

**SHERRITT GORDON LIMITED**

and

**MONTREAL TRUST COMPANY OF CANADA**

as Rights Agent

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**SHAREHOLDER RIGHTS PLAN AGREEMENT**

**DATED AS OF**

**November 23, 1989**

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## SHAREHOLDER RIGHTS PLAN

THIS AGREEMENT dated as of the 23rd day of November, 1989 between Sherritt Gordon Limited (the "Corporation"), a corporation subsisting under the Business Corporations Act, 1982 (Ontario) and Montreal Trust Company of Canada, a trust company incorporated under the laws of Canada, as Rights Agent (the "Rights Agent", which term shall include any successor Rights Agent hereunder).

WHEREAS the Board of Directors of the Corporation has determined that it is advisable to adopt a shareholder rights plan (the "Rights Plan")

AND WHEREAS in order to implement the adoption of the Rights Plan the Board of Directors of the Corporation has:

- (a) authorized the issuance of one Right effective the Record Time in respect of each Common Share outstanding at the Record Time; and
- (b) authorized the issuance of one Right in respect of each Common Share issued after the Record Time and prior to the earlier of the Separation Time and the Expiration Time; and

AND WHEREAS each Right entitles the holder thereof, after the Separation Time, to purchase securities of the Corporation (or, in certain cases, of certain other entities) pursuant to the terms and subject to the conditions set forth herein; and

AND WHEREAS the Corporation desires to appoint the Rights Agent to act on behalf of the Corporation, and the Rights Agent is willing to so act, in connection with the issuance, transfer, exchange and replacement of Rights Certificates, the exercise of Rights and other matters referred to herein;

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

## ARTICLE 1 - INTERPRETATION

### 1.1 Certain Definitions

For purposes of this Agreement, the following terms have the meanings indicated:

(a) "Acquiring Person" shall mean, any Person who is the Beneficial Owner of twenty percent or more of the outstanding Voting Shares of the Corporation; provided, however, that the term "Acquiring Person" shall not include (i) the Corporation or any Subsidiary of the Corporation, (ii) any employee benefit plan, or trust for the benefit of employees, of the Corporation or any Subsidiary of the Corporation, or any Person organized, appointed or established by the Corporation for or pursuant to the terms of any such plan or trust and (iii) any Person who becomes the Beneficial Owner of twenty percent or more of the outstanding Voting Shares of the Corporation as a result of (A) Corporate Acquisitions, (B) Permitted Bid Acquisitions, (C) Corporate Distributions or (D) Exempt Acquisitions; provided, however, that if a Person shall become the Beneficial Owner of twenty per cent or more of the Voting Shares of the Corporation then outstanding by reason of (i) Corporate Acquisitions, (ii) Permitted Bid Acquisitions, (iii) Corporate Distributions or (iv) Exempt Acquisitions and, after such Corporate Acquisitions, Permitted Bid Acquisitions, Corporate Distributions or Exempt Acquisitions, becomes the Beneficial Owner of any additional Voting Shares of the Corporation other than pursuant to Permitted Bid Acquisitions, Corporate Distributions or through Exempt Acquisitions then as of the date of such acquisition, such Person shall become an Acquiring Person;

(b) "Affiliate" used to indicate a relationship with a specified Person, shall mean a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person;

(c) "Agreement" means this agreement as amended, modified or supplemented from time to time;

(d) "Associate" of a specified Person shall mean:

- (i) any corporation, partnership or other organization of which such specified Person is an officer or partner;
- (ii) any trust or other estate in which such specified Person has a substantial beneficial interest or as to which such specified Person serves as trustee or in a similar fiduciary capacity;
- (iii) any relative or spouse of such specified Person or any person of the opposite sex to whom such specified Person is married or with whom such specified Person is living in a conjugal relationship outside marriage, or any relative of such spouse or other person who has the same home as such specified Person or who is a director or officer of the Corporation or an Affiliate of the Company;



- (iv) any Person who is a director, officer, partner or trustee of such specified Person or of any corporation, partnership or other organization (other than the Corporation or any wholly owned subsidiary of the Corporation) which is an Affiliate or Associate of such Specified Person; and
  - (v) any corporation of which such specified Person beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attaching to all voting securities of the corporation for the time being outstanding.
- (e) a Person shall be deemed the "Beneficial Owner", and to have "Beneficial Ownership" of, and to "Beneficially Own":
- (i) any securities as to which such Person or any of the Affiliates or Associates of such person is or may be deemed to be the direct or indirect beneficial owner (whether or not of record) pursuant to the Business Corporations Act, 1982 (Ontario) or the Securities Act (Ontario) for the purposes of insider trading or take-over bids or pursuant to Rule 13d-3 or Rule 13d-5 under the 1934 Exchange Act (or pursuant to any comparable or successor laws, Rules or regulations or, if such laws, Rules or regulations shall be rescinded and there shall be no comparable or successor laws, Rules or regulations, pursuant to Rule 13d-3 or Rule 13d-5 as in effect on the date of this Agreement) whether or not such laws or regulations apply to such Person;
  - (ii) any securities as to which such Person or any of the Affiliates or Associates of such Person has (A) the right to acquire (whether such right is exercisable immediately or after the lapse or passage of time or otherwise) pursuant to any agreement, arrangement, pledge or understanding (other than customary agreements with and between underwriters and banking group or selling group members with respect to a bona fide public offering or private placement of securities and other than pledges of securities in the ordinary course of business that meet all of the conditions specified in Rule 13d - 3(d)(3) under the 1934 Exchange Act), or upon the exercise of any conversion right, exchange right, right (other than the Rights) warrant or option, or otherwise or (B) the right to vote such security (whether such right is exercisable immediately or after the lapse or passage of time or otherwise), pursuant to any agreement, arrangements or understanding or otherwise; and

(iii) any securities which are Beneficially Owned within the meaning of paragraphs (i) or (ii) by any other person or entity with which such Person or any of the Affiliates or Associates of such Person has any agreement, arrangement or understanding (whether or not in writing) with respect to or for the purpose of acquiring, holding, voting or disposing of any Voting Shares of the Corporation (other than customary agreements with and between underwriters and banking group or selling group members with respect to a bona fide public offering or private placement of securities) or acquiring, holding or disposing of a significant portion of the property or assets of the Corporation or any Subsidiary of the Corporation,

provided, however, that a Person shall not be deemed the "Beneficial Owner", or to have "Beneficial Ownership", of, or to "Beneficially Own", any security:

(A) solely because such security has been deposited or tendered pursuant to any tender or exchange offer or take-over bid made by such Person or made by any of the Affiliates or Associates of such Person until such deposited or tendered security has been taken up or paid for, whichever shall first occur; or

(B) solely because such Person or any of the Affiliates or Associates of such Person has or shares the power to vote or direct the voting of such security pursuant to a revocable proxy given in response to a public proxy solicitation made pursuant to and in accordance with the applicable rules and regulations under (i) the Business Corporations Act, 1982 (Ontario) and the Securities Act (Ontario), or (ii) the 1934 Exchange Act, except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the 1934 Exchange Act (or any similar provision of a comparable or successor report) or

(C) solely because such Person or any of the Affiliates or Associates of such Person has or shares the power to vote or direct the voting of such security in connection with or in order to participate in a public proxy solicitation made or to be made pursuant to and in accordance with the applicable rules and regulations referred to in (B) above.



For purposes of this Agreement, the percentage of Voting Shares Beneficially Owned by any Person, shall be and be deemed to be the product of 100 and the number of which the numerator is the number of votes for the election of all directors generally attaching to the Voting Shares Beneficially Owned by such Person and the denominator of which is the number of votes for the election of all directors generally attaching to all outstanding Voting Shares. Where any Person is deemed to Beneficially Own unissued Voting Shares, such Voting Shares shall be deemed to be outstanding for the purpose of calculating the percentage of Voting Shares Beneficially Owned by such Person;

(f) "Business Corporations Act, 1982 (Ontario)" shall mean the Business Corporations Act, 1982 S.O. 1982, c. 4 as amended, and the regulations made thereunder and any comparable or successor laws or regulations thereto;

(g) "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in Toronto are authorized or obligated by law to close;

(h) "close of business" on any given date shall mean the time on such date (or, if such date is not a Business Day, the time on the next succeeding Business Day) at which the office of the transfer agent for the Common Shares in the City of Toronto (or, after the Separation Time, the offices of the Rights Agent) are closed to the public;

(i) "Common Shares", when used with reference to the Corporation, shall mean the common shares in the capital of the Corporation and, when used with reference to any Person other than the Corporation, shall mean the class or classes of shares (or similar equity interest) with the greatest per share voting power entitled to vote generally in the election of all directors of such other Person or the equity securities or other equity interest having power (whether or not exercised) to control or direct the management of such other Person or, if such other Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person;

(j) "Corporate Acquisitions" means an acquisition by the Corporation or a Subsidiary of the Corporation or the redemption by the Corporation of Voting Shares of the Corporation which by reducing the number of Voting Shares of the Corporation outstanding increases the proportionate number of Voting Shares Beneficially Owned by any Person;

(k) "Corporate Distributions" means the acquisition of Voting Shares of the Corporation as a result of a stock dividend, a stock split or other event pursuant to which all holders of Voting Shares of the Corporation are entitled to receive Voting Shares on a pro rata basis.

(l) "Election to Exercise" shall have the meaning attributed thereto in section 2.2(d);



(m) "Exercise Price" shall mean, as of any date, the price at which a holder may purchase the securities issuable upon exercise of one whole Right. Until adjustment thereof in accordance with the terms hereof, the Exercise Price shall be \$41.00;

(n) "Exempt Acquisitions" means acquisitions of Voting Shares of the Corporation in respect of which the Board of Directors of the Corporation has waived the application of Section 3.2 pursuant to the provisions of clause 5.1(b) or which were made on or prior to the Record Time;

(o) "Expiration Time" shall mean the earlier of:

- (i) the Termination Time; and
- (ii) the close of business on the tenth anniversary of the date hereof;

(p) "Flip-in Event" shall mean a transaction in or pursuant to which any Person becomes an Acquiring Person provided, however, that the term "Flip-in Event" shall not include any transaction or event that constitutes a Flip-over Event;

(q) "Flip-over Entity" shall have the meaning attributed thereto in Section 3.1;

(r) "Flip-over Event" shall mean (i) a transaction or series of transactions in or pursuant to which, directly or indirectly, the Corporation shall consolidate, merge or amalgamate with or into, or enter into a statutory arrangement with, any other Person (other than a wholly owned Subsidiary of the Corporation), or any other Person (other than a wholly owned Subsidiary of the Corporation) shall consolidate, merge or amalgamate with or into, or enter into a statutory arrangement with, the Corporation, and, in connection therewith, all or part of the Common Shares of the Corporation shall be changed in any way, reclassified or converted into or exchanged, redeemed or otherwise acquired for shares or other securities of the Corporation or of any other Person or cash or any other property, or (ii) a transaction or series of transactions in which, directly or indirectly, the Corporation shall sell or otherwise assign or transfer (including by way of a leasehold interest) (or one or more of its Subsidiaries shall sell or otherwise assign or transfer) property or assets

(A) aggregating more than 50 per cent of the property or assets (measured by either book value or fair market value), or

(B) which generated during the Corporation's last completed fiscal year or are expected to generate in the Corporation's then current fiscal year more than 50 per cent of the operating income or cash flow from operations,



of the Corporation and its Subsidiaries (taken as a whole), to any other Person or Persons (other than the Corporation or one or more of its wholly owned Subsidiaries)

(s) "Independent Shareholders" shall mean holders of Voting Shares of the Corporation, but shall not include any Acquiring Person or any Person that has made a tender or exchange offer or a Take-over Bid for Voting Shares of the Corporation (including a Permitted Bid) or any Person acting jointly or in concert with such Acquiring Person or Person or their Associates or Affiliates.

(t) "Market Price" per share of any securities on any date of determination shall mean the average of the daily closing prices per share of such securities (determined as described below) on each of the 20 consecutive Trading Days through and including the Trading Day immediately preceding such date; provided, however, that if an event of a type analogous to any of the events described in Section 2.3 hereof shall have caused the closing prices used to determine the Market Price on any Trading Days not to be fully comparable with the closing price on such date of determination or, if the date of determination is not a Trading Day, on the immediately preceding Trading Day, each such closing price so used shall be appropriately adjusted in a manner analogous to the applicable adjustment provided for in Section 2.3 hereof in order to make it fully comparable with the closing price on such date of determination or, if the date of determination is not a Trading Day, on the immediately preceding Trading Day. The closing price per share of any securities on any date shall be (i) the closing board lot sale price or, in case no such sale takes place on such date, the average of the closing bid and asked prices for each share of such securities as reported by the principal stock exchange in Canada on which such securities are listed or posted for trading, (ii) if the securities are not listed or posted for trading on any stock exchange in Canada, the closing board lot sale price, or, in case no such sale takes place on such date, the average of the closing bid and asked prices, for each share of such securities as reported by the principal national securities exchange in the United States on which the securities are listed or admitted to trading, or (iii) if for any reason none of such prices is available on such day or the securities are not listed or admitted to trading on a stock exchange in Canada or a national securities exchange in the United States the last quoted price, or if not so quoted, the average of the high bid and low asked prices for each share of such securities in the over-the-counter market, as reported by the financial press, or (iv) if on any such date the securities are not so reported, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the securities selected in good faith by the Board of Directors of the corporation; provided, however, that if on any such date the securities are not traded in the over-the-counter market, the closing price per share of such securities on such date shall mean the fair value per share of securities on such date as determined in good faith by the



Board of Directors of the Corporation, after consultation with a nationally or internationally recognized investment dealer or investment banker with respect to the fair value per share of such securities. The Market Price shall be expressed in Canadian dollars and if initially determined in respect of any day forming part of the 20 consecutive Trading Day period in question in United States dollars, such amount shall be translated into Canadian dollars on the relevant Trading Day;

(u) "1933 Securities Act" shall mean the Securities Act of 1933 of the United States, as amended, and the rules and regulations thereunder, and any comparable or successor laws or regulations thereto;

(v) "1934 Exchange Act" shall mean the Securities Exchange Act of 1934 of the United States, as amended, and the rules and regulations thereunder, and any comparable or successor laws or regulations thereto;

(w) "Offer to Acquire" shall include:

(i) an offer to purchase, or a solicitation of an offer to sell, Voting Shares of the Corporation, and

(ii) an acceptance of an offer to sell Voting Shares of the Corporation, whether or not such offer to sell has been solicited;

or any combination thereof, and the Person accepting an offer to sell shall be deemed to be making an Offer to Acquire to the Person that made the offer to sell;

(x) "Offeror's Securities" means Voting Shares of the Corporation Beneficially Owned by any Person who has announced an intention to make or who has made a Take-over Bid;

(y) "Permitted Bid" means a Take-over Bid made in compliance with and not on a basis which is exempt from or otherwise not subject to, the provisions of Part XIX of the Securities Act (Ontario), sections 10, 13(d) and 14 of the 1934 Exchange Act and the regulations thereunder (or such comparable or successor laws or regulations or, if such provisions shall be repealed and there shall be no comparable or successor laws or regulations, pursuant to Part XIX and sections 10, 13(d) and 14 as in effect on the date of this Agreement) and in compliance with all other applicable laws (including the securities laws of all other relevant jurisdictions) and which also complies with the following additional provisions:

(i) the Take-over Bid is made for any and all Voting Shares to all holders of record of Voting Shares wherever resident as registered on the books of the Corporation;

- (ii) the Person making the Take-over Bid shall provide the Rights Agent, within two Business Days of the announcement of the Take-over Bid, with a list of all securities of the Corporation Beneficially Owned by each of such Person, such Person's Associates and Affiliates and any Person acting jointly or in concert with such Person or any Associate or Affiliate of such Person together with the particulars of the registration of all such securities and an undertaking to update such list on a daily basis prior to the termination or expiration of the takeover bid to reflect any changes occurring or to occur in such Beneficial Ownership;
- (iii) the Take-over Bid shall contain and the take up and payment for securities tendered or deposited thereunder shall be subject to an irrevocable and unqualified condition that no Voting Shares shall be taken up or paid for pursuant to the Take-over Bid unless a resolution is passed to approve the Take-over Bid at a special meeting of the Independent Shareholders by a majority of not less than 51% of the votes cast by Independent Shareholders represented at the meeting in person or by proxy, which special meeting of the Independent Shareholders shall be called and held for that purpose in accordance with the provisions of Section 3.5;
- (iv) the Take-over Bid shall not expire until the earlier of (A) 10 clear Business Days following the conclusion of the special meeting of Independent Shareholders referred to in subclause 1.1 (y) (iii) and (B) 120 days after the date of the Take-over Bid provided, however, that in no circumstances may the Take-over Bid expire earlier than five clear Business Days following the conclusion of the special meeting of the Independent Shareholders referred to in subclause 1.1 (y) (iii); and
- (v) the Person making the Take-over Bid shall provide the Corporation with a commitment in form and on terms satisfactory to the Corporation, acting reasonably, to pay for 50% of the costs and expenses incurred by the Corporation to call and hold the special meeting of Independent Shareholders referred to in subclause 1.1 (y) (iii); and the Board of Directors of the Corporation acting in good faith within the 31 day period referred to in Section 3.5(a) determines that the takeover bid complies with the provisions of this clause 1.1 (y).
- (z) **Permitted Bid Acquisitions**" means share acquisitions pursuant to a Permitted Bid which is approved by Independent Shareholders at a special meeting called and held for that purpose in accordance with the provisions of Section 3.5 and made after that meeting;



(aa) "Person" shall mean any individual, firm, partnership, association, trust, trustee, executor, administrator, legal personal representative, group (as such term is used in Rule 13d-5 under the 1934 Exchange Act, as in effect on the date of this Agreement), body corporate, corporation, unincorporated organization, syndicate or other entity;

(bb) "Record Time" means 5:00 p.m. (Toronto time) on November 23, 1989;

(cc) "regular periodic cash dividend" shall mean cash dividends paid at regular intervals in any fiscal year of the Corporation to the extent that such cash dividends do not exceed, in the aggregate, the greatest of

(i) 200 per cent of the aggregate amount of cash dividends declared payable by the Corporation on its Common Shares in its immediately preceding fiscal year,

(ii) 300 per cent of the arithmetic mean of the aggregate amounts of the annual cash dividends declared payable by the Corporation on its Common Shares in its three immediately preceding fiscal years, and

(iii) 100 per cent of the aggregate consolidated net income of the Corporation, before extraordinary items, for its immediately preceding fiscal year;

(dd) "Rights" means a right issued pursuant to this Rights Plan;

(ee) "Rights Certificate" shall have the meaning attributed thereto in Section 2.2(c);

(ff) "Securities Act (Ontario)" shall mean the Securities Act, R.S.O. 1980, c. 466, as amended, and the regulations thereunder, and any comparable or successor laws or regulations thereto;

(gg) "Separation Time" shall mean the close of business on the eighth Trading Day after the earlier of (i) the Stock Acquisition Date and (ii) the date of the commencement of, or first public announcement of the intent of any person (other than the Corporation or any Subsidiary of the Corporation) to commence, a Take-over Bid (other than a Permitted Bid) or such later date as may be determined by the Board of Directors of the Corporation provided that, if the foregoing results in the Separation Time being prior to the Record Time, the Separation Time shall be the Record Time and provided further that, if any Take-over Bid referred to in subclause (ii) of this clause 1.1(gg) expires, is cancelled, terminated or otherwise withdrawn prior to the Separation Time, such Take-over Bid shall be deemed, for the purposes of this clause 1.1(gg), never to have been made;



(hh) "Stock Acquisition Date" shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, a report filed pursuant to Section 100 of the Securities Act (Ontario) or Section 13(d) under the 1934 Exchange Act) by the Corporation or an Acquiring Person of facts indicating that an Acquiring Person has become such;

(ii) "Subsidiary" of any Person shall mean any corporation or other entity of which a majority of the Voting Shares is Beneficially Owned, directly or indirectly, by such Person;

(jj) "Take-over Bid" means an Offer to Acquire Voting Shares of the Corporation or securities convertible into Voting Shares of the Corporation where the Voting Shares of the Corporation subject to the Offer to Acquire, together with the Voting Shares of the Corporation into which the securities subject to the Offer to Acquire are convertible, and the Offeror's Securities, constitute in the aggregate twenty percent or more of the outstanding Voting Shares of the Corporation at the date of the Offer to Acquire;

(kk) "Termination Time" shall mean the time at which the right to exercise Rights shall terminate pursuant to Sections 3.4 or 5.1 hereof;

(ll) "Trading Day", when used with respect to any securities, shall mean a day on which the principal Canadian or United States securities exchange on which such securities are listed or admitted to trading is open for the transaction of business or, if the securities are not listed or admitted to trading on any Canadian securities exchange, a Business Day;

(mm) "Voting Shares" shall mean, with respect to any Person, the Common Shares of such Person and any other shares of capital stock or voting interests of such Person entitled to vote generally in the election of all directors.

## 1.2 Currency

All sums of money which are referred to in this Agreement are expressed in lawful money of Canada, unless otherwise specified.

## 1.3 Headings

The division of this Agreement into Articles, Sections, clauses and subclauses and the insertion of headings, subheadings and an index are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 References to 1933 Securities Act and 1934 Exchange Act

The references herein to the 1933 Securities Act or the 1934 Exchange Act shall have no force and effect during such time the Corporation is not subject to the provisions of such Acts for the purposes of this Agreement except for the provisions of clause 1.1(aa).

ARTICLE 2 - THE RIGHTS

2.1 Legend on Common Share Certificates

Certificates issued for Common Shares after the Record Time but prior to the close of business on the earlier of the Separation Time and the Expiration Time shall evidence one Right for each Common Share represented thereby and shall have impressed on, printed on, written on or otherwise affixed to them the following legend:

Until the Separation Time (as defined in the Rights Agreement referred to below), this certificate also evidences and entitles the holder hereof to certain Rights as set forth in a Shareholder Rights Plan Agreement, dated as of the 23rd day of November, 1989 (the "Rights Agreement"), between Sherritt Gordon Limited (the "Corporation") and Montreal Trust Company of Canada, as Rights Agent, the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Corporation. Under certain circumstances, as set forth in the Rights Agreement, such Rights may be amended, redeemed, may expire, may become null and void (if, in certain cases, they are issued to or "Beneficially Owned" by any person who is, was or becomes an "Acquiring Person", as such terms are defined in the Rights Agreement, whether currently held by or on behalf of such Person or any subsequent holder) or may be evidenced by separate certificates and may no longer be evidenced by this certificate. The Corporation will mail or arrange for the mailing of a copy of the Rights Agreement to the holder of this certificate without charge promptly after the receipt of a written request therefor.

Certificates representing Common Shares that are issued and outstanding at the Record Time shall evidence one Right for each Common Share evidenced thereby notwithstanding the absence of the foregoing legend until the earlier of the Separation Time and the Expiration Time.



2.2 Initial Exercise Price; Exercise of Rights; Detachment of Rights

(a) Subject to adjustment as herein set forth, each Right will entitle the holder thereof, from after the Separation Time and prior to the Expiration Time, to purchase, for the Exercise Price as at the Business Day immediately preceding the date of exercise of the Right, one Common Share (which price and number of Common Shares are subject to adjustment as set forth below).

(b) Until the Separation Time, (i) the Rights shall not be exercisable and no Right may be exercised, and (ii) for administrative purposes each Right will be evidenced by the certificates for the associated Common Shares registered in the names of the holders thereof (which Certificates shall also be deemed to be Rights Certificates) and will be transferable only together with, and will be transferred by a transfer of, such associated Common Shares.

(c) From and after the Separation Time and prior to the Expiration Time, (i) the Rights shall be exercisable, and (ii) the registration and transfer of the Rights shall be separate from and independent of Common Shares. Promptly following the Separation Time, the Corporation will prepare and the Rights Agent will mail to each holder of record of Rights as of the Separation Time (other than an Acquiring Person and, in respect of any Rights Beneficially Owned by such Acquiring Person which are not held of record by such Acquiring Person, the holder of record of such Rights (a "Nominee")), at such holder's address as shown by the records of the Corporation (the Corporation hereby agreeing to furnish copies of such records to the Rights Agent for this purpose), (x) a certificate (a "Rights Certificate") in substantially the form of Exhibit A hereto appropriately completed, representing the number of Rights held by such holder at the Separation Time and having such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Corporation may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law, rule, regulation or judicial or administrative order or with any rule or regulation made pursuant thereto or with any rule or regulation of any self-regulatory organization, stock exchange or quotation system on which the Rights may from time to time be listed or traded, or to conform to usage, and (y) a disclosure statement describing the Rights provided that a Nominee shall be sent the materials provided for in (x) and (y) in respect of all Common Shares held of record by it which are not Beneficially Owned by an Acquiring Person. In order for the Corporation to determine whether any person is holding Common Shares which are Beneficially Owned by another Person, the Corporation may require such first mentioned person to furnish it with such information and documentation as the Corporation considers advisable.

(d) Rights may be exercised in whole or in part on any Business Day after the Separation Time and prior to the Expiration Time by submitting to the Rights Agent the Rights Certificate evidencing such Rights with an election to exercise such Rights (an "Election to Exercise") substantially in the form attached to the Rights Certificate duly completed, accompanied by payment in cash, by certified cheque, banker's draft or money order payable to the order of the Corporation, of a sum equal to the Exercise Price multiplied by the number of Rights being exercised and a sum sufficient to cover any transfer tax or charge which may be payable in respect of any transfer involved in the transfer or delivery of Rights Certificates or the issuance or delivery of certificates for Common Shares in a name other than that of the holder of the Rights being exercised.

(e) Upon receipt of a Rights Certificate, which is accompanied by (x) a completed Election to Exercise that does not indicate that such Right is null and void as provided by clause 3.2(b) and (y) payment as set forth in clause 2.2(d), the Rights Agent (unless otherwise instructed by the Corporation) will thereupon promptly

(i) requisition from the transfer agent for the Common Shares certificates representing the number of Common Shares to be purchased (the Corporation hereby irrevocably authorizing its transfer agent to comply with all such requisitions),

(ii) when appropriate, requisition from the Corporation the amount of cash to be paid in lieu of issuing fractional Common Shares,

(iii) after receipt of such certificates, deliver the same to or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, and

(iv) when appropriate, after receipt, deliver such cash to or to the order of the registered holder of the Rights Certificate.

(f) In case the holder of any Rights shall exercise less than all the Rights evidenced by such holder's Rights Certificate, a new Rights Certificate evidencing the Rights remaining unexercised will be issued by the Rights Agent to such holder or to such holder's duly authorized assigns.

(g) The Corporation covenants and agrees that it will

(i) take all such action as may be necessary and within its power to ensure that all Common Shares delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Exercise Price), be duly and validly authorized, executed, issued and delivered and fully paid and non-assessable,



(ii) take all such action as may be necessary and within its power to ensure compliance with the provisions of Section 3.2 including, without limitation, all such action to comply with any applicable requirements of the Business Corporations Act, 1982 (Ontario), the Securities Act (Ontario), the 1933 Securities Act, the 1934 Exchange Act and the comparable securities legislation of each of the provinces of Canada and any other applicable law, rule or regulation, in connection with the issuance and delivery of the Rights Certificates and the issuance of any shares upon exercise of Rights,

(iii) use reasonable efforts to cause all Common Shares issued upon exercise of Rights to be listed on the principal exchanges on which the Common Shares were traded prior to the Stock Acquisition Date upon issuance,

(iv) cause to be reserved and kept available out of its authorized and unissued Common Shares, the number of Common Shares that, as provided in this Agreement, will from time to time be sufficient to permit the exercise in full of all outstanding Rights, and

(v) pay when due and payable any and all Canadian and United States federal, provincial and state transfer taxes and charges (not including any income taxes of the holder or exercising holder or any liability of the Corporation to withhold tax) which may be payable in respect of the original issuance or delivery of the Rights Certificates, provided that the Corporation shall not be required to pay any transfer tax or charge which may be payable in respect of any transfer involved in the transfer or delivery of Rights Certificates or the issuance or delivery of certificates for shares in a name other than that of the holder of the Rights being transferred or exercised.

### 2.3 Adjustments to Exercise Price; Number of Rights

The Exercise Price, the number and kind of shares subject to purchase upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 2.3.

(a) In the event the Corporation shall at any time after the date of this Agreement (A) declare or pay a dividend on the Common Shares payable in Common Shares (or other securities exchangeable for or convertible into or giving a right to acquire Common Shares or other securities) other than the issue of Common Shares or such exchangeable or convertible securities to holders of Common Shares in lieu of but not in an amount which exceeds the value of regular periodic cash dividends, (B) subdivide or change the outstanding Common Shares into a greater number of Common Shares, (C) combine or change the outstanding Common Shares into a smaller number of Common Shares



or (D) issue any Common Shares (or other securities exchangeable for or convertible into or giving a right to acquire Common Shares or other securities) in respect of, in lieu of or in exchange for existing Common Shares, except as otherwise provided in this Section 2.3, the Exercise Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of Common Shares or other securities, as the case may be, issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the Exercise Price then in effect, the aggregate number and kind of Common Shares or other securities, as the case may be, which, if such Right had been exercised immediately prior to such date and at a time when the Common Share transfer books of the Corporation were open, he would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification. If an event occurs which would require an adjustment under both this Section 2.3 and Section 3.2 hereof, the adjustment provided for in this Section 2.3 shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 3.2 hereof.

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



(c) In case the Corporation shall fix a record date for a distribution to all holders of Common Shares (including any such distribution made in connection with a merger in which the Corporation is the continuing corporation) of evidences of indebtedness, cash (other than a regular periodic cash dividend or a regular periodic cash dividend paid in Common Shares, but including any dividend payable in securities other than Common Shares) assets or subscription rights or warrants (excluding those referred to in Section 2.3(b) hereof), the Exercise Price to be in effect after such record date shall be determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Market Price per Common Share on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Corporation, whose determination shall be described in a statement filed with the Rights Agent) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a Common Share and the denominator of which shall be such Market Price per Common Share. Such adjustments shall be made successively whenever such a record date is fixed, and in the event that such distribution is not so made, the Exercise Price shall be adjusted to be the Exercise Price which would have been in effect if such record date had not been fixed.

(d) Notwithstanding anything herein to the contrary, no adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease of at least one percent in the Exercise Price; provided, however, that any adjustments which by reason of this clause 2.3(d) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 2.3 shall be made to the nearest cent or to the nearest ten-thousandth of a Common Share or other share, as the case may be. Notwithstanding the first sentence of this clause 2.3(d), any adjustment required by this Section 2.3 shall be made no later than the earlier of (i) three years from the date of the transaction which mandates such adjustment or (ii) the Termination Time.

(e) If as a result of an adjustment made pursuant to Section 3.1 or Section 3.2 hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares other than Common Shares, thereafter the number of such other shares so receivable upon exercise of any Right and the Exercise Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Common Shares contained in clauses 2.3 (a), (b), (c), (d), (f), (g), (i), and (k), and the provisions of this Agreement with respect to the Common Shares shall apply on like terms to any such other shares.



(f) All Rights originally issued by the Corporation subsequent to any adjustment made to the Exercise Price hereunder shall evidence the right to purchase, at the adjusted Exercise Price, the number of Common Shares purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(g) Unless the Corporation shall have exercised its election as provided in clause 2.3(h), upon each adjustment of the Exercise Price as a result of the calculations made in clauses 2.3(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Exercise Price, that number of Common Shares (calculated to the nearest one ten-thousandth) obtained by (i) multiplying (x) the number of shares covered by a Right immediately prior to this adjustment by (y) the Exercise Price in effect immediately prior to such adjustment of the Exercise Price, and (ii) dividing the product so obtained by the Exercise Price in effect immediately after such adjustment of the Exercise Price.

(h) The Corporation may elect on or after the date of any adjustment of the Exercise Price to adjust the number of Rights, in lieu of any adjustment in the number of Common Shares purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of Common Shares for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Exercise Price in effect immediately prior to adjustment of the Exercise Price by the Exercise Price in effect immediately after adjustment of the Exercise Price. The Corporation shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Exercise Price is adjusted or any day thereafter, but, if the Rights Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 2.3(h), the Corporation shall, as promptly as practicable, cause to be distributed to holders of record of Rights Certificates on such record date Rights Certificates evidencing, subject to Section 5.5 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Corporation, shall cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Corporation, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates so



to be distributed shall be issued, executed and countersigned in the manner provided for herein and may bear, at the option of the Corporation, the adjusted Exercise Price and shall be registered in the names of the holders of record of Rights Certificates on the record date specified in the public announcement.

(i) Irrespective of any adjustment or change in the Exercise Price or the number of Common Shares issuable upon the exercise of the rights, the Rights Certificates theretofore and thereafter issued may continue to express the Exercise Price per share and the number of shares which were expressed in the initial Rights Certificates issued hereunder.

(j) In any case in which this Section 2.3 shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Corporation may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date the number of Common Shares and other securities of the Corporation, if any, issuable upon such exercise over and above the number of Common Shares and other securities of the Corporation, if any, issuable upon such exercise on the basis of the Exercise Price in effect prior to such adjustment; provided, however, that the Corporation shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(k) Notwithstanding anything in this Section 2.3 to the contrary, the Corporation shall be entitled to make such reductions in the Exercise Price, in addition to those adjustments expressly required by this Section 2.3, as and to the extent that in their good faith judgment the Board of Directors of the Corporation shall determine to be advisable in order that any (i) consolidation or subdivision of the Common Shares, (ii) issuance of any Common Shares at less than the Market Price, (iii) issuance of securities that by their terms are convertible into or exchangeable for Common Shares, (iv) stock dividends or (v) issuance of rights, options or warrants referred to in this Section 2.3, hereafter made by the Corporation to holders of its Common Shares, shall not be taxable to such shareholders.

(l) The Corporation covenants and agrees that, after the Separation Time, it will not, except as permitted by Section 5.1 or Section 5.4 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

#### **2.4 Date on Which Exercise is Effective**

Each person in whose name any certificate for Common Shares is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Common Shares represented thereby on, and such certificate shall be dated, the date upon which the Rights Certificate evidencing such Rights was duly surrendered (together with a duly completed



Election to Exercise) and payment of the Exercise Price for such Rights (and any applicable transfer taxes and other governmental charges payable by the exercising holder hereunder) was made; provided, however, that if the date of such surrender and payment is a date upon which the Common Share transfer books of the Corporation are closed, such person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding Business Day on which the Common Share transfer books of the Corporation are open.

## 2.5 Execution, Authentication, Delivery and Dating of Right Certificates

(a) The Rights Certificates shall be executed on behalf of the Corporation by its Chairman, President or any of its Vice Presidents, together with its Secretary or Assistant Secretary under its corporate seal reproduced thereon. The signature of any of these officers on the Rights Certificates may be manual or facsimile. Rights Certificates bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Corporation shall bind the Corporation, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the countersignature and delivery of such Rights Certificates.

(b) Promptly after the Corporation learns of the Separation Time, the Corporation will notify the Rights Agent of such Separation Time and will deliver Rights Certificates executed by the Corporation to the Rights Agent for countersignature, and the Rights Agent shall manually countersign and send such Rights Certificates to the holders of the Rights pursuant to clause 2.2(c) hereof. No Rights Certificate shall be valid for any purpose until countersigned by the Rights Agent as aforesaid.

(c) Each Rights Certificate shall be dated the date of countersignature thereof.

## 2.6 Registration, Registration of Transfer and Exchange

(a) The Corporation will cause to be kept a register (the "Rights Register") in which, subject to such reasonable regulations as it may prescribe, the Corporation will provide for the registration and transfer of Rights. The Rights Agent is hereby appointed "Rights Registrar" for the purpose of maintaining the Rights Register for the Corporation and registering Rights and transfers of Rights as herein provided. In the event that the Rights Agent shall cease to be the Rights Registrar, the Rights Agent will have the right to examine the Rights Register at all reasonable times.

After the Separation Time and prior to the Expiration Time, upon surrender for registration of transfer or exchange of any Rights Certificate, and subject to the provisions of clause 2.6(c) below, the Corporation will execute, and the Rights Agent will manually countersign and deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Rights Certificates evidencing the same aggregate number of Rights as did the Rights Certificates so surrendered.



(b) All Rights issued upon any registration of transfer or exchange of Rights Certificates shall be the valid obligations of the Corporation, and such Rights shall be entitled to the same benefits under this Agreement as the Rights surrendered upon such registration of transfer or exchange.

(c) Every Rights Certificate surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Corporation or the Rights Agent, as the case may be, duly executed by the holder thereof or such holder's attorney duly authorized in writing. As a condition to the issuance of any new Rights Certificate under this Section 2.6, the Corporation 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 Rights Agent) connected therewith.

## **2.7 Mutilated, Destroyed, Lost and Stolen Right Certificates**

(a) If any mutilated Rights Certificate is surrendered to the Rights Agent prior to the Expiration Time, the Corporation shall execute and the Rights Agent shall manually countersign and deliver in exchange therefor a new Rights Certificate evidencing the same number of Rights as did the Rights Certificate so surrendered.

(b) If there shall be delivered to the Corporation and the Rights Agent prior to the Expiration Time (i) evidence to their reasonable satisfaction of the destruction, loss or theft of any Rights Certificate and (ii) such security or indemnity as may be required by them to save each of them and any of their agents harmless, then, in the absence of notice to the Corporation or the Rights Agent that such Rights Certificate has been acquired by a bona fide purchaser, the Corporation shall execute and upon its request the Rights Agent shall countersign and deliver, in lieu of any such destroyed, lost or stolen Rights Certificate, a new Rights Certificate evidencing the same number of Rights as did the Rights Certificate so destroyed, lost or stolen.

(c) As a condition to the issuance of any new Rights Certificate under this Section 2.7, the Corporation 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 Rights Agent) connected therewith.

(d) Every new Rights Certificate issued pursuant to this Section 2.7 in lieu of any destroyed, lost or stolen Rights Certificate shall evidence an original additional contractual obligation of the Corporation, whether or not the destroyed, lost or stolen Rights Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Agreement equally and proportionately with any and all other Rights duly issued by the Corporation.



## 2.8 Persons Deemed Owners

The Corporation, the Rights Agent and any agent of the Corporation or the Rights Agent may deem and treat the person in whose name a Rights Certificate (or, prior to the Separation Time, the associated Common Share certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby for all purposes whatsoever. As used in this Agreement, unless the context otherwise requires, the term "holder" of any Rights shall mean the registered holder of such Rights (or, prior to the Separation Time, the associated Common Share certificate).

## 2.9 Delivery and Cancellation of Certificates

All Rights Certificates surrendered upon exercise or for redemption, registration of transfer or exchange shall, if surrendered to any person other than the Rights Agent, be delivered to the Rights Agent and, in any case, shall be promptly cancelled by the Rights Agent. The Corporation may at any time deliver to the Rights Agent for cancellation any Rights Certificates previously countersigned and delivered hereunder which the Corporation may have acquired in any manner whatsoever, and all Rights Certificates so delivered shall be promptly cancelled by the Rights Agent. No Rights Certificate shall be countersigned in lieu of or in exchange for any Rights Certificates cancelled as provided in this Section 2.9, except as expressly permitted by this Agreement. The Rights Agent shall destroy all cancelled Rights Certificates and deliver a certificate of destruction to the Corporation.

## 2.10 Agreement of Rights Holders

Every holder of Rights, by accepting the same, consents and agrees with the Corporation and the Rights Agent and with every other holder of Rights:

(i) to be bound by and subject to the provisions of this Agreement, as amended from time to time in accordance with the terms hereof, in respect of all Rights held;

(ii) that prior to the Separation Time, each Right will be transferable only together with, and will be transferred by a transfer of, the Common Share certificate representing such Right;

(iii) that after the Separation Time, the Rights Certificates will be transferable only on the Rights Register as provided herein;

(iv) that prior to due presentment of a Rights Certificate (or, prior to the Separation Time, the associated Common Share certificate) for registration of transfer, the Corporation, the Rights Agent and any agent of the Corporation or the Rights Agent may deem and treat the person in whose name the Rights Certificate (or, prior to the Separation Time, the associated Common Share certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on such Rights



Certificate or the associated Common Share certificate made by anyone other than the Corporation or the Rights Agent) for all purposes whatsoever, and neither the Corporation nor the Rights Agent shall be affected by any notice to the contrary;

(v) that such holder of Rights has waived his right to receive any fractional Rights or any fractional shares upon exercise of a Right; and

(vi) that without the approval of any holder of Rights and upon the sole authority of the Board of Directors of the Corporation acting in good faith this Agreement may be supplemented or amended from time to time pursuant to and as provided herein.

#### 2.11 Rights Certificate Holder not Deemed a Shareholder

No holder, as such, of any Rights or Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose whatsoever the holder of any Common Share or any other share or security of the Corporation which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Rights Certificate be construed or deemed or confer upon the holder of any Right or Rights Certificate, as such, any of the rights, titles, benefits or privileges of a holder of Common Shares or any other shares or securities of the Corporation or any right to vote at any meeting of shareholders of the Corporation whether for the election of directors or otherwise or upon any matter submitted to holders of shares of the Corporation at any meeting thereof, or to give or withhold consent to any action of the Corporation, or to receive notice of any meeting or other action affecting any holder of Common Shares or any other shares or securities of the Corporation except as expressly provided herein, or to receive dividends, distributions or subscription rights, or otherwise, until the Right or Rights evidenced by Rights Certificates shall have been duly exercised in accordance with the terms and provisions hereof.

### ARTICLE 3 - ADJUSTMENTS TO THE RIGHTS IN THE EVENT OF CERTAIN TRANSACTIONS

#### 3.1 Flip-over Event

(a) Subject to Sections 3.3 and 3.4 and clause 5.1(b), in the event that prior to the Expiration Time the Corporation enters into, consummates or permits or suffers to occur any Flip-over Event, the Corporation shall take such action as shall be necessary to ensure that

(i) each Right shall from and after the date upon which any Flip-over Event shall become effective constitute the right to purchase from the Person into which or with which the Corporation shall be consolidated, merged or amalgamated or with which the Corporation shall



enter into a statutory arrangement or to which the Corporation shall sell assets (such Person being herein referred to the "Flip-over Entity"), upon exercise thereof in accordance with the terms hereof, that number of Common Shares of the Flip-over Entity having an aggregate Market Price on the date of consummation or occurrence of such Flip-over Event equal to twice the Exercise Price for an amount in cash equal to the Exercise Price (such right to be appropriately adjusted in a manner analogous to the applicable adjustment to the Rights provided for in Section 2.3 in the event that after such date of consummation or occurrence an event of a type analogous to any of the events described in Section 2.3 shall have occurred with respect to such Common Shares), and

(ii) the Flip-over Entity shall thereafter be liable for and shall assume all of the obligations, liabilities and duties of the Corporation pursuant to this Agreement.

(b) The Corporation shall not enter into, consummate or permit or suffer to occur any Flip-over Event unless and until it shall have entered into an agreement with the Flip-over Entity supplemental to this Agreement pursuant to which the Flip-over Entity shall covenant and agree, for the benefit of the holders from time to time of the Rights, to the matters contemplated by clause 3.1(a) of this Agreement.

(c) The Corporation shall do all such acts and things and shall take all steps within its control to ensure that the Flip-over Entity does all such acts and things as shall be necessary to ensure compliance with the provisions of clause 3.1(a) of this Agreement.

### 3.2 Flip-in Event

(a) Subject to clause 3.2(b), Sections 3.3, 3.4 and clause 5.1(b), in the event that prior to the Expiration Time a Flip-in Event shall occur, the Corporation shall take such action as shall be necessary to ensure and provide within five Business Days or such longer period as may be required to satisfy the requirements of the 1933 Securities Act, the Securities Act (Ontario), and the securities legislation of each province of Canada of such occurrence so that except as provided below, each Right shall thereafter constitute the right to purchase from the Corporation upon exercise thereof in accordance with the terms hereof that number of Common Shares of the Corporation having an aggregate Market Price on the date of the consummation or occurrence of such Flip-in Event equal to twice the Exercise Price for an amount in cash equal to the Exercise Price (such Right to be appropriately adjusted in a manner analogous to the applicable adjustment provided for in Section 2.3 in the event that after such date of consummation or occurrence an event of a type analogous to any of the events described in Section 2.3 shall have occurred).

(b) Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any Flip-in Event, any Rights that are Beneficially Owned by (i) an Acquiring Person or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any



Affiliate or Associate of such Acquiring Person, or (ii) a transferee of Rights, directly or indirectly, of an Acquiring Person (or of any Affiliate or Associate of an Acquiring Person) or of any Person acting jointly or in concert with an Acquiring Person or any Associate or Affiliate of an Acquiring Person who becomes a transferee concurrently with or subsequent to the Acquiring Person becoming such shall become null and void without any further action, and any holder of such Rights (including transferees) shall not have any rights whatsoever to exercise such Rights under any provision of this Agreement and shall not have thereafter any other rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise.

(c) In the event that there shall not be sufficient Common Shares authorized but unissued to permit the exercise in full of the Rights in accordance with this Section 3.2, the Corporation shall take all such action as may be necessary and within its power to authorize additional Common Shares for issuance upon exercise of Rights.

### 3.3 Obligations of the Corporation

The Corporation shall not enter into or engage in any transaction of the kind referred to in Article 3 if at the time of or immediately after such transaction there are any rights, warrants, securities or other instruments outstanding or any other arrangements, agreements or instruments in effect which would eliminate or otherwise diminish in any respect the benefits intended to be afforded by the Rights and this Rights Agreement to the holders of Rights, upon consummation of such transaction. The provisions of this Section 3.3 shall apply to successive amalgamations, arrangements or consolidations, sales, other transfers or transactions of the kind referred to in Article 3.

### 3.4 Exchange Option

(a) The Board of Directors of the Corporation may, at its option, at any time after a Flip-in Event has occurred, authorize the Corporation to issue or deliver in respect of each Right which is not void pursuant to clause 3.2(b), either (i) in return for the Exercise Price and the Right, debt or other equity securities or other assets (or a combination thereof) having a value equal to twice the Exercise Price, or (ii) in return for the Right, and without further charge (except for any amounts that may be required to be paid under applicable law), debt or equity securities or other assets (or a combination thereof) having a value equal to the Exercise Price, in full and final settlement of all rights attaching to the Rights, where in either case

the value of such such debt or equity securities and the value of the Right shall be determined by the Board of Directors of the Corporation who may rely upon the advice of a nationally or internationally recognized firm of investment dealers or investment bankers selected by the Board of Directors of the Corporation.

(b) If the Board of Directors of the Corporation authorizes the exchange of debt or equity securities or other assets (or a combination thereof) for Rights pursuant to clause 3.4(a), without any further action or notice the right to exercise the Rights will terminate and the only right thereafter of a holder of Rights (other than Rights void pursuant to clause 3.2 (b)) shall be to receive such debt or equity securities or other assets (or a combination thereof) in accordance with the exchange formula authorized by the Board of Directors. Within 10 Business Days after the Board of Directors has authorized the exchange of such debt or equity securities or other assets (or a combination thereof) for Rights pursuant to clause 3.4(a), the Corporation shall give notice of such exchange to the holders of such Rights by mailing such notice to all such holders at their last addresses as they appear upon the Rights Register. Each such notice of exchange will state the method by which the exchange of such debt or equity securities or other assets (or a combination thereof) for Rights will be effected.

3.5 Special Meetings of Independent Shareholders to Consider Permitted Bids

- (a) In the event that a Person (the "Offeror") makes a Take-Over Bid which is a Permitted Bid within the meaning of clause 1.1(y) and the Board of Directors of the Corporation acting in good faith concludes that upon receipt of the approval of the Independent Shareholders referred to in clause 1.1(y) acquisitions of shares pursuant to such Take-Over Bid shall be Permitted Bid Acquisitions, the Board of Directors of the Corporation shall, within 31 days after the date (the "Offer Date") on which all of the documents referred to in clause 1.1(y) and which have otherwise been sent to the holders of Voting Shares by the Offeror in connection with such Take-Over Bid have been delivered to the Corporation, call a special meeting (the "Special Meeting") of Independent Shareholders in order for the Independent Shareholders to consider and if thought fit to approve a resolution (the "Referendum") on the question of whether such Take-Over Bid (as such Take-Over Bid may be amended or revised by the Offeror from time to time either (a) to waive a condition thereof or (b) to increase the price per share to be paid to holders of Voting Shares, without reduction in amount or change in terms of any security or reduction in amount of cash that are components thereof) should be approved. The Special Meeting shall be held on a date fixed by the Board of Directors, which date shall be as soon as practicable after the mailing of the Take-over Bid, taking into account:



- (i) the time required to prepare a management proxy statement or information circular and to comply with applicable securities laws and other regulatory requirements relating to the holding of meetings of shareholders, record dates and the distribution of proxy related materials to shareholders and intermediaries;
- (ii) other actual or pending Take-over Bids including Permitted Bids, if any; and
- (iii) other factors considered relevant by the Board of Directors of the Corporation,

but not less than 90 nor more than 120 days after the Offer Date; provided that if the Board of Directors receives a competing Take-over Bid which is a Permitted Bid after a special meeting has been called for another Take-over Bid, the Board in its discretion may delay the date on which the meeting is to be held, or adjourn the meeting, to a date not more than 45 days after the originally scheduled meeting date, so that shareholders may consider the merits of the competing Take-over Bid. The Board of Directors of the Corporation shall fix a record date for determining the Independent Shareholders entitled to receive notice of the Special Meeting in accordance with the procedures set forth in National Policy No. 41 of the Canadian Securities Administrators and the rules of any stock exchange on which the Common Shares are then listed, and the Articles and By-laws of the Corporation. The Special Meeting shall be conducted in accordance with the rules for holding meetings of shareholders set forth in the Articles and By-Laws of the Corporation. At the Offeror's request, the Corporation shall include with its proxy statement or information circular prepared in connection with the Special Meeting, proxy solicitation materials submitted by the Offeror provided that the Offeror by written agreement with the Corporation in form and substance satisfactory to the Corporation shall indemnify and hold the Corporation harmless from and against all costs, damages, expenses, fees and liabilities whatsoever, directly or indirectly, resulting from or arising out of any misstatements, misrepresentations, misleading statements or untrue statements contained in or omissions to state any fact in the Offeror's proxy solicitation materials necessary to make any statement contained therein not misleading in light of the circumstances in which it was made and shall have agreed to pay the Corporation's incremental costs incurred as a result of including such materials with the Corporation's proxy statement or information circular. Notwithstanding the foregoing, no Special Meeting shall be held from and after such time as any Person becomes an Acquiring Person, and any Special Meeting scheduled prior to such time and not theretofore held shall be cancelled.

- (b) If at the Special Meeting the Referendum receives the affirmative vote of a majority of not less than 51% of the votes cast by Independent Shareholders represented at the meeting in person or by proxy and such vote has been confirmed by independent election inspectors retained by the Corporation then acquisitions of Voting Shares made under the Permitted Bid referred to in the Referendum shall be deemed to be Permitted Bid Acquisitions.
- (c) For clarification it is understood that nothing contained in this Section 3.5 shall be considered to affect the obligations of the Board of Directors to exercise its fiduciary duties. Without limiting the generality of the foregoing, nothing contained herein shall be construed to suggest or imply that the Board of Directors shall not be entitled to recommend that holders of Voting Shares reject or accept any Take-over Bid to take any other action (including, without limitation, the commencement, prosecution, defence or settlement of any litigation and the submission of additional or alternative Take-over Bids or other proposals to the Special Meeting) with respect to any Take-over Bid or otherwise that the Board of Directors believes is necessary or appropriate in the exercise of its fiduciary duties.
- (d) Nothing contained in this Section 3.5 shall be construed as limiting or prohibiting the Corporation or any Offeror from proposing or engaging in any acquisition, disposition or other transfer of any securities of the Corporation, any merger, amalgamation, arrangement, recapitalization or business combination or transaction involving the Corporation, any sale or other transfer of assets of the Corporation, any liquidation, dissolution or winding-up of the Corporation or any other business combination or other transaction, or any other action by the Corporation or such Offeror, provided that the holders of Rights shall have the rights set forth in this Agreement with respect to any such acquisition, disposition, transfer, merger, amalgamation, arrangement, recapitalization, sale, liquidation, dissolution, winding-up, business combination or transaction or action.

#### ARTICLE 4 - THE RIGHTS AGENT

##### 4.1 General

(a) The Corporation hereby appoints the Rights Agent to act as agent for the Corporation in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Corporation may from



time to time appoint such Co-Rights Agents as it may deem necessary or desirable. In the event the Corporation appoints one or more Co-Rights Agents, the respective duties of the Rights Agents and Co-Rights Agents shall be as the Corporation may determine. The Corporation agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Corporation also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without negligence, bad faith or wilful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability, which right to indemnification will survive the termination of this Agreement.

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

#### **4.2 Merger or Amalgamation or Change of Name of Rights Agent**

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or amalgamated or with which it may be consolidated, or any corporation resulting from any merger, amalgamation, statutory arrangement or consolidation to which the Rights Agent or any successor Rights Agent is a party, or any corporation succeeding to the shareholder or stockholder services business of the Rights Agent or any successor Rights Agent, will be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 4.4 hereof. In case at the time such successor Rights Agent succeeds to the agency created by this Agreement any of the Rights Certificates have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Rights Certificates so countersigned; and in case at that time any of the Rights Certificates have not been countersigned, any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor



Rights Agent or in the name of the successor Rights Agent; and in all such cases such Rights Certificates will have the full force provided in the Rights Certificates and in this Agreement.

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

#### 4.3 Duties of Rights Agent

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

(i) the Rights Agent may consult with legal counsel (who may be legal counsel for the Corporation) and the opinion of such counsel will be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion;

(ii) whenever in the performance of its duties under this Agreement the Rights Agent deems it necessary or desirable that any fact or matter be proved or established by the Corporation prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by a person believed by the Rights Agent to be the Chairman of the Board, the President or any Vice President, Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Corporation and delivered to the Rights Agent; and such certificate will be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate;

(iii) the Rights Agent will be liable hereunder only for its own negligence, bad faith or wilful misconduct;

(iv) the Rights Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the certificates for Common Shares or the Rights Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and will be deemed to have been made by the Corporation only;



(v) the Rights Agent will not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due authorization, execution and delivery hereof by the Rights Agent) or in respect of the validity or execution of any Common Share certificate or Rights Certificate (except its countersignature thereof); nor will it be responsible for any breach by the Corporation of any covenant or condition contained in this Agreement or in any Rights Certificate; nor will it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to clause 3.2(b) hereof) or any adjustment required under the provisions of Section 2.3 hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights after receipt of the certificate contemplated by Section 2.3 describing any such adjustment); nor will it by any act hereunder be deemed to make any representation or warranty as to the authorization of any Common Shares to be issued pursuant to this Agreement or any Rights or as to whether any Common Shares will, when issued, be duly and validly authorized, executed, issued and delivered and fully paid and non-assessable;

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

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

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



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

#### 4.4 Change of Rights Agent

The Rights Agent may resign and be discharged from its duties under this Agreement upon 90 days' notice (or such lesser notice as is acceptable to the Corporation) in writing mailed to the Corporation and to each transfer agent of Voting Shares of the Corporation by registered or certified mail, and to the holders of the Rights in accordance with Section 5.8. The Corporation may remove the Rights Agent upon 30 days' notice in writing, mailed to the Rights Agent and to each transfer agent of the Voting Shares of the Corporation by registered or certified mail, and to the holders of the Rights in accordance with Section 5.8. If the Rights Agent should resign or be removed or otherwise become incapable of acting, the Corporation will appoint a successor to the Rights Agent. If the Corporation fails to make such appointment within a period of 30 days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of any Rights (which holder shall, with such notice, submit such holder's Rights Certificate for inspection by the Corporation), then the holder of any Rights may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Corporation or by such a court, shall be a corporation incorporated under the laws of Canada or a province thereof or of the United States or any state thereof authorized to carry on the business of a trust company. After appointment, the successor Rights Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Corporation will file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Voting Shares of the Corporation, and mail a notice thereof in writing to the holders of the Rights. Failure to give any notice provided for in this Section 4.4, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.



ARTICLE 5 - MISCELLANEOUS

5.1 Redemption and Waiver

(a) The Board of Directors of the Corporation may, at its option, at any time prior to the occurrence of a Flip-in Event, elect to redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.01 per Right appropriately adjusted in a manner analogous to the applicable adjustment provided for in Section 2.3 in the event that an event of the type analogous to any of the events described in Section 2.3 shall have occurred (such redemption price being herein referred to as the "Redemption Price"). The redemption of the Rights by the Board of Directors may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish.

(b) The Board of Directors of the Corporation may determine, upon prior written notice delivered to the Rights Agent, to waive the application of Sections 3.1 or 3.2 to any particular Flip-over Event or Flip-in Event.

(c) In the event that prior to the occurrence of a Flip-in Event or a Flip-over Event a Person acquires pursuant to a Permitted Bid not less than ninety percent of the then outstanding Common Shares other than Common Shares Beneficially owned at the date of the Permitted Bid by such Person, then the Board of Directors of the Corporation shall, immediately upon the consummation of such acquisition, without further formality be deemed to have elected to redeem the Rights at the Redemption Price.

(d) If the Board of Directors of the Corporation elects or is deemed to have elected to redeem the Rights, the right to exercise the Rights will thereupon, without further action and without notice, terminate and each Right will after redemption be null and void and the only right thereafter of the holders of Rights shall be to receive the Redemption Price.

(e) Within 10 days after the Board of Directors electing or having been deemed to have elected to redeem the Rights, the Corporation shall give notice of redemption to the holders of the then outstanding Rights by mailing such notice to all such holders at their last address as they appear upon the Rights Register or, prior to the Separation Time, on the registry books of the Transfer Agent for the Common Shares. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. The Corporation may not redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 5.1, and other than in connection with the purchase of Common Shares prior to the Separation Time.

## 5.2 Expiration

No Person shall have any rights whatsoever pursuant to or arising out of this Agreement or in respect of any Right after the Expiration Time, except the Rights Agent as specified in clause 4.1(a) of this Agreement.

## 5.3 Issuance of New Right Certificates

Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Corporation may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by its Board of Directors of the Corporation to reflect any adjustment or change in the number or kind or class of shares purchasable upon exercise of Rights made in accordance with the provisions of this Agreement.

## 5.4 Supplements and Amendments

The Corporation may from time to time supplement or amend this Agreement without the approval of any holders of Rights

(i) to make any changes, except for a supplement or amendment which would change the Expiration Time or change the percentages referred to clauses 1.1(a), 5.1(c) hereof, which the Board of Directors of the Corporation acting in good faith may deem necessary or desirable, provided that no such supplement or amendment made on or after the Stock Acquisition Date shall materially adversely affect the interests of the holders of Rights generally and provided further that no supplement or amendment shall be made to the provisions of Article 4 except with the written concurrence of the Rights Agent to such supplement or amendment, or

(ii) in order to cure any ambiguity or to correct or supplement any provision contained herein which may be inconsistent with any other provisions herein or otherwise defective.

## 5.5 Fractional Rights and Fractional Shares

(a) The Corporation shall not be required to issue fractions of Rights or to distribute Rights Certificates which evidence fractional Rights. Any such fraction shall be null and void and the Corporation will not have any obligation or liability in respect thereof.

(b) The Corporation shall not be required to issue fractions of Common Shares upon exercise of the Rights or to distribute certificates which evidence fractional Common Shares. In lieu of issuing fractional Common Shares, the Corporation shall pay to the registered holders of Rights



Certificates at the time such Rights are exercised as herein provided, an amount in cash equal to the same fraction of the Market Price of one Common Share.

#### 5.6 Rights of Action

Subject to the terms of this Agreement, all rights of action in respect of this Agreement, other than rights of action vested solely in the Rights Agent, are vested in the respective registered holders of the Rights; and any registered holder of any Rights, without the consent of the Rights Agent or of the registered holder of any other Rights, may, on such holder's own behalf and for such holder's own benefit and the benefit of other holders of Rights enforce, and may institute and maintain any suit, action or proceeding against the Corporation to enforce such holder's right to exercise such holder's Rights in the manner provided in such holder's Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of the obligations of any Person subject to, this Agreement.

#### 5.7 Notice of Proposed Actions

In case the Corporation shall propose after the Separation Time and prior to the Expiration Time

(i) to effect or permit (in cases where the Corporation's permission is required) any Flip-in Event or Flip-over Event, or

(ii) to effect the liquidation, dissolution or winding up of the Corporation or the sale of all or substantially all of the Corporation's assets,

then, in each such case, the Corporation shall give to each holder of a Right, in accordance with Section 5.8 hereof, a notice of such proposed action, which shall specify the date on which such Flip-in Event or Flip-over Event, liquidation, dissolution, winding up, or sale is to take place, and such notice shall be so given at least 20 Business Days prior to the date of taking of such proposed action.

## 5.8 Notices

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

Sherritt Gordon Limited  
Suite 2800  
Commerce Court West  
Toronto, Ontario  
M5L 1B1

Attention: The Chairman

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

Montreal Trust Company of Canada  
66 Temperance Street,  
Toronto, Ontario,  
M5H 1Y7

Attention: Manager, Stock and Bond Transfer Department

Notices or demands authorized or required by this Agreement to be given or made by the Corporation or the Rights Agent to or on the holder of any Rights shall be sufficiently given or made if delivered or sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as it appears upon the Rights Register or, prior to the Separation Time, on the registry books of the Corporation for the Common Shares. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice.

## 5.9 Costs of Enforcement

The Corporation agrees that if the Corporation or any other Person the securities of which are purchasable upon exercise of Rights fails to fulfil any of its obligations pursuant to this Agreement, then the Corporation or such Person will reimburse the holder of any Rights for the costs and expenses (including legal fees) incurred by such holder in actions to enforce his rights pursuant to any Rights or this Agreement.



#### 5.10 Successors

All the covenants and provisions of this Agreement by or for the benefit of the Corporation or the Rights Agent shall bind and enure to the benefit of their respective successors and assigns hereunder.

#### 5.11 Benefits of this Agreement

Nothing in this Agreement shall be construed to give to any Person other than the Corporation, the Rights Agent and the holders of the Rights any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Corporation, the Rights Agent and the holders of the Rights.

#### 5.12 Governing Law

This Agreement and each Right issued hereunder shall be deemed to be a contract made under the laws of the Province of Ontario and for all purposes shall be governed by and construed in accordance with the laws of such province applicable to contracts to be made and performed entirely within such Province.

#### 5.13 Severability

If any Section, clause, term or provision hereof or the application thereof to any circumstance or any right hereunder shall, in any jurisdiction and to any extent, be invalid or unenforceable, such Section, clause, term or provision or such right shall be ineffective only to such jurisdiction and to the extent of such invalidity or unenforceability in such jurisdiction without invalidating or rendering unenforceable or ineffective the remaining Sections, clauses, terms and provisions hereof or rights hereunder in such jurisdiction or the application of such Section, clause, term or provision or rights hereunder in any other jurisdiction or to circumstances other than those as to which it is specifically held invalid or unenforceable.

#### 5.14 Effective Date

This Agreement is effective and in full force and effect in accordance with its terms as of and from 5:00 p.m. (Toronto time) on November 23rd, 1989. If this Agreement is not confirmed by resolution passed by a majority of not less than 51% of the votes cast by the holders of Common Shares of the Corporation, excluding such holders who acquire 5% or more of the Common Shares of the Corporation from the date hereof until the date of such meeting, who vote in respect of confirmation of this Agreement at a meeting of shareholders to be held no later than the date of May 23, 1990, then this Agreement and any then outstanding Rights shall be of no further force and effect from that date which is the earlier of (i) the date of such meeting and (ii) May 23, 1990.

5.15 Determinations and Actions by the Board of Directors

The Board of Directors of the Corporation shall have the exclusive power and authority to administer and amend this Agreement and to exercise all rights and powers specifically granted to the Board of Directors of the Corporation or the Corporation, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to terminate or not to terminate the Rights or to amend the Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (b) below, all omissions with respect to the foregoing) which are done or made by the Board, in good faith, shall (a) be final, conclusive and binding on the Corporation, the Rights Agent, the holders of the Rights Certificates and all other parties, and (b) not subject the Board of Directors or any director of the Corporation to any liability to the holders of the Rights Certificates.



**5.16 Successor Corporations**

The Corporation shall not consummate or permit or suffer to occur any consolidation, amalgamation, merger or transfer of the undertaking or assets of the Corporation as an entirety or substantially as an entirety to another corporation (the "successor corporation") unless the successor corporation resulting from such consolidation, amalgamation, merger or transfer (if not the Corporation) shall expressly assume, by supplemental agreement in form satisfactory to the Rights Agent and executed and delivered to the Rights Agent, the due and punctual performance and observance of each and every covenant and condition of this Agreement to be performed and observed by the Corporation.

**5.17 Time of the Essence**

Time shall be of the essence in this Agreement.

**5.18 Execution in Counterparts**

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

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

**SHERITT GORDON LIMITED**

By: "K.J. Harvey"  
Vice-President, Finance

By: "P.E. Lawford" C.S.  
Assistant Secretary

**MONTREAL TRUST COMPANY OF CANADA**

By: "R.L. Mackenzie"  
Assistant Vice-President

By: "E.A. Shea" C.S.  
Manager, Operations  
Stock Transfer

## [FORM OF RIGHTS CERTIFICATE]

Certificate No. \_\_\_\_\_

\_\_\_\_\_ Rights

THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE CORPORATION, ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES (SPECIFIED IN CLAUSE 3.2(b) OF THE RIGHTS AGREEMENT), RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON, ANY PERSON ACTING JOINTLY OR IN CONCERT WITH AN ACQUIRING PERSON OR THEIR RESPECTIVE ASSOCIATES AND AFFILIATES (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) AND THEIR RESPECTIVE TRANSFEEES SHALL BECOME VOID WITHOUT ANY FURTHER ACTION.

## RIGHTS CERTIFICATE

This certifies that \_\_\_\_\_, or registered assigns, is the registered holder of the number of Rights set forth above, each of which entitles the registered holder thereof, subject to the terms, provisions and conditions of the Shareholder Rights Plan Agreement dated as of the 23rd day of November, 1989, (the "Rights Agreement") between Sherritt Gordon Limited, a corporation subsisting under the Business Corporations Act, 1982 (Ontario) (the "Corporation") and Montreal Trust Company of Canada, a trust company incorporated under the laws of Canada, as rights agent (the "Rights Agent", which term shall include any successor Rights Agent under the Rights Agreement) to purchase from the Corporation at any time after the Separation Time (as such term is defined in the Rights Agreement) and prior to the close of business on the 23rd day of November, 1999, one fully paid and non-assessable Common Share of the Corporation (a "Common Share") at the Exercise Price referred to below, upon presentation and surrender of this Rights Certificate together with the Form of Election to Exercise duly executed and submitted to the Rights Agent at its' principal office in any of the cities of Toronto, Montreal, Vancouver and Calgary. The Exercise Price shall initially be \$41.00 (Canadian) per Right and shall be subject to adjustment in certain events as provided in the Rights Agreement.

In certain circumstances described in the Rights Agreement, each Right evidenced hereby may entitle the registered holder thereof to purchase or receive securities of an entity other than the Corporation, assets, debt securities or other equity securities of the Corporation (or a combination thereof), all as provided in the Rights Agreement.



This Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Rights Agent, the Corporation and the holders of the Rights Certificates. Copies of the Rights Agreement are on file at the registered office of the Corporation and are available upon written request.

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

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Rights Certificate (i) may be, and under certain circumstances are required to be, redeemed by the Corporation at a redemption price of \$0.01 per Right or (ii) may be exchanged at the option of the Corporation in whole or in part for debt or equity securities or other assets (or a combination thereof) of the Corporation.

No fractional Common Shares will be issued upon the exercise of any Right or Rights evidenced hereby.

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

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

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

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

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

By: \_\_\_\_\_ C/S

Countersigned:

MONTREAL TRUST COMPANY OF CANADA

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



(To be attached to each Rights Certificate)

FORM OF ELECTION TO EXERCISE

TO:

The undersigned hereby irrevocably elects to exercise \_\_\_\_\_ whole Rights represented by the attached Rights Certificate to purchase the Common Shares issuable upon the exercise of such Rights and requests that certificates for such Shares be issued to:

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(CITY AND STATE OR PROVINCE)

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

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(CITY AND STATE OR PROVINCE)

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

Signature Guaranteed:

\_\_\_\_\_  
Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever)

Signature must be guaranteed by a member firm of a recognized stock exchange in Canada, a registered national securities exchange in the United States, a member of the National Association of Securities Dealers, Inc., or a commercial bank or trust company having an office or correspondent in Canada or the United States.

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(To be completed if true)

The undersigned hereby represents, for the benefit of all holders of Rights and Common Shares, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficially Owned by an Acquiring Person or an Affiliate or Associate thereof or any Person acting jointly or in concert with any of the foregoing (as defined in the Rights Agreement).

\_\_\_\_\_  
Signature

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#### NOTICE

In the event the certification set forth in the Forms of Assignment and Election is not completed, the Corporation will deem the Beneficial Owner of the Rights evidenced by this Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement) and accordingly such Rights shall be null and void.



FORM OF ASSIGNMENT

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

FOR VALUE RECEIVED \_\_\_\_\_

hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Please print name and address of transferee)

the Rights represented by this Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorney, to transfer the within Rights on the books of the Corporation, with full power of substitution.

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

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

\_\_\_\_\_  
Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever)

Signature must be guaranteed by a member firm of a recognized stock exchange in Canada, a registered national securities exchange in the United States, a member of the National Association of Securities Dealers, Inc., or a commercial bank or trust company having an office or correspondent in Canada or the United States.

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(to be completed if true)

The undersigned hereby represents, for the benefit of all holders of Rights and Common Shares, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficially Owned by an Acquiring Person or an Affiliate or Associate thereof or any person acting jointly or in concert with an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement).

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Signature







