

United States  
Securities and Exchange Commission  
Washington, D.C. 20549

Form 10-Q

X QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2003.

OR

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

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

Commission File Number 001-31303

Black Hills Corporation  
Incorporated in South Dakota      IRS Identification Number 46-0458824

625 Ninth Street  
Rapid City, South Dakota 57701

Registrant's telephone number (605) 721-1700

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

NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No \_\_\_

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes  No \_\_\_

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

Class	Outstanding at July 31, 2003
Common stock, \$1.00 par value	32,107,619 shares

1

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TABLE OF CONTENTS

	<u>Page</u>
PART 1. FINANCIAL INFORMATION	
Item 1. Financial Statements	
Condensed Consolidated Statements of Income - Three and Six Months Ended June 30, 2003 and 2002	3
Condensed Consolidated Balance Sheets - June 30, 2003, December 31, 2002 and June 30, 2002	4
Condensed Consolidated Statements of Cash Flows - Six Months Ended June 30, 2003 and 2002	5
Notes to Condensed Consolidated Financial Statements	6-30
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	31-49
Item 3. Quantitative and Qualitative Disclosures about Market Risk	50
Item 4. Controls and Procedures	51

Item 1.	Legal Proceedings	52
Item 4.	Submission of Matters to a Vote of Security Holders	52
Item 6.	Exhibits and Reports on Form 8-K	53
	Signatures	55
	Exhibit Index	56

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**(unaudited)**

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands, except per share amounts)			
Operating revenues	\$300,044	\$260,687	\$599,376	\$431,322
Operating expenses:				
Fuel and purchased power	182,178	169,919	372,040	256,952
Operations and maintenance	28,944	18,345	53,000	35,623
Administrative and general	21,058	18,054	39,385	30,852
Depreciation, depletion and amortization	21,216	17,972	41,726	34,336
Taxes, other than income taxes	8,576	5,621	16,385	11,906
	261,972	229,911	522,536	369,669
Equity in earnings of unconsolidated subsidiaries	4,408	2,118	4,864	3,280
Operating income	42,480	32,894	81,704	64,933
Other income (expense):				
Interest expense	(15,270)	(10,530)	(29,352)	(20,151)
Interest income	206	723	379	1,321
Other expense	(157)	(498)	(289)	(574)
Other income	1,155	1,853	1,470	3,496
	(14,066)	(8,452)	(27,792)	(15,908)
Income from continuing operations before minority interest, income taxes and change in accounting principle	28,414	24,442	53,912	49,025
Minority interest	(1,418)	(1,836)	(1,346)	(4,102)
Income taxes	(10,336)	(7,887)	(19,049)	(15,311)
Income from continuing operations before change in accounting principle	16,660	14,719	33,517	29,612
Loss from discontinued operations, net of taxes	--	(912)	--	(2,637)
Change in accounting principles, net of taxes	--	--	(2,680)	896
Net income	16,660	13,807	30,837	27,871
Preferred stock dividends	(57)	(56)	(114)	(112)
Net income available for common stock	\$ 16,603	\$ 13,751	\$ 30,723	\$ 27,759
Weighted average common shares outstanding:				
Basic	30,582	26,804	28,822	26,749
Diluted	31,128	27,126	29,295	27,045
Earnings per share:				
Basic-				
Continuing operations	\$ 0.54	\$ 0.55	\$ 1.16	\$ 1.10
Discontinued operations	--	(0.04)	--	(0.09)
Change in accounting principle	--	--	(0.09)	0.03

Total	\$ 0.54	\$ 0.51	\$ 1.07	\$ 1.04
Diluted-				
Continuing operations	\$ 0.54	\$ 0.54	\$ 1.14	\$ 1.09
Discontinued operations	--	(0.03)	--	(0.09)
Change in accounting principle	--	--	(0.09)	0.03
Total	\$ 0.54	\$ 0.51	\$ 1.05	\$ 1.03
Dividends paid per share of common stock	\$ 0.30	\$ 0.29	\$ 0.60	\$ 0.58

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(unaudited)**

	June 30 2003	December 31 2002	June 30 2002
	(in thousands, except share amounts)		
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 79,535	\$ 79,811	\$ 54,346
Restricted cash	1,070	1,070	--
Receivables (net of allowance for doubtful accounts of \$4,660, \$3,860 and \$5,145, respectively)	236,423	209,144	151,923
Notes receivable	553	35,135	1,950
Materials, supplies and fuel	36,437	24,720	25,853
Derivative assets	27,955	36,393	50,336
Deferred income taxes	566	6,017	--
Other assets	5,491	8,020	17,246
Assets of discontinued operations	--	--	4,927
	388,030	400,310	306,581
Investments	24,612	18,707	19,520
Property, plant and equipment	1,989,425	1,890,266	1,763,873
Less accumulated depreciation and depletion	(446,863)	(414,003)	(389,561)
	1,542,562	1,476,263	1,374,312
Other assets:			
Derivative assets	3,146	2,406	1,987
Goodwill	33,885	33,685	30,185
Intangible assets (net of accumulated amortization of \$17,645, \$15,535 and \$6,715, respectively)	75,979	78,089	93,760
Other	27,584	25,709	16,219
	140,594	139,889	142,151
	\$2,095,798	\$2,035,169	\$1,842,564
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 221,486	\$ 207,047	\$ 127,756
Accrued liabilities	82,599	53,753	58,904
Current maturities of long-term debt	25,917	23,448	36,457
Notes payable	13	340,500	406,109
Derivative liabilities	37,873	46,557	53,852
Liabilities of discontinued operations	--	--	6,294
	367,888	671,305	689,372
Long-term debt, net of current maturities	825,499	618,862	476,024
Deferred credits and other liabilities:			
Deferred income taxes	128,840	132,270	77,672
Derivative liabilities	12,391	8,419	7,669
Other	75,046	62,696	40,202

	216,277	203,385	125,543
Minority interest in subsidiaries	7,737	6,454	22,546
Stockholders' equity:			
Preferred stock - no par Series 2000-A; 21,500 shares authorized; Issued and Outstanding: 5,177 shares	5,549	5,549	5,549
Common stock equity-			
Common stock \$1 par value; 100,000,000 shares authorized; Issued 32,264,003, 27,102,351 and 27,026,162 shares, respectively	32,264	27,102	27,026
Additional paid-in capital	373,905	246,997	244,739
Retained earnings	293,624	280,628	262,741
Treasury stock, at cost	(3,698)	(3,921)	(3,891)
Accumulated other comprehensive loss	(23,247)	(21,192)	(7,085)
	672,848	529,614	523,530
Total stockholders' equity	678,397	535,163	529,079
	\$2,095,798	\$2,035,169	\$1,842,564

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(unaudited)**

	Six Months Ended June 30	
	2003	2002
	(in thousands)	
Operating activities:		
Net income available for common	\$ 30,723	\$ 27,759
Adjustments to reconcile net income available for common to net cash provided by operating activities:		
Loss from discontinued operations	--	2,637
Provision for valuation allowances	750	(1,007)
Depreciation, depletion and amortization	41,726	34,336
Net change in derivative assets and liabilities	(241)	(485)
Deferred income taxes	9,874	4,132
Undistributed earnings in associated companies	(3,851)	(3,964)
Minority interest	1,346	4,102
Accounting change	2,680	(896)
Change in operating assets and liabilities-		
Accounts receivable and other current assets	(37,052)	(50,725)
Accounts payable and other current liabilities	37,525	50,390
Other operating activities	10,634	(6,428)
	94,114	59,851
Investing activities:		
Property, plant and equipment additions	(47,040)	(109,920)
Payment for acquisition of net assets, net of cash acquired	--	(23,229)
Increase in notes receivable - Mallon Resources	(5,164)	--
Other investing activities	(1,534)	1,751
	(53,738)	(131,398)
Financing activities:		
Dividends paid	(17,727)	(15,533)
Common stock issued	119,897	2,285
Increase (decrease) in short-term borrowings, net	(340,487)	45,659
Long-term debt - issuance	252,164	71,003
Long-term debt - repayments	(47,127)	(10,224)
Other financing activities	(7,372)	2,747
	(40,652)	95,937

Increase (decrease) in cash and cash equivalents	(276)	24,390
Cash and cash equivalents:		
Beginning of period	79,811	29,956
End of period	\$ 79,535	\$ 54,346
Supplemental disclosure of cash flow information:		
Cash paid during the period for-		
Interest	\$ 26,674	\$ 20,437
Income taxes paid, net	\$ 3,453	\$ 725
Non-cash net assets acquired through issuance of common stock and decrease in notes receivable - Mallon Resources	\$ 51,153	\$ --

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

5

## BLACK HILLS CORPORATION

### Notes to Condensed Consolidated Financial Statements (unaudited)

(Reference is made to Notes to Consolidated Financial Statements included in the Company's Annual Report on Form 10-K)

#### (1) MANAGEMENT'S STATEMENT

The financial statements included herein have been prepared by Black Hills Corporation (the Company) without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations; however, the Company believes that the footnotes adequately disclose the information presented. These financial statements should be read in conjunction with the financial statements and the notes thereto, included in the Company's 2002 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

Accounting methods historically employed require certain estimates as of interim dates. The information furnished in the accompanying financial statements reflects all adjustments which are, in the opinion of management, necessary for a fair presentation of the June 30, 2003, December 31, 2002 and June 30, 2002, financial information and are of a normal recurring nature. The results of operations for the three months and six months ended June 30, 2003, are not necessarily indicative of the results to be expected for the full year. All earnings per share amounts discussed refer to diluted earnings per share unless otherwise noted.

#### (2) STOCK BASED COMPENSATION

At June 30, 2003, the Company had three stock-based employee compensation plans under which it can issue stock options to its employees. The Company accounts for these plans under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees (APB 25)," and related interpretations. No employee compensation cost related to stock options is reflected in net income, as all options granted under these plans had an exercise price equal to the market value of the underlying common stock on the date of grant.

6

The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of Statement of Financial Accounting Standards (SFAS) No. 123, "Accounting for Stock-Based Compensation (SFAS 123)," to stock-based employee compensation (in thousands, except per share amounts):

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Net income available for common stock, as reported	\$ 16,603	\$ 13,751	\$ 30,723	\$ 27,759
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(201)	(272)	(443)	(535)
Pro forma net income	\$ 16,402	\$ 13,479	\$ 30,280	\$ 27,224
Earnings per share:				
As reported--				
Basic				
Continuing operations	\$ 0.54	\$ 0.55	\$ 1.16	\$ 1.10
Discontinued operations	--	(0.04)	--	(0.09)
Change in accounting principles	--	--	(0.09)	0.03

Total	\$ 0.54	\$ 0.51	\$ 1.07	\$ 1.04
Diluted				
Continuing operations	\$ 0.54	\$ 0.54	\$ 1.14	\$ 1.09
Discontinued operations	--	(0.03)	--	(0.09)
Change in accounting principles	--	--	(0.09)	0.03
Total	\$ 0.54	\$ 0.51	\$ 1.05	\$ 1.03
Pro forma--				
Basic				
Continuing operations	\$ 0.54	\$ 0.54	\$ 1.14	\$ 1.08
Discontinued operations	--	(0.04)	--	(0.09)
Change in accounting principles	--	--	(0.09)	0.03
Total	\$ 0.54	\$ 0.50	\$ 1.05	\$ 1.02
Diluted				
Continuing operations	\$ 0.53	\$ 0.53	\$ 1.13	\$ 1.07
Discontinued operations	--	(0.03)	--	(0.09)
Change in accounting principles	--	--	(0.09)	0.03
Total	\$ 0.53	\$ 0.50	\$ 1.04	\$ 1.01

7

### (3) RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

#### SFAS 143

The Company adopted SFAS No. 143, "Accounting for Asset Retirement Obligations"(SFAS 143) effective January 1, 2003. SFAS 143 provides accounting and disclosure requirements for retirement obligations associated with long-lived assets. SFAS 143 requires that the present value of retirement costs for which the Company has a legal obligation be recorded as liabilities with an equivalent amount added to the asset cost and depreciated over an appropriate period. The liability is then accreted over time by applying an interest method of allocation to the liability. Cumulative accretion and accumulated depreciation have been recognized for the time period from the date the liability would have been recognized had the provisions of SFAS 143 been in effect, to the date of its adoption. The cumulative effect of initially applying SFAS 143 is recognized as a change in accounting principle.

The Company completed a detailed review of the specific applicability and implications of SFAS 143. The review identified legal retirement obligations related to plugging and abandonment of natural gas and oil wells in our Oil and Gas segment and reclamation of our coal mining sites in our Mining segment.

Upon adoption, the Company recorded a \$2.9 million transition adjustment to properly reflect its asset retirement obligations in accordance with the provisions of SFAS 143. The transition adjustment represents the current estimated fair value of the Company's obligation to plug its oil and gas wells at the time of abandonment and an adjustment to its liability for reclaiming its coal mining sites following completion of mining activity. These activities were previously accounted for under the provisions of SFAS 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies" and other industry practices and reported on the Company's consolidated balance sheet. The cumulative effect on earnings of adopting SFAS 143 was a benefit of approximately \$0.2 million representing the cumulative amounts of depreciation and changes in the asset retirement obligation due to the passage of time for historical accounting periods.

8

The following table presents the details of the Company's asset retirement obligations which are included on the accompanying Condensed Consolidated Balance Sheets in Other under Deferred credits and other liabilities (in thousands):

	Balance at 12/31/02	SFAS 143 Transition Adjustment	Liabilities Incurred	Liabilities Settled	Accretion	Cash Flow Revisions	Balance at 6/30/03
Oil and Gas	\$ --	\$ 6,133	\$ 531(b)	\$--	\$ 245	\$--	\$ 6,909
Mining	18,513(a)	(3,214)	--	--	417	--	15,716
Total	\$ 18,513	\$ 2,919	\$ 531	\$--	\$ 662	\$--	\$ 22,625

(a) December 31, 2002 balance for coal mine reclamation liability as previously accounted for under a cost-accumulation approach.

(b) The Company incurred certain asset retirement obligations with its acquisition of Mallon Resources completed on March 10, 2003, as described in Note 15.

Pro forma net income, earnings per share and liabilities have not been presented for prior periods because the pro forma application of SFAS 143 to prior periods would result in pro forma net income, earnings per share and liabilities not materially different from the actual amounts reported for those periods in the accompanying Condensed Consolidated Statements of Income and Balance Sheets.

During 2002, the Emerging Issues Task Force (EITF) issued EITF Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities" (EITF 02-3). EITF 98-10, "Accounting for Contracts Involving Energy Trading and Risk Management Activities" (EITF 98-10), required that energy trading contracts be accounted for at fair value. EITF 02-3 rescinded Issue No. 98-10 effective for any new contracts entered into after October 25, 2002. For energy trading contracts entered into on or before October 25, 2002, such contracts continued to be accounted for at fair value through December 31, 2002. Effective January 1, 2003, contracts that did not meet the accounting definition of a derivative, as defined by SFAS 133 "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133), are required to be accounted for at historical cost. The Company's energy contracts that qualify as derivatives continue to be accounted for at fair value under SFAS 133, unless those contracts meet the "normal purchase/normal sale" exclusion provided by SFAS 133 and are therefore exempted out of fair value accounting.

Upon adoption on January 1, 2003, the Company recorded a charge for a cumulative effect of an accounting change totaling approximately \$2.9 million, net of tax. This cumulative effect of an accounting change was the result of certain energy contracts in our Energy Marketing segment, previously marked to fair value under EITF 98-10, being restated to reflect historical cost. The amount of the cumulative effect represents the unrealized gain or loss recorded on these contracts as of January 1, 2003. Gains and losses on these contracts are now recognized on the accrual basis of accounting. See Note 13 for further discussion of our accounting for contracts at our Energy Marketing segment subsequent to adoption of EITF 02-3.

EITF 02-3 also requires that gains and losses (realized and unrealized) on all derivative instruments within the scope of SFAS 133 be presented on a net basis in the statement of income, whether or not settled physically, if the derivative instruments are held for "trading purposes." EITF 02-3 references a definition of "trading purposes" as "active and frequent buying and selling...with the objective of generating profits on short-term differences in price." Contracts at our crude oil marketing operations are not held for "trading purposes" as defined by EITF 02-3 and meet the requirements of EITF Issue No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent" (EITF 99-19) for a gross basis presentation on the statement of income. Upon adoption, the Company began reporting settlement amounts on contracts at our crude oil marketing operations, on a gross basis in the statement of income. Contracts at our natural gas marketing operations are held for "trading purposes", as defined by EITF 02-3, and are presented on a net basis in the statement of income. The accompanying Condensed Consolidated Statements of Income have been reclassified to conform to this presentation for all periods presented.

#### (4) RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In January 2003, the Financial Accounting Standards Board (FASB) issued Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46). The Company's subsidiary, Black Hills Wyoming (f/k/a Black Hills Generation), has an agreement with Wygen Funding, Limited Partnership, an unrelated, unconsolidated special purpose entity (SPE) to lease the Wygen plant, a 90 megawatt coal-fired power plant. Under the new accounting interpretation, the Company will consolidate the SPE effective July 1, 2003. The effect of consolidating the SPE into the Company's consolidated financial statements is to record both the Wygen asset and its related debt on the Company's Condensed Consolidated Balance Sheets which is estimated to be approximately \$130 million. In addition, the net effect of consolidating the income statement of the SPE is to recognize the depreciation and interest expense of the SPE in place of recognizing lease expense which is estimated to have approximately a \$3.5 million pre-tax negative annual effect to pre-tax income based on a 40-year depreciable life. The Company is currently evaluating the cumulative effect on earnings of adopting FIN 46.

In May 2003, the FASB issued SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" (SFAS 150). SFAS 150 provides accounting and disclosure requirements for classification and measurement of certain financial instruments with characteristics of both liabilities and equity. Management will adopt SFAS 150 effective July 1, 2003. Adoption is not expected to have a material effect on the Company's consolidated financial position, results of operations or cash flows.

During the second quarter of 2003, discussion between the Securities and Exchange Commission (SEC) and FASB staffs have raised concerns over the interaction of SFAS No. 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies" (SFAS 19) and SFAS No. 142, "Goodwill and Other Intangible Assets" (SFAS 142). The discussion focuses on whether or not pronouncements set forth by SFAS 142 requiring more clarity in distinguishing between tangible and intangible assets, required oil and gas producing companies to reclassify amounts related to mineral rights from tangible assets to intangible assets upon adoption of SFAS 142. When the Company adopted SFAS 142 on January 1, 2002, the amounts related to mineral rights were not reclassified to intangible assets and continue to be classified in Property, plant and equipment on the accompanying Condensed Consolidated Balance Sheets. The SEC staff has confirmed that further discussion is needed with the FASB staff and final guidance has not yet been provided. The Company is currently monitoring the related discussion between the SEC and FASB staff and is evaluating the impact the reclassification would have on the Company's balance sheet. Any impact would be to the balance sheet and related disclosures only and will not have an effect on the Company's cash flows or results of operations.

On June 25, 2003, the FASB Derivatives Implementation Group cleared Issue C20, "Scope Exceptions: Interpretation of the Meaning of *Not Clearly and Closely Related* in Paragraph 10(b) regarding Contracts with a Price Adjustment Feature" (Issue C20). Issue C20 clarifies which contracts qualify for the "normal purchase or sale" exception as provided by paragraph 10(b) of SFAS 133. The Company is currently re-evaluating which contracts, if any, that have previously been designated as normal purchases or sales would now not qualify for this exception. The effective date for Issue C20 is the first day of the first fiscal quarter beginning after July 10, 2003, which is October 1, 2003 for the Company. The Company is currently evaluating the effects that this guidance will have on its results of operations and financial position.

#### (5) RECLASSIFICATIONS

Operating Revenues on the Condensed Consolidated Statements of Income for the three and six months ended June 30, 2003, have been reclassified to present realized and unrealized gains and losses under contracts in the energy marketing segment in accordance with the provisions of EITF 02-3. These

provisions of EITF 02-3 were adopted on January 1, 2003 (See Note 3). This change in presentation did not have an impact on the Company's total stockholders' equity or net income available for common stock as previously reported.

In addition, certain other 2002 amounts in the financial statements have been reclassified to conform to the 2003 presentation. These reclassifications did not have an effect on the Company's total stockholders' equity or net income available for common stock as previously reported.

(6) EARNINGS PER SHARE

Basic earnings per share is computed by dividing net income by the weighted average number of common shares outstanding during the period. Diluted earnings per share gives effect to all dilutive common shares potentially outstanding during a period. A reconciliation of "Income from continuing operations" and basic and diluted share amounts is as follows:

Periods ended June 30, 2003 (in thousands)	Three Months		Six Months	
	Income	Average Shares	Income	Average Shares
Income from continuing operations	\$ 16,660	--	\$ 33,517	--
Less: preferred stock dividends	(57)	--	(114)	--
Basic - available for common shareholders	16,603	30,582	33,403	28,822
Dilutive effect of:				
Stock options	--	101	--	74
Convertible preferred stock	57	148	114	148
Estimated contingent shares issuable for prior acquisition	--	261	--	217
Others	--	36	--	34
Diluted - available for common shareholders	\$ 16,660	31,128	\$ 33,517	29,295
Periods ended June 30, 2002 (in thousands)	Three Months		Six Months	
	Income	Average Shares	Income	Average Shares
Income from continuing operations	\$ 14,719	--	\$ 29,612	--
Less: preferred stock dividends	(56)	--	(112)	--
Basic - available for common shareholders	14,663	26,804	29,500	26,749
Dilutive effect of:				
Stock options	--	148	--	122
Convertible preferred stock	56	148	112	148
Others	--	26	--	26
Diluted - available for common shareholders	\$ 14,719	27,126	\$ 29,612	27,045

As further described in Note 9, on April 30, 2003, the Company completed a public offering of 4.6 million shares of common stock. Accordingly, this transaction significantly affects the weighted average number of common shares outstanding used in earnings per share calculations for the current and for future periods.

(7) EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES

Included in Equity in Earnings of Unconsolidated Subsidiaries for the three and six months ended June 30, 2003, is approximately \$3.1 million related to the application of the provisions of the AICPA Audit and Accounting Guide, "Audits of Investment Companies," by certain entities in which the Company invests. This guidance among other things requires investments held by investment companies to be stated at fair value. Consistent with prior periods, the Company will continue to record its portion of the net income of entities over which it exercises significant influence but which it does not control.

(8) COMPREHENSIVE INCOME

The following table presents the components of the Company's comprehensive income:

Three Months Ended June 30		Six Months Ended June 30	
2003	2002	2003	2002
(in thousands)			



Net income	\$ 16,660	\$ 13,807	\$ 30,837	\$ 27,871
Other comprehensive income, net of tax:				
Unrealized loss on available-for-sale securities	--	--	--	(219)
Reclassification adjustment for unrealized gain on available-for-sale securities included in net income	--	(406)	--	(406)
Fair value adjustment on derivatives designated as cash flow hedges, net of minority interest	(3,040)	(3,227)	(2,055)	(2,718)
Comprehensive income	\$ 13,620	\$ 10,174	\$ 28,782	\$ 24,528

(9) CHANGES IN COMMON STOCK

Other than the following transactions, the Company had no other material changes in its common stock, as reported in Note 6 of the Company's 2002 Annual Report on Form 10-K.

Second Quarter 2003 Transactions

- The Company issued 4.6 million shares of common stock in a public offering at a price of \$27 per share. Net proceeds were approximately \$118 million after commissions and expenses. The proceeds were used to pay off a \$50 million credit facility due in May 2003 and to repay \$68 million under the Company's 364-day revolving credit facility which expires on August 26, 2003.

13

- Company issued 45,123 restricted stock units and 24,643 shares of restricted stock from treasury shares to certain officers. The shares vest one-third a year over three years, contingent on employment. Compensation cost related to the award is recognized over the vesting period. The market value of the award on the date of grant was approximately \$2.0 million.
- The Company issued 240,165 stock options at a weighted average exercise price of \$28.09 per share.
- 5,917 stock options were exercised at a weighted average exercise price of \$22.92 per share.
- The Company issued 25,222 shares of common stock under its dividend reinvestment plan at a weighted average price of \$29.60 per share.
- The Company issued 5,653 shares of common stock under its employee stock purchase plan at a price of \$23.45 per share.
- The Company acquired 3,119 shares of common stock from certain officers under share withholding provisions to cover tax withholding on restricted stock that vested under the Company's 2001 Omnibus Incentive Compensation Plan.

First Quarter 2003 Transactions

- The Company issued 481,509 shares of common stock and 45,000 warrants to purchase common stock in the acquisition of Mallon Resources Corporation (see Note 15).
- The Company granted 43,500 stock options at a weighted average exercise price of \$27.38 per share.
- 9,333 stock options were exercised at a weighted average exercise price of \$16.87 per share.
- The Company issued 29,376 shares of common stock under its dividend reinvestment plan at a weighted average price of \$23.96 per share.
- The Company issued 4,642 shares of common stock under its employee stock purchase plan at a price of \$23.45 per share.
- The Company issued 3,075 shares of common stock under the short-term incentive compensation plan. Compensation cost related to the award was approximately \$0.1 million which was accrued for in 2002.

(10) CHANGES IN LONG-TERM DEBT AND NOTES PAYABLE

On January 31, 2003, Black Hills Energy Resources amended its credit agreement increasing its uncommitted, discretionary credit facility to \$40 million. The facility expires January 30, 2004.

14

As part of the Mallon acquisition (see Note 15), the Company acquired additional debt in the amount of \$4.1 million.

On April 30, 2003, the Company paid off the \$50 million credit facility due May 2003 and repaid \$68 million of the Company's 364-day revolving credit facility (see Note 9).

On May 21, 2003, the Company sold \$250 million of Notes, due 2013. Net proceeds from the offering were approximately \$247.3 million and were used

to repay a \$35.0 million Term Credit Agreement due 2004, and \$208.5 million of the three year and 364-day revolving credit facilities. After inclusion of applicable letters of credit, the company has \$348.4 million of borrowing capacity available under these revolving credit facilities at June 30, 2003.

The Company had no other material changes in its consolidated indebtedness, as reported in Notes 8 and 9 of the Company's 2002 Annual Report on Form 10-K.

(11) GUARANTEES

The Company has entered into various agreements providing financial or performance assurance to third parties on behalf of certain subsidiaries. Such agreements include guarantees of debt obligations, performance obligations under contracts and indemnification for reclamation and surety bonds.

As prescribed in FASB Interpretation No. 45, the Company records a liability for the fair value of the obligation it has undertaken for guarantees issued after December 31, 2002. The liability recognition requirements of FASB Interpretation No. 45 are to be applied on a prospective basis to guarantees issued or modified after December 31, 2002, while the disclosure requirements are applied to all guarantees.

As of June 30, 2003 the Company had the following guarantees in place (in thousands):

Nature of Guarantee	Outstanding at June 30, 2003	Year Expiring
Guarantee payments under certain energy marketing derivative, power and gas agreements	\$ 2,500	2004
Guarantee of obligation of Las Vegas Cogen II under an interconnection and operation agreement	750	2005
Guarantee performance of Black Hills Wyoming under a power sales agreement	5,000	2004
Guarantee obligations under the Wygen Plant Lease	107,153	2008
Guarantee payment and performance under credit agreements for two combustion turbines	32,000	2010
Indemnification for subsidiary reclamation/surety bonds	30,600	Ongoing
	\$178,003	

The Company has guaranteed up to \$2.5 million of commodity related payments for its energy marketing subsidiary, Enserco Energy Inc. This guarantee was provided to the counterparty in order to facilitate physical and financial transactions in energy commodities and related services. To the extent liabilities exist under the commodity- related contract subject to this guarantee, such liabilities are included in the Condensed Consolidated Balance Sheets. The guarantee expires on June 30, 2004.

The Company has guaranteed up to \$0.8 million of the obligations of Las Vegas Cogeneration II, LLC under an interconnection and operations agreement for the LV II unit. To the extent liabilities exist under the interconnection and operations agreement, such liabilities are included in the Condensed Consolidated Balance Sheets. The obligation is due May 20, 2005.

The Company has guaranteed up to \$5 million for the performance of its wholly-owned subsidiary, Black Hills Wyoming (f/k/a Black Hills Generation), under a power sales agreement on the Wygen plant. The guarantee will expire in February 2004, the first anniversary of commercial operation of the facility. There are no liabilities on the Company's Condensed Consolidated Balance Sheets associated with this guarantee.

The Company has also guaranteed the obligations of Black Hills Wyoming under the agreement for lease and lease for the Wygen plant. The lease is currently accounted for as an off-balance sheet transaction, therefore there are no liabilities associated with the lease on the consolidated financial statements. If the lease was terminated and sold, the Company's obligation is the amount of deficiency in the proceeds from the sale to repay the investors up to a maximum of 83.5 percent of the cost of the project. At June 30, 2003, the Company's maximum obligation under the guarantee is \$107.2 million (83.5 percent of \$128.3 million, the cost incurred for the Wygen plant as of June 30, 2003). The initial term of the lease is five years with two five-year renewal options.

The Company has guaranteed the payment of \$27.5 million of debt of Black Hills Wyoming and \$4.5 million of debt for another of its wholly-owned subsidiaries, Black Hills Generation (f/k/a Black Hills Energy Capital, Inc.). The debt is recorded on the Company's Condensed Consolidated Balance Sheets and is due December 18, 2010.

In addition, at June 30, 2003, the Company had guarantees in place totaling approximately \$30.6 million for reclamation and surety bonds for its subsidiaries. The guarantees were entered into in the normal course of business. To the extent liabilities are incurred as a result of activities covered by the surety bonds, such liabilities are included in the Company's Condensed Consolidated Balance Sheets.

(12) SUMMARY OF INFORMATION RELATING TO SEGMENTS OF THE COMPANY'S BUSINESS

The Company's reportable segments are those that are based on the Company's method of internal reporting, which generally segregates the strategic business groups due to differences in products, services and regulation. As of June 30, 2003, substantially all of the Company's operations and assets are located within the United States. The Company's operations are conducted through six reporting segments that include: Integrated Energy group consisting of the following segments: Mining, which engages in the mining and sale of coal from its mine near Gillette, Wyoming; Oil and Gas, which

produces, explores and operates oil and gas interests located in the Rocky Mountain region, Texas, California and other states; Energy Marketing, which markets natural gas, oil and related services to customers in the Midwest, Southwest, Rocky Mountain, West Coast and Northwest regions and transports crude oil in Texas; and Power Generation, which produces and sells generating capacity and electricity to wholesale customers; Electric group and segment, which supplies electric utility service to western South Dakota, northeastern Wyoming and southeastern Montana; and Communications group and segment, which primarily markets communications and software development services.

Segment information follows the same accounting policies as described in Note 1 of the Company's 2002 Annual Report on Form 10-K. In accordance with the provisions of SFAS No. 71 "Accounting for the Effects of Certain Types of Regulation" (SFAS 71), intercompany fuel sales to the electric utility are not eliminated. Segment information included in the accompanying Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Income is as follows (in thousands):

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
Quarter to Date			
June 30, 2003			
Energy marketing	\$ 172,262*	\$ --	\$ (1,490)
Power generation	56,675	--	11,898
Oil and gas	12,674	64	2,577
Mining	5,146	2,953	1,331
Electric	39,186	21	4,722
Communications	11,773	--	(433)
Corporate	--	--	(1,944)
Intersegment eliminations	--	(710)	(1)
Total	<u>\$ 297,716</u>	<u>\$ 2,328</u>	<u>\$ 16,660</u>

\*Operating revenues for Energy marketing are presented in accordance with EITF 02-3 as described in Note 3.

17

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
Quarter to Date			
June 30, 2002			
Energy marketing	\$ 163,503*	\$ 73	\$ 2,397
Power generation	36,981	--	4,174
Oil and gas	6,802	65	1,283
Mining	4,259	2,622	2,494
Electric	38,303	--	6,792
Communications	8,217	--	(2,049)
Corporate	--	--	(365)
Intersegment eliminations	--	(138)	(7)
Total	<u>\$ 258,065</u>	<u>\$ 2,622</u>	<u>\$ 14,719</u>

\*Operating revenues for Energy marketing are presented in accordance with EITF 02-3 as described in Note 3.

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
Year to Date			
June 30, 2003			
Energy marketing	\$ 354,689*	\$ --	\$ 2,755
Power generation	104,284	--	16,467
Oil and gas	21,665	136	4,440
Mining	10,541	5,788	2,912
Electric	82,935	35	11,421
Communications	20,459	--	(2,242)
Corporate	--	--	(2,235)
Intersegment eliminations	--	(1,156)	(1)
Total	<u>\$ 594,573</u>	<u>\$ 4,803</u>	<u>\$ 33,517</u>

\*Operating revenues for Energy marketing are presented in accordance with EITF 02-3 as described in Note 3.

18

<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (loss) from Continuing Operations</u>
--	---	---

Year to Date			
June 30, 2002			
Energy marketing	\$ 244,083*	\$ 73	\$ 3,903
Power generation	68,150	--	8,951
Oil and gas	12,749	205	2,161
Mining	9,709	5,374	4,829
Electric	75,494	--	14,614
Communications	15,763	--	(4,276)
Corporate	--	--	(563)
Intersegment eliminations	--	(278)	(7)
Total	\$ 425,948	\$ 5,374	\$ 29,612

\*Operating revenues for Energy marketing are presented in accordance with EITF 02-3 as described in Note 3.

Other than the Oil and Gas segment's acquisition of Mallon Resources, as described in Note 15, the Company had no material changes in total assets of its reporting segments, as reported in Note 16 of the Company's 2002 Annual Report on Form 10-K, beyond changes resulting from normal operating activities.

### (13) RISK MANAGEMENT ACTIVITIES

The Company actively manages its exposure to certain market risks as described in Note 2 of the Company's Annual Report on Form 10-K. Details of derivative and hedging activities included in the accompanying Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Income are as follows:

#### Trading Activities

##### Natural Gas Marketing

On June 30, 2003, December 31, 2002 and June 30, 2002, contracts accounted for at fair value at the Company's natural gas marketing operations had the following notional amounts, terms and related balances:

	June 30, 2003		December 31, 2002		June 30, 2002	
	Notional Amounts	Maximum Term in Years	Notional Amounts	Maximum Term in Years	Notional Amounts	Maximum Term in Years
(thousands of MMBtu's)						
Basis swaps purchased	64,107	1	72,340	1	44,871	1.25
Basis swaps sold	65,497	1.25	72,329	1	53,504	1.25
Fixed-for float swaps purchased	17,840	1.25	10,675	1	20,783	1.50
Fixed-for-float swaps sold	22,372	1.50	17,934	1	24,723	1.50
Physical purchases	44,869	1	42,813	1.25	40,431	1.25
Physical sales	36,137	1.25	41,654	1	46,909	1
Options purchased	1,870	0.75	--	--	--	--
Options sold	1,870	0.75	--	--	--	--

Derivatives and certain other natural gas marketing activities were marked to fair value and the gains and/or losses recognized in earnings. The amounts included in the accompanying Condensed Consolidated Balance Sheets and Statements of Income are as follows:

	Current Derivative Assets	Non-current Derivative Assets	Current Derivative Liabilities	Non-current Derivative Liabilities	Unrealized Gain (Loss)
(in thousands)					
June 30, 2003	\$ 26,197	\$ 3,146	\$ 26,766	\$ 3,139	\$ (562)
December 31, 2002	\$ 29,559	\$ 2,406	\$ 28,535	\$ 409	\$ 3,021
June 30, 2002	\$ 43,960	\$ 1,831	\$ 38,933	\$ 1,146	\$ 5,712

For the three and six month periods ended June 30, 2003, contracts and other activities at our natural gas marketing operations are accounted for under the provisions of EITF 02-3 and SFAS 133. As such, all of the contracts and other activities at the Company's natural gas marketing operations that meet the definition of a derivative under SFAS 133 are accounted for at fair value. EITF 02-3, adopted on January 1, 2003, precludes mark-to-market accounting for energy trading contracts that are not derivatives pursuant to SFAS 133. Accordingly, natural gas physical inventories and transportation contracts that have not been designated as part of a fair value hedge transaction, in accordance with SFAS 133, are recognized at a historical cost basis (lower of cost or market for physical inventories) and settlement costs or gains or losses recognized on the accrual method of accounting. Substantially all other contracts at the Company's natural gas marketing operations are derivatives or hedging activities, as defined by SFAS 133, and have been recorded at fair value.

For all other periods presented, contracts and other activities at the Company's natural gas marketing operations fell under the purview of EITF 98-10, SFAS 133 and for contracts entered into after October 25, 2002, under EITF 02-3. As such, all contracts and other natural gas marketing activities entered into on or before October 25, 2002 and transactions entered after that date that meet the definition of a derivative as defined by SFAS 133, are accounted for under mark-to-market accounting.

### Non-trading Energy Activities

On June 30, 2003, December 31, 2002 and June 30, 2002, contracts accounted for at fair value at the Company's non-trading energy operations had the following notional amounts, terms and related balances (in thousands):

#### Crude Oil Marketing

	June 30, 2003		December 31, 2002		June 30, 2002	
	Notional Amounts	Maximum Term in Years	Notional Amounts	Maximum Term in Years	Notional Amounts	Maximum Term in Years
<b>(thousands of barrels)</b>						
Crude oil purchased	12	0.25	4,081	0.5	4,002	1
Crude oil sold	--	--	4,150	0.5	4,038	1
	Current Derivative Assets	Non-current Derivative Assets	Current Derivative Liabilities	Non-current Derivative Liabilities	Unrealized Gain	
June 30, 2003	\$ 11	\$ --	\$ --	\$ --	\$ 11	
December 31, 2002	\$ 6,776	\$ --	\$ 6,010	\$ --	\$ 766	
June 30, 2002	\$ 5,724	\$ --	\$ 4,959	\$ --	\$ 765	

21

For the three and six month periods ended June 30, 2003, contracts at the Company's crude oil marketing operations are accounted for under the provisions of EITF 02-3 and SFAS 133. Substantially all of the contracts at the Company's crude oil marketing operations are either not derivatives, as defined by SFAS 133, or are derivatives but qualify for the "normal purchase/normal sale" exclusion provided by SFAS 133 and have been exempted out of fair value accounting treatment. As such, the Company accounts for all contracts at its crude oil marketing operations on a historical cost method with gains or losses recognized when realized in accordance with the accrual method of accounting.

For all other periods presented, contracts at the Company's crude oil marketing operations fell under the purview of EITF 98-10, SFAS 133 and for contracts entered into after October 25, 2002, under EITF 02-3. As such, all contracts entered into on or before October 25, 2002 have been accounted for under mark-to-market accounting.

#### Oil and Gas Exploration and Production

(in thousands)	Notional*	Maximum Terms in Years	Current Derivative Assets	Non-current Derivative Assets	Current Derivative Liabilities	Non-current Derivative Liabilities	Pre-tax Accumulated	Pre-tax
							Other Comprehensive Income (Loss)	Income (Loss)
<b>June 30, 2003</b>								
Natural gas swaps	3,600,000	0.5	\$ 1,567	\$ --	\$ 1,010	\$ --	\$ 558	\$ (1)
Crude oil swaps	360,000	1.5	--	--	979	101	(1,026)	(54)
			\$ 1,567	\$ --	\$ 1,989	\$ 101	\$ (468)	\$ (55)
<b>December 31, 2002</b>								
Natural gas swaps	1,650,000	1	\$ 58	\$ --	\$ 744	\$ --	\$ (686)	\$ --
Crude oil swaps	360,000	1	--	--	976	--	(914)	(62)
			\$ 58	\$ --	\$ 1,720	\$ --	\$ (1,600)	\$ (62)
<b>June 30, 2002</b>								
Natural gas swaps	1,320,000	1	\$ 409	\$ --	\$ 336	\$ --	\$ 71	\$ 2
Crude oil swaps	270,000	1	--	--	739	--	(556)	(183)
			\$ 409	\$ --	\$ 1,075	\$ --	\$ (485)	\$ (181)

\*crude in barrels, gas in MMBtu's

Based on June 30, 2003 market prices, a \$0.5 million loss will be realized and reported in earnings during the next twelve months related to hedges of production. These estimated realized losses for the next twelve months were calculated using June 30, 2003 market prices. Estimated and actual realized

Financing Activities

On June 30, 2003, December 31, 2002 and June 30, 2002, the Company's interest rate swaps and related balances were as follows (in thousands):

	Current Notional Amount	Weighted Average Fixed Interest Rate	Maximum Terms in Years	Current Derivative Assets	Non- current Derivative Assets	Current Derivative Liabilities	Non- current Derivative Liabilities	Pre-tax Accumulated Other Comprehensive Loss	Pre-tax Income (Loss)
June 30, 2003									
Swaps on project financing	\$250,372	5.23%	3.25	\$ 180	\$ --	\$ 8,416	\$9,151	\$(17,387)	\$ --
Swaps on corporate debt	25,000	5.28%	0.75	--	--	702	--	(688)	(14)
<b>Total</b>	<b>\$275,372</b>			<b>\$ 180</b>	<b>\$ --</b>	<b>\$ 9,118</b>	<b>\$9,151</b>	<b>\$(18,075)</b>	<b>\$(14)</b>
December 31, 2002									
Swaps on project financing	\$212,256	5.98%	3.75	\$ --	\$ --	\$ 9,345	\$7,844	\$(17,189)	\$ --
Swaps on corporate debt	25,000	5.28%	1.25	--	--	947	166	(1,113)	--
<b>Total</b>	<b>\$237,256</b>			<b>\$ --</b>	<b>\$ --</b>	<b>\$10,292</b>	<b>\$8,010</b>	<b>\$(18,302)</b>	<b>\$ --</b>
June 30, 2002									
Swaps on project financing	\$215,017	6.00%	4.25	\$ --	\$ 156	\$ 7,514	\$6,255	\$(13,551)	\$(62)
Swaps on corporate debt	75,000	4.45%	1.75	--	--	1,276	268	(1,544)	--
<b>Total</b>	<b>\$290,017</b>			<b>\$ --</b>	<b>\$ 156</b>	<b>\$ 8,790</b>	<b>\$6,523</b>	<b>\$(15,095)</b>	<b>\$(62)</b>

During the first and second quarters of 2003, the Company entered into treasury locks, with a notional amount of \$150 million, to hedge the risk of interest rate movement between the hedge date and the expected pricing date for a portion of the Company's second quarter \$250 million debt offering of senior unsecured notes. These swaps terminated and cash settled during the second quarter 2003 and resulted in a \$4.0 million loss. These swaps were treated as cash flow hedges and accordingly the resulting loss will continue to be carried in Accumulated other comprehensive loss on the Condensed Consolidated Balance Sheet and amortized into earnings as additional interest expense over the life of the related long-term financing.

Based on June 30, 2003 market interest rates and balances, approximately \$9.0 million will be realized as additional interest expense during the next twelve months. Estimated and realized amounts will likely change during the next twelve months as market interest rates change.

(14) LEGAL PROCEEDINGS

**Fires**

In September 2001, a fire, which is known as the Hell Canyon Fire, occurred in the southwestern portion of the Black Hills region of South Dakota. The State of South Dakota has alleged that the fire occurred when a high voltage electrical span maintained by the Company's electric utility subsidiary broke and electrical arcing from the severed line ignited dry grass. The fire burned approximately 10,000 acres of land owned by the Black Hills National Forest, the Oglala Sioux Tribe and other private landowners. The State of South Dakota initiated litigation against the Company in the Seventh Judicial Circuit Court, Fall River County, South Dakota, on January 31, 2003. The complaint seeks recovery of damages for alleged injury to timber, fire suppression and rehabilitation costs. A claim for treble damages is asserted with respect to the claim for injury to timber. The United States Forest Service has asserted substantially similar claims against the Company. The Company's investigation into the cause and origin of the fire is still pending. The total amount of damages claimed by the State of South Dakota and the United States are not specified in their complaints. The Company has denied all claims and will vigorously defend this matter, the timing or outcome of which is uncertain.

In June 2002, a forest fire, sometimes referred to as the Grizzly Gulch Fire, damaged approximately 11,000 acres of private and governmental land located near Deadwood and Lead, South Dakota. The fire destroyed approximately 20 structures and caused the evacuation of the cities of Lead and Deadwood for approximately 48 hours.

The cause of the Grizzly Gulch Fire was investigated by the State of South Dakota. Contact between power lines owned by the Company's electric utility subsidiary and undergrowth was alleged to be the cause. The Company has initiated its own investigation into the cause of the fire, including the hiring of expert fire investigators and that investigation is continuing.

The State of South Dakota initiated a civil action in the Seventh Judicial Circuit Court, Pennington County, South Dakota seeking recovery of damages for fire suppression, reclamation and remediation costs, and treble damages for injury to trees. The United States government initiated a civil action in U.S. District Court, District of South Dakota, asserting similar claims. Neither the State of South Dakota nor the United States specified the amount of their alleged damages. In addition, the Company has been notified of potential private civil claims for property damage and business loss. The Company has denied all claims and will vigorously defend this matter. The State of South Dakota has subsequently joined its claim in the federal action.

If it is determined that power line contact was the cause of either fire and that the Company was negligent in the maintenance of those power lines, the Company could be liable for some or all of the damages related to these claims. Although the Company cannot predict the outcome or the viability of potential claims with respect to either fire, based on information currently available, management believes that any such claims, if determined adversely to the Company, will not have a material adverse effect on the Company's financial condition or results of operations.

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## **Federal Energy Regulatory Commission (FERC) Investigations**

### Enron "Qualifying Facility" Status

In August 2001, the Company purchased a partnership interest in Las Vegas Cogeneration, L.P., which owns the 53 megawatt Las Vegas Cogeneration I Facility, from an affiliate of Enron. The prior owner certified to the Company and to relevant governmental authorities that the facility complied with all regulations necessary to obtain and maintain "qualifying facility" status under the Public Utility Regulatory Policies Act of 1978 (PURPA). Qualifying facilities are allowed to sell their output to electric utilities at "avoided cost" rates, which are usually higher than prevailing market-based rates. The prior owner contracted with Nevada Power Company to sell 45 megawatts of the facility's output during the periods of peak electricity consumption at avoided cost rates. In connection with acquiring the facility, the Company assumed this contract.

On February 24, 2003, FERC issued an order announcing an investigation to determine whether Enron's ownership of the Las Vegas Cogeneration I Facility violated the qualifying facility regulations under PURPA. In addition, the SEC issued an initial decision concluding that Enron is an electric utility and is thus not exempt from regulations under the Public Utility Holding Company Act of 1935 (PUHCA), that, among other things, prohibit electric utilities from owning more than 50 percent of a qualifying facility. Enron is appealing this decision.

The FERC investigation does not relate to the 224 megawatt gas-fired facility owned and operated by Las Vegas Cogeneration II, LLC and located on the same site in North Las Vegas, Nevada. This facility is not now and never was certified as a qualifying facility under PURPA.

If FERC determines that Enron violated the qualifying facility regulations with respect to the Las Vegas Cogeneration I Facility, the Company, as a partner in the entity that now owns that facility, could be liable for any refunds, fines or other penalties FERC imposes. The Company could also be subject to additional liabilities resulting from third party claims.

The Company is engaged in ongoing settlement discussions with FERC and interveners and expects to settle the FERC investigatory proceeding without formal hearing proceedings. In the event the FERC investigation is not settled and proceeds to hearing, the Company believes that it has meritorious defenses to any claim for a refund or other relief, and it intends to defend such claims vigorously. In any event, based on the information available, the Company believes that the FERC investigation will have no material adverse effect on its financial position or results of operations.

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### Order to Show Cause

On June 25, 2003, FERC issued an order to Enron Power Marketing, Inc. (EPMI), Enron Energy Services, Inc. (EES), and a number of other market participants to show cause why their behavior during January 1, 2000, to June 20, 2001, did not constitute gaming and/or anomalous behavior, as defined in the tariffs of the California Independent System Operator (CAISO) and California Power Exchange (CAPX) (the FERC Show Cause Order). Las Vegas Cogeneration, L.P. (LV Cogen) is among the named respondents in the FERC Show Cause Order. The Company acquired its partnership interest in LV Cogen on August 31, 2001, a date following the close of the period of inquiry under the FERC Show Cause Order.

The FERC Show Cause Order alleges that EPMI and/or EES formed partnerships and alliances with utilities, public power districts, municipalities, and qualifying facilities and used the partnerships and alliances to gain market share, acquire commercially sensitive data, acquire decision-making authority, and promote reciprocal dealing and equity share of profits, all in an effort to "game the market." The FERC Show Cause Order directs the named respondents to show cause, in a trial-type evidentiary proceeding to be held before a FERC administrative law judge, why they should not be found to have engaged in "gaming practices" in violation of the CAISO's and CAPX's tariffs. The FERC Show Cause Order indicates that FERC will seek disgorgement of unjust profits associated with any violations or other additional appropriate remedies.

The Company intends to vigorously defend against claims for a refund or other relief. Based on the information available, the Company believes that the proceeding commenced by the FERC Show Cause Order will not have a material adverse effect on the Company's financial position or results of operations.

### **Commodity Futures Trading Commission Investigation**

In March 2003, the Company received a request for information from the Commodity Futures Trading Commission, or CFTC, calling for the production, among other things, of "all documents relating to natural gas and electricity trading" in connection with CFTC's industry wide investigation of trade and trade reporting practices of power and natural gas trading companies. The Company cooperated fully with the CFTC producing documents and other

materials in response to specific requests relating to the reporting of natural gas trading information to energy industry publications, conducted its own internal investigation into the accuracy of information that former employees of Enserco Energy Inc., its gas marketing subsidiary, voluntarily reported to trade publications, and provided detailed reports of its own investigation to the CFTC.

On July 31, 2003, the Company announced that a settlement was reached with the CFTC relating to the Enserco investigation, whereby the Company agreed to pay a civil monetary penalty of \$3.0 million. This charge was recorded in second quarter earnings and is included in "Administrative and general" expenses on the accompanying Condensed Consolidated Statement of Income. The settlement order recites findings of fact relating to conduct over a time period ending in June 2002 and states that the persons responsible for the misconduct no longer work for the Company. The CFTC found that the activity violated certain provisions of the Commodity Exchange Act relating to the delivery of false market information. Neither the Company nor Enserco admitted or denied these findings. The CFTC found no evidence that the Company had knowledge of, or participated in, the misconduct. The CFTC also cited efforts of the Company both before and after the inception of the investigation, to employ industry experts to assist the Company in enhancing risk management activities and internal controls on marketing activities, and the adoption by the Company of new procedures designed to prevent a reoccurrence of alleged misconduct. The Company does not believe inaccurate trade reporting to trade publications affected the financial accounting treatment of any transactions recorded in its books and records. The Company is considering its rights relative to the individuals it believes to be responsible for the conduct in question. Although the Company agreed to this civil monetary penalty with the CFTC, we cannot guarantee that other legal proceedings, civil or criminal fines or penalties, or other regulatory action related to this issue will not occur which, in turn, could adversely affect the Company's financial condition or results of operations.

### Ongoing Proceedings

The Company is subject to various other legal proceedings, claims and litigation which arise in the ordinary course of operations. In the opinion of management, the amount of liability, if any, with respect to these actions would not materially affect the consolidated financial position or results of operations of the Company.

### (15) ACQUISITIONS

On October 1, 2002, the Company entered into a definitive merger agreement to acquire the Denver-based Mallon Resources Corporation. On March 10, 2003, the Company completed this acquisition. The total cost of the transaction was approximately \$51.2 million. The total cost of the transaction includes \$30.5 million for the October 2002 acquisition of Mallon's debt to Aquila Energy Capital Corporation and the settlement of outstanding hedges and approximately \$8.4 million, which the Company loaned to Mallon prior to completion of the acquisition. Mallon shareholders received 0.044 of a share of the Company's common stock for each share of Mallon, which was equivalent to 481,509 shares of Black Hills Corporation common stock.

The purchase has been accounted for under the purchase method of accounting and, accordingly, the purchase price is allocated to the acquired assets and liabilities based on preliminary estimates of the fair values of the assets purchased and liabilities assumed as of the date of acquisition. The estimated purchase price allocation is subject to adjustment, generally within one year of the date of acquisition. The preliminary purchase allocation has been adjusted to reflect the completion of the quantification and analysis of the acquired asset retirement obligations in accordance with SFAS 143. This adjustment resulted in a \$0.5 million increase to Long-term liabilities and Property, plant and equipment. The adjusted preliminary allocation of the purchase price is as follows (in thousands):

Current assets	\$	165
Property, plant and equipment		56,153
Deferred tax asset		5,194
		<hr/>
Total assets acquired	\$	61,512
		<hr/>
Current liabilities	\$	6,343
Long-term liabilities		4,016
		<hr/>
Total liabilities assumed	\$	10,359
		<hr/>
Net assets	\$	51,153
		<hr/>

The results of operations of the above acquired company have been included in the accompanying consolidated financial statements since the acquisition date.

The following pro forma consolidated results of operations have been prepared as if the Mallon acquisition had occurred on January 1, 2003 and 2002, respectively (in thousands):

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Operating revenues	\$ 300,044	\$ 263,415	\$ 602,317	\$ 436,733
Income from continuing operations	\$ 16,660	\$ 13,829	\$ 33,070	\$ 28,168
Net income	\$ 16,660	\$ 12,917	\$ 30,390	\$ 26,427
Earnings per share-- Basic:				



Continuing operations	\$	0.54	\$	0.50	\$	1.15	\$	1.03
Total	\$	0.54	\$	0.47	\$	1.05	\$	0.97
Diluted:								
Continuing operations	\$	0.54	\$	0.50	\$	1.13	\$	1.02
Total	\$	0.54	\$	0.47	\$	1.04	\$	0.96

The above pro forma information is presented for informational purposes only and is not necessarily indicative of the results of operations that actually would have been achieved had the acquisition been consummated as of that time, nor is it intended to be a projection of future results.

Mallon Resources' proved developed and undeveloped reserves, estimated using constant year-end product prices, as of December 31, 2002, were approximately 86 billion cubic feet of gas equivalent. These estimates are based on reserve reports by Ralph E. Davis Associates, Inc., an independent engineering firm selected by the Company. The reserves are located primarily on the Jicarilla Apache Nation in the San Juan Basin of New Mexico and are comprised almost entirely of natural gas in shallow sand formations. The oil and gas leases of the acquisition total more than 66,500 gross acres (56,000 net), most of which is contained in a contiguous block that is in the early stages of development.

(16) DISCONTINUED OPERATION

During the second quarter of 2002, the Company adopted a plan to dispose of its coal marketing subsidiary, Black Hills Coal Network. The sale and disposal was finalized in July 2002. In connection with the plan of disposal, the Company determined that the carrying values of some of the underlying assets exceeded their fair values and a charge to operations was required.

Consequently, in the second quarter of 2002, the Company recorded an after-tax charge of approximately \$1.0 million, which represents the difference between the carrying values of the assets and liabilities of the subsidiary versus their fair values, less cost to sell. The disposition has been accounted for under the provisions of Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Accordingly, results of operations and the related charge have been classified as "Discontinued operations" in the accompanying Condensed Consolidated Statements of Income, and prior periods have been restated. For business segment reporting purposes, the coal marketing business results were previously included in the segment "Energy marketing."

(17) SUBSEQUENT EVENTS

**Announced Sale of Hydroelectric Assets**

On July 9, 2003 the Company entered into a definitive agreement to sell its seven hydroelectric power plants located in upstate New York and currently operated as part of the Company's Power Generation segment. The aggregate cash purchase price of approximately \$186 million will be used in part to pay debt of approximately \$82 million associated with the power projects. The purchasers are affiliates of Boralex, Inc., a Canadian corporation, and Boralex Power Income Fund, an unincorporated Canadian trust of which Boralex owns an interest (collectively "the Purchaser"). The agreements with the Purchaser require that the Company deliver 100 percent of the equity interests of the entities that own the facilities and require that the Company acquire those minority interests which it did not then own in advance of closing. In anticipation of entering into the agreement with the Purchaser, on July 8, 2003, the Company acquired the equity interests of a third party investor for \$9.0 million and entered into a definitive agreement to acquire the balance of the equity interests from another third party investor (who is presently treated as a consolidated subsidiary of the Company for financial statement purposes, in accordance with accounting principles generally accepted in the United States). The purchase of the balance of the equity interests is contingent on a near-simultaneous closing of the sale to the Purchaser.

While the Company has obtained regulatory approval from the Federal Energy Regulatory Commission and received early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 by the Federal Trade Commission, the transaction remains subject to the fulfillment of conditions customary in transactions of this nature. The Company expects to complete the transaction in the third quarter of 2003.

Included in the accompanying Condensed Consolidated Balance Sheet are the following carrying amounts of the major classes of assets and liabilities as of June 30, 2003, to be included in the sale (in thousands):

Current assets	\$ 12,895
Property, plant and equipment	179,725
Accumulated depreciation	(33,504)
Goodwill	9,773
Current liabilities	(488)
Deferred credits and other liabilities	(4,258)

Based on historical earnings from these assets and reduced interest cost from an assumed debt reduction from proceeds, the Company anticipates that the sale could reduce annual earnings by approximately \$0.07 per share.

We are a diversified energy holding company operating principally in the United States. Our unregulated and regulated businesses have expanded significantly in recent years. Our integrated energy group, Black Hills Energy, Inc., produces and markets electric power and fuel. We produce and sell generating capacity and electricity in a number of markets, with a strong emphasis in the western United States. We also produce coal, natural gas and crude oil, primarily in the Rocky Mountain region, and transport crude oil in Texas. Our electric utility, Black Hills Power, Inc., serves an annual average of approximately 60,000 customers in South Dakota, Wyoming and Montana. Our communications group provides state-of-the-art broadband communications services to over 26,000 residential and business customers in Rapid City and the northern Black Hills region of South Dakota through Black Hills FiberCom, LLC.

The following discussion should be read in conjunction with Item 7. – Management’s Discussion and Analysis of Financial Condition and Results of Operations – included in our 2002 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

## Results of Operations

### Consolidated Results

Revenue and Income (loss) from continuing operations provided by each business group as a percentage of our total revenue and total income (loss) from continuing operations were as follows:

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
<u>Revenues</u>				
Integrated energy	83%	82%	83%	79%
Electric utility	13	15	14	17
Communications	4	3	3	4
	100%	100%	100%	100%
<u>Income/ (Loss) from Continuing Operations</u>				
Integrated energy	86%	70%	79%	67%
Electric utility	28	46	34	49
Communications	(3)	(14)	(7)	(14)
Corporate	(11)	(2)	(6)	(2)
	100%	100%	100%	100%

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Consolidated income from continuing operations for the three-month period ended June 30, 2003 was \$16.7 million or \$0.54 per share compared to \$14.7 million or \$0.54 per share in the same period of the prior year.

Income from continuing operations for the three-month period ended June 30, 2003 includes certain unusual items that resulted in a net charge of \$0.04 per share. These items related to a \$3.0 million charge or (\$0.10) per share for a settlement reached with the Commodity Futures Trading Commission (CFTC) relating to its investigation of our marketing subsidiary, Enserco Energy Inc.’s trade reporting practices to industry publications. (See Note 14 of the accompanying Notes to Condensed Consolidated Financial Statements), partially offset by a \$0.06 benefit from unrealized gains from investments in certain energy funds.

The increase in income from continuing operations was driven by a 38 percent increase in earnings for the integrated energy business group. The strong operating results were attributed to higher oil and gas production and prices, an increase in power sales resulting from higher generating capacity in our power generation segment, increased earnings from power fund investments accounted for under the equity method of accounting, and improving performance in our communications business group, partially offset by a decrease in net income at the electric utility due to higher operating costs and interest expense, a decrease in net income in the mining segment due to higher operating costs, and a decrease in net income at the energy marketing segment, due to the CFTC settlement, lower margins received and a decrease in unrealized mark-to-market gains on derivative contracts.

During the second quarter of 2002, we decided to discontinue operations in our coal marketing business due primarily to challenges encountered in marketing our Wyodak coal from the Powder River Basin of Wyoming to midwestern and eastern coal markets. We sold the non-strategic assets effective August 1, 2002. Net loss from discontinued operations was \$0.9 million or \$(0.03) per share for the three months ended June 30, 2002. Prior year results of operations have been restated to reflect the discontinued operations.

Consolidated revenues for the three-month period ended June 30, 2003 were \$300.0 million compared to \$260.7 million for the same period in 2002. Revenues increased in each of our three business groups. In the power generation segment, revenues increased 53 percent due to a substantial increase in its generating capacity. Oil and gas revenue increased 86 percent, due to a 53 percent increase in production resulting primarily from the March 2003 acquisition of Mallon Resources and a 37 percent increase in the average price received. Mining revenue increased 18 percent, due to a 34 percent increase in tons sold. Revenues from the electric utility group increased 2 percent, due to an 11 percent increase in off-system sales and a 10 percent increase in average prices received for non-firm sales offset by lower industrial revenues. The communications group revenue increased 43 percent as a result of the recording of revenue associated with the 2003-2004 Black Hills telephone directory and a 17 percent increase in its customer base.

Consolidated operating expenses for the three-month period increased from \$229.9 million in 2002 to \$262.0 million in 2003. The increase was primarily due to an increase in fuel costs and depreciation expense as a result of our increased investment in independent power generation and increased operating expenses related to the increase in production in each of our three business groups. Corporate costs increased \$1.6 million primarily due to the result of a write-off of deferred debt issuance costs associated with the \$35 million term loan paid off during the second quarter of 2003, higher general and administrative expenses and increased pension expenses.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Consolidated income from continuing operations for the six-month period ended June 30, 2003 was \$33.5 million or \$1.14 per share compared to \$29.6 million or \$1.09 per share in the same period of the prior year. Income from continuing operations for the six-month period ended June 30, 2003 includes certain unusual items that resulted in a net charge of \$0.04 per share. These items relate to a \$3.0 million charge or (\$0.10) per share for the CFTC Settlement, partially offset by a \$0.06 benefit from unrealized gains from investments in certain energy funds. Consolidated income from continuing operations for the six months ended June 30, 2002 include a \$0.07 per share benefit attributed to the collection of previously reserved amounts.

The increase in income from continuing operations was a result of higher oil and gas prices, an increase in power sales resulting from higher generation capacity in our power generation segment, increased earnings from power fund investments accounted for under the equity method of accounting and improving performance in our communications business group, partially offset by a decrease in income at the electric utility due to higher operating costs and interest expense, a decrease in income in the mining segment due to higher operating costs, and a decrease in income at the energy marketing segment, due to the CFTC Settlement and lower margins received.

Net income for the six months ended June 30, 2003, included a charge of \$2.7 million or (\$0.09) per share for changes in accounting principles compared to a \$0.9 million benefit or \$0.03 per share in 2002. The change in accounting principles in 2003 reflect a \$2.9 million charge related to the adoption of EITF 02-3 and a \$0.2 million benefit related to the adoption of SFAS 143. The change in accounting principle in 2002 reflects a \$0.9 million benefit related to the adoption of SFAS No. 142, "Goodwill and Other Intangible Assets" (SFAS 142).

In addition, during the second quarter of 2002, we decided to discontinue operations in our coal marketing business due primarily to challenges encountered in marketing our Wyodak coal from the Powder River Basin of Wyoming to midwestern and eastern coal markets. We sold the non-strategic assets effective August 1, 2002. Net loss from discontinued operations was \$2.6 million or \$(0.09) per share for the six months ended June 30, 2002. Prior year results of operations have been restated to reflect the discontinued operations.

Consolidated revenues for the six-month period ended June 30, 2003 were \$599.4 million compared to \$431.3 million for the same period in 2002. Revenues increased in each of our three business groups due primarily to higher production volumes. In the power generation segment, revenues increased 53 percent due to a substantial increase in its generating capacity in service. Energy marketing revenues increased 45 percent, due primarily to a 16 percent increase in crude oil average daily volumes marketed at average prices 24 percent higher than the same period in 2002. Oil and gas revenue increased 68 percent, primarily due to a 33 percent increase in production. Mining revenue increased 8 percent, due to a 23 percent increase in coal production partially offset by lower average prices received. Revenues from the electric utility group increased 10 percent, due to a 29 percent increase in off-system megawatt-hour sales at a 23 percent increase in average prices received. The communications group revenue increased 30 percent as a result of the recording of revenue, associated with the 2003 – 2004 Black Hills telephone directory and a 17 percent increase in its customer base.

Consolidated operating expenses for the six-month period increased to \$522.5 million in 2003 from \$369.7 million in 2002. The increase was due to an increase in fuel and depreciation expense as a result of our increased investment in independent power generation and increased operating expenses related to the increase in production in all business segments. Corporate costs increased \$1.7 million primarily due to the result of a write-off of deferred debt issuance costs associated with the \$35 million term loan paid off during the second quarter of 2003, higher general and administrative expenses and increased pension expenses.

The following business group and segment information does not include discontinued operations and intercompany eliminations.

### Integrated Energy Group

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue:				
Energy marketing	\$ 172,262	\$ 163,576	\$ 354,689	\$ 244,156
Power generation	56,675	36,981	104,284	68,150
Oil and gas	12,738	6,867	21,801	12,954
Mining	8,099	6,881	16,329	15,083
Total revenue	249,774	214,305	497,103	340,343
Equity in investments of unconsolidated subsidiaries	4,408	2,118	4,864	3,280
Operating expenses	219,982	193,677	439,805	300,089
Operating income	\$ 34,200	\$ 22,746	\$ 62,162	\$ 43,534
Income from continuing operations	\$ 14,316	\$ 10,348	\$ 26,574	\$ 19,844

The following is a summary of sales volumes of our coal, oil and natural gas production and various measures of power generation:

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Fuel production:				
Tons of coal sold	1,126,800	843,500	2,270,300	1,844,700
Barrels of oil sold	107,577	115,357	214,301	229,633
Mcf of natural gas sold	2,336,437	1,259,719	3,950,635	2,547,571
Mcf equivalent sales	2,981,899	1,951,861	5,236,441	3,925,369

	June 30 2003	2002
Independent power capacity:		
MWs of independent power capacity in service	1,046*	646
MWs of independent power capacity under construction	--	364*

\*includes a 90 MW plant under a lease arrangement

34

The following is a summary of average daily energy marketing volumes:

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Natural gas - MMBtus	1,151,200	1,131,800	1,169,600	987,935
Crude oil - barrels	62,400	59,900	60,200	51,900

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Income from continuing operations for the integrated energy group for the three months ended June 30, 2003 was \$14.3 million, compared to \$10.3 million in the same period of the prior year. Income from continuing operations increased approximately \$4.0 million primarily due to increased power generating capacity, increased oil and gas production and increased earnings from power fund investments accounted for under the equity method of accounting, partially offset by the \$3.0 million CFTC Settlement. Income from continuing operations in our power generation segment increased \$7.7 million due to increased generating capacity in service and increased earnings from power fund investments. The increased earnings from our power fund investments primarily relate to a \$1.8 million after-tax benefit attributed to unrealized gains on investments accounted for under a fair-value method of accounting at our equity method power funds. Income from continuing operations at our oil and gas segment increased approximately \$1.3 million due to higher prices received compared to 2002 and a 53 percent increase in production. Income from continuing operations at our energy marketing segment decreased \$3.9 million due to the CFTC Settlement, a decrease in margins received and a decrease in unrealized mark-to-market gains on derivative contracts. Income from continuing operations for the mining segment decreased \$1.2 million as higher production volumes were more than offset by lower average prices, higher operating costs and certain accruals for taxes and other items.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Income from continuing operations for the integrated energy group for the six months ended June 30, 2003 was \$26.6 million, compared to \$19.8 million in the same period of the prior year. In addition, 2002 income from continuing operations includes a \$1.9 million benefit relating to the collection of previously reserved amounts for California operations in our power generation segment. Income from continuing operations increased approximately \$6.7 million due to increased generating capacity, increased oil and gas production and increased earnings from power fund investments accounted for under the equity method of accounting partially offset by the \$3.0 million CFTC settlement. Income from continuing operations in our power generation segment increased \$7.5 million due to increased generating capacity in service and increased earnings from power fund investments. Income from continuing operations at our oil and gas segment increased approximately \$2.3 million due to higher prices received compared to 2002 and a 33 percent increase in production. Income from continuing operations at our energy marketing segment decreased \$1.1 million primarily due to the CFTC Settlement offset by the increased volumes marketed. Income from continuing operations for the mining segment decreased \$1.9 million as higher production volumes were more than offset by lower average prices, higher operating costs and certain accruals for taxes and other items.

35

### Energy Marketing

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 172,262	\$ 163,576	\$ 354,689	\$ 244,156
Operating income	(754)	3,508	5,924	5,371
Income before change in accounting principle	(1,490)	2,397	2,755	3,903
Change in accounting principle	--	--	(2,870)	--
Net income	(1,490)	2,397	(115)	3,903

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** The increase in revenues is a result of a 4 percent increase in crude oil volumes marketed at an average price 2 percent higher than the prior year and an increase in oil transportation and oil terminal revenues offset by a decrease in revenue from lower gas marketing margins. Revenue increases from crude oil marketing were offset by a similar increase in the cost of crude oil sold.

Operating expenses increased \$12.9 million due to the \$3.0 million settlement reached with the CFTC, a 2 percent increase in the cost of crude oil sold, an increase in general and administrative expenses and an increase in operations and maintenance expense associated with increased volumes of crude oil transportation.

Income from continuing operations decreased \$3.9 million due to the CFTC Settlement, a decrease in oil and gas margins received and an increase in general and administrative expenses and operations and maintenance expense associated with increased volumes of crude oil transportation. As a result of changing commodity prices, net income was impacted by unrealized gains recognized through mark-to-market accounting treatment. Unrealized pre-tax mark-to-market gains for the three-month period ended June 30, 2003 were \$0.3 million compared to \$1.3 million in 2002 resulting in a quarter over quarter decrease of \$1.0 million pre-tax.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Revenues increased 45 percent, due primarily to a 16 percent increase in crude oil volumes marketed at average prices 24 percent higher than the same period in the prior year. In addition, revenues from natural gas marketing margins and oil transportation and terminal operations increased over the prior year. Revenue increases from crude oil marketing were offset by similar increases in the cost of crude oil sold.

Operating expenses increased \$110.0 million due to a \$103.2 million increase in the cost of crude oil sold, the \$3.0 million settlement reached with the CFTC and an increase in operations and maintenance expense associated with increased volumes of crude oil transportation.

Income from continuing operations decreased \$1.1 million due to the \$3.0 million CFTC Settlement partially offset by earnings from increased volumes marketed. Net income decreased \$4.0 million primarily due to the CFTC Settlement and a change in accounting principle of \$(2.9) million, net of tax, related to the adoption of EITF 02-3, partially offset by higher unrealized mark-to market gains and higher earnings from increased volumes marketed. As a result of changing commodity prices, net income was impacted by unrealized gains recognized through mark-to-market accounting treatment. Unrealized pre-tax mark-to-market gains for the six-month period ended June 30, 2003 were \$1.9 million compared to \$0.3 million in 2002 resulting in a period over period increase of \$1.6 million pre-tax.

36

## Power Generation

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 56,675	\$ 36,981	\$ 104,284	\$ 68,150
Operating income	30,117	15,419	47,033	30,700
Income before change in accounting principle	11,898	4,174	16,467	8,951
Change in accounting principle	--	--	--	896
Net income	11,898	4,174	16,467	9,847

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Revenue increased 53 percent and operating income nearly doubled for the three-month period ended June 30, 2003 compared to the same period in 2002 and is primarily attributed to additional generating capacity. As of June 30, 2003, we had 1,046 megawatts of independent power capacity in service compared to 646 megawatts at June 30, 2002.

Net income for the power generation segment increased \$7.7 million due to the additional generating capacity and increased earnings from power fund investments accounted for under the equity method of accounting. Increased earnings from our power fund investments primarily relate to a \$1.8 million after-tax benefit attributed to unrealized gains on investments accounted for under a fair value method of accounting at the power funds.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Revenue and operating income increased 53 percent for the six-month period ended June 30, 2003 compared to the same period in 2002 and is attributed to additional generating capacity and increased earnings from additional ownership of an energy partnership. As of June 30, 2003 we had 1,046 megawatts of independent power capacity in service compared to 646 megawatts at June 30, 2002.

Net income for the power generation segment increased \$6.6 million due to the additional generating capacity and increased earnings from power fund investments accounted for under the equity method of accounting. Increased earnings from our power fund investments primarily relate to \$1.8 million after-tax benefit attributed to unrealized gains on investments accounted for under a fair value method of accounting at the power funds. Results from 2002 reflect a \$1.9 million after-tax benefit related to the collection of previously reserved amounts for California operations and a \$0.9 million after-tax benefit from a change in accounting principle related to the adoption of SFAS 142.

37

## Oil and Gas

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 12,738	\$ 6,867	\$ 21,801	\$ 12,954
Operating income	4,197	1,765	6,831	2,783
Income before change in accounting principle	2,577	1,283	4,440	2,161
Change in accounting principle	--	--	(128)	--
Net income	2,577	1,283	4,312	2,161

The following is a summary of our internally estimated economically recoverable oil and gas reserves measured using constant product prices of \$30.18 per barrel of oil and \$5.33 per Mcf of natural gas as of June 30, 2003 and \$26.25 per barrel of oil and \$3.10 per Mcf of natural gas as of June 30, 2002. Significant increases in reserves are primarily the result of the March 2003 acquisition of Mallon Resources. Estimates of economically recoverable reserves for interim periods are based on independent year-end reserve studies updated for acquisitions, drilling activity, property sales and actual production during the interim period. These internally estimated reserves may differ from actual results.

	June 30	
	2003	2002
Barrels of oil (in millions)	4.7	4.6
Bcf of natural gas	113.8	23.2

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Revenue from our oil and gas production business segment increased 86 percent for the three-month period ended June 30, 2003, compared to the same period in 2002, due to a 53 percent increase in production primarily resulting from the March 2003 acquisition of Mallon Resources, and a 37 percent increase in the average price received.

Operating expenses increased 67 percent primarily due to the increase in production.

Income from continuing operations more than doubled due to the higher prices received and the increase in production compared to 2002.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Revenue from our oil and gas production segment increased 68 percent for the six month period ended June 30, 2003, compared to the same period in 2002, due to a 33 percent increase in production primarily resulting from the March 2003 acquisition of Mallon Resources, and a 40 percent increase in the average price received.

38

Operating expenses increased 47 percent primarily due to the increase in production.

Income from continuing operations more than doubled due to the higher prices received and the increase in production. Net income for 2003 also reflects a \$0.1 million after-tax charge from the change in accounting principle related to the adoption of SFAS 143.

### Mining

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 8,099	\$ 6,881	\$ 16,329	\$ 15,083
Operating income	640	2,054	2,374	4,434
Income before change in accounting principle	1,331	2,494	2,912	4,829
Change in accounting principle	--	--	318	--
Net income	1,331	2,494	3,230	4,829

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Revenue from our mining segment increased 18 percent for the three-month period ended June 30, 2003, compared to the same period in 2002. A 34 percent increase in tons of coal sold was partially offset by lower average prices received. The increase in tons of coal sold was primarily attributable to sales to the Wygen Plant which began commercial operation in February 2003 and sales of coal through the train load-out facility.

Operating expenses increased 55 percent or approximately \$2.6 million primarily due to higher operating costs related to the increase in production, accruals for taxes and certain other items and an increase in general and administrative costs.

Income from continuing operations decreased 47 percent due to an increase in general and administrative and direct mining costs, partially offset by the increase in tons of coal sold in the second quarter of 2003.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Revenue from our mining segment increased 8 percent for the six-month period ended June 30, 2003, compared to the same period in 2002. A 23 percent increase in tons of coal sold was partially offset by lower average prices received. The increase in tons of coal sold was primarily attributable to sales to the Wygen Plant which began commercial operation in February 2003 and sales of coal through the train load-out facility.

Operating expenses increased 31 percent or approximately \$3.3 million primarily due to higher operating costs related to the increase in production, accruals for taxes and certain other items and an increase in general and administrative costs.

Income from continuing operations decreased 40 percent due to an increase in general and administrative and direct mining costs, partially offset by the increase in tons of coal sold in the six-month period ended June 30, 2003. Net income for 2003 also reflects a \$0.3 million after-tax benefit from the change in accounting principle related to the adoption of SFAS 143.

39

### **Electric Utility Group**

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 39,207	\$ 38,303	\$ 82,970	\$ 75,494
Operating expenses	28,610	24,950	58,721	47,814
Operating income	\$ 10,597	\$ 13,353	\$ 24,249	\$ 27,680
Net income	\$ 4,722	\$ 6,792	\$ 11,421	\$ 14,614

The following table provides certain operating statistics:

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002

Firm (system) sales - MWh	447,400	462,000	952,900	968,000
Off-system sales - MWh	234,100	210,000	479,800	371,000

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** Electric utility revenues increased 2 percent for the three-month period ended June 30, 2003, compared to the same period in the prior year. The increase in revenue was primarily due to an 11 percent increase in off-system electric megawatt-hour sales, at a 10 percent increase in average prices received. Firm residential, commercial and industrial electricity revenues decreased 3 percent, 1 percent, and 7 percent, respectively. The decrease in industrial revenues was primarily due to the closing of Homestake Gold Mine and decreased electricity usage at the South Dakota Cement Plant.

Electric operating expenses increased 15 percent for the three month period ended June 30, 2003, compared to the same period in the prior year. The increase in operating expenses was primarily due to an increase in purchased power costs, additional costs incurred during a scheduled maintenance outage at our Osage plant, and an increase in depreciation, administrative and general costs. Purchased power and fuel costs increased \$2.1 million due to the increase in electric sales and higher gas prices. Depreciation expense increased \$0.4 million primarily due to the depreciation associated with the combustion turbines. Administrative and general expenses increased primarily due to a \$0.5 million increase in pension expense.

Interest expense increased \$1.0 million for the three month period, primarily due to interest associated with the \$75 million first mortgage bonds issued in August 2002.

Net income decreased \$2.1 million primarily due to the increase in purchased power expense, interest expense, depreciation expense and pension expense, partially offset by an increase in off-system electric sales and transmission revenues.

40

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** Electric utility revenues increased 10 percent for the six-month period ended June 30, 2003, compared to the same period in the prior year. The increase in revenue was primarily due to a 29 percent increase in off-system electric megawatt-hour sales at a 23 percent increase in average prices received. Industrial revenues decreased 8 percent, primarily due to the closing of Homestake Gold Mine and Federal Beef Processors and decreased electricity usage at the South Dakota Cement Plant.

Electric operating expenses increased 23 percent for the six-month period ended June 30, 2003 compared to the same period in the prior year. The increase in operating expense was primarily due to a \$6.2 million increase in purchased power costs, a \$1.3 million increase in fuel expense, and increased depreciation and general and administrative expenses. Purchased power and fuel costs increased due to the increase in electric sales and higher gas prices. The average cost of fuel and purchased power increased 17 percent in 2003 compared to the same period in 2002. Depreciation expense increased due to additional expense related to combustion turbines. A \$1.0 million increase in pension expense contributed to the increase in general and administrative expense.

Interest expense increased \$2.1 million for the six-month period, primarily due to interest associated with the \$75 million first mortgage bonds issued in August 2002.

Net income decreased \$3.2 million, primarily due to the increase in fuel and purchased power expense, depreciation expense and pension expense, partially offset by an increase in off-system electric and transmission revenues.

### Communications Group

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
	(in thousands)			
Revenue	\$ 11,773	\$ 8,217	\$ 20,459	\$ 15,763
Operating expenses	11,415	10,412	21,987	20,433
Operating income (loss)	\$ 358	\$ (2,195)	\$ (1,528)	\$ (4,670)
Net loss	\$ (433)	\$ (2,049)	\$ (2,242)	\$ (4,276)
	June 30 2003	March 31 2003	December 31 2002	June 30 2002
Business customers(a)	2,778	2,657	3,061	2,970
Business access lines	11,271	10,342	9,094	8,380
Residential customers	23,400	22,700	21,700	19,450

(a) In 2003, reported business customers were adjusted for the consolidation of multiple-location business customers, business orders and temporary business access lines.

41

**Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002.** The communications business group's net loss for the three-month period ended June 30, 2003 was \$0.4 million, compared to \$2.0 million in 2002. The performance improvement is due largely to a 43 percent increase in revenue as a result of a larger customer base and the recording of \$2.4 million of revenue associated with the 2003 - 2004 Black Hills telephone directory partially offset by directory publishing costs, increased depreciation and tax expense.

The total number of customers exceeded 26,000 at the end of June 2003 – a 17 percent increase over the customer base at June 30, 2002 and a 3 and 6 percent increase compared to March 31 2003 and December 31, 2002, respectively.

**Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002.** The communications business group's net loss for the six-month period ended June 30, 2003 was \$2.2 million, compared to \$4.3 million in 2002. The performance improvement is due to a larger customer base and the recording of \$2.4 million of revenue associated with the 2003 – 2004 Black Hills telephone directory, partially offset by directory publishing costs, higher depreciation and tax expenses.

The total number of customers exceeded 26,000 at the end of June 2003 – a 17 percent increase compared to June 30, 2002 and a 3 and 6 percent increase compared to March 31, 2003 and December 31, 2002, respectively.

### **Earnings Guidance**

Because of our commitment to a strong balance sheet and reflecting current prospects resulting from prevailing economic conditions, we recently revised our long-term average annual earnings per share growth target to approximately 8 percent.

### **Critical Accounting Policies**

There have been no material changes in our critical accounting policies from those reported in our 2002 Annual Report on Form 10-K filed with the Securities Exchange Commission. For more information on our critical accounting policies, see Part II, Item 7 in our 2002 Annual Report on Form 10-K.

42

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## **Liquidity and Capital Resources**

### **Cash Flow Activities**

During the six-month period ended June 30, 2003, we generated sufficient cash flow from operations to meet our operating needs, to pay dividends on common and preferred stock, to pay our long-term debt maturities and to fund a portion of our property additions. We plan to fund future property and investment additions primarily through a combination of operating cash flow, increased short-term debt, long-term debt and long-term non-recourse project financing.

Cash flows from operations increased \$34.3 million for the six-month period ended June 30, 2003 compared to the same period in the prior year primarily due to the increase in cash provided by earnings from operations and changes in working capital.

During the six months ended June 30, 2003, we had cash outflows for investing activities of \$53.7 million, which includes \$47.0 million for property, plant and equipment additions and the acquisition of assets.

During the six months ended June 30, 2003, we had cash outflows from financing activities of \$40.7 million, primarily due to the repayment of debt offset by the proceeds from a public offering of 4.6 million shares of common stock and the sale of \$250 million ten-year notes.

On April 30, 2003, we completed a public offering of 4.6 million shares of common stock at \$27 per share. Net proceeds were approximately \$118 million after commissions and expenses. The proceeds were used to pay off a \$50 million credit facility due in May 2003 and to repay \$68 million under our 364-day revolving credit facility which expires on August 26, 2003.

On May 21, 2003, we issued \$250 million 6.5 percent ten-year notes. Net proceeds from the note offering were approximately \$247 million after the discount, commissions and expenses. The proceeds were used to repay our \$35 million term loan due September 30, 2004, all of our short-term borrowings under our \$195 million, 364-day revolving credit facility and all of our outstanding notes payable under our three-year revolving credit facility which expires on August 24, 2004.

### **Dividends**

Dividends paid on our common stock totaled \$0.30 per share in each of the first and second quarters of 2003. This reflects a 3.4 percent increase, as approved by our board of directors in January 2003, from the prior periods. The determination of the amount of future cash dividends, if any, to be declared and paid will depend upon, among other things, our financial condition, funds from operations, the level of our capital expenditures, restrictions under our credit facilities and our future business prospects.

43

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## **Short-Term Liquidity and Financing Transactions**

Our principal sources of short-term liquidity are our revolving bank facilities and cash provided by operations. As of June 30, 2003, we had approximately \$79.5 million of cash unrestricted for operations and \$395 million of credit through revolving bank facilities. Approximately \$39.2 million of the cash balance at June 30, 2003 was restricted by subsidiary debt agreements that limit our subsidiaries' ability to dividend cash to the parent company. The bank facilities consisted of a \$195 million facility due August 26, 2003 and a \$200 million facility due August 27, 2004. These bank facilities can be used to fund our working capital needs, for general corporate purposes and to provide liquidity for a commercial paper program if implemented. At June 30, 2003, we had no bank borrowings outstanding under these facilities. After inclusion of applicable letters of credit, the remaining borrowing capacity under the bank facilities was \$348.4 million at June 30, 2003.

Our liquidity position was greatly enhanced during the second quarter due to the public offering of 4.6 million shares of common stock and \$250 million of ten-year notes (See discussion above under cash flow activities). These two offerings provided net proceeds of approximately \$365 million which were used to pay off the \$50 million credit facility due in May 2003, the \$35 million term loan due September 30, 2004, all of our borrowings under our 364-day revolving credit facility which expires on August 26, 2003, and all of our notes payable under our three-year revolving credit facility which expires on August 24, 2004.



We are currently in the process of negotiating a \$200 million three-year revolving credit facility which we expect to complete in August 2003.

The above bank facilities include covenants that are common in such arrangements. Several of the facilities require that we maintain a consolidated net worth in an amount of not less than the sum of \$425 million and 50 percent of the aggregate consolidated net income beginning April 1, 2002; a recourse leverage ratio not to exceed 0.65 to 1.00; and a fixed charge coverage ratio of not less than 1.5 to 1.0. In addition, the \$195 million 364-day credit facility and the \$200 million three-year credit facility contain a liquidity covenant that requires us to have \$30 million of liquid assets as of the last day of each fiscal quarter. Liquid assets are defined as unrestricted cash and available unused capacity under our credit facilities. If these covenants are violated, it would be considered an event of default entitling the lender to terminate the remaining commitment and accelerate all principal and interest outstanding. In addition, certain of our interest rate swap agreements include cross-default provisions. These provisions would allow the counterparty the right to terminate the swap agreement and liquidate at a prevailing market rate, in the event of default. As of June 30, 2003, we were in compliance with the above covenants.

Our consolidated net worth was \$678.4 million at June 30, 2003, which was approximately \$214 million in excess of the net worth we are required to maintain under the debt covenant described above. The long-term debt component of our capital structure at June 30, 2003 was 54.9 percent, our total debt leverage (long-term debt and short-term debt) was 55.7 percent, and our recourse leverage ratio was approximately 49 percent.

In addition, Enserco Energy Inc., our gas marketing unit, has a \$135 million uncommitted, discretionary line of credit to provide support for the purchase of natural gas. We provided no guarantee to the lender under this facility. This facility was extended during the second quarter to September 30, 2003. At June 30, 2003, there were outstanding letters of credit issued under the facility of \$53.6 million with no borrowing balances outstanding on the facility.

44

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Similarly, Black Hills Energy Resources, Inc., our oil marketing unit, has a \$40 million uncommitted, discretionary credit facility. This line of credit provided credit support for the purchases of crude oil by Black Hills Energy Resources. We provided no guarantee to the lender under this facility. At June 30, 2003, Black Hills Energy Resources had letters of credit outstanding of \$4.5 million.

On May 13, 2003, our corporate credit rating was downgraded to "BBB-" by Standard and Poor's Ratings Group. This credit rating downgrade had minimal effect on our interest rates under our credit agreements. Our issuer credit rating is "Baa3" by Moody's Investors Service. These security ratings are subject to revision and/or withdrawal at any time by the respective rating organizations. None of our current credit agreements contain acceleration triggers. If our credit rating drops below investment grade, however, pricing under these agreements would be affected. Based upon borrowings outstanding at June 30, 2003, a further credit downgrade to BB+ would increase interest expense by an additional \$1.5 million a year.

In July 2003, we entered into a definitive agreement to sell seven hydroelectric power plants in New York State for approximately \$186 million. The transaction is expected to reduce project indebtedness by approximately \$82 million and increase funds available for additional debt repayment or for capital deployment, should potential projects meet certain strict investment criteria. Based on historical earnings from these assets and reduced interest costs from an assumed debt reduction from proceeds, we anticipate that the sale could reduce annual earnings by approximately \$0.07 per share. The asset sale is expected to close in the third quarter of 2003.

Our ability to obtain additional financing will depend upon a number of factors, including our future performance and financial results and capital market conditions. We can provide no assurance that we will be able to raise additional capital on reasonable terms or at all.

There have been no other material changes in our forecasted changes in liquidity and capital requirements from those reported in Item 7 of our 2002 Annual Report on Form 10-K filed with the Securities Exchange Commission.

#### **Guarantees**

During the first quarter of 2003, a \$135 million completion guarantee for the expanded facilities under a construction loan for Black Hills Colorado expired. During the second quarter of 2003, a \$50 million guarantee of the secured financing for the Las Vegas II project expired when the associated debt was paid off and \$7.5 million of guarantees under certain energy marketing derivative, power and gas agreements expired or were terminated. In addition a new \$2.5 million guarantee was issued during the second quarter related to payments under energy marketing derivative, power and gas agreements. At June 30, 2003, we had guarantees totaling \$178.0 million in place.

45

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#### **Capital Requirements**

During the six months ended June 30, 2003, capital expenditures were approximately \$47 million. We currently expect capital expenditures for the entire year 2003 to approximate \$110 million, which is significantly less than forecasted earlier this year. Management continues active pursuit of appropriate investment opportunities, but presently, no significant asset acquisitions or other capital deployments for new or expanded projects are anticipated to close during the remainder of the year.

#### **RISK FACTORS**

##### **Results of an investigation into reporting of trading information could adversely affect our business.**

In March 2003, we received a request for information from the Commodity Futures Trading Commission, or CFTC, calling for the production, among other things, of "all documents relating to natural gas and electricity trading" in connection with the CFTC's industry wide investigation of trade and trade reporting practices of power and natural gas trading companies. We have cooperated fully with the CFTC producing documents and other materials in response to more specific requests relating to the reporting of natural gas trading information to energy industry publications, conducted our own internal investigation into the accuracy of information that former employees of Enserco Energy Inc., our gas marketing subsidiary, voluntarily reported to trade publications, and provided detailed reports of our investigation to the CFTC.

On July 31, 2003 we announced that a settlement was reached with the CFTC on this investigation, whereby we agreed to pay a civil monetary penalty of \$3.0 million (see Note 14 of the accompanying Notes to Condensed Consolidated Financial Statements). Although we agreed to this civil monetary penalty with the

CFTC we cannot guarantee that other legal proceedings, civil or criminal fines or penalties, or other regulatory action related to this issue will not occur which, in turn, could adversely affect our financial condition or results of operations.

**Ongoing regulatory industry-wide investigations into energy marketing trading activity and anomalous bidding behavior could adversely affect our business.**

FERC and other regulatory agencies continue their industry-wide investigations into inappropriate energy marketing trading activity. FERC recently issued an order commencing an investigation into “anomalous bidding behavior and practices” in the Western markets. FERC Staff will investigate entities that submitted bids for short-term power sales in excess of \$250 per megawatt in the markets operated by the CAISO and CAPX during the period May 1, 2000, to October 2, 2000. The Company cannot predict the outcome of these investigations and the effect they could have on our business.

46

**Ongoing changes in the United States utility industry, such as state and federal regulatory changes, a potential increase in the number of our competitors or the imposition of price limitations to address market volatility, could adversely affect our profitability.**

The United States electric utility industry is currently experiencing increasing competitive pressures as a result of:

- consumer demands;
- technological advances;
- deregulation;
- greater availability of natural gas-fired power generation; and
- other factors.

FERC has implemented and continues to propose regulatory changes to increase access to the nationwide transmission grid by utility and non-utility purchasers and sellers of electricity. In addition, a number of states have implemented or are considering or currently implementing methods to introduce and promote retail competition. Industry deregulation in some states has led to the disaggregation of some vertically integrated utilities into separate generation, transmission and distribution businesses, and deregulation initiatives in a number of states may encourage further disaggregation. As a result, significant additional and better capitalized competitors could become active in the generation, transmission and distribution segments of our industry, which could negatively affect our ability to expand our asset base.

In addition, the independent system operators who oversee most of the wholesale power markets have in the past imposed, and may in the future continue to impose, price limitations and other mechanisms to address some of the volatility in these markets. These types of price limitations and other mechanisms may adversely affect the profitability of those generating facilities that sell energy into the wholesale power markets. Given the extreme volatility and lack of meaningful long-term price history in some of these markets and the imposition of price limitations by independent system operators, we may not be able to operate profitably in all wholesale power markets.

Several bills, including the Energy Policy Act of 2003, have been introduced in Congress that would amend or repeal portions of PURPA, including the mandatory purchase requirements under which utilities are currently required to enter into contracts to purchase power from qualifying facilities. The proposed legislation would not affect our existing contracts. If the Energy Policy Act of 2003 or similar legislation is enacted, however, utilities would no longer be required to enter into new contracts with qualifying facilities if the FERC determines that the qualifying facility has access to a competitive wholesale market for the sale of electric energy. Any such legislation, if enacted, could adversely affect the value or profitability of our qualifying facilities.

There have been no other material changes in our risk factors from those reported in Items 1 and 2 of our 2002 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

47

## NEW ACCOUNTING PRONOUNCEMENTS

Other than the new pronouncements reported in our 2002 Annual Report on Form 10-K filed with the Securities Exchange Commission and those discussed in Note 4 of the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q, there have been no new accounting pronouncements issued that when implemented would require us to either retroactively restate prior period financial statements or record a cumulative catch-up adjustment.

### Forward Looking Statements

Some of the statements in this Form 10-Q include “forward-looking statements” as defined by the Securities and Exchange Commission, or SEC. We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical facts, included in this Form 10-Q that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. These forward-looking statements are based on assumptions, which we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties that, among other things, could cause actual results to differ materially from those contained in the forward-looking statements, including:

- the effects on our business resulting from the financial difficulties of other energy companies, including the effects on liquidity in the energy marketing and power generation businesses and markets and perceptions of the energy and energy marketing business;

- the effects on our business resulting from a lowering of our credit rating (or actions we may take in response to changing credit ratings criteria), including demands for increased collateral by our current or new counterparties, refusal by our current or potential counterparties or customers to enter into transactions with us and our inability to obtain credit or capital in amounts or on terms favorable to us;
- capital market conditions;
- unanticipated developments in the western power markets, including unanticipated governmental intervention, deterioration in the financial condition of counterparties, default on amounts due from counterparties, adverse changes in current or future litigation, market disruption and adverse changes in energy and commodity supply, volume and pricing and interest rates;
- pricing and transportation of commodities;
- population changes and demographic patterns;
- prevailing governmental policies and regulatory actions with respect to allowed rates of return, industry and rate structure, acquisition and disposal of assets and facilities, operation and construction of plant facilities, recovery of purchased power and other capital investments, and present or prospective wholesale and retail competition;
- the continuing efforts by or on behalf of the State of California to restructure its long-term power purchase contracts and efforts by regulators and private parties in several western states to recover refunds for alleged price manipulation;
- changes in and compliance with environmental and safety laws and policies;
- weather conditions;
- competition for retail and wholesale customers;
- market demand, including structural market changes;
- changes in tax rates or policies or in rates of inflation;
- changes in project costs;
- unanticipated changes in operating expenses or capital expenditures;
- technological advances by competitors;
- competition for new energy development opportunities;
- the cost and other effects of legal and administrative proceedings that influence our business;
- the effects on our business, including the availability of insurance, resulting from terrorist actions or responses to such actions;
- risk factors discussed in this Form 10-Q; and
- other factors discussed from time to time in our filings with the SEC.

New factors that could cause actual results to differ materially from those described in forward-looking statements emerge from time to time, and it is not possible for us to predict all such factors, or the extent to which any such factor or combination of factors may cause actual results to differ from those contained in any forward-looking statement. We assume no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events, or otherwise.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The following table provides a reconciliation of the activity in energy trading contracts marked to market during the six month period ended June 30, 2003 (in thousands):

Total fair value of natural gas marketing contract net assets at December 31, 2002	\$ 3,021
Net cash settled during the quarter on contracts that existed at December 31, 2002	(2,427)
Change in fair value due to change in techniques and assumptions	--
Unrealized gain/(loss) on new contracts entered during the six month period and still existing at June 30, 2003	3,848
Realized gain/(loss) on contracts that existed at December 31, 2002 and were settled during the six month period	(576)
Unrealized gain/(loss) on contracts that existed at December 31, 2002 and still exist at June 30, 2003	(4,428)
Total fair value of natural gas marketing contract net assets at June 30, 2003	\$ (562)

On January 1, 2003, the Company adopted EITF Issue No. 02-3. As described in Notes 3 and 13 of the Notes to Condensed Consolidated Financial Statements in this Form 10-Q, the adoption of EITF 02-3 resulted in certain energy trading activities no longer being accounted for at fair value, therefore, the above reconciliation does not present a complete picture of our overall portfolio of trading activities and our expected cash flows from those operations. The cumulative effect of the adoption of EITF 02-3 is included in the above reconciliation of fair value of energy trading contracts from December 31, 2002 to June 30, 2003.

At June 30, 2003, we had a mark to fair value unrealized loss of \$0.6 million for our natural gas marketing activities with substantially all of this amount current. The source of fair value measurements were as follows (in thousands):

Source of Fair Value	Maturities		Total Fair Value
	Less than 1 year	1 - 3 years	
Actively quoted (i.e., exchange-traded) prices	\$ 2,803	\$ 597	\$ 3,400
Prices provided by other external sources	(3,372)	(590)	(3,962)
Modeled	--	--	--
Total	\$ (569)	\$ 7	\$ (562)

There have been no material changes in market risk faced by us from those reported in our 2002 Annual Report on Form 10-K filed with the Securities Exchange Commission. For more information on market risk, see Part II, Item 7 in our 2002 Annual Report on Form 10-K, and Note 13 of our Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

50

## ITEM 4. CONTROLS AND PROCEDURES

### Evaluation of disclosure controls and procedures

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (Exchange Act)) as of June 30, 2003. Based on their evaluation, they have concluded that our disclosure controls and procedures are adequate and effective to ensure that material information relating to us that is included in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the required time periods.

### Changes in internal control over financial reporting

During the period covered by this Quarterly Report on Form 10-Q, there have been no changes in our internal control over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

51

## BLACK HILLS CORPORATION

### Part II - Other Information

#### Item 1. Legal Proceedings

For information regarding legal proceedings, see Note 12 in Item 8 of the Company's 2002 Annual Report on Form 10-K and Note 14 in Item 1 of Part I of this Quarterly Report on Form 10-Q, which information from Note 14 is incorporated by reference into this item.

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

- (a) The Annual Meeting of Shareholders was held on May 28, 2003.
- (b) The following Director was elected to serve until the Annual Meeting of Shareholders in 2005.

Daniel P. Landguth

The following directors were elected to serve until the Annual Meeting of Shareholders in 2006.

David C. Ebertz  
John R. Howard

Other Directors whose term of office continues are:

David Bruce B. Brundage  
Kay S. Jorgensen  
Richard Korpan \*

\* Elected to the Board effective June 1, 2003 to replace Steven J. Helmers.

(c) Matters Voted Upon at the Meeting

1. Elected one Class II Director to serve until the Annual Meeting of Shareholders in 2005.

Daniel P. Landguth	
Votes For	22,531,242
Votes Withheld	302,181

52

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2. Elected two Class III Directors to serve until the Annual Meeting of Shareholders in 2006.

David C. Ebertz	
Votes For	22,635,077
Votes Withheld	204,746

John R. Howard	
Votes For	22,545,548
Votes Withheld	294,275

3. Ratified the appointment of Deloitte & Touche LLP to serve as Black Hills Corporation's independent auditors in 2003.

Votes For	22,263,205
Votes Against	491,692
Abstain	84,926
Broker Non-Votes	--

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits –

Exhibit 4.1 Indenture dated as of May 21, 2003 between the Company and LaSalle Bank National Association, as Trustee.

Exhibit 4.2 First Supplemental Indenture dated as of May 21, 2003 between the Company and LaSalle Bank National Association, as Trustee.

Exhibit 31.1 Certification pursuant to Rule 13a – 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.

Exhibit 31.2 Certification pursuant to Rule 13a – 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.

Exhibit 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Exhibit 32.2 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

53

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(b) Reports on Form 8-K

We have filed the following Reports on Form 8-K during the quarter ended June 30, 2003:

Form 8-K dated April 16, 2003.

Reported under Item 5, that the Company issued a press release announcing corporate officer additions and promotions and under Item 7, Exhibits.

Form 8-K dated April 16, 2003.

Reported under Item 5, that the Company issued a press release announcing an internal investigation regarding trade reporting to energy publications in response to a Request for Information from the United States Commodity Futures Trading Commission and under Item 7, Exhibits.

Form 8-K dated April 21, 2003.

Reported under Items 9 and 12, that the Company issued a press release announcing expected first quarter 2003 earnings and under Item 7, Exhibits.

Form 8-K dated April 29, 2003.

Reported under Item 5, that the Company filed a Prospectus Supplement relating to the issuance and sale of the public offering of the Company's common stock and under Item 7, Exhibits pertaining to the Prospectus Supplement.

Form 8-K dated May 6, 2003.

Reported under Item 7, Exhibits and Item 9, that the Company issued a press release announcing the declaration of dividends and quarterly results for the quarter ended March 31, 2003.

Form 8-K dated May 20, 2003.

Reported under Item 5, that the Company filed a Prospectus Supplement relating to the issuance and sale of the public offering of 6.5% Notes due 2013, and Item 7, Exhibits pertaining to the Prospectus Supplement.

54

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BLACK HILLS CORPORATION

Signatures

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

BLACK HILLS CORPORATION

/S/ Daniel P. Landguth

Daniel P. Landguth, Chairman and  
Chief Executive Officer

/S/ Mark T. Thies

Mark T. Thies, Executive Vice President and  
Chief Financial Officer

Dated: August 13, 2003

55

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EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
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56

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BLACK HILLS CORPORATION  
AND  
LASALLE BANK NATIONAL ASSOCIATION  
AS TRUSTEE  
INDENTURE  
DATED AS OF MAY 21, 2003  
SENIOR DEBT SECURITIES

TABLE OF CONTENTS

		Page
ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION		
SECTION 1.1	DEFINITIONS.....	1
SECTION 1.2	COMPLIANCE CERTIFICATES AND OPINIONS.....	9
SECTION 1.3	FORM OF DOCUMENTS DELIVERED TO TRUSTEE.....	10
SECTION 1.4	ACTS OF HOLDERS; RECORD DATES.....	10
SECTION 1.5	NOTICES, ETC., TO TRUSTEE AND COMPANY.....	13
SECTION 1.6	NOTICE TO HOLDERS; WAIVER. ....	13
SECTION 1.7	CONFLICT WITH TRUST INDENTURE ACT.....	14
SECTION 1.8	EFFECT OF HEADINGS AND TABLE OF CONTENTS.....	14
SECTION 1.9	SUCCESSORS AND ASSIGNS.....	14
SECTION 1.10	SEPARABILITY CLAUSE.....	14
SECTION 1.11	BENEFITS OF INDENTURE. ....	14
SECTION 1.12	GOVERNING LAW. ....	15
SECTION 1.13	LEGAL HOLIDAYS.....	15
SECTION 1.14	INDENTURE AND SECURITIES SOLELY CORPORATE OBLIGATIONS. ....	15
SECTION 1.15	INDENTURE MAY BE EXECUTED IN COUNTERPARTS.....	15
ARTICLE II SECURITY FORMS		
SECTION 2.1	FORMS GENERALLY.....	16
SECTION 2.2	FORM OF LEGEND FOR GLOBAL SECURITIES.....	16
SECTION 2.3	FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.....	17
SECTION 2.4	FORM OF CONVERSION NOTICE.....	17
ARTICLE III THE SECURITIES		
SECTION 3.1	AMOUNT UNLIMITED; ISSUABLE IN SERIES.....	18
SECTION 3.2	DENOMINATIONS.....	22
SECTION 3.3	EXECUTION, AUTHENTICATION, DELIVERY AND DATING.....	22
SECTION 3.4	TEMPORARY SECURITIES.....	24
SECTION 3.5	REGISTRATION; REGISTRATION OF TRANSFER AND EXCHANGE. ....	25
SECTION 3.6	MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES.....	27
SECTION 3.7	PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.....	28
SECTION 3.8	PERSONS DEEMED OWNERS.....	30
SECTION 3.9	CANCELLATION.....	30
SECTION 3.10	COMPUTATION OF INTEREST.....	30
ARTICLE IV SATISFACTION AND DISCHARGE		
SECTION 4.1	SATISFACTION AND DISCHARGE OF INDENTURE.....	30
SECTION 4.2	APPLICATION OF TRUST MONEY.....	32
ARTICLE V REMEDIES		
SECTION 5.1	EVENTS OF DEFAULT.....	32
SECTION 5.2	ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.....	34
SECTION 5.3	COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE. ....	35
SECTION 5.4	TRUSTEE MAY FILE PROOFS OF CLAIM.....	36
SECTION 5.5	TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES. ....	36
SECTION 5.6	APPLICATION OF MONEY COLLECTED.....	37

SECTION 5.7	LIMITATION ON SUITS.....	37
SECTION 5.8	UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST AND TO CONVERT.....	38
SECTION 5.9	RESTORATION OF RIGHTS AND REMEDIES.....	38
SECTION 5.10	RIGHTS AND REMEDIES CUMULATIVE.....	38
SECTION 5.11	DELAY OR OMISSION NOT WAIVER.....	39
SECTION 5.12	CONTROL BY HOLDERS.....	39
SECTION 5.13	WAIVER OF PAST DEFAULTS. ....	39
SECTION 5.14	UNDERTAKING FOR COSTS.....	40
SECTION 5.15	WAIVER OF USURY, STAY OR EXTENSION LAWS.....	40

ARTICLE VI THE TRUSTEE

SECTION 6.1	CERTAIN DUTIES AND RESPONSIBILITIES.....	41
SECTION 6.2	NOTICE OF DEFAULTS.....	41
SECTION 6.3	CERTAIN RIGHTS OF TRUSTEE.....	41
SECTION 6.4	NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.....	43
SECTION 6.5	MAY HOLD SECURITIES AND ACT AS TRUSTEE UNDER OTHER INDENTURES.....	43
SECTION 6.6	MONEY HELD IN TRUST.....	43
SECTION 6.7	COMPENSATION AND REIMBURSEMENT.....	43
SECTION 6.8	CONFLICTING INTERESTS.....	44
SECTION 6.9	CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.....	44
SECTION 6.10	RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.....	45
SECTION 6.11	ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.....	46
SECTION 6.12	MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.....	48
SECTION 6.13	PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.....	48
SECTION 6.14	APPOINTMENT OF AUTHENTICATING AGENT.....	48

ARTICLE VII HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 7.1	COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.....	50
SECTION 7.2	PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.....	50
SECTION 7.3	REPORTS BY TRUSTEE.....	51
SECTION 7.4	REPORTS BY COMPANY.....	51

ARTICLE VIII CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 8.1	COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.....	52
SECTION 8.2	SUCCESSOR SUBSTITUTED.....	53

ARTICLE IX SUPPLEMENTAL INDENTURES

SECTION 9.1	SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.....	53
SECTION 9.2	SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS. ....	55
SECTION 9.3	EXECUTION OF SUPPLEMENTAL INDENTURES.....	56
SECTION 9.4	EFFECT OF SUPPLEMENTAL INDENTURES.....	57
SECTION 9.5	CONFORMITY WITH TRUST INDENTURE ACT.....	57
SECTION 9.6	REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.....	57

ARTICLE X COVENANTS

SECTION 10.1	PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.....	57
SECTION 10.2	MAINTENANCE OF OFFICE OR AGENCY.....	58
SECTION 10.3	MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.....	58
SECTION 10.4	STATEMENT BY OFFICERS AS TO DEFAULT.....	60
SECTION 10.5	EXISTENCE.....	60
SECTION 10.6	WAIVER OF CERTAIN COVENANTS.....	60

ARTICLE XI REDEMPTION OF SECURITIES

SECTION 11.1	APPLICABILITY OF ARTICLE.....	60
SECTION 11.2	ELECTION TO REDEEM; NOTICE TO TRUSTEE.....	61
SECTION 11.3	SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED. ....	61
SECTION 11.4	NOTICE OF REDEMPTION.....	62
SECTION 11.5	DEPOSIT OF REDEMPTION PRICE.....	63
SECTION 11.6	SECURITIES PAYABLE ON REDEMPTION DATE.....	63
SECTION 11.7	SECURITIES REDEEMED IN PART.....	64

ARTICLE XII SINKING FUNDS

SECTION 12.1	APPLICABILITY OF ARTICLE.....	64
SECTION 12.2	SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES. ....	65
SECTION 12.3	REDEMPTION OF SECURITIES FOR SINKING FUND.....	65

ARTICLE XIII DEFEASANCE AND COVENANT DEFEASANCE

SECTION 13.1	COMPANY'S OPTION TO EFFECT DEFEASANCE OR COVENANT DEFEASANCE.....	66
SECTION 13.2	DEFEASANCE AND DISCHARGE.....	66



SECTION 13.3	COVENANT DEFEASANCE.....	67
SECTION 13.4	CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE.....	67
SECTION 13.5	DEPOSITED MONEY AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; MISCELLANEOUS PROVISIONS.....	70
SECTION 13.6	REINSTATEMENT.....	70

ARTICLE XIV CONVERSION OF SECURITIES

SECTION 14.1	APPLICABILITY OF ARTICLE.....	71
SECTION 14.2	EXERCISE OF CONVERSION PRIVILEGE.....	71
SECTION 14.3	NO FRACTIONAL SHARES.....	72
SECTION 14.4	ADJUSTMENT OF CONVERSION PRICE.....	73
SECTION 14.5	NOTICE OF CERTAIN CORPORATE ACTIONS.....	74
SECTION 14.6	RESERVATION OF SHARES OF COMMON STOCK.....	75
SECTION 14.7	PAYMENT OF CERTAIN TAXES UPON CONVERSION.....	75
SECTION 14.8	NONASSESSABILITY.....	75
SECTION 14.9	PROVISION IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS.....	75
SECTION 14.10	DUTIES OF TRUSTEE REGARDING CONVERSION.....	76
SECTION 14.11	REPAYMENT OF CERTAIN FUNDS UPON CONVERSION.....	77

INDENTURE, dated as of May 21, 2003, between Black Hills Corporation, a corporation duly organized and existing under the laws of the State of South Dakota (herein called the “Company”), having its principal executive office at 625 Ninth Street, Rapid City, South Dakota 57701, and LaSalle Bank National Association, a national banking association organized and existing under the laws of the United States of America, as Trustee (herein called the “Trustee”).

WITNESSETH:

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the “Securities”), to be issued in one or more series as provided in this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done;

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof appertaining, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

I.1 DEFINITIONS.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
  - (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- 
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, 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 at the date of such computation;
  - (4) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture; and
  - (5) the words “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.

“Act,” when used with respect to any Holder, has the meaning specified in Section 1.4.

“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.

“Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 6.14 to act on behalf of the Trustee to authenticate Securities of one or more series.

“Board of Directors” means either the board of directors of the Company or any duly authorized committee of that board empowered to act for it with respect to this Indenture.

“Board Resolution” means a copy of a resolution 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 Trustee.

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“Business Day,” when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

“Commission” means the Securities and Exchange Commission, 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 at such time.

“Common Stock” includes any stock of any class of the Company, which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which is not subject to redemption by the Company; provided, however, subject to the provisions of Section 14.9, shares issuable upon conversion of Securities shall include only shares of the class designated as Common Stock of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, further that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Company” means the corporation named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by its Chairman of the Board, its President or a Vice President, and by its principal financial officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Constituent Person” has the meaning specified in Section 14.9.

“Corporate Trust Office” means the corporate trust office of the Trustee at 135 S. LaSalle Street, Suite 1960, Chicago, Illinois, Attention: Corporate Trust Department, or such other office, designated by the Trustee by written notice to the Company, at which at any particular time its corporate trust business shall be administered.

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“Corporation” means a corporation, association, company, joint-stock company or business trust.

“Covenant Defeasance” has the meaning specified in Section 13.3.

“Defaulted Interest” has the meaning specified in Section 3.7.

“Defeasance” has the meaning specified in Section 13.2.

“Depository” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 3.1.

“Event of Default” has the meaning specified in Section 5.1.

“Exchange Act” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Expiration Date” has the meaning specified in Section 1.4.

“Global Security” means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 2.2 (or such legend as may be specified as contemplated by Section 3.1 for such Securities).

“Holder” means a Person in whose name a Security is registered in the Security Register.

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“Indenture” means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term “Indenture” shall also include the terms of particular series of Securities established as contemplated by Section 3.1; provided, however, that if at any time more than one Person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities, “Indenture” shall mean, with respect to such series of Securities for which any such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities for which such Person is Trustee established as contemplated by Section 3.1, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Trustee, but to which such person, as such Trustee, was not a party; provided, further that in the event that this Indenture is supplemented or amended by one or more indentures supplemental hereto which are only applicable to certain series of Securities, the term “Indenture” for a particular series of Securities shall only include the supplemental indentures applicable thereto.

“Interest,” when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Interest Payment Date,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Investment Company Act” means the Investment Company Act of 1940 and any statute successor thereto, in each case as amended from time to time.

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

“Notice of Default” means a written notice of the kind specified in Section 5.1(4).

“Officers’ Certificate” means a certificate signed by the Chairman of the Board, the President or a Vice President, and by the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 10.4 shall be the principal executive, financial or accounting officer of the Company.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for, or an employee of, the Company, and who shall be reasonably acceptable to the Trustee.

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“Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

“Outstanding,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except

- (1) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (3) Securities as to which Defeasance has been effected pursuant to Section 13.2; and
- (4) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

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provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 5.2, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 3.1, (C) the principal amount of a Security denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 3.1, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

“Paying Agent” means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” when used with respect to the Securities of any series, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Record Date” means any Regular Record Date or Special Record Date.

“Redemption Date,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

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“Redemption Price,” when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

“Securities” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Securities Act” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 3.5.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

“Stated Maturity,” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” means, with respect to any Person, (i) any corporation or trust of which a majority of the outstanding voting securities is at the time, and (ii) any partnership of which a majority of the equity capital or profit interest is at the time, owned, directly or indirectly, by the Company, by one or more other Subsidiaries or by the Company and one or more Subsidiaries. For the purposes of this definition, “voting securities” means securities which ordinarily have voting power for the election of directors, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

“Trust Indenture Act” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

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“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“ U.S. Government Obligation” has the meaning specified in Section 13.4.

“Vice President,” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

## I.2 COMPLIANCE CERTIFICATES AND OPINIONS.

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 such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include,

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) 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;
- (3) a statement that, in the opinion of each such individual, 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
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

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## I.3 FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

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 his or her 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 stating that the information with respect to such factual matters is in the possession 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 Indenture, they may, but need not, be consolidated and form one instrument.

## I.4 ACTS OF HOLDERS; RECORD DATES.

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Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made 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 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 Trustee and, where it is hereby expressly required, to the Company. The Trustee shall promptly deliver to the Company copies of all such instrument or instruments delivered to the Trustee. 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 Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Securities shall be proved by the Security Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security 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 Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

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The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, vote, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing 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 canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series 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 Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(2) or (iv) any direction referred to in Section 5.12, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee 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 canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6.

With respect to any record date set pursuant to this Section, the party hereto which sets such record dates may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto which set such record date 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.

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Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

#### I.5 NOTICES, ETC., TO TRUSTEE AND COMPANY.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

- (1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (or by facsimile transmissions, provided that oral confirmation of receipt shall have been received) to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Department, or
- (2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer.

#### I.6 NOTICE TO HOLDERS; WAIVER.

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Where this Indenture 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, or delivered by hand or overnight courier to each Holder affected by such event, at its address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. Neither the failure to

mail or deliver by hand or overnight courier any such notice, nor any defect in any such notice so mailed or delivered by hand or overnight courier, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture 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 Trustee, 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 Trustee shall constitute a sufficient notification for every purpose hereunder.

#### I.7 CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

#### I.8 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.

#### I.9 SUCCESSORS AND ASSIGNS.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

#### I.10 SEPARABILITY CLAUSE.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### I.11 BENEFITS OF INDENTURE.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

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#### I.12 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO SUCH STATE'S CONFLICTS OF LAWS PRINCIPLES.

#### I.13 LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert a Security at a particular conversion price shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) or, if applicable to a particular series of Securities, conversion need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity or on such last day for conversion, as the case may be.

#### I.14 INDENTURE AND SECURITIES SOLELY CORPORATE OBLIGATIONS

No recourse for the payment of the principal of or premium, if any, or interest on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, 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 all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

#### I.15 INDENTURE MAY BE EXECUTED IN COUNTERPARTS.

This instrument 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 instruments.

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## ARTICLE II SECURITY FORMS

#### II.1 FORMS GENERALLY.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more 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 and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities. Any such Board

Resolution or record of such action shall have attached thereto a true and correct copy of the form of Security referred to therein approved by or pursuant to such Board Resolution.

II.2 FORM OF LEGEND FOR GLOBAL SECURITIES.

Unless otherwise specified as contemplated by Section 3.1 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

II.3 FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

The Trustee's certificates 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.

LaSalle Bank National Association,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

II.4 FORM OF CONVERSION NOTICE.

Conversion notices shall be in substantially the following form:

To Black Hills Corporation:

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or portion hereof (which is \$1,000 or an integral multiple thereof) below designated, into shares of Common Stock of the Company in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If this Notice is being delivered on a date after the close of business on a Regular Record Date and prior to the opening of business on the related Interest Payment Date (unless this Security or the portion thereof being converted has been called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day), this Notice is accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest payable on such Interest Payment Date of the principal of this Security to be converted. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

Principal Amount to be Converted (in an integral multiple of \$1,000, if less than all)

U.S. \$ \_\_\_\_\_

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

Signature(s) must be guaranteed by an eligible guarantor institution (banks, stock brokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15.

-----  
Signature Guaranty

Fill in for registration of shares of Common Stock and Security if to be issued otherwise than to the registered Holder.

-----  
(Name)

-----  
Social Security or Other Taxpayer  
Identification Number

-----  
(Address)

-----  
Please print Name and Address

(including zip code number)

[The above conversion notice is to be modified, as appropriate, for conversion into other securities or property of the Company.]

ARTICLE III  
THE SECURITIES

III.1 AMOUNT UNLIMITED; ISSUABLE IN SERIES.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

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The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 3.3, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);
  - (2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.7 and except for any Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder);
  - (3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;
  - (4) the date or dates on which the principal of any Securities of the series is payable;
  - (5) the rate or rates at which any Securities of the series shall bear interest, if any, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any such interest payable on any Interest Payment Date;
  - (6) the place or places where the principal of and any premium and interest on any Securities of the series shall be payable;
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- (7) the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than by a Board Resolution, the manner in which any election by the Company to redeem the Securities shall be evidenced;
  - (8) the obligation, if any, of the Company to redeem or purchase any Securities of the series pursuant to any sinking fund or analogous provisions or at the option of the Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
  - (9) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which any Securities of the series shall be issuable;
  - (10) if the amount of principal of or any premium or interest on any Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;
  - (11) if other than the currency of the United States of America, the currency, currencies or currency units in which the principal of or any premium or interest on any Securities of the series shall be payable and the manner of determining the equivalent thereof in the currency of the United States of America for any purpose, including for purposes of the definition of "Outstanding" in Section 1.1;
  - (12) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or the Holder thereof, in one or more currencies or currency units other than that or those in which such Securities are stated to be payable, the currency, currencies or currency units in which the principal of or any premium or interest on such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);
- 
- (13) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;
  - (14) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);
  - (15) if applicable, that the Securities of the series, in whole or any specified part, shall be defeasible pursuant to Section 13.2 or Section 13.3 or both such Sections and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;
  - (16) if applicable, the terms of any right to convert Securities of the series into shares of Common Stock of the Company or other securities or property;
  - (17) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositories for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 2.2 and any circumstances in addition to or in lieu of those set forth in Clause (2) of the last paragraph of Section 3.5 in which



any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depository for such Global Security or a nominee thereof;

(18) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 5.2;

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(19) any addition to or change in the covenants set forth in Article 10 which applies to Securities of the series; and

(20) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 9.1(5)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 3.3) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

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

### III.2 DENOMINATIONS.

The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

### III.3 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its principal financial officer, its President or one of its Vice Presidents, attested by its Treasurer, Secretary or one of its Assistant Treasurers or Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

Securities 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 Securities or did not hold such offices at the date of such Securities.

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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, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions as permitted by Sections 2.1 and 3.1, 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 6.1) shall be fully protected in relying upon, a copy of such Board Resolution, the Officers' Certificate setting forth the terms of the series and an Opinion of Counsel, with such Opinion of Counsel stating,

- (1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;
- (2) if the terms of such Securities have been established by or pursuant to Board Resolution as permitted by Section 3.1, that such terms have been established in conformity with the provisions of this Indenture; and
- (3) that such Securities, when 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, will constitute valid and legally 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.

If such form or terms have been so established, 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.

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Notwithstanding the provisions of Section 3.1 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the

Trustee for cancellation as provided in Section 3.9, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Neither the Company nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Security, check, advice of payment or redemption notice, and any such document may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Company nor the Trustee shall be liable for any inaccuracy in such numbers.

#### III.4 TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. 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 and tenor.

#### III.5 REGISTRATION; REGISTRATION OF TRANSFER AND EXCHANGE.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar 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 Securities, but the Company may require payment 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 Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of that series (or of that series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Securities selected for redemption under Section 11.3 and ending at the close of business on the day of such mailing, or (B) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

The provisions of Clauses (1), (2), (3) and (4) below shall apply only to Global Securities:

- (1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depository designated for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.
- (2) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depository for such Global Security or a nominee thereof unless (A) such Depository (i) has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security or (C) there shall exist such circumstances, if any, in addition to or in lieu of the foregoing as have been specified for this purpose as contemplated by Section 3.1.
- (3) Subject to Clause (2) above, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depository for such Global Security shall direct.
- (4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section, Section 3.4, 3.6, 9.6 or 11.7 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless

such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof.

### III.6 MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, 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 expenses (including the fees and expenses of the Trustee) connected therewith.

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Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued 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 Securities.

### III.7 PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Except as otherwise provided as contemplated by Section 3.1 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

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- (1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Securities of such series in the manner set forth in Section 1.6, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).
  - (2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Subject to the provisions of Section 14.2, in the case of any Security (or any part thereof) which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security the principal of (or premium, if any, on) which shall become due and payable, whether at Stated Maturity or by declaration of acceleration prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or any one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence or in Section 14.2, in the case of any Security (or any part thereof) which is converted, interest whose Stated Maturity is after the date of conversion of such Security (or such part thereof) shall not be payable.

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### III.8 PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and

(subject to Section 3.7) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

### III.9 CANCELLATION.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be disposed of as directed by a Company Order.

### III.10 COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

## ARTICLE IV SATISFACTION AND DISCHARGE

### IV.1 SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

- (1) either
  - (A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Trustee or the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or
  - (B) all such Securities not theretofore delivered to the Trustee for cancellation
    - (i) have become due and payable, or
    - (ii) will become due and payable at their Stated Maturity within one year, or
    - (iii) are to be called for redemption 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, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, money in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;
- (2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and
- (3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the obligations of the Trustee to any Authenticating Agent under Section 6.14 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive.

### IV.2 APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the 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 Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee.

## ARTICLE V

### REMEDIES

### V.1 EVENTS OF DEFAULT.

"Event of Default," wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or
  - (2) default in the payment of the principal of or any premium on any Security of that series at its Maturity; or
  - (3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series; or
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- (4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or
  - (5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging 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 any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or
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- (6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or
  - (7) any other Event of Default provided with respect to Securities of that series.

## V.2 ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default specified in Section 5.1(5) or 5.1(6)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof) to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable. If an Event of Default specified in Section 5.1(5) or 5.1(6) with respect to Securities of any series at the time Outstanding occurs, the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof) shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

- (1) the Company has paid or deposited with the Trustee a sum sufficient to pay

all overdue interest on all Securities of that series,

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the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,

to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

- (1) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13. No such rescission shall affect any subsequent default or impair any right consequent thereon.

## V.3 COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

*The Company covenants that if*

- (1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or
  - (2) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.
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If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### V.4 TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, 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 it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

#### V.5 TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

#### V.6 APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium, if any, and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium, if any, and interest, respectively; and

THIRD: The balance, if any, to the Company or any other Person or Persons entitled thereto.

#### V.7 LIMITATION ON SUITS.

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;
  - (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
  - (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
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- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
  - (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series; it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

#### V.8 UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST AND TO CONVERT.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 3.7) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), to convert such Securities in accordance with Article 14 to the extent that such right to convert is applicable to such Security and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

#### V.9 RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

#### V.10 RIGHTS AND REMEDIES CUMULATIVE.

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Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or 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.

#### V.11 DELAY OR OMISSION NOT WAIVER.

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 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 (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

#### V.12 CONTROL BY HOLDERS.

The Holders of a majority in principal amount of the Outstanding Securities of any series 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, with respect to the Securities of such series, provided that:

- (1) such direction shall not be in conflict with any rule of law or with this Indenture and the Trustee shall not have determined that the action so directed would be unjustly prejudicial to Holders of Securities of that series, or any other series, not taking part in such direction; and
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction or this Indenture.

#### V.13 WAIVER OF PAST DEFAULTS.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except:

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- (1) a default in the payment of the principal of or any premium or interest on any Security of such series; or
  - (2) to the extent such right is applicable to such Security, a failure by the Company on request to convert any Security into Common Stock; or
  - (3) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series 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.

#### V.14 UNDERTAKING FOR COSTS.

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, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or in any suit for the enforcement of the right to convert any Security in accordance with Article 14.

#### V.15 WAIVER OF USURY, 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 usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE VI

### THE TRUSTEE

#### VI.1 CERTAIN DUTIES AND RESPONSIBILITIES.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. Notwithstanding the foregoing, no provision of 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 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. 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.

#### VI.2 NOTICE OF DEFAULTS.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.1(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

#### VI.3 CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 6.1:

- (1) the Trustee may rely and shall be 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 believed by it to be genuine and to have been signed or presented by the proper party or parties;

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- (2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;
- (3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) is entitled to and may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
- (4) the Trustee may consult with counsel and the written 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;
- (5) 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 Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- (6) 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, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and
- (7) 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 with due care by it hereunder.

#### VI.4 NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or priority of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### VI.5 MAY HOLD SECURITIES AND ACT AS TRUSTEE UNDER OTHER INDENTURES.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Subject to the limitations imposed by the Trust Indenture Act, nothing in this Indenture shall prohibit the Trustee from becoming and acting as trustee under other indentures under which other securities, or certificates of interest of participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

#### VI.6 MONEY HELD IN TRUST.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.



## VI.7 COMPENSATION AND REIMBURSEMENT.

*The Company agrees:*

- (1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

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- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and
- (3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

## VI.8 CONFLICTING INTERESTS.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

## VI.9 CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has (or if the Trustee is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of at least \$50,000,000. If any such Person or bank holding company publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person or bank holding company 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 the Trustee with respect to the Securities of any series 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.

## VI.10 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

If at any time:

- (1) the Trustee shall fail to comply with Section 6.8 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or
- (2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or
- (3) 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 of rehabilitation, conservation or liquidation, then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (B) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security 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 with respect to all Securities and the appointment of a successor Trustee or Trustees.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.11, the retiring Trustee may petition, or any Holder who has been a bona fide Holder of a Security of such series

for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

#### VI.11 ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

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In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee 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 of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

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 one or more 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 that or those 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 that or those 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 that or those series to which the appointment of such successor Trustee relates; but, on 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 that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

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#### VI.12 MERGER, CONVERSION, 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 the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

#### VI.13 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

#### VI.14 APPOINTMENT OF AUTHENTICATING AGENT.

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The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and 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 be acceptable to the Company and shall at all times be a corporation 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 act as Authenticating Agent, having (or if the Authenticating Agent is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes 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 Authenticating Agent 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, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be 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.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof 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 such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment in the manner provided in Section 1.6 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. 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. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.7.

If an appointment with respect to one or more series is made pursuant to this Section 6.12, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

LaSalle Bank National Association,  
as Trustee

By: \_\_\_\_\_

As Authenticating Agent

By: \_\_\_\_\_

Authorized Officer

## ARTICLE VII

### HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

#### VII.1 COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

The Company will furnish or cause to be furnished to the Trustee:

- (1) semi-annually, not later than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of such Regular Record Date, as the case may be; and
- (2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as Security Registrar.

#### VII.2 PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

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The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

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 agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

#### VII.3 REPORTS BY TRUSTEE.

The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than July 1 in each calendar year, commencing with the first July 1 after the first issuance of Securities pursuant to this Indenture.

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange.

#### VII.4 REPORTS BY COMPANY.

The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to the Trust Indenture Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

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## ARTICLE VIII

### CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

#### VIII.1 COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

- (1) in case the Company shall consolidate with or merge into another Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and the conversion rights shall be provided for in accordance with Article 14, if applicable, or as otherwise specified pursuant to Section 3.1, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's assets;
- (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or any Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and
- (3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

#### VIII.2 SUCCESSOR SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease 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 Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

#### IX.1 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company, or successive successions, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or
- (3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or
- (4) to add to 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, or to permit or facilitate the issuance of Securities in uncertificated form; or
- (5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or
- (6) to secure the Securities; or
- (7) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or
- (8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series 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, pursuant to the requirements of Section 6.11; or

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- (9) to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article 14, including providing for the conversion of the securities into any security (other than the Common Stock of the Company) or property of the Company; or
  - (10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this Clause (10) shall not adversely affect the interests of the Holders of Securities of any series in any material respect; or
  - (11) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Articles Four and Thirteen, provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities in any material respect.

#### IX.2 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

- (1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or
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- (2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or
  - (3) modify any of the provisions of this Section, Section 5.13 or Section 10.06, 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 Holder of each Outstanding Security affected thereby; provided, however, that this clause 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 and Section 10.6, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.1(8), or
  - (4) if applicable, make any change that adversely affects the right to convert any security as provided in Article 14 or pursuant to Section 3.1 (except as permitted by Section 9.1(9)) or decrease the conversion rate or increase the conversion price of any such security. 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 which modifies the rights of the Holders of 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 of any other series.

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

#### IX.3 EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 6.1 and 6.3) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### IX.4 EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

#### IX.5 CONFORMITY WITH TRUST INDENTURE ACT.

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

#### IX.6 REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

## COVENANTS

## X.1 PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

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## X.2 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities of that series may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee 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 Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands. Unless otherwise provided in a supplemental indenture or pursuant to Section 3.1 hereof, the Place of Payment for any series of Securities shall be the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series 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 each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

## X.3 MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

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Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee 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, that such Paying Agent will (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for a period ending on the earlier of the date that is ten Business Days prior to the date such money would escheat to the State or two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; 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, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in each Place of Payment, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

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## X.4 STATEMENT BY OFFICERS AS TO DEFAULT.

The Company will deliver to the Trustee, 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 best 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 Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The fiscal year of the Company currently ends on December 31; and the Company will give the Trustee prompt written notice of any change of its fiscal year.

## X.5 EXISTENCE.

Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

## X.6 WAIVER OF CERTAIN COVENANTS.

Except as otherwise specified as contemplated by Section 3.1 for Securities of such series, the Company may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Section 3.1(19) or 9.1(2) for the benefit of the Holders of such series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision 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 term, provision or condition shall remain in full force and effect.

## ARTICLE XI

### REDEMPTION OF SECURITIES

#### XI.1 APPLICABILITY OF ARTICLE.

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

#### XI.2 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities. In case of any redemption at the election of the Company of less than all the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. 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 elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

#### XI.3 SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by lot, or in the Trustee's discretion, on a pro-rata basis, provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

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The Trustee shall promptly notify the Company in writing of the Securities selected for redemption as aforesaid and, in case of any Securities selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

#### XI.4 NOTICE OF REDEMPTION.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to each Holder of Securities to be redeemed, at its address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date,
  - (2) the Redemption Price (including accrued interest, if any),
  - (3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,
  - (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,
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- (5) the place or places where each such Security is to be surrendered for payment of the Redemption Price,
  - (6) if applicable, the conversion price, the date on which the right to convert the principal of the Securities or the portions thereof to be redeemed will terminate, and the place or places where such Securities may be surrendered for conversion, and

(7) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable.

#### XI.5 DEPOSIT OF REDEMPTION PRICE.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to the right of any Holder of such Security to receive interest as provided in the last paragraph of Section 3.7) be paid to the Company on Company Request, or if then held by the Company, shall be discharged from such trust.

#### XI.6 SECURITIES PAYABLE ON REDEMPTION DATE.

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Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

#### XI.7 SECURITIES REDEEMED IN PART.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or its attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

### ARTICLE XII

#### SINKING FUNDS

##### XII.1 APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 3.1 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "optional sinking fund payment." If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

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##### XII.2 SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

##### XII.3 REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 60 days prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

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### ARTICLE XIII



XIII.1 COMPANY'S OPTION TO EFFECT DEFEASANCE OR COVENANT DEFEASANCE.

The Company may elect, at its option at any time, to have Section 13.2 or Section 13.3 applied to any Securities or any series of Securities, as the case may be, designated pursuant to Section 3.1 as being defeasible pursuant to such Section 13.2 or 13.3, in accordance with any applicable requirements provided pursuant to Section 3.1 and upon compliance with the conditions set forth below in this Article. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 3.1 for such Securities.

XIII.2 DEFEASANCE AND DISCHARGE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all 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), subject to the following which shall survive until otherwise terminated or discharged hereunder:

- (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 13.4 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due;
- (2) the Company's obligations with respect to such Securities under Sections 3.4, 3.5, 3.6, 10.2 and 10.3, and, if applicable, Article 14;
- (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder; and
- (4) this Article.

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Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 13.3 applied to such Securities.

XIII.3 COVENANT DEFEASANCE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be:

- (1) the Company shall be released from its obligations under any covenants provided pursuant to Section 3.1(19) or 9.1(2) or for the benefit of the Holders of such Securities; and
- (2) the occurrence of any event specified in any covenants provided pursuant to Section 3.1(19) or 9.1(2) shall be deemed not to be or result in an Event of Default,

in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such 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 specified Section (to the extent so specified in the case of Section 5.1(4)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

XIII.4 CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE.

The following shall be the conditions to the application of Section 13.2 or Section 13.3 to any Securities or any series of Securities, as the case may be:

- (1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 6.9 and agrees to comply with the provisions of this Article 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 benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations 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, money in an amount, or (C) a combination thereof, in each case sufficient, 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 any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "U.S. Government Obligation" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.
- (2) In the event of an election to have Section 13.2 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the

deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

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- (3) In the event of an election to have Section 13.3 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.
  - (4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted as a result of such deposit.
  - (5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities shall have occurred and be continuing at the time of such deposit or, with regard to any such event specified in Sections 5.1(5) and (6), at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).
  - (6) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Securities are in default within the meaning of such Act).
  - (7) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.
  - (8) Such Defeasance or Covenant Defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act unless such trust shall be registered under such Act or exempt from registration thereunder.
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- (9) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

#### XIII.5 DEPOSITED MONEY AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; MISCELLANEOUS PROVISIONS.

Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 13.6, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 13.4 in respect of any Securities 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 such 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 any premium and interest, but money so held in trust 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 U.S. Government Obligations deposited pursuant to Section 13.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 13.4 with respect to any Securities 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 the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

#### XIII.6 REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations under this Indenture and such Securities from which the Company has been discharged or released pursuant to Section 13.2 or 13.3 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Securities, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.5 with respect to such Securities in accordance with this Article; provided, however, that if the Company makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

### ARTICLE XIV

#### CONVERSION OF SECURITIES

##### APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to the Securities of any series which are convertible into shares of Common Stock of the Company, and the issuance of such shares of Common Stock upon the conversion of such Securities, except as otherwise specified as contemplated by Section 3.1 for the Securities of such series.

##### EXERCISE OF CONVERSION PRIVILEGE.

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In order to exercise a conversion privilege, the Holder of a Security of a series with such a privilege shall surrender such Security to the Company at the office or agency maintained for that purpose pursuant to Section 10.2, accompanied by a duly executed conversion notice to the Company substantially in the

form set forth in Section 2.4 stating that the Holder elects to convert such Security or a specified portion thereof. Such notice shall also state, if different from the name and address of such Holder, the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. Securities surrendered for conversion shall (if so required by the Company or the Trustee) be duly endorsed by or accompanied by instruments of transfer in forms satisfactory to the Company and the Trustee duly executed by the registered Holder or its attorney duly authorized in writing; and Securities so surrendered for conversion (in whole or in part) during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (excluding Securities or portions thereof called for redemption during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day) shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Security then being converted, and such interest shall be payable to such registered Holder notwithstanding the conversion of such Security, subject to the provisions of Section 3.7 relating to the payment of Defaulted Interest by the Company. As promptly as practicable after the receipt of such notice and of any payment required pursuant to a Board Resolution and, subject to Section 3.3, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto setting forth the terms of such series of Security, and the surrender of such Security in accordance with such reasonable regulations as the Company may prescribe, the Company shall issue and shall deliver, at the office or agency at which such Security is surrendered, to such Holder or on its written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Security (or specified portion thereof), in accordance with the provisions of such Board Resolution, Officers' Certificate or supplemental indenture, and cash as provided therein in respect of any fractional share of such Common Stock otherwise issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the date on which such notice and such payment, if required, shall have been received in proper order for conversion by the Company and such Security shall have been surrendered as aforesaid (unless such Holder shall have so surrendered such Security and shall have instructed the Company to effect the conversion on a particular date following such surrender and such Holder shall be entitled to convert such Security on such date, in which case such conversion shall be deemed to be effected immediately prior to the close of business on such date) and at such time the rights of the Holder of such Security as such Security Holder shall cease and the person or persons in whose name or names any certificate or certificates for shares of Common Stock of the Company shall be issuable upon such conversion shall be deemed to have become the Holder or Holders of record of the shares represented thereby. Except as set forth above and subject to the final paragraph of Section 3.7, no payment or adjustment shall be made upon any conversion on account of any interest accrued on the Securities (or any part thereof) surrendered for conversion or on account of any dividends on the Common Stock of the Company issued upon such conversion. In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unconverted portion of such Security.

#### NO FRACTIONAL SHARES.

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No fractional share of Common Stock of the Company shall be issued upon conversions of Securities of any series. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If, except for the provisions of this Section 14.3, any Holder of a Security or Securities would be entitled to a fractional share of Common Stock of the Company upon the conversion of such Security or Securities, or specified portions thereof, the Company shall pay to such Holder an amount in cash equal to the current market value of such fractional share computed, (i) if such Common Stock is listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the last reported sale price on such exchange or market on the last trading day prior to the date of conversion upon which such a sale shall have been effected, or (ii) if such Common Stock is not at the time so listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the average of the bid and asked prices of such Common Stock in the over-the-counter market, on the last trading day prior to the date of conversion, as reported by the National Quotation Bureau, Incorporated or similar organization if the National Quotation Bureau, Incorporated is no longer reporting such information, or if not so available, the fair market price as determined by the Board of Directors. For purposes of this Section, "trading day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday other than any day on which the Common Stock is not traded on the New York Stock Exchange, or if the Common Stock is not traded on the New York Stock Exchange, on the principal exchange or market on which the Common Stock is traded or quoted.

#### ADJUSTMENT OF CONVERSION PRICE.

The conversion price of Securities of any series that is convertible into Common Stock of the Company shall be adjusted for any stock dividends, stock splits, reclassifications, combinations or similar transactions in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of the Securities of such series. Whenever the conversion price is adjusted, the Company shall compute the adjusted conversion price in accordance with terms of the applicable Board Resolution or supplemental indenture and shall prepare an Officers' Certificate setting forth the adjusted conversion price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion of Securities pursuant to Section 10.2 and, if different, with the Trustee. The Company shall forthwith cause a notice setting forth the adjusted conversion price to be mailed, first class postage prepaid, to each Holder of Securities of such series at its address appearing on the Security Register and to any conversion agent other than the Trustee.

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#### NOTICE OF CERTAIN CORPORATE ACTIONS.

*In case:*

the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its retained earnings (other than a dividend for which approval of any shareholders of the Company is required) that would require an adjustment pursuant to Section 14.4; or

the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights (other than any such grant for which approval of any shareholders of the Company is required); or

of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any shareholders of the Company is required), or of the sale of all or substantially all of the assets of the Company; or

of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed with the Trustee, and shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least 20 days (or 10 days in any case specified in Clause (1) or (2) above) prior to the applicable record date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of Record to be entitled to such dividend, distribution, rights, options or warrants are to be determined, or (ii) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up. If at any time the Trustee shall not be the conversion agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

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#### XIV.1 RESERVATION OF SHARES OF COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of Common Stock of the Company then issuable upon the conversion of all outstanding Securities of any series that has conversion rights.

#### XIV.2 PAYMENT OF CERTAIN TAXES UPON CONVERSION.

Except as provided in the next sentence, the Company will pay any and all taxes that may be payable in respect of the issue or delivery of shares of its Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of its Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid.

#### XIV.3 NONASSESSABILITY.

The Company covenants that all shares of its Common Stock which may be issued upon conversion of Securities will upon issue in accordance with the terms hereof be duly and validly issued and fully paid and nonassessable.

#### XIV.4 PROVISION IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS.

In case of any consolidation or merger of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security of a series then Outstanding that is convertible into Common Stock of the Company shall have the right thereafter (which right shall be the exclusive conversion right thereafter available to said Holder), during the period such Security shall be convertible, to convert such Security only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted immediately prior to such consolidation, merger, conveyance, sale, transfer or lease, assuming such holder of Common Stock of the Company (i) is not a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a "Constituent Person"), or an Affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer, or lease is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease by others than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-electing Share"), then for the purpose of this Section 14.9 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by the holders of each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-electing Shares). Such supplemental indenture shall provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article or in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of such adjustments. The above provisions of this Section 14.9 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security of a series that is convertible into Common Stock of the Company as provided in Section 1.6 promptly upon such execution. Neither the Trustee nor any conversion agent, if any, shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities of a series convertible into Common Stock of the Company upon the conversion of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

#### XIV.5 DUTIES OF TRUSTEE REGARDING CONVERSION.

Neither the Trustee nor any conversion agent shall at any time be under any duty or responsibility to any Holder of Securities of any series that is convertible into Common Stock of the Company to determine whether any facts exist which may require any adjustment of the conversion price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, whether herein or in any supplemental indenture, any resolutions of the Board of Directors or written instrument executed by one or more officers of the Company provided to be employed in making the same. Neither the Trustee nor any conversion agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock of the Company, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Securities and neither the Trustee nor any conversion agent makes any representation with respect thereto. Subject to the provisions of Section 6.1, neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of its Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or to comply with any of the covenants of the Company contained in this Article 14 or in the applicable supplemental indenture, resolutions of the Board of Directors or written instrument executed by one or more duly authorized officers of the Company.

#### XIV.6 REPAYMENT OF CERTAIN FUNDS UPON CONVERSION.

Any funds which at any time shall have been deposited by the Company or on its behalf with the Trustee or any other paying agent for the purpose of paying the principal of and any premium and interest on any of the Securities (including, but not limited to, funds deposited for the sinking fund referred to in Article 12 hereof and funds deposited pursuant to Article 13 hereof) and which shall not be required for such purposes because of the conversion of such Securities as provided in this Article 14 shall after such conversion be repaid to the Company by the Trustee upon the Company's written request.

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

BLACK HILLS CORPORATION

By: /s/ Everett E. Hoyt

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Name: Everett E. Hoyt  
Title: President and COO

LASALLE BANK NATIONAL ASSOCIATION,  
as Trustee

By: /s/ Wayne M. Evans

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Name: Wayne M. Evans  
Title: First Vice President

BLACK HILLS CORPORATION

AND

LASALLE BANK NATIONAL ASSOCIATION

AS TRUSTEE

FIRST SUPPLEMENTAL INDENTURE

DATED AS OF

MAY 21, 2003

\$250,000,000

6.50% NOTES DUE 2013

FIRST SUPPLEMENTAL INDENTURE dated as of May 21, 2003 ("Supplemental Indenture"), to the Indenture dated as of May 21, 2003 (as supplemented, the "Indenture"), by and between BLACK HILLS CORPORATION, a South Dakota corporation (the "Company"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the holders of the Notes (as defined below):

WHEREAS, the Company and the Trustee have duly authorized the execution and delivery of the Indenture to provide for the issuance from time to time of senior debt securities (the "Securities") to be issued in one or more series as in the Indenture provided;

WHEREAS, the Company desires and has requested the Trustee to join the Company in the execution and delivery of this Supplemental Indenture in order to establish and provide for the issuance by the Company of a series of Securities designated as its 6.50% Notes due 2013 in the aggregate principal amount of \$250,000,000, substantially in the form attached hereto as Exhibit A (the "Notes"), on the terms set forth herein;

WHEREAS, Section 3.1 of the Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee for such purpose provided certain conditions are met;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been complied with; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done;

*NOW, THEREFORE:*

In consideration of the premises and the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee, for the equal and ratable benefit of the holders, that the Indenture is supplemented and amended, to the extent expressed herein, as follows:

2

## ARTICLE I

### Scope of Supplemental Indenture; General

This Supplemental Indenture supplements, and to the extent inconsistent therewith, replaces the provisions of the Indenture, to which provisions reference is hereby made.

The changes, modifications and supplements to the Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, the Notes, which shall initially be in aggregate principal amount of \$250,000,000, which amount may be increased pursuant to an Officers' Certificate (as defined in the Indenture) in accordance with this Supplemental Indenture and shall not apply to any other Securities that may be issued under the Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. Pursuant to this Supplemental Indenture, there is hereby created and designated a series of Securities under the Indenture entitled "6.50% Notes due 2013." The Notes shall be in the form of Exhibit A hereto.

In the event that the Company shall issue and the Trustee shall authenticate any Notes issued under this Supplemental Indenture subsequent to the Issue Date (as defined below) (such Notes, "Additional Securities"), the Company shall use its best efforts to obtain the same "CUSIP" number for such Notes as is printed on the Notes outstanding at such time; provided, however, that if any series of Notes issued under this Supplemental Indenture subsequent to the Issue Date is determined, pursuant to an Opinion of Counsel (as defined in the Indenture) of the Company in a form reasonably satisfactory to the Trustee, to be a different class of security than the Notes outstanding at such time for federal income tax purposes, the Company may obtain a "CUSIP" number for such Notes that is different than the "CUSIP" number printed on the Notes then outstanding. Notwithstanding the foregoing, all Notes issued under this Supplemental Indenture shall vote and consent together on all matters as one class and no series of Notes will have the right to vote or consent as a separate class on any matter.

## ARTICLE II

### Certain Definitions

The following terms have the meanings set forth below in this Supplemental Indenture. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Indenture. To the extent terms defined herein differ from the Indenture the terms defined herein shall govern.

“Adjusted Consolidated Capitalization Amount” means an amount equal to 5% of Consolidated Capitalization, less the total amount of all Indebtedness then outstanding that has been incurred and secured pursuant to subclause (6)(b) of Section 4.1 of this Supplemental Indenture (but only to the extent that the amount of each such incurrence of Indebtedness, at the time of such incurrence, exceeded the amount then permitted by subclause (x) of the second proviso thereto).

3

“Adjusted Treasury Rate” means, with respect to any Redemption Date, (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15 (519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the remaining term of the Notes, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date, in each case calculated on the third Business Day preceding the Redemption Date, plus in each case 0.50%.

“Assets” of any Person means the whole or any part of its business, property, assets, cash and receivables.

“Comparable Treasury Issue” means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term from the Redemption Date to the Stated Maturity of the Notes that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Notes.

“Comparable Treasury Price” means, with respect to any Redemption Date, if clause (ii) of the definition of Adjusted Treasury Rate is applicable, the average of three, or such lesser number as is obtained by the Trustee, Reference Treasury Dealer Quotations for such Redemption Date.

“Consolidated Capitalization” means, as of any date of determination, the sum obtained by adding (i) Consolidated Shareholders’ Equity, (ii) Consolidated Indebtedness (exclusive of any thereof which is due and payable within one year of the date such sum is determined) and, without duplication, (iii) any preference or preferred stock of the Company or any Consolidated Subsidiary which is subject to mandatory redemption or sinking fund provisions.

4

“Consolidated Indebtedness” means, as of any date of determination, total indebtedness as shown on the consolidated balance sheet of the Company and its Consolidated Subsidiaries.

“Consolidated Shareholders’ Equity” means, as of any date of determination, the total Assets of the Company and its Consolidated Subsidiaries less all liabilities of the Company and its Consolidated Subsidiaries. As used in this definition, “liabilities” means all obligations which would, in accordance with generally accepted accounting principles in the United States, be classified on a balance sheet as liabilities, including without limitation, (i) indebtedness secured by property of the Company or any of its Consolidated Subsidiaries whether or not the Company or such Consolidated Subsidiary is liable for the payment thereof unless, in the case that the Company or such Consolidated Subsidiary is not so liable, such property has not been included among the Assets of the Company or such Consolidated Subsidiary on such balance sheet, (ii) deferred liabilities, and (iii) indebtedness of the Company or any of its Consolidated Subsidiaries that is expressly subordinated in right and priority of payment to other liabilities of the Company or such Consolidated Subsidiary. As used in this definition, “liabilities” includes preference or preferred stock of the Company or any Consolidated Subsidiary only to the extent of any such preference or preferred stock that is subject to mandatory redemption or sinking fund provisions.

“Consolidated Subsidiary” means, at any date, any Subsidiary the financial statements of which under generally accepted accounting principles in the United States would be consolidated with those of the Company in its consolidated financial statements as of such date.

“Event of Default” has the meaning specified in Section 5.1.

“Holder” means the Person in whose name a Note is registered in the books of the Security Registrar for the Notes.

“Indebtedness” means (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, incurred, created or assumed by the Company or any Subsidiary for the repayment of money borrowed, (ii) all indebtedness for money borrowed secured by a lien upon property owned by the Company or any Subsidiary, regardless of whether the Company or such Subsidiary has assumed or otherwise become liable for the payment of such indebtedness for money borrowed, and (iii) all indebtedness of others for money borrowed which is guaranteed as to payment of principal or interest by the Company or any Subsidiary or in effect guaranteed by the Company or such Subsidiary through a contingent agreement to purchase such indebtedness or through any “keep-well” or similar agreement to be directly or indirectly liable for the repayment of such indebtedness.

“Issue Date” means the date on which the Notes are originally issued under this Supplemental Indenture.

5

“Make-Whole Amount” means the sum, as determined by a Quotation Agent, of the present values of the principal amount of the Notes to be redeemed, together with scheduled payments of interest (exclusive of interest to the Redemption Date) from the Redemption Date to the Stated Maturity of the Notes, in each case discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Adjusted Treasury Rate, plus accrued interest (if any) on the principal amount of the Notes being redeemed to the Redemption Date.

“Quotation Agent” means the Reference Treasury Dealer selected by the Trustee after consultation with the Company.

“Reference Treasury Dealer” means each primary U.S. Government securities dealer selected by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.

“Subsidiary” means a corporation, limited partnership, limited liability company or trust in which more than 50% of the outstanding voting stock is owned, directly or indirectly, by the Company and/or by one or more other Subsidiaries. For the purposes of this definition, “voting stock” means stock, partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest that ordinarily (without regard to the occurrence of any contingency) has voting power for the election of directors, managers or trustees, whether at all times or only so long as no senior class of stock has that voting power by reason of any contingency.

“Trustee” means the party named as such above until a successor replaces such party in accordance with the applicable provisions of the Indenture and thereafter means the successor serving hereunder.

## ARTICLE III

### The Notes

#### Section 3.1 Payments of Principal and Interest.

The Notes shall bear interest from and including May 21, 2003 to but excluding the date of Maturity, at the rate of 6.50% per annum. The Notes shall mature on May 15, 2013. The Company shall pay interest on the Notes semiannually on May 15 and November 15 of each year, commencing November 15, 2003 to the Person in whose name any such Note or any predecessor Note is registered in the Security Register at the close of business on the May 1 and November 1 next preceding such Interest Payment Date. The Company initially authorizes the Trustee to act as Paying Agent.

6

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#### Section 3.2 Optional Redemption.

Subject to the provisions of Article XI of the Indenture, the Notes shall be redeemable at the option of the Company, as a whole at any time or in part from time to time, at a Redemption Price equal to the greater of (i) the principal amount of the Notes to be redeemed plus accrued interest (if any) to the Redemption Date and (ii) the Make-Whole Amount with respect to the Notes to be redeemed.

#### Section 3.3 No Sinking Fund.

The Notes shall not be entitled to the benefit of any sinking fund.

#### Section 3.4 Book Entry, Delivery and Form.

The Notes shall initially be issued in the form of a Global Security (the “Global Note”). The Global Note shall initially be deposited on or about the Issue Date with, or on behalf of, The Depository Trust Company (the “Depository”) and registered in the name of Cede & Co., as nominee of the Depository.

#### Section 3.5 Form of Legend for Global Note

In addition to the legend set forth in Section 2.2 of the Indenture, every Global Note authenticated and delivered hereunder shall bear a legend substantially in the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

## ARTICLE IV

### Covenants

#### Section 4.1 Limitations on Liens.



So long as any Notes are Outstanding, neither the Company nor any Subsidiary shall pledge, mortgage, hypothecate or grant a security interest in, or permit any mortgage, pledge, security interest or other lien upon, any capital stock of any Subsidiary now or hereafter owned directly or indirectly by the Company or any Subsidiary, to secure any Indebtedness without concurrently making effective provision whereby the Outstanding Notes shall (so long as such other Indebtedness shall be so secured) be equally and ratably secured with any and all such other Indebtedness and any other indebtedness similarly entitled to be equally and ratably secured; provided, however, that this restriction shall not apply to nor prevent the creation of:

- (1) any mortgage, pledge, security interest, lien or encumbrance existing on the Issue Date;
- (2) any mortgage, pledge, security interest, lien or encumbrance upon any capital stock created at the time of the acquisition of such capital stock by the Company or any Subsidiary or within 365 days after such time to secure all or a portion of the purchase price for such capital stock;
- (3) any mortgage, pledge, security interest, lien or encumbrance upon any capital stock existing thereon at the time of the acquisition of such capital stock by the Company or any Subsidiary, whether or not the obligations secured thereby are assumed by the Company or such Subsidiary, other than any mortgage, pledge, security interest, lien or encumbrance created in connection with or in anticipation of such acquisition not for the purpose of securing the purchase price for such capital stock;
- (4) any mortgage, pledge, security interest, lien or encumbrance upon any capital stock to secure or provide for the acquisition, construction, improvement, expansion or development of property by the Company or any Subsidiary; provided that such mortgage, pledge, security interest, lien or encumbrance may not extend to or cover any other property of the Company or any Subsidiary that is not the subject of the related financing;
- (5) any mortgage, pledge, security interest, lien or encumbrance upon any capital stock of (a) Black Hills Southwest, LLC (or any of its direct or indirect Subsidiaries existing on the Issue Date) to finance the project now known as the "Las Vegas" project or (b) Black Hills Wyoming, Inc. (or any of its direct or indirect Subsidiaries) or any other Subsidiary or group of Subsidiaries formed to refinance the project now known as the "Wygen" project; provided that, in either case, such mortgage, pledge, security interest, lien or encumbrance may not extend to or cover any other property of the Company or any Subsidiary that is not the subject of such financing or refinancing, as the case may be;

(6) so long as no additional property of the Company or any Subsidiary is encumbered or made subject to a mortgage, pledge, security interest or lien, any mortgage, pledge, security interest, lien or encumbrance granted in connection with (a) extending, renewing, replacing or refinancing in whole or in part the Indebtedness secured by any mortgage, pledge, security interest, lien or encumbrance described in the foregoing clauses (1) through (5) or (b) any transaction or series of related transactions involving separate projects pursuant to which any of the mortgages, pledges, security interests, liens or encumbrances described in the foregoing clauses (1) through (5) are combined or aggregated; provided, that, for purposes of this subclause (b), all of the Indebtedness secured by such mortgages, pledges, security interests, liens or encumbrances immediately prior to such transaction or series of related transactions is repaid in connection therewith; provided further, that, for purposes of this subclause (b), the aggregate amount of Indebtedness secured by such combined or aggregated mortgages, pledges, security interests, liens or other encumbrances does not exceed the sum of (x) the aggregate amount of extended, renewed, replaced or refinanced Indebtedness secured by such mortgages, pledges, security interests, liens or encumbrances outstanding immediately prior to such transaction or series of related transactions, (y) the then applicable Adjusted Consolidated Capitalization Amount and (z) the amount of Indebtedness then permitted to be secured pursuant to clause (7) below after giving effect to all Indebtedness then outstanding that has been incurred and secured pursuant to clause (7) below;

(7) any mortgage, pledge, security interest, lien or encumbrance upon any capital stock now or hereafter owned by the Company or any Subsidiary to secure any Indebtedness, which would otherwise be subject to the foregoing restriction and not otherwise permitted under any of the foregoing clauses (1) through (6), in an aggregate principal amount which, together with (a) the amount of all other such Indebtedness then outstanding that has been incurred under this clause (7) and (b) the amount of all Indebtedness then outstanding that has been incurred and secured pursuant to the foregoing subclause (6)(b) (but only to the extent that the amount of each such incurrence of Indebtedness exceeded the sum of the amounts permitted at the time of such incurrence by subclauses (x) and (y) of the second proviso thereto), does not at the time of the creation of such mortgage, pledge, security interest, lien or encumbrance exceed 5% of Consolidated Capitalization; or

- (8) any judgment, levy, execution, attachment or other similar lien arising in connection with court proceedings, provided that:
  - (a) the execution or enforcement of each such lien is effectively stayed within 60 days after entry of the corresponding judgment (or the corresponding judgment has been discharged within such 60-day period) and the claims secured thereby are being contested in good faith by appropriate proceedings timely commenced and diligently prosecuted;

- (b) the payment of each such lien is covered in full by insurance provided by a third party and the insurance company has not denied or contested coverage thereof; or
- (c) each such lien is adequately bonded within 60 days of the creation of such lien.

In case the Company shall propose to pledge, mortgage, hypothecate or grant a security interest in any capital stock of any Subsidiary owned directly or indirectly by the Company or any Subsidiary to secure any Indebtedness, other than as permitted by clauses (1) to (7), inclusive, of this Section 4.1, the Company

shall prior thereto give written notice thereof to the Trustee, and the Company shall prior to or simultaneously with such pledge, mortgage, hypothecation or grant of security interest, by supplemental indenture executed by the Company and the Trustee (or to the extent legally necessary by another trustee or an additional or separate trustee), in form satisfactory to the Trustee, effectively secure (for so long as such other Indebtedness shall be so secured) all the Outstanding Notes equally and ratably with such Indebtedness and with any other indebtedness similarly entitled to be equally and ratably secured.

## ARTICLE V

### Remedies

#### Section 5.1 Events of Default.

“Event of Default” means, with respect to the Notes, any one or more of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of the principal of or any Make-Whole Amount on any Note at its Maturity;
- (b) default in the payment of any interest upon any Note when it becomes due and payable, and continuance of such default for a period of 30 days;
- (c) default in the performance, or breach, of any covenant or warranty of the Company in this Supplemental Indenture or the Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in the Indenture solely for the benefit of series of Securities other than the Notes), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Notes Outstanding a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder (without giving effect to any applicable grace period with respect to such covenant or warranty);

10

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(d) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging 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 any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(e) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

## ARTICLE VI

### Miscellaneous

#### Section 6.1 Governing Law.

This Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to such states’ conflicts of laws principles.

#### Section 6.2 Ratification of Indenture.

11

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Except as expressly modified or amended hereby, the Indenture continues in full force and effect and is in all respects confirmed, ratified and preserved.

#### Section 6.3 Trustee.

The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The statements and recitals herein are deemed to be those of the Company and not of the Trustee.

#### Section 6.4 Counterparts

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

Section 6.5 Separability.

In case any provision in this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12

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

BLACK HILLS CORPORATION,  
as the Company

By: /s/ Everett E. Hoyt  
Name: Everett E. Hoyt  
Title: President and COO

LASALLE BANK NATIONAL ASSOCIATION,  
as Trustee

By: /s/ Wayne M. Evans  
Name: Wayne M. Evans  
Title: First Vice President

13

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Exhibit A

FORM OF NOTE

[Face of Security]

[If this Security is a Global Note, insert: THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

A-1

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No.: \_\_\_\_

CUSIP No.:092113 AE 9  
\$ \_\_\_\_\_

6.50% Notes due 2013

BLACK HILLS CORPORATION

BLACK HILLS CORPORATION, a South Dakota corporation (the “Company”), for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns the principal sum of \_\_\_\_\_ DOLLARS on May 15, 2013 (the “Stated Maturity”) or earlier at the option of the Company as provided herein (the “Redemption Date”) and to pay interest thereon from May 21, 2003 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on May 15 and November 15 in each year (each, an “Interest Payment Date”), commencing November 15, 2003, at the rate of 6.50% per annum, until the principal hereof is paid or duly provided for.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture by and between the Company and LaSalle Bank National Association, as trustee (the “Trustee”), dated as of May 21, 2003, as supplemented by the First Supplemental Indenture, dated as of May 21, 2003, by and between the Company and the Trustee (collectively, the “Indenture”).

The interest payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the May 1 or November 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date at the office or agency of the Company maintained for such purpose. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may be paid to the Holder in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The principal of this Security payable on the Stated Maturity or the principal of, or Make-Whole Amount, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the Redemption Date, will be paid against presentation of this Security at the office or agency of the Company maintained for that purpose in the City of Chicago, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

A-2

Interest payable on this Security on any Interest Payment Date and on the Stated Maturity or Redemption Date, as the case may be, will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including May 21, 2003, if no interest has been paid on this Security) to but excluding such Interest Payment Date or the Stated Maturity or Redemption Date, as the case may be. If any Interest Payment Date or the Stated Maturity or Redemption Date falls on a day that is not a Business Day, as defined below, principal or Make-Whole Amount, if any, and/or interest payable with respect to such Interest Payment Date or Stated Maturity or Redemption Date, as the case may be, will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity or Redemption Date, as the case may be. "Business Day" means each Monday, Tuesday, Wednesday, Thursday or Friday which is not a day on which banking institutions in the City of Chicago are authorized or obligated by law or executive order to close.

[If this Security is a Global Note, insert: All payments of principal or Make-Whole Amount, if any, and interest in respect of this Security will be made by the Company in immediately available funds.]

Reference is hereby made to the further provisions of this Security 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 Trustee by manual signature of one of its authorized signatories, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

A-3

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its facsimile corporate seal.

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

BLACK HILLS CORPORATION

By: \_\_\_\_\_

Name:

Title:

Attest:

By: \_\_\_\_\_

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

LASALLE BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_

Authorized Officer

A-4

BLACK HILLS CORPORATION

6.50% Notes due 2013

This Security 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 under an Indenture, dated as of May 21, 2003, as supplemented by the First Supplemental Indenture, dated as of May 21, 2003 (as so supplemented, herein called the "Indenture"), each between the Company and LaSalle Bank National Association, as trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. The aggregate principal amount of the Securities to be issued under such series is initially limited to \$250,000,000 (except for Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of other Securities). All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, with respect to the Securities shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Securities are subject to redemption, at the option of the Company, in whole at any time or in part from time to time at a redemption price equal to the greater of (i) the principal amount of the Securities to be redeemed plus accrued interest (if any) to the Redemption Date and (ii) the Make-Whole Amount with respect to the Securities being redeemed.

Notice of redemption will be given by mail to Holders of Securities, not less than 30 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

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 Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of all Securities issued under the Indenture at the time Outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Securities, on behalf of the Holders of all such Securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Securities of any series to waive, on behalf of all of the Holders of Securities of such series, certain past defaults under the Indenture and their consequences.

A-5

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No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and Make-Whole Amount, if any) and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register of the Company upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and Make-Whole Amount, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is exchangeable for a like aggregate principal amount of Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or Make-Whole Amount, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, employee, agent, officer, or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, 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 part of the consideration for the issue hereof, expressly waived and released.

A-6

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The Securities and the Indenture shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to such state's conflicts of laws principles.

A-7

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ASSIGNMENT FORM

To assign this Security, fill in the form below: (I) or (we) assign and transfer this Security to

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(Insert assignee's soc. sec. or tax I.D. no.)

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(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_ to transfer this Security on the books of the Company. The agent may substitute another to act for him.

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

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Security)

Tax Identification No: \_\_\_\_\_

SIGNATURE GUARANTEE:

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Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

## CERTIFICATION

I, Daniel P. Landguth, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2003

/s/Daniel P. Landguth  
Chairman and  
Chief Executive Officer

## CERTIFICATION

I, Mark T. Thies, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - a) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2003

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



CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel P. Landguth, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Daniel P. Landguth  
Daniel P. Landguth  
Chairman of the Board and  
Chief Executive Officer  
August 13, 2003

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark T. Thies, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark T. Thies

Mark T. Thies

Executive Vice President and

Chief Financial Officer

August 13, 2003