermediary for deposit in the Collateral Account, prior to 4:00 p.m. (New York City time) on the first Business Day immediately preceding the first day of the Final Remarketing Period (in Cash by certified or cashier's check or wire transfer, in immediately available funds) \$[] as the Purchase Price for the shares of Common Stock issuable to such Holder by the Company with respect to [] Purchase Contracts on the Purchase Contract Settlement Date. The undersigned Holder hereby instructs you to notify promptly the Collateral Agent of the undersigned Holder's election to make such Cash Settlement with respect to the Purchase Contracts related to such Holder's Corporate Units.

Dated: _____

Signature: _____

Signature
Guarantee: _____

Please print name and address of Registered Holder

Name of DTC Participant:

Social Security or other Taxpayer
Identification Number, if any:

DTC Participant code:

Phone:

Email:

E-1

Wire instructions for payment of:

Bank Name:
Bank Address:
Wire ABA:

ACH ABA:
For the account of:
Account No.:
Amount:

Any written notices should be sent to:

Name(s):

Address:
Email:

U.S. Federal Tax Information

If you, a DTC participant, do not have a W-9 (or other appropriate tax form) on file with the Purchase Contract Agent, you must attach a completed W-9 form (or other appropriate tax form), a copy of which is available at: <http://www.irs.gov>.

E-2

EXHIBIT F

**INSTRUCTION
FROM PURCHASE CONTRACT AGENT
TO COLLATERAL AGENT
(Creation of Treasury Units)**

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with Section 3.13 of the Agreement that the holder of securities named below (the "Holder") has elected to substitute \$[] aggregate principal amount at maturity of Treasury Securities or security entitlements with respect thereto in exchange for an equal aggregate principal amount of Notes underlying Pledged Applicable Ownership Interests in Notes relating to [] Corporate Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Treasury Securities or security entitlements with respect thereto to the Collateral Agent, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Treasury Securities or security entitlements thereto have been credited to the Collateral Account, to Transfer to the undersigned an equal aggregate principal amount at maturity of Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto related to [] Corporate Units of such Holder in accordance with Section 3.13 of the Agreement.

Dated: _____

By: U.S. Bank National Association,
as Purchase Contract Agent and attorney-in-fact
of the Holders from time to time of the Units

Name:
Title:
Authorized Signatory

F-1

Please print name and address of Holder electing to substitute Treasury Securities or security entitlements with respect thereto for the Notes underlying Pledged Applicable Ownership Interests in Notes:

Name Social Security or other Taxpayer Identification Number,
if any

F-2

EXHIBIT G

**INSTRUCTION
FROM COLLATERAL AGENT
TO SECURITIES INTERMEDIARY
(Creation of Treasury Units)**

U.S. Bank National Association,
as Securities Intermediary
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation (the "Company").

Reference is hereby made to the securities account of U.S. Bank National Association, as Collateral Agent, maintained on the books of the Securities Intermediary and designated "Black Hills Corporation Collateral Account" (the "Collateral Account").

Please also refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

When you have confirmed that \$[] aggregate principal amount at maturity of Treasury Securities or security entitlements with respect thereto has been credited to the Collateral Account by or for the benefit of [], as Holder of [] Corporate Units (the "Holder"), you are hereby instructed to release from the Collateral Account an equal aggregate principal amount of Notes underlying Pledged Applicable Ownership Interests in Notes or security entitlements with respect thereto relating to [] Corporate Units of the Holder by Transfer to the Purchase Contract Agent.

Dated: _____

By: U.S. Bank National Association,
as Collateral Agent

Name:
Title:
Authorized Signatory

G-1

EXHIBIT H

**INSTRUCTION
FROM PURCHASE CONTRACT AGENT**

TO COLLATERAL AGENT
(Recreation of Corporate Units)

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Treasury Units of Black Hills Corporation (the "Company").

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with Section 3.14 of the Agreement that the holder of securities named below (the "Holder") has elected to substitute \$[] principal amount of Notes relating to [] Corporate Units in exchange for \$[] principal amount at maturity of Pledged Treasury Securities relating to [] Treasury Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Notes or security entitlements thereto to the Collateral Agent, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Notes or security entitlements thereto have been credited to the Collateral Account, to release to the undersigned \$[] aggregate principal amount at maturity of Treasury Securities related to [] Treasury Units of such Holder in accordance with Section 3.14 of the Agreement.

Dated: _____

By: U.S. Bank National Association,
as Purchase Contract Agent

Name:
Title:
Authorized Signatory

H-1

Please print name and address of Holder electing to substitute Notes or security entitlements with respect thereto for Pledged Treasury Securities:

Name

Social Security or other Taxpayer Identification Number,
if any

Address

H-2

EXHIBIT I

INSTRUCTION
FROM COLLATERAL AGENT TO
SECURITIES INTERMEDIARY
(Recreation of Corporate Units)

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Treasury Units of Black Hills Corporation (the "Company").

Reference is hereby made to the securities account of U.S. Bank National Association, as Collateral Agent, maintained on the books of the Securities Intermediary and designated "Black Hills Corporation Collateral Account" (the "Collateral Account").

Please also refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

When you have confirmed that \$[] aggregate principal amount of Notes or security entitlements with respect thereto has been credited to the Collateral Account by or for the benefit of [], as Holder of [] Treasury Units (the "Holder"), you are hereby instructed to release from the Collateral

Account \$[] aggregate principal amount at maturity of Treasury Securities by Transfer to the Purchase Contract Agent.

Dated: _____

By: U.S. Bank National Association,
as Collateral Agent

Name:
Title:
Authorized Signatory

I-1

EXHIBIT J

**NOTICE TO SETTLE WITH CASH FROM PURCHASE CONTRACT
AGENT TO COLLATERAL AGENT
(Cash Settlement Amounts)**

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein.

In accordance with Section 5.03(a)(iv) of the Agreement, we hereby notify you that as of 4:00 p.m. (New York City time) on the first Business Day immediately preceding the first day of the Final Remarketing Period, we have received (i) notification from the Securities Intermediary that it has received for deposit in the Collateral Account \$[] in immediately available funds paid in an aggregate amount equal to the Purchase Price due to the Company on the Purchase Contract Settlement Date with respect to [] Corporate Units and (ii) based on the funds received set forth in clause (i) above, an aggregate principal amount of \$[] of Notes underlying Pledged Applicable Ownership Interests in Notes are to be offered for purchase in each Remarketing during the Final Remarketing Period.

Dated: _____

By: U.S. Bank National Association,
as Purchase Contract Agent

Name:
Title:
Authorized Signatory

Please print name and address of Holder electing a Cash Settlement

Name: DTC Participant #

Address: Social Security or other Taxpayer Identification Number

J-1

City/State/Zip

J-2

EXHIBIT K

INSTRUCTION TO CUSTODIAL AGENT REGARDING REMARKETING

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: 2015 Series A 3.50% Remarketable Junior Subordinated Notes Due 2028 of Black Hills Corporation (the "Company").

The undersigned hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that the undersigned elects to deliver \$[] aggregate principal amount of Separate Notes for delivery to the Remarketing Agent(s) prior to a Remarketing, other than during a Blackout Period, for remarketing pursuant to Section 5.02(d) of the Agreement. The undersigned will, upon request of the Remarketing Agent(s), execute and deliver any additional documents deemed by the Remarketing Agent(s) or by the Company to be necessary or desirable to complete the sale, assignment and transfer of the Separate Notes tendered hereby. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

The undersigned hereby instructs you to deliver such Separate Notes to or upon the order of the Remarketing Agent(s) against payment of the Proceeds of a Successful Remarketing attributable to such Separate Notes from the Remarketing Agent(s), and to deliver such Proceeds to the undersigned in accordance with the instructions indicated herein under "Payment Instructions" or the Depository in accordance with the Applicable Procedures of the Depository if such Remarketing was effected through DTC. The undersigned hereby instructs you, in the event of a Failed Remarketing to deliver such Separate Notes to the person(s) and the address(es) indicated herein under "B. Delivery Instructions."

With this notice, the undersigned hereby (i) represents and warrants that the undersigned has full power and authority to surrender, sell, assign and transfer the Separate Notes surrendered hereby and that the undersigned is the record owner of any Separate Notes surrendered herewith in physical form or a participant in The Depository Trust Company ("DTC") and the Beneficial Owner of any Separate Notes surrendered herewith by book-entry transfer to your account at DTC, (ii) agrees to be bound by the terms and conditions of Section 5.02(a) or (b), as applicable, of the Agreement and (iii) acknowledges and agrees that after 4:00 p.m. (New York City time) on the second Business Day immediately preceding the first day of the Applicable Remarketing Period, such election shall become an irrevocable election to have such Separate Notes remarketed in each Remarketing during the Applicable Remarketing Period, and that the Separate Notes surrendered herewith will only be returned in the event of a Failed Remarketing.

K-1

Date: _____ By: _____
Name:
Title:
Signature Guarantee: _____

Name

Address

Social Security or other Taxpayer
Identification Number, if any

A. PAYMENT INSTRUCTIONS

Proceeds of a Successful Remarketing attributable to the Separate Notes delivered hereunder should be paid by the following wire instructions, or if unavailable by check in the name of the person(s) set forth below and mailed to the address set forth below.

[Wire Instructions]

Name(s): _____
(Please Print)

Address: _____
(Please Print)

(Zip Code)

(Tax Identification or Social Security Number)

B. DELIVERY INSTRUCTIONS

In the event of a Failed Remarketing, Notes which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s): _____
(Please Print)

Address: _____
(Please Print)

(Zip Code)

(Tax Identification or Social Security Number)

In the event of a Failed Remarketing, Notes which are in book-entry form should be credited to the account at The Depository Trust Company to the person(s) set forth below.

DTC Account Number: _____

Name of Account Party: _____

EXHIBIT L

**INSTRUCTION TO CUSTODIAL AGENT REGARDING
WITHDRAWAL FROM REMARKETING**

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: 2015 Series A 3.50% Remarketable Junior Subordinated Notes Due 2028 of Black Hills Corporation (the "Company")

The undersigned hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that the undersigned elects to withdraw, other than during a Blackout Period, the \$[] aggregate principal amount of Separate Notes delivered to you for Remarketing pursuant to Section 5.02(d) of the Agreement. The undersigned hereby instructs you to return such Separate Notes to the person(s) and the address(es) indicated herein under "A. Delivery Instructions."

With this notice, the undersigned hereby agrees to be bound by the terms and conditions of Section 5.02(d) of the Agreement. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

Date: _____

By: _____

Name:

Title:

Signature Guarantee: _____

Name

Address

Social Security or other Taxpayer
Identification Number, if any

A. DELIVERY INSTRUCTIONS

In the event of a withdrawal of Separate Notes from a Remarketing, Separate Notes which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s): _____
(Please Print)

Address:

(Please Print)

(Zip Code)

(Zip Code)

In the event of a withdrawal of Separate Notes from a Remarketing, Separate Notes which are in book-entry form should be credited to the account at The Depository Trust Company to the person(s) set forth below.

DTC Account Number:

Name of Account Party:

L-2

EXHIBIT M

NOTICE TO SETTLE WITH CASH AFTER FAILED FINAL REMARKETING

U.S. Bank National Association,
as Purchase Contract Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation, a South Dakota corporation (the "Company")

The undersigned Holder hereby irrevocably notifies you in accordance with Section 5.02(b)(ix) of the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary, that such Holder has elected to pay to or upon the order of the Securities Intermediary for deposit in the Collateral Account, on or prior to 4:00 p.m. (New York City time) on the Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier's check or wire transfer, in immediately available funds), \$[] as the Purchase Price for the shares of Common Stock issuable to such Holder by the Company with respect to [] Purchase Contracts on the Purchase Contract Settlement Date. The undersigned Holder hereby instructs you to notify promptly the Collateral Agent of the undersigned Holders' election to settle the Purchase Contracts related to such Holder's Corporate Units with separate cash.

Date:

Signature:

Signature Guarantee:

Please print name and address of Registered Holder:

M-1

EXHIBIT N

**NOTICE
FROM PURCHASE CONTRACT AGENT
TO COLLATERAL AGENT
(Settlement with Separate Cash)**

U.S. Bank National Association,
as Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation, a South Dakota corporation (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time, as Collateral Agent, as Custodial Agent and as Securities Intermediary. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with the last paragraph of Section 5.02(b)(ix) of the Agreement that the holder of Corporate Units named below (the "Holder") has elected to settle the [] Purchase Contracts related to its Pledged Applicable Ownership Interests in Notes with [] of separate cash prior to 4:00 p.m. (New York City time) on the second Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier's check or wire transfer, in immediately available funds payable to or upon the order of the Securities Intermediary) and has delivered to the undersigned a notice to that effect.

We hereby request that you, upon confirmation that the Purchase Price has been paid by the Holder to the Securities Intermediary in accordance with Section 5.02(b)(ix) of the Agreement in lieu of exercise of such Holder's Put Right, give us notice of the receipt of such payment and, thereafter, you are instructed to, or instructed to cause the Securities Intermediary to, (A) deposit the separate cash received in the Collateral Account and, if applicable, invest such separate cash in Permitted Investments consistent with the instructions of the Company as provided in Section 5.03(a)(v) of the Agreement with respect to Cash Settlement (as specified by Section 5.02(b)(ix)), (B) promptly release from the Pledge the Notes underlying the Applicable Ownership Interest in Notes related to the Corporate Units as to which such Holder has paid such separate cash; and (C) promptly Transfer all such Notes to us for distribution to such Holder, in each case free and clear of the Pledge created by the Agreement.

Dated:

By: U.S. Bank National Association, as Purchase
Contract Agent and attorney-in-fact of the Holders from
time to time of the Units

N-1

Name:
Title:
Authorized Signatory

Please print name and address of Holder electing to settle with separate cash:

Name: Social Security or other Taxpayer Identification Number, if any

Address:

N-2

EXHIBIT O

**NOTICE OF SETTLEMENT WITH SEPARATE CASH FROM
SECURITIES INTERMEDIARY TO PURCHASE CONTRACT AGENT AND
COLLATERAL AGENT
(Settlement with Separate Cash)**

U.S. Bank National Association,
as Purchase Contract Agent and Collateral Agent
190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services

Re: Corporate Units of Black Hills Corporation (the "Company")

Please refer to the Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Agreement"), among you and the Company. Unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein.

In accordance with the last paragraph of Section 5.02(b)(ix) of the Agreement, we hereby notify you that as of 4:00 p.m. (New York City time) on the Business Day immediately preceding the Purchase Contract Settlement Date, (i) we have received from [] \$[] in immediately available funds paid in an aggregate amount equal to the Purchase Price due to the Company on the Purchase Contract Settlement Date with respect to [] Corporate Units and (ii) based on the funds received set forth in clause (i) above, an aggregate principal amount of \$[] of Notes underlying related Pledged Applicable Ownership Interests in Notes are to be released from the Pledge and Transferred to you.

U.S. Bank National Association, as Securities Intermediary

Dated:

By:

O-1

EXHIBIT P

FORM OF REMARKETING AGREEMENT

[], 20[]

U.S. Bank National Association

[]

Ladies and Gentlemen:

This Agreement is dated as of [], 20[] (the "Agreement") by and among Black Hills Corporation, a South Dakota corporation (the "Company"), [](1), as the reset agent[s] and the remarketing agent[s] (the "Remarketing Agent"), and U.S. Bank National Association, solely as Purchase Contract Agent (the "Purchase Contract Agent") and as attorney-in-fact of the Holders of Purchase Contracts, relating to the appointment of [] to serve as Remarketing Agent with respect to the Remarketing of the Notes.

The Company has also entered into: (a) a Purchase Contract and Pledge Agreement, dated as of November 23, 2015 (the "Purchase Contract and Pledge Agreement"), among the Company and U.S. Bank National Association, as Purchase Contract Agent, attorney-in-fact of the Holders of the Purchase Contracts, and as Collateral Agent, Custodial Agent and Securities Intermediary, and (b) an Underwriting Agreement, dated November 17, 2015 (the "Underwriting Agreement"), by and among the Company and the several underwriters named in Schedule A thereto for whom Credit Suisse Securities (USA) LLC, Wells Fargo Securities, LLC, RBC Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated acted as representatives, each related to the Company's Corporate Units.

On November 23, 2015, the Company issued an aggregate of 5,980,000 Corporate Units, each of which consists of a Purchase Contract and a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of the Company's 2015 Series A 3.50% remarketable junior subordinated notes due 2028 (the "Notes") issued under the Company's Junior Subordinated Indenture, dated as of November 23, 2015 (the "Base Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Indenture Trustee"), as supplemented and amended by the First Supplemental Indenture, dated as of November 23, 2015, between the Company and the Indenture Trustee (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). The Notes that form part of the Corporate Units are pledged pursuant to the Purchase Contract and Pledge Agreement to secure a Corporate Unit Holder's Obligations under the related Purchase Contracts on the Purchase Contract Settlement Date.

The terms and conditions under which the Remarketing will occur are as provided for in the Indenture and the Purchase Contract and Pledge Agreement and as provided for herein.

(1) Insert one or more remarketing agents to be designated by the Company. All subsequent references to "Remarketing Agent" to be made plural in the case of multiple remarketing agents.

Section 1. DEFINITIONS.

(a) Capitalized terms used and not defined in this Agreement shall have the meanings set forth in the Purchase Contract and Pledge Agreement.

(b) As used in this Agreement, the following terms have the following meanings:

"430B Information" means in the case of a Public Remarketing, information included in a prospectus relating to the Remarketed Notes then deemed to be a part of the Registration Statement pursuant to Rule 430B(e) or retroactively deemed to be a part of the Registration Statement pursuant to Rule 430B(f).

"430C Information" means in the case of a Public Remarketing, information included in a prospectus relating to the Offered Securities then deemed to be a part of the Registration Statement pursuant to Rule 430C.

"Applicable Time" means the time of first sale of Remarketed Notes during the Applicable Remarketing Period.

"Commencement Date" has the meaning specified in Section 3 of this Agreement.

"Commission" means the Securities and Exchange Commission.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Final Prospectus" means, in the case of a Public Remarketing, the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Remarketed Notes and otherwise satisfies Section 10(a) of the Securities Act.

"General Disclosure Package" means (i) in the case of a Public Remarketing, the Registration Statement and any amendment thereof and the Preliminary Prospectus, taken together with any Issuer Free Writing Prospectus used in connection with a Successful Remarketing at the Applicable Time, and (ii) in the case of a Private Remarketing, the Private Placement Marketing Materials (as defined in Section 3(d) hereof).

"Indemnified Party" has the meaning specified in Section 7(a) of this Agreement.

"Issuer Free Writing Prospectus" means, in the case of a Public Remarketing, any "issuer free writing prospectus", as defined in Rule 433, relating to the Remarketed Notes in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

“Preliminary Prospectus” means, in the case of a Public Remarketing, a preliminary prospectus, if any, relating to the Remarketed Notes included in the Registration Statement, including the documents incorporated by reference therein as of the date of such preliminary prospectus.

“Private Remarketing” means a Remarketing that is conducted in accordance with Rule 144A of the Securities Act or any other exemption from registration thereunder.

“Private Placement Marketing Materials” has the meaning specified in Section 3(d) of this Agreement.

“Public Remarketing” means a Remarketing that is conducted on a registered basis under the Securities Act.

“Registration Statement” means a registration statement, if any, under the Securities Act prepared by the Company covering, inter alia, the Remarketing of the Remarketed Notes pursuant to Section 5(a) hereof, including all exhibits thereto and the documents incorporated by reference in the Preliminary Prospectus or the Final Prospectus, as applicable, and any post-effective amendments thereto.

“Remarketed Notes” means, with respect to all Remarketings during any Applicable Remarketing Period, the aggregate Notes underlying the Pledged Applicable Ownership Interests in Notes and the Separate Notes, if any, subject to Remarketing as identified to the Remarketing Agent by the Purchase Contract Agent and the Custodial Agent, respectively, in the case of an Optional Remarketing, by 4:00 p.m. New York City time, on the Business Day immediately prior to the first day of the Optional Remarketing Period, or in the case of a Final Remarketing, promptly after 4:00 p.m., New York City time, on the Business Day immediately prior to the first day of the Final Remarketing Period in accordance with the Purchase Contract and Pledge Agreement and shall include (i) the Notes underlying the Pledged Applicable Ownership Interests in Notes of the Holders of Corporate Units and, in the case of a Final Remarketing, who have not notified the Purchase Contract Agent prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period of their intention to effect a Cash Settlement of the related Purchase Contracts pursuant to the terms of the Purchase Contract and Pledge Agreement or who have so notified the Purchase Contract Agent but failed to make the required cash payment prior to 4:00 p.m., New York City time, on the first Business Day immediately preceding the Final Remarketing Period and (ii) the Separate Notes of the holders of Separate Notes, if any, who have elected to have their Separate Notes remarketed in any such Remarketing pursuant to the terms of the Purchase Contract and Pledge Agreement.

“Remarketing Fee” has the meaning specified in Section 4 of this Agreement.

“Remarketing Agent Indemnified Party” has the meaning specified in Section 7(b) of this Agreement.

“Remarketing Materials” means (i) in the case of a Public Remarketing, the Registration Statement, the Preliminary Prospectus, the Final Prospectus and/or any Issuer Free Writing Prospectus furnished by the Company to the Remarketing Agent for distribution to investors in connection with such Remarketing or (ii) in the case of a Private Remarketing, the Private Placement Marketing Materials.

“Representation Date” has the meaning specified in Section 3 of this Agreement.

“Reset Rate” has the meaning specified in Section 2(d) of this Agreement.

“Rules and Regulations” means the rules and regulations of the Commission.

“Securities” has the meaning specified in Section 10 of this Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Statutory Prospectus” with reference to any particular time means in the case of a Public Remarketing the prospectus relating to the Remarketed Notes that is included in the Registration Statement immediately prior to that time, including all 430B Information and all 430C Information with respect to the Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus only as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) and not retroactively.

“Transaction Documents” means this Agreement, the Purchase Contract and Pledge Agreement, the Units, the Notes and the Indenture, in each case as amended or supplemented from time to time.

Section 2. APPOINTMENT AND OBLIGATIONS OF THE REMARKETING AGENT.

(a) The Company hereby appoints [] as the exclusive Remarketing Agent, and, subject to the terms and conditions set forth herein, [] hereby accepts appointment as Remarketing Agent, for the purpose of (i) remarketing the Remarketed Notes on behalf of the Holders thereof, (ii) determining, in consultation with the Company, in the manner provided for herein and in the Purchase Contract and Pledge Agreement and the Supplemental Indenture, the Reset Rate for the Notes, and (iii) performing such other duties as are assigned to the Remarketing Agent in the Transaction Documents.

(b) Unless a Termination Event has occurred prior to such date, if the Company elects to conduct an Optional Remarketing during the Optional Remarketing Period selected by the Company pursuant to the Purchase Contract and Pledge Agreement, the Remarketing Agent shall use its commercially

reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price; provided that the Company shall determine in its sole discretion if and when

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to attempt an Optional Remarketing, and the Company may commence or postpone or cancel an Optional Remarketing in its absolute and sole discretion. In the case of an Optional Remarketing, on any Remarketing Date, the Remarketing Agent shall notify the Company, the Collateral Agent and the Quotation Agent of the amount and issue of the U.S. Treasury securities (or principal or interest strips thereof) that will constitute the Treasury Portfolio, which will be selected by the Remarketing Agent in its sole discretion in accordance with the Purchase Contract and Pledge Agreement. The Company will cause the Quotation Agent to notify the Remarketing Agent of the Treasury Portfolio Purchase Price no later than 4:00 p.m. New York City time on such Remarketing Date. If the Remarketing Agent is also acting as Quotation Agent, the Quotation Agent shall be entitled to all rights, protections and privileges granted herein to the Remarketing Agent.

(c) If there is no Successful Optional Remarketing during the Optional Remarketing Period or no Optional Remarketing occurs on any Optional Remarketing Date, if any, and unless a Termination Event has occurred prior to such date, on each Remarketing Date in the Final Remarketing Period, the Remarketing Agent shall use its commercially reasonable efforts to remarket the Remarketed Notes at the applicable Remarketing Price. It is understood and agreed that the Remarketing on any Remarketing Date in the Final Remarketing Period will be considered successful if the resulting proceeds are at least equal to the applicable Remarketing Price. The Company has the right to postpone the Final Remarketing in the Company's sole and absolute discretion on any day prior to the last three Business Days of the Final Remarketing Period.

(d) In connection with a Remarketing, the Remarketing Agent shall determine, in consultation with the Company, the rate per annum, rounded to the nearest one-thousandth (0.001) of one percent per annum, that the Remarketed Notes should bear (the "Reset Rate") that in the reasonable discretion of the Remarketing Agent will enable it to remarket all of the Remarketed Notes at no less than the applicable Remarketing Price in such Remarketing; provided that such Reset Rate shall not exceed the maximum interest rate permitted by applicable law.

(e) If, by 4:00 p.m., New York City time, on the applicable Remarketing Date, (i) the Remarketing Agent is unable to Remarket all of the Remarketed Notes, at a price not less than the applicable Remarketing Price pursuant to the terms and conditions hereof or (ii) the Remarketing did not occur on such Remarketing Date because one of the conditions set forth in Section 6 hereof was not satisfied, the Remarketing Agent shall advise by telephone (and promptly deliver a notice in writing thereafter to) the Depository, the Purchase Contract Agent, the Collateral Agent and the Company. Whether or not there has been a Failed Remarketing will be determined in the sole reasonable discretion of the Remarketing Agent. In the event of a Failed Remarketing, the applicable interest rate on the Notes will not be reset and will continue to be the Coupon Rate set forth in the Supplemental Indenture.

(f) In the event of a Successful Remarketing, by approximately 4:30 p.m., New York City time, on the applicable Remarketing Date, the Remarketing Agent shall advise, by telephone:

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(i) the Depository, the Purchase Contract Agent, the Trustee, the Collateral Agent, the Custodial Agent and the Company (and promptly deliver a notice in writing to such Persons thereafter) of the Reset Rate with respect to the Notes and the aggregate principal amount of Remarketed Notes sold in such Remarketing;

(ii) each purchaser (or the Depository Participant thereof) of Remarketed Notes of the Reset Rate and the aggregate principal amount of Remarketed Notes such purchaser is to purchase;

(iii) each such purchaser (if other than a Depository Participant) to give instructions to its Depository Participant to pay the purchase price on the Remarketing Settlement Date in same day funds against delivery of the Remarketed Notes purchased through the facilities of the Depository; and

(iv) each such purchaser (or Depository Participant thereof) that the Remarketed Notes will not be delivered until the Remarketing Settlement Date and (if applicable) that if such purchaser wishes to trade the Remarketed Notes that it has purchased prior to the third Business Day preceding the Remarketing Settlement Date, such purchaser will have to specify an alternative settlement cycle at the time of any such trade to prevent failed settlement.

In the case of a Public Remarketing, the Remarketing Agent shall also, if required by the Securities Act, deliver, in conformity with the requirements of the Securities Act, to each purchaser a Final Prospectus in connection with such Public Remarketing.

(g) The proceeds from a Successful Remarketing (i) with respect to the Notes underlying the Pledged Applicable Ownership Interests in Notes that are components of the Corporate Units and (ii) with respect to the Separate Notes, in each case, shall be applied in accordance with Section 5.02 of the Purchase Contract and Pledge Agreement.

(h) It is understood and agreed that the Remarketing Agent shall not have any obligation whatsoever to purchase any Remarketed Notes, whether in the Remarketing or otherwise, and shall in no way be obligated to provide funds to make payment upon surrender of Remarketed Notes for Remarketing or to otherwise expend or risk its own funds or incur or to be exposed to financial liability in the performance of its duties under this Agreement. Neither the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon surrender of the Remarketed Notes for Remarketing.

Section 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Remarketing Agent, (i) on and as of each date any Remarketing Materials are first distributed in connection with the Remarketing (each, a "Commencement Date"), (ii) on and as of each date any amendment to any Remarketing Materials is first distributed, (iii) on and as of each Remarketing Date and (iv) on and as of the Remarketing Settlement Date (in each case of clauses (i) through (iv), a "Representation Date"), that:

(a) This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the Remarketing Agent and the other parties hereto, constitutes a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(b) Each of the representations and warranties of the Company as set forth in Section 2 of the Underwriting Agreement (other than those made in subsections (a), (b), (c), (d), (e), (f), (i), (j), (l), (s), (x), (ii) and (jj)) is true and correct as if made on each Representation Date; provided that for purposes of this Section 3(b), any reference in such sections of the Underwriting Agreement to (a) the "Registration Statement," the "General Disclosure Package," and the "Final Prospectus" shall be deemed to refer to such terms as defined herein, except that in the case of a Private Remarketing each such term shall, *mutatis mutandis*, be deemed to refer to the Private Placement Marketing Materials, (b) either the "Units Agreement" or "this Agreement" shall refer to this Agreement, (c) the "Offered Securities" shall refer to the Remarketed Notes and (d) either "Underwriters" or "Underwriter" shall refer to the Remarketing Agent; and provided further that (x) the reference to "the Company's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2014" in Section 2(z) of the Underwriting Agreement shall be deemed to refer to the Company's Annual Report on Form 10-K for the fiscal year ended [] 31, 20[], (y) the reference to Section 7(d)(ii) in Section 2(ff) of the Underwriting Agreement shall be deemed to refer to Section 6(b)(ii) hereof and (z) the reference to "for the fiscal years ended December 31, 2012, December 31, 2013 and December 31, 2014" in Section 2(gg) of the Underwriting Agreement shall be deemed to refer to the three most recently completed fiscal years for which financial information is included in the General Disclosure Package.

(c) If the Remarketing is a Public Remarketing, then:

(i) The Company has filed with the Commission a Registration Statement, including a related prospectus or prospectuses relating to the Remarketed Notes, covering the registration of the Remarketed Notes under the Securities Act, which has become effective.

(ii) (A) (I) At the time the Registration Statement initially became effective, (II) at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether by post-effective amendment, incorporated report or form of prospectus), (III) at the time of the first contract of sale for the Remarketed Notes and (IV) on each Remarketing Settlement Date, the Registration Statement conformed and will conform in all material respects to the requirements of the Securities Act, the TIA and the Rules and Regulations and did not and will not include any 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, and (B) (I) on its date, (II) at the time of filing the Final Prospectus pursuant to Rule 424(b) and (III) on each Remarketing Settlement Date, the Final Prospectus will conform in all material respects to the requirements of the Securities Act, the TIA and the Rules and Regulations, and will

not include any 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. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by the Remarketing Agent specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 7(b) hereof.

(iii) (A) At the time of initial filing of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Remarketed Notes in reliance on the exemption of Rule 163, the Company was a "well known seasoned issuer" as defined in Rule 405, including not having been an "ineligible issuer" as defined in Rule 405.(2)

(iv) The Registration Statement is an "automatic shelf registration statement", as defined in Rule 405, that initially became effective within three years of the date of this Agreement.(3)

(v) The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to use of the automatic shelf registration statement form.(4)

(vi) (A) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Remarketed Notes and (B) at the date of this Agreement, the Company was not and is not an "ineligible issuer", as defined in Rule 405, including (I) the Company or any subsidiary of the Company in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (II) the Company in the preceding three years not having been the subject of a bankruptcy petition or insolvency or similar proceeding, not having had a registration statement be the subject of a proceeding under Section 8 of the Securities Act and not being the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Remarketed Notes, all as described in Rule 405.(5)

(2) To be included only to the extent the Registration Statement (as defined) is an "automatic shelf registration statement." If that is not the case, to include alternate representations as reasonably agreed.

(3) To be included only to the extent the Registration Statement (as defined) is an "automatic shelf registration statement." If that is not the case, to include alternate representations as reasonably agreed.

(4) To be included only to the extent the Registration Statement (as defined) is an "automatic shelf registration statement." If that is not the case, to include alternate representations as reasonably agreed.

(5) To be included only to the extent the Registration Statement (as defined) is an "automatic shelf registration statement." If that is not the case, to include alternate representations as reasonably agreed.

(vii) As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted 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. The preceding sentence does not apply to statements in or omissions from the General Disclosure Package or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Remarketing Agent consists of the information described as such in Section 7(b) hereof.

(viii) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Remarketed Notes or until any earlier date that the Company notified or notifies the Remarketing Agent as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would 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, (i) the Company has promptly notified or will promptly notify the Remarketing Agent and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(d) If the Remarketing is a Private Remarketing, then any preliminary offering memorandum or any communication, document or material relating to the Remarketed Notes that would, if the Remarketing were conducted as a public offering pursuant to a registration statement filed under the Securities Act, constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act (including the documents incorporated or deemed incorporated by reference in any such document or materials) (the “Private Placement Marketing Materials”), and any further amendments or supplements to the Private Placement Marketing Materials, do not and will not as of their respective dates of distribution to investors (and as amended or supplemented, as of such date), contain an 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. The preceding sentence does not apply to statements in or omissions from the Private Placement Marketing Materials in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Remarketing Agent consists of the information described as such in Section 7(b) hereof.

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(e) The Remarketed Notes are in the form contemplated by the Indenture and have been duly authorized by the Company and, when issued and delivered pursuant to the Indenture to and paid for by the purchasers thereof, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles, and be entitled to the benefits provided by the Indenture.

(f) The Indenture has been duly authorized, executed and delivered by the Company, and assuming due authorization, execution and delivery by the Indenture Trustee, constitutes a valid and legally binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles; and the Indenture has been duly qualified under the TIA.

(g) The statements in the General Disclosure Package under the headings “[Description of Notes]”, “[Material United States Federal Income Tax Considerations]” and “[Underwriting / Plan of Distribution]”, insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings in all material respects and present the information required to be shown.

Section 4. FEES.

In the event of a Successful Remarketing of the Remarketed Notes, the Company shall pay the Remarketing Agent a remarketing fee to be agreed upon in writing by the Company and the Remarketing Agent prior to any such Remarketing (the “Remarketing Fee”).

Section 5. COVENANTS OF THE ISSUER.

The Company covenants and agrees as follows:

(a) If and to the extent the offering of the Remarketed Notes in the Remarketing is required (in the view of counsel for the Company) to be conducted as a Public Remarketing, then:

(i) The Company has filed or will file each Statutory Prospectus (including the Final Prospectus) pursuant to and in accordance with Rule 424(b)(2) or 424(b)(5) not later than the second business day following the earlier of the date it is first used or the execution and delivery of this Agreement. The Company has complied and will comply with Rule 433.

(ii) If, at any time when a prospectus relating to the Remarketed Notes is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act by the Remarketing Agent, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or

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omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Securities Act, the Company will promptly notify the Remarketing Agent of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Remarketing Agent and any other dealers upon request of the Remarketing Agent, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the consent to, nor delivery of, any such amendment or supplement by the Remarketing Agent shall constitute a waiver of any of the conditions set forth in Section 6 hereof.

(iii) As soon as practicable, but not later than 16 months, after the date of this Agreement, the Company will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the date of this Agreement and satisfying the provisions of Section 11(a) of the Securities Act and Rule 158.

(b) The Company will, during the Applicable Remarketing Period, promptly advise the Remarketing Agent of any proposal at any time to amend or supplement the Registration Statement or any Statutory Prospectus, in the case of a Public Remarketing, or any of the Private Placement Marketing Materials, in the case of a Private Remarketing, and will offer the Remarketing Agent a reasonable opportunity to comment on any such amendment or supplement; and the Company will also advise the Remarketing Agent promptly of (i) the filing of any such amendment or supplement, (ii) any request by the Commission or its staff for any amendment to the Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iii) the institution by the Commission of any stop order proceedings in respect of the Registration Statement or the threatening of any proceeding for that purpose, and (iv) the receipt by the Company of any notification with respect to the suspension of the qualification of the Remarketed Notes in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) The Company will furnish to the Remarketing Agent copies of the Registration Statement, including all exhibits, any Statutory Prospectus, the Final Prospectus and all amendments and supplements to such documents (in the case of a Public Remarketing) or copies of the Private Placement Marketing Materials and all amendments and supplements to such documents (in the case of a Private Remarketing), in each case as soon as available and in such quantities as the Remarketing Agent reasonably requests. The Company will pay the expenses of printing and distributing to the Remarketing Agent all such documents.

(d) The Company will arrange for the qualification of the Remarketed Notes for sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Remarketing Agent reasonably designates and will continue such qualifications in effect so long as required for the distribution; provided that, in connection therewith, the Company shall

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not be required to qualify as a foreign corporation or to take any action that would subject it to a general consent to service of process in any such jurisdiction.

(e) [Intentionally omitted]

(f) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any securities of the Company to facilitate the sale of the Remarketed Notes.

(g) The Company will pay all expenses incident to the performance of its obligations under this Agreement, including but not limited to any filing fees and other expenses (including fees and disbursements of counsel to the Remarketing Agent) incurred in connection with qualification of the Remarketed Notes for sale under the laws of such jurisdictions as the Remarketing Agent reasonably designates and the preparation and printing of memoranda relating thereto, any fees charged by investment rating agencies for the rating of the Remarketed notes, costs and expenses relating to investor presentations or any "road show" in connection with the offering and sale of the Remarketed Notes including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company including the chartering of airplanes (but excluding any separately-incurred travel expenses of employees and representatives of the Remarketing Agent), fees and expenses incident to listing any of the Remarketed Notes on the New York Stock Exchange, American Stock Exchange, NASDAQ Stock Market and other national and foreign exchanges, fees and expenses in connection with the registration of the Remarketed Notes under the Exchange Act, and expenses incurred in distributing the Preliminary Prospectus and the Final Prospectus or Private Placement Marketing Materials, as applicable (including, in either case, any amendments and supplements thereto) to the Remarketing Agent and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors.

(h) The Company shall furnish the Remarketing Agent with such information and documents as the Remarketing Agent may reasonably request in connection with the transactions contemplated hereby, and to make reasonably available to the Remarketing Agent and any accountant, attorney or other advisor retained by the Remarketing Agent such information, and such access to the appropriate officers, employees and accountants of the Company, that parties would customarily require, and reasonably requested by the Remarketing Agent, in connection with a due diligence investigation conducted in accordance with applicable securities laws.

(i) Between the applicable Commencement Date and the applicable Remarketing Settlement Date, the Company will not, without the prior written consent of the Remarketing Agent (which consent may be withheld at the reasonable discretion of the Remarketing Agent), directly or indirectly, sell, offer, contract to sell or grant any option to sell, or otherwise dispose of, any debt securities of the Company substantially similar to the Remarketed Notes.

(j) The Company represents and agrees that, unless it obtains the prior written consent of the Remarketing Agent, and the Remarketing Agent represents and agrees that, unless it obtains the prior written consent of the Company, it has not made and will not make any offer

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relating to the Remarketed Notes that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405 of the Securities Act), required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Remarketing Agent is hereinafter referred to as a "Permitted Free Writing Prospectus". The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus", as defined in Rule 433, and has complied and will comply with the

requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(k) The Company will prepare a final term sheet relating to the Remarketed Notes, containing only information that describes the final terms of the Remarketed Notes and otherwise in a form consented to by the Remarketing Agent, and, in the case of a Public Remarketing, will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for the offering of the Remarketed Notes. Any such final term sheet is an Issuer Free Writing Prospectus and a Permitted Free Writing Prospectus for purposes of this Agreement. The Company also consents to the use by the Remarketing Agent of a free writing prospectus that contains only (i) (A) information describing the preliminary terms of the Remarketed Notes or their offering or (B) information that describes the final terms of the Remarketed Notes or their offering and that is included in the final term sheet of the Company contemplated in the first sentence of this subsection or (ii) other information that is not "issuer information", as defined in Rule 433, it being understood that any such free writing prospectus referred to in clause (i) or (ii) above shall not be an Issuer Free Writing Prospectus for purposes of this Agreement.

Section 6. CONDITIONS TO THE REMARKETING AGENT'S OBLIGATIONS.

The obligations of the Remarketing Agent hereunder shall be subject to the following conditions:

(a) If the Remarketing is a Public Remarketing, no stop order suspending the effectiveness of the Registration Statements shall have been issued and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Remarketed Notes shall have been initiated or, to the knowledge of the Company, threatened by the Commission.

(b) Subsequent to the Commencement Date, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Remarketing Agent, is material and adverse and makes it impractical or inadvisable to market the Remarketed Notes; (ii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 3(a)(62)), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in

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U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Remarketing Agent, impractical to market or to enforce contracts for the sale of the Remarketed Notes, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum or maximum prices for trading on such exchange; (v) any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. Federal or New York authorities; (vii) any major disruption of settlements of securities, payment or clearance services in the United States or any other country where such securities are listed, or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Remarketing Agent, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to market the Remarketed Notes or to enforce contracts for the sale of the Remarketed Notes.

(c) The Remarketing Agent shall have received a certificate, dated the applicable Remarketing Settlement Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Remarketing Settlement Date; in the case of a Public Remarketing, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after reasonable investigation, are contemplated by the Commission; and, subsequent to the date of the most recent financial statements in the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in or contemplated by the General Disclosure Package or as described in such certificate.

(d) On each of the date of a Successful Remarketing and on the Remarketing Settlement Date, the Remarketing Agent shall have received a letter addressed to the Remarketing Agent and dated each such date, in form and substance satisfactory to the Remarketing Agent, of (i) the independent accountants of the Company who have certified the consolidated financial statements of the Company and its subsidiaries included or incorporated by reference in the Remarketing Materials, containing statements and information of the type ordinarily included in accountants' "comfort letters" with respect to certain financial information contained in the Remarketing Materials, if any, and (ii) Cawley, Gillespie & Associates, Inc. or another independent reserve engineer, containing statements and information with respect to the estimated oil and gas reserves of the Company and its subsidiaries contained in the Remarketing Materials, if any.

(e) Each of counsel for the Company and General Counsel to the Company shall have furnished to the Remarketing Agent its opinion letter with respect to the Remarketed Notes, addressed to the Remarketing Agent and dated the applicable Remarketing Settlement Date,

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addressing such matters with respect to the Notes as are set forth in such counsel's opinion letter furnished pursuant to Section 7(e) or Section 7(f) of the Underwriting Agreement, as the case may be, adapted as necessary to relate to the securities being remarketed hereunder and to the Remarketing Materials, or to any changed circumstances or events occurring subsequent to the date of this Agreement, such adaptations being reasonably acceptable to counsel for the Remarketing Agent.

(f) Counsel for the Remarketing Agent shall have furnished to the Remarketing Agent its opinion with respect to the Remarketed Notes, addressed to the Remarketing Agent and dated the applicable Remarketing Settlement Date, addressing such matters with respect to the Notes as are set forth in such counsel's opinion furnished pursuant to Section 7(g) of the Underwriting Agreement, adapted as necessary to relate to the securities being remarketed

hereunder and to the Remarketing Materials, or to any changed circumstances or events occurring subsequent to the date of this Agreement, such adaptations being reasonably acceptable to the Remarketing Agent.

Section 7. INDEMNIFICATION.

(a) The Company will indemnify and hold harmless the Remarketing Agent, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls the Remarketing Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an “Indemnified Party”), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Remarketing Materials at any time, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Remarketing Agent consists of the information described as such in subsection (b) below.

(b) The Remarketing Agent will indemnify and hold harmless the Company, each of its directors and each of its officers who signs the Registration Statement (in the case of a Public Remarketing) and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a “Remarketing Agent Indemnified Party”), against any losses, claims, damages or liabilities to which such

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Remarketing Agent Indemnified Party may become subject, under the Securities Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of the Remarketing Materials at any time, or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Remarketing Agent Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Remarketing Agent Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by the Remarketing Agent consists of the following information in the Remarketing Materials: [the concession and reallowance figures appearing in the [] paragraph under the caption “[Underwriting / Plan of Distribution]” in the [Prospectus / Private Placement Marketing Materials] and the information contained in the [] paragraph (pertaining to stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids) and [] (pertaining to the effect of stabilizing transactions, syndicate covering transactions and penalty bids) paragraph under the caption “[Underwriting / Plan of Distribution]” in the [Prospectus / Private Placement Marketing Materials]].

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an

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unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Remarketing Agent on the other from the offering of the Remarketed Notes or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Remarketing Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Remarketing Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the fees received by the Remarketing Agent. The relative fault shall be determined by reference to, among other things, 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 or the Remarketing Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the Remarketing Agent shall not be required to contribute any amount in excess of the fees payable to it hereunder. 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 Company and the Remarketing Agent agree that it would not be just and equitable if contribution pursuant to this Section 7(d) were determined by pro rata allocation [(even if the Remarketing Agents were treated as one entity for such purpose)](6) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 7(d).

Section 8. RESIGNATION AND REMOVAL OF THE REMARKETING AGENT.

The Remarketing Agent may, upon 30 days' prior written notice, resign and be discharged from its duties and obligations hereunder, and the Company may remove the Remarketing Agent by written notice at any time, in the case of a resignation, delivered to the Company and the Purchase Contract Agent and, in the case of a removal, delivered to the Remarketing Agent and the Purchase Contract Agent; provided, however, that no such resignation nor any such removal shall become effective until the Company shall have appointed at least one nationally recognized

(6) To be included in the case of multiple Remarketing Agents.

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broker-dealer as a successor Remarketing Agent and such successor Remarketing Agent shall have entered into a remarketing agreement with the Company, in which it shall have agreed to conduct the Remarketing in accordance with the Purchase Contract and Pledge Agreement in all material respects.

In any such case, the Company will use commercially reasonable efforts to appoint a successor Remarketing Agent and enter into such a remarketing agreement with such person as soon as reasonably practicable.

Section 9. DEALING IN SECURITIES.

The Remarketing Agent, when acting as the Remarketing Agent or in its individual or any other capacity, may, to the extent permitted by law, buy, sell, hold and deal in any of the Remarketed Notes, Corporate Units, Treasury Units or any of the securities of the Company (collectively, the "Securities"), but shall not be obligated to purchase any of the Remarketed Notes for its own account. The Remarketing Agent may exercise any vote or join in any action which any beneficial owner of such Securities may be entitled to exercise or take pursuant to the Indenture with like effect as if it did not act in any capacity hereunder.

Section 10. REMARKETING AGENT'S PERFORMANCE; DUTY OF CARE.

The duties and obligations of the Remarketing Agent shall be determined solely by the express provisions of the Transaction Documents. No implied covenants or obligations of or against the Remarketing Agent shall be read into any of the Transaction Documents. In the absence of bad faith, willful misconduct or gross negligence on the part of the Remarketing Agent, the Remarketing Agent may conclusively rely upon any document furnished to it, as to the truth of the statements expressed in any of such documents. The Remarketing Agent shall be protected in acting upon any document or communication reasonably believed by it to have been signed, presented or made by the proper party or parties. The Remarketing Agent shall have no obligation to determine whether there is any limitation under applicable law on the Reset Rate on the Notes or, if there is any such limitation, the maximum permissible Reset Rate on the Notes, and it shall rely solely upon written notice from the Company (which the Company agrees to provide prior to the third Business Day before the applicable Remarketing Date) as to whether or not there is any such limitation and, if so, the maximum permissible Reset Rate. The Remarketing Agent, acting under this Agreement, shall incur no liability to the Company or to any holder of Remarketed Notes in its individual capacity or as Remarketing Agent for any action or failure to act, on its part in connection with a Remarketing or otherwise, except if such liability is (a) judicially determined to have resulted from its failure to comply with the terms of this Agreement or bad faith, gross negligence or willful misconduct on its part or (b) determined pursuant to Section 7 of this Agreement. The provisions of this Section 10 shall survive the termination of this Agreement and shall survive the resignation or removal of the Remarketing Agent pursuant to this Agreement.

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Section 11. TERMINATION.

This Agreement shall automatically terminate (a) as to the Remarketing Agent on the effective date of the resignation or removal of the Remarketing Agent pursuant to Section 8 of this Agreement and (b) on the earlier of (i) the occurrence of a Termination Event and (ii) the Business Day immediately following the Purchase Contract Settlement Date. Notwithstanding any termination of this Agreement, in the event there has been a Successful Remarketing, the obligations set forth in Section 4 hereof shall survive and remain in full force and effect until all amounts payable under said Section 4 hereof shall have been paid in full.

Section 12. REIMBURSEMENT OF REMARKETING AGENT'S EXPENSES.

If this Agreement shall be terminated pursuant to Section 11 hereof or if the settlement of the Remarketed Notes does not occur in connection with a Successful Remarketing because of any of the events referred to in clause (iii), (iv), (vi), (vii) or (viii) of Section 6(b) hereof, then the Company shall not then be under any liability to the Remarketing Agent except as provided in Sections 5(g) and 7 hereof; but, if for any other reason the settlement of the Remarketed Notes does not occur in connection with a Successful Remarketing, the Company will reimburse the Remarketing Agent for all out-of-pocket expenses, including fees and disbursements of counsel, reasonably incurred by the Remarketing Agent in making preparations for the settlement of the Remarketed Notes, but the Company shall then be under no further liability to the Remarketing Agent with respect to such failed settlement of the Remarketed Notes except as provided in Sections 5(g) and 7 hereof.

Section 13. NO FIDUCIARY DUTY.

The Company acknowledges and agrees that:

(a) *No Other Relationship.* The Remarketing Agent has been retained solely to act in the capacity as set forth in Section 2 hereof and that no fiduciary, advisory or agency relationship between the Company and the Remarketing Agent has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Remarketing Agent has advised or is advising the Company on other matters;

(b) *Arms' Length Negotiations.* The price of the Remarketing Notes set forth in the General Disclosure Package was established by the Company following discussions and arms' length negotiations with the Remarketing Agent and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) *Absence of Obligation to Disclose.* The Company has been advised that the Remarketing Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Remarketing Agent has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) *Waiver.* The Company waives, to the fullest extent permitted by law, any claims it may have against the Remarketing Agent for breach of fiduciary duty or alleged breach of

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fiduciary duty and agrees that the Remarketing Agent shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

Section 14. NOTICES.

All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Remarketing Agent, shall be delivered or sent by mail or facsimile transmission to:

[]

with a copy to:

[]

(b) if to the Company, shall be delivered or sent by mail or facsimile transmission to:

Black Hills Corporation
[625 Ninth Street
Rapid City, South Dakota 57701
Attn: Steven J. Helmers
Facsimile number: [](7)

with a copy to:

Sonia A. Shewchuk, Esq.
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Facsimile number: (612) 766-1600

(c) if to the Purchase Contract Agent, shall be delivered or sent by mail or facsimile transmission to:

U.S. Bank National Association

190 South LaSalle Street, 10th Floor, MK-IL-SLTR
Chicago, IL 60603
Attention: Corporate Trust Services
Facsimile number: [](8)

(7) **Company to confirm.**

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Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof.

Section 15. PERSONS ENTITLED TO BENEFIT OF AGREEMENT.

This Agreement shall inure to the benefit of and be binding upon each party hereto and its respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (x) the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the Remarketing Agent and the person or persons, if any, who control the Remarketing Agent within the meaning of Section 15 of the Securities Act and (y) the indemnity agreement of the Remarketing Agent contained in Section 7 of this Agreement shall be deemed to be for the benefit of the Company's directors and officers who sign the Registration Statement, if any, and any person controlling the Company within the meaning of Section 15 of the Securities Act. Nothing contained in this Agreement is intended or shall be construed to give any person, other than the persons referred to herein, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

Section 16. SURVIVAL.

The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and the Remarketing Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Remarketing Agent, the Company or any of the indemnified persons referred to in Section 7 hereof, and will survive delivery of the Remarketed Notes. The provisions of Sections 7, 10 and 12 hereof shall survive the resignation or removal of the Remarketing Agent pursuant to this Agreement or the termination and cancellation of this Agreement.

Section 17. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 18. JUDICIAL PROCEEDINGS.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in The City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

(8) U.S. Bank to provide.

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Section 19. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

Section 20. HEADINGS.

The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

Section 21. SEVERABILITY.

If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any or all jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy or for any other reason, then, to the extent permitted by law, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 22. AMENDMENTS.

This Agreement may be amended by an instrument in writing signed by the parties hereto. Each of the Company and the Purchase Contract Agent agrees that it will not enter into, cause or permit any amendment or modification of the Transaction Documents or any other instruments or agreements relating to the Applicable Ownership Interests in Notes, the Notes or the Corporate Units that would in any way materially adversely affect the rights, duties and obligations of the Remarketing Agent, without the prior written consent of the Remarketing Agent.

Section 23. SUCCESSORS AND ASSIGNS.

Except in the case of a succession pursuant to the terms of the Purchase Contract and Pledge Agreement, the rights and obligations of the Company hereunder may not be assigned or delegated to any other Person without the prior written consent of the Remarketing Agent. The rights and obligations of the Remarketing Agent hereunder may not be assigned or delegated to any other Person (other than an affiliate of the Remarketing Agent) without the prior written consent of the Company.

Section 24. RIGHTS OF THE PURCHASE CONTRACT AGENT.

Notwithstanding any other provisions of this Agreement, the Purchase Contract Agent shall be entitled to all the rights, protections and privileges granted to the Purchase Contract Agent in the Purchase Contract and Pledge Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

If the foregoing correctly sets forth the agreement by and among the Company, the Remarketing Agent, U.S. Bank National Association, not individually but solely as attorney-in-fact of the Holders of the Purchase Contracts and U.S. Bank National Association, as Purchase Contract Agent, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

BLACK HILLS CORPORATION

By: _____
Name:
Title:

CONFIRMED AND ACCEPTED:

[]
as Remarketing Agent

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION
not individually but solely as attorney-in-fact of the Holders of the Purchase Contracts

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION
as Purchase Contract Agent

By: _____
Name:
Title:

November 23, 2015

Black Hills Corporation
625 Ninth Street
Rapid City, South Dakota 57701

Gentlemen:

I am Senior Vice President, General Counsel and Chief Compliance Officer of Black Hills Corporation, a South Dakota corporation (the "Company"), and I have acted as counsel for the Company in connection with (i) the preparation of a Registration Statement on Form S-3 (File No. 333-197895) (as amended, the "Registration Statement"), with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), (ii) the Prospectus Supplement dated November 17, 2015 to the Prospectus dated November 16, 2015 relating to the offer and sale by the Company under the Registration Statement of 6,325,000 shares of Common Stock of the Company, par value \$1.00 per share (the "Common Stock" and such 6,325,000 shares, the "Common Shares"), and (iii) the Prospectus Supplement dated November 17, 2015 to the Prospectus dated November 16, 2015 relating to the offer and sale by the Company under the Registration Statement of 5,980,000 Equity Units, initially consisting of Corporate Units with a stated amount of \$50 (such Corporate Units, the "Units"), each Unit consisting of a purchase contract issued by the Company to purchase shares of Common Stock (the "Purchase Contracts") and, initially, a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of the Company's 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 (the "Notes").

The Common Shares are to be issued under the Articles of Incorporation, as amended, of the Company (the "Articles of Incorporation") and sold pursuant to the Underwriting Agreement dated November 17, 2015 (the "Common Shares Underwriting Agreement") between the Company and the Underwriters named therein.

The Units are to be issued under the Purchase Contract and Pledge Agreement dated November 23, 2015 (the "Purchase Contract Agreement") by and between the Company and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary, and sold pursuant to the Underwriting Agreement dated November 17, 2015 (the "Unit Underwriting Agreement") between the Company and the Underwriters named therein. The Notes will be issued pursuant to the Junior Subordinated Indenture dated November 23, 2015 (the "Base Indenture") by and between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture thereto dated November 23, 2015 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). The Purchase Contract Agreement, the Indenture, the Common Shares Underwriting Agreement and the Unit Underwriting Agreement are sometimes referred to herein as the "Transaction Documents." The Units, the Purchase Contracts, the

Notes, the Common Shares and the shares of Common Stock issuable upon settlement of the Purchase Contracts are sometimes referred to herein as the "Securities."

I have examined or am otherwise familiar with the Registration Statement, the Transaction Documents, the Articles of Incorporation and the Amended and Restated Bylaws of the Company and such other documents, records and instruments as I have deemed necessary or appropriate for the purposes of the opinions set forth herein.

Based upon and subject to the foregoing and the qualifications set forth in Annex I attached hereto, I am of the opinion that:

1. The Common Shares have been duly authorized and, when delivered to and paid for pursuant to the Common Shares Underwriting Agreement, will be duly and validly issued, fully paid, and nonassessable.
2. The shares of Common Stock issuable pursuant to the Purchase Contracts have been duly authorized and, when issued and delivered by the Company upon settlement of the Purchase Contracts, will be duly and validly issued, fully paid, and nonassessable.
3. The Units, as evidenced by the Corporate Units Certificate (as defined in and issued pursuant to the Purchase Contract Agreement), have been duly authorized and executed and, when authenticated in accordance with the Purchase Contract Agreement and delivered to and paid for pursuant to the terms of the Unit Underwriting Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and equitable principles of general applicability (regardless of whether considered in a proceeding in equity or at law).
4. The Notes have been duly authorized and executed by the Company and, when authenticated in accordance with the provisions of the Indenture and delivered to and paid for pursuant to the terms of the Unit Underwriting Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and equitable principles of general applicability (regardless of whether considered in a proceeding in equity or at law).

My opinions set forth herein are limited to the laws of the States of South Dakota and New York and the federal laws of the United States of America (the "Covered Laws"), and I express no opinion as to the effect of any other laws. The Units and the Notes are governed by the laws of the State of New York. To the extent the opinions set forth herein relate to the laws of the State of New York, I have relied, with their permission, as to all matters of New York law on the opinions of Faegre Baker Daniels LLP dated the date hereof, which is filed herewith as Exhibit 5.2 to a Current Report on Form 8-K of the Company filed with the Commission and thereby incorporated by reference into the Registration Statement (the "Current Report").

Very truly yours,

/s/ Steven J. Helmers

Steven J. Helmers, Senior Vice President,
General Counsel and Chief Compliance Officer

In rendering the accompanying opinion letter, I wish to advise you of the following additional qualifications to which such opinion letter is subject:

(a) I have relied upon representations made by the Company in the Transaction Documents, the assumptions set forth below as to the matters referred therein, and upon certificates of, and information provided by, officers and employees of the Company reasonably believed by me to be appropriate sources of information, as to the accuracy of such factual matters, in each case without independent verification thereof or other investigation.

(b) In rendering opinions as to the Covered Laws, I have only considered the applicability of statutes, rules, regulations and judicial decisions that a lawyer practicing in such jurisdiction (the "Opining Jurisdictions") exercising customary professional diligence would reasonably recognize as being directly applicable to the Company or the transactions contemplated by the Transaction Documents.

(c) I express no opinion as to whether, or to the extent of which, the laws of any particular jurisdiction apply to the subject matter hereof, including without limitation the enforceability of the governing law provision contained in the Transaction Documents, except to the extent such provision would be enforceable based on Section 5-1401 and 5-1402 of the General Obligations Law of the State of New York.

(d) I have relied, without investigation, upon the following assumptions: (i) natural persons who are involved on behalf of the Company have sufficient legal capacity to enter into and perform, on behalf of the Company, the transaction in question and to carry out their role in the transaction; (ii) each Transaction Document and the Securities have been duly authorized, executed and delivered by each party thereto (other than the Company); (iii) each party having rights under any Transaction Documents or the Securities (other than the Company) has satisfied those legal requirements that are applicable to it to the extent necessary to make the Transaction Documents enforceable against it and has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Transaction Documents and the Securities against it and the other parties; (iv) each document submitted to me for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine; (v) there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence; (vi) all statutes, judicial and administrative decisions, and rules and regulations of governmental agencies, constituting the Covered Laws, are publicly available to lawyers practicing in the Opining Jurisdictions; (vii) all relevant statutes, rules, regulations or agency actions are constitutional and valid unless a reported decision in the Opining Jurisdictions has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; (viii) the Company will not in the future take any discretionary action (including a decision not to act) permitted under the Transaction Documents or the Securities that would result in a violation of law or constitute a breach or default under any other agreement, order or regulation; (ix) the Company will obtain all permits and governmental approvals required in the future, and

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take all future actions similarly required, relevant to the performance of the Transaction Documents and the Securities including, without limitation, those actions required under the Purchase Contract Agreement in connection with Early Settlement or Fundamental Change Early Settlement (each as defined in the Purchase Contract Agreement) and those actions required under the Remarketing Agreement in connection with a Remarketing (each as defined in the Purchase Contract Agreement); and (x) all parties to the transaction will act in accordance with, and will refrain from taking any action that is forbidden by, the terms and conditions of the Transaction Documents and the Securities.

(e) I express no opinion as to the enforceability or effect in any Transaction Document of (i) any usury or fraudulent transfer or conveyance "savings" provision; (ii) any agreement to submit to the jurisdiction of any particular court or other governmental authority (either as to personal jurisdiction or subject matter jurisdiction), any waivers of the right to jury trial, any waivers of service of process requirements that would otherwise be applicable, any agreement that a judgment rendered by a court in one jurisdiction may be enforced in another jurisdiction, or any provision otherwise affecting the jurisdiction or venue of courts; and (iii) any provision waiving legal, statutory or equitable defenses or other procedural, judicial or administrative rights.

(f) The opinions herein expressed are limited to the specific issues addressed and to facts and laws existing on the date hereof. In rendering these opinions, I do not undertake to advise you with respect to any other matter or of any change in such facts and laws or in the interpretation thereof which may occur after the date hereof.

(g) Without limiting any other qualifications set forth herein, the opinions expressed in opinion paragraphs 3 and 4 are subject to the effect of generally applicable laws that (i) provide for the enforcement of oral waivers or modifications where a material change of position in reliance thereon has occurred or provide that a course of performance may operate as a waiver; (ii) limit the availability of a remedy under certain circumstances where another remedy has been elected; (iii) limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves negligence, recklessness, willful misconduct or unlawful conduct; (iv) may, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange; (v) govern and afford judicial discretion regarding determination of damages and entitlement to attorneys' fees and other costs; (vi) may permit a party who has materially failed to

render or offer performance required by a contract to cure that failure unless either permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance or it is important under the circumstances to the aggrieved party that performance occur by the date stated in the contract; (vii) may limit the enforceability of provisions imposing premiums or liquidated damages to the extent such provisions constitute, or are deemed to constitute, a penalty or forfeiture and provisions imposing increased interest rates upon default, or providing for the compounding of interest or the payment of interest on interest; (viii) may limit the amount payable under the Notes upon an acceleration to the extent that a portion of the amount so payable is considered by a court to be unearned interest;

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(ix) may require mitigation of damages; and (x) provide a time limitation after which rights may not be enforced (i.e., statutes of limitation).

(h) For purposes of rendering the opinion in paragraphs 2 and 3 hereof, I have assumed the Company has, and will maintain, a sufficient number of authorized shares of Common Stock available for issuance upon settlement of the Purchase Contracts.

(i) The opinions expressed herein do not address any of the following legal issues: (i) federal securities laws and regulations, (ii) state securities laws and regulations, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments; (iii) margin regulations of the Board of Governors of the Federal Reserve System; (iv) federal and state tax laws and regulations; (v) the statutes and ordinances, administrative decisions and the rules and regulations of counties, towns, municipalities and special political subdivisions (whether created or enabled through legislative action at the federal, state or regional level) and judicial decisions to the extent that they deal with the foregoing; (vi) voidable transaction, fraudulent transfer and fraudulent conveyance laws; and (vii) laws, regulations, directives and executive orders restricting transactions with or freezing or otherwise controlling assets of designated foreign persons or governing investments by foreign persons in the United States.

(j) I express no opinion as to the creation, attachment, perfection or relative priority of any lien provided in the Transaction Documents or the necessity of making any filings in connection therewith.

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Faegre Baker Daniels LLP
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November 23, 2015

Steven J. Helmers, Esq.
 Senior Vice President — General Counsel
 Black Hills Corporation
 625 Ninth Street
 Rapid City, South Dakota 57701

Gentlemen:

You have acted as counsel to Black Hills Corporation, a South Dakota corporation (the “Company”), in connection with (i) the preparation of a Registration Statement on Form S-3 (File No. 333-197895) (as amended, the “Registration Statement”), with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), and (ii) the Prospectus Supplement dated November 17, 2015 to the Prospectus dated November 16, 2015 relating to the offer and sale by the Company under the Registration Statement of 5,980,000 Equity Units, initially consisting of Corporate Units with a stated amount of \$50 (such Corporate Units, the “Units”), each Unit consisting of a purchase contract (the “Purchase Contracts”) issued by the Company to purchase shares of Common Stock of the Company, par value \$1.00 per share (the “Common Stock”), and, initially, a 1/20, or 5%, undivided beneficial ownership interest in \$1,000 principal amount of the Company’s 2015 Series A 3.50% Remarketable Junior Subordinated Notes due 2028 (the “Notes”). As such counsel, you are furnishing an opinion in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act. In connection with such opinion, you have asked us to opine with respect to certain matters under New York law.

The Units are to be issued under the Purchase Contract and Pledge Agreement dated November 23, 2015 (the “Purchase Contract Agreement”) by and between the Company and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary, and sold pursuant to the Underwriting Agreement dated November 17, 2015 (the “Underwriting Agreement”) between the Company and the Underwriters named therein. The Notes will be issued pursuant to the Junior Subordinated Indenture dated November 23, 2015 (the “Base Indenture”) by and between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by the First Supplemental Indenture thereto dated November 23, 2015 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). The Purchase Contract Agreement, the Indenture and the Underwriting Agreement are sometimes referred to herein as the “Transaction Documents.” The Units, the Purchase Contracts, the Notes and the shares of Common Stock issuable upon settlement of the Purchase Contracts are sometimes referred to herein as the “Securities.”

We have examined the Registration Statement, the Transaction Documents, and such other documents, records and instruments as we have deemed necessary or appropriate for the purposes of the opinions set forth herein.

Based upon and subject to the foregoing and the qualifications set forth in Annex I attached hereto, we are of the opinion that:

1. The Units, as evidenced by the Corporate Units Certificate (as defined in and issued pursuant to the Purchase Contract Agreement), have been duly authorized and executed and, when authenticated in accordance with the Purchase Contract Agreement and delivered to and paid for pursuant to the terms of the Unit Underwriting Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights generally and equitable principles of general applicability (regardless of whether considered in a proceeding in equity or at law).
2. The Notes have been duly authorized and executed by the Company and, when authenticated in accordance with the provisions of the Indenture and delivered to and paid for pursuant to the terms of the Unit Underwriting Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights generally and equitable principles of general applicability (regardless of whether considered in a proceeding in equity or at law).

We hereby consent to the filing of this opinion as Exhibit 5.2 to a Current Report on Form 8-K of the Company filed with the Commission and thereby incorporated by reference into the Registration Statement without implying or admitting that we are “experts” within the meaning of the Act, or other rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this exhibit.

Very truly yours,

FAEGRE BAKER DANIELS LLP

By: /s/ Sonia A. Shewchuk
 Sonia A. Shewchuk, Partner

In rendering the accompanying opinion letter, we wish to advise you of the following additional qualifications to which such opinion letter

is subject:

(a) We have relied upon representations made by the Company in the Transaction Documents, the assumptions set forth below as to the matters referred therein, and upon certificates of, and information provided by, officers and employees of the Company reasonably believed by us to be appropriate sources of information, as to the accuracy of such factual matters, in each case without independent verification thereof or other investigation.

(b) Our opinion letter is limited to the laws of the State of New York (the “Covered Laws”) and we express no opinion as to the effect on the matters covered by our opinions of any other law. Furthermore, in rendering opinions as to the Covered Laws, we have only considered the applicability of statutes, rules, regulations and judicial decisions that a lawyer practicing in such jurisdiction (the “Opining Jurisdictions”) exercising customary professional diligence would reasonably recognize as being directly applicable to the Company or the transactions contemplated by the Transaction Documents.

(c) We express no opinion as to whether, or to the extent of which, the laws of any particular jurisdiction apply to the subject matter hereof, including without limitation the enforceability of the governing law provision contained in the Transaction Documents, except to the extent such provision would be enforceable based on Section 5-1401 and 5-1402 of the General Obligations Law of the State of New York.

(d) We have relied, without investigation, upon the following assumptions: (i) natural persons who are involved on behalf of the Company have sufficient legal capacity to enter into and perform, on behalf of the Company, the transaction in question and to carry out their role in the transaction; (ii) each Transaction Document and the Securities have been duly authorized, executed and delivered by each party thereto; (iii) each party having rights under any Transaction Documents or the Securities (other than the Company) has satisfied those legal requirements that are applicable to it to the extent necessary to make the Transaction Documents enforceable against it and has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Transaction Documents and the Securities against it and the other parties; (iv) each document submitted to us for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine; (v) there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence; (vi) all statutes, judicial and administrative decisions, and rules and regulations of governmental agencies, constituting the Covered Laws, are publicly available to lawyers practicing in the Opining Jurisdictions; (vii) all relevant statutes, rules, regulations or agency actions are constitutional and valid unless a reported decision in the Opining Jurisdictions has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; (viii) the Company will not in the future take any discretionary action (including a decision not to act) permitted under the

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Transaction Documents or the Securities that would result in a violation of law or constitute a breach or default under any other agreement, order or regulation; (ix) the Company will obtain all permits and governmental approvals required in the future, and take all future actions similarly required, relevant to the performance of the Transaction Documents and the Securities including, without limitation, those actions required under the Purchase Contract Agreement in connection with Early Settlement or Fundamental Change Early Settlement (each as defined in the Purchase Contract Agreement) and those actions required under the Remarketing Agreement in connection with a Remarketing (each as defined in the Purchase Contract Agreement); and (x) all parties to the transaction will act in accordance with, and will refrain from taking any action that is forbidden by, the terms and conditions of the Transaction Documents and the Securities.

(e) We have further assumed, without investigation, that (i) the Company has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) the Company has the power and authority under its governing documents and the laws of its jurisdiction of incorporation to execute and deliver the Transaction Documents and the Securities, to perform its obligations thereunder and to consummate the transactions contemplated thereby; (iii) the Transaction Documents and the Securities have been duly authorized, executed and delivered by the Company; and (iv) the Company has obtained all governmental and third party authorizations, consents, approvals and orders and has made all filings and registrations required to enable it to execute, deliver and perform its obligations under, and consummate the transactions contemplated by, the Transaction Documents and the Securities (which authorizations, consents, approvals and orders have become final and remain in full force and effect), and such execution, delivery, performance and consummation does not and will not violate or conflict with any law, rule, regulation, order, decree, judgment, instrument or agreement binding upon the Company or its properties.

(f) We express no opinion as to the enforceability or effect in any Transaction Document of (i) any usury or fraudulent transfer or conveyance “savings” provision; (ii) any agreement to submit to the jurisdiction of any particular court or other governmental authority (either as to personal jurisdiction or subject matter jurisdiction), any waivers of the right to jury trial, any waivers of service of process requirements that would otherwise be applicable, any agreement that a judgment rendered by a court in one jurisdiction may be enforced in another jurisdiction, or any provision otherwise affecting the jurisdiction or venue of courts; and (iii) any provision waiving legal, statutory or equitable defenses or other procedural, judicial or administrative rights.

(g) The opinions herein expressed are limited to the specific issues addressed and to facts and laws existing on the date hereof. In rendering these opinions, we do not undertake to advise you with respect to any other matter or of any change in such facts and laws or in the interpretation thereof which may occur after the date hereof.

(h) Without limiting any other qualifications set forth herein, the opinions expressed in opinion paragraphs 3 and 4 are subject to the effect of generally applicable laws that (i) provide for the enforcement of oral waivers or modifications where a

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material change of position in reliance thereon has occurred or provide that a course of performance may operate as a waiver; (ii) limit the availability of a remedy under certain circumstances where another remedy has been elected; (iii) limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves negligence, recklessness, willful misconduct or unlawful conduct; (iv) may, where less than all of a contract may be unenforceable,

limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange; (v) govern and afford judicial discretion regarding determination of damages and entitlement to attorneys' fees and other costs; (vi) may permit a party who has materially failed to render or offer performance required by a contract to cure that failure unless either permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance or it is important under the circumstances to the aggrieved party that performance occur by the date stated in the contract; (vii) may limit the enforceability of provisions imposing premiums or liquidated damages to the extent such provisions constitute, or are deemed to constitute, a penalty or forfeiture and provisions imposing increased interest rates upon default, or providing for the compounding of interest or the payment of interest on interest; (viii) may limit the amount payable under the Notes upon an acceleration to the extent that a portion of the amount so payable is considered by a court to be unearned interest; (ix) may require mitigation of damages; and (x) provide a time limitation after which rights may not be enforced (i.e., statutes of limitation).

(i) For purposes of rendering the opinion in paragraph 1 hereof, we have assumed the Company has, and will maintain, a sufficient number of authorized shares of Common Stock available for issuance upon settlement of the Purchase Contracts.

(j) The opinions expressed herein do not address any of the following legal issues: (i) federal securities laws and regulations, (ii) state securities laws and regulations, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments; (iii) margin regulations of the Board of Governors of the Federal Reserve System; (iv) federal and state tax laws and regulations; (v) the statutes and ordinances, administrative decisions and the rules and regulations of counties, towns, municipalities and special political subdivisions (whether created or enabled through legislative action at the federal, state or regional level) and judicial decisions to the extent that they deal with the foregoing; (vi) voidable transaction, fraudulent transfer and fraudulent conveyance laws; and (vii) laws, regulations, directives and executive orders restricting transactions with or freezing or otherwise controlling assets of designated foreign persons or governing investments by foreign persons in the United States.

(k) We express no opinion as to the creation, attachment, perfection or relative priority of any lien provided in the Transaction Documents or the necessity of making any filings in connection therewith.

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November 23, 2015

Black Hills Corporation
625 Ninth Street
Rapid City, South Dakota 57709-1400

Ladies and Gentlemen:

We have acted as tax counsel to Black Hills Corporation, a South Dakota corporation (the "Company"), in connection with the issuance of up to 5,980,000 Equity Units, initially consisting of Corporate Units with a stated amount of \$50, as described in the Company's Prospectus Supplement dated November 17, 2015 (the "Prospectus Supplement") to the Prospectus dated November 16, 2015 contained in the Registration Statement on Form S-3, File No. 333-197895 (the "Registration Statement").

We hereby consent to the reference to us under the heading "Material United States Federal Tax Consequences" in the Prospectus Supplement and to the filing of this opinion as an exhibit to a Current Report on Form 8-K of the Company filed with the Securities and Exchange Commission and thereby incorporated by reference into the Company's Registration Statement. In giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended.

Very truly yours,

FAEGRE BAKER DANIELS LLP

By: /s/ Faegre Baker Daniels LLP
