

# Alberta

## Articles of Amalgamation

**1. Name of Amalgamated Corporation**

**MEG ENERGY CORP.**

**2. The classes of shares, and any maximum number of shares that the corporation is authorized to issue:**

The attached Schedule of Share Capital is incorporated into and forms part of this form.

**3. Restrictions on share transfers (if any):**

None.

**4. Number, or minimum and maximum number of directors:**

Not less than 3 directors and not more than 15 directors.

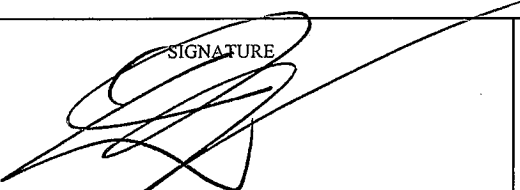
**5. If the corporation is restricted FROM carrying on a certain business or restricted TO carrying on a certain business, specify the restriction(s):**

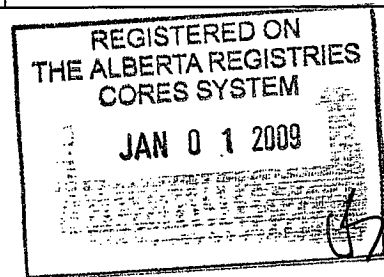
None.

**6. Other provisions (if any):**

The attached Schedule of Other Provisions is incorporated into and forms part of this form.

7. Name of Amalgamating Corporations	Corporate Access Number
MEG Energy Corp.	2010234488
1316410 Alberta Ltd.	2013164104

4. DATE	SIGNATURE	TITLE
January 1, 2009		Corporate Secretary



## SCHEDULE OF SHARE CAPITAL

### MEG ENERGY CORP.

The Corporation is authorized to issue:

- (a) One class of shares, to be designated as "Common Shares", in an unlimited number; and
- (b) One class of shares, to be designated as "Preferred Shares", issuable in series, in an unlimited number;

such shares having attached thereto the following rights, privileges, restrictions and conditions:

#### **A. Common Shares**

The Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- (i) the right to one vote at all meetings of shareholders of the Corporation, except meetings at which only holders of a specified class of shares are entitled to vote;
- (ii) subject to the prior rights and privileges attaching to any other class of shares of the Corporation, the right to receive any dividend declared by the Corporation; and
- (iii) subject to the prior rights and privileges attaching to any other class of shares of the Corporation, the right to receive the remaining property and assets of the Corporation upon dissolution.

#### **B. Preferred Shares**

The Preferred Shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- (i) the Preferred Shares may at any time and from time to time be issued in one or more series, each series to consist of such number of shares as may, before the issue thereof, be determined by resolution of the directors of the Corporation; and
- (ii) subject to the provisions of the *Business Corporations Act* (Alberta), the directors of the Corporation may by resolution fix from time to time before the issue thereof the designation, rights, privileges, restrictions and conditions attaching to each series of the Preferred Shares.

## SCHEDULE OF SERIES PROVISIONS

The Series A Preferred Shares (the "Series A Shares") in the capital of MEG Energy Corp. (the "Corporation") shall have the rights, privileges, restrictions and conditions set forth below. The Corporation is authorized to issue 15,626,812 Series A Shares.

### 1. Interpretation

- (a) **Definitions.** In this schedule of share provisions, the following capitalized terms shall have the meanings set forth below:
- (i) "ABCA" means the *Business Corporations Act* (Alberta), as amended, restated, replaced or re-enacted, from time to time;
  - (ii) "Additional Equity Securities" means all Common Shares issued, or deemed to be issued pursuant to Section 5(d)(ii) hereof, by the Corporation after the Series A Original Issue Date other than:
    - (1) Series A Shares issued on the Series A Original Issue Date or the Follow-On Issue Date; or
    - (2) Common Shares issued or issuable:
      - a. upon conversion of the Series A Shares;
      - b. pursuant to the exercise of Approved Options
      - c. as a dividend or distribution on the Series A Shares; or
      - d. for which adjustment of the Series A Conversion Price is made pursuant to Section 5(d)(v) hereof;
  - (iii) "Affiliate" of any Person means any Person which, directly or indirectly, is controlled by, controls or is under direct or indirect common control with such Person;
  - (iv) "Approved Options" means the following stock options granted or to be granted to officers, directors or employees or, or consultants to, the Corporation pursuant to stock option agreements made in accordance with a stock option plan approved by the Board:
    - (1) Options outstanding as of the Series A Original Issue Date to purchase a maximum of 1,677,470 Common Shares (adjusted for all subdivisions and combinations with respect to (the Common Shares));

- (2) Options to be granted following the Series A Original Issue Date to purchase a maximum of 892,754 Common Shares (adjusted for all subdivisions and combinations with respect to the Common Shares) provided that such Options are granted with an exercise price of not less than \$4.31 per Common Share;
  - (3) Options to be granted following the Follow-On Issue Date to purchase a maximum of 1,295,000 Common Shares (adjusted for all subdivisions and combinations with respect to the Common Shares) provided that such Options are granted with an exercise price of not less than \$5.00 per Common Share; and
  - (4) in the event that all of the Options described in subparagraphs (1), (2) and (3) of this definition have been granted, such additional Options with such exercise prices as are approved by the Board upon the recommendation of the compensation committee of the Board (if any) if and when warranted for performance, provided that no such Option is granted with an exercise price below \$4.00 per Common Share (adjusted for all subdivisions and combinations with respect to the Common Shares);
- (v) **"Board"** means the board of directors of the Corporation;
- (vi) **"Change of Control Transaction"** means:
- (1) any transaction by which any Person (other than the Initial Holder) becomes the beneficial owner, directly or indirectly, of securities of the Corporation representing 35% or more of the total votes represented by the Corporation's then outstanding voting securities, provided that, as a result of such transaction there is a change in the Chief Executive Officer (or person then holding an equivalent position) or a material change in the job description or duties of such person; or
  - (2) the direct or indirect sale or exchange of all or substantially all of the then outstanding voting securities of the Corporation by the holders thereof; or
  - (3) an amalgamation, merger, corporate reorganization, consolidation or other transaction involving the Corporation pursuant to which the holders of the voting securities of the Corporation immediately prior to such transaction do not retain, directly or indirectly, at least a

majority of the beneficial interest in the voting securities of the Corporation after such transaction; or

- (4) any issuance of voting securities from treasury to a single Person (other than the Initial Holder) or entity which results in such Person or entity becoming the beneficial owner, directly or indirectly, of securities of the Corporation representing more than 50% of the total votes represented by the Corporation's then outstanding voting securities;
- (vii) "**Chief Executive Officer**" means the Chief Executive Officer of the Corporation as appointed by the Board from time to time;
- (viii) "**Common Shares**" means the common shares in the capital of the Corporation;
- (ix) "**Convertible Securities**" means any evidences of indebtedness, shares (other than the Series A Shares) or other securities (excluding Options) convertible into or exchangeable for Common Shares;
- (x) "**Follow-On Issue Date**" means the date, if any, upon which any Follow-On Shares are issued to the Initial Holder;
- (xi) "**Follow-On Shares**" means 9,250,000 Series A Shares;
- (xii) "**Follow-On Issue Price**" means \$4.00;
- (xiii) "**Fully-Diluted Common Shares**" means, at any time, the number of Common Shares issued and outstanding plus the number of Common Shares issuable:
  - (1) upon conversion of the then issued and outstanding Series A Shares;
  - (2) upon the conversion or exchange of any then issued and outstanding Convertible Securities; and
  - (3) upon the exercise of any then issued and outstanding Options whether or not vested and currently exercisable;
- (xiv) "**Initial Holder**" means the initial holder of the Initial Shares or an Affiliate thereof;
- (xv) "**Initial Series A Issue Price**" means \$3.45;
- (xvi) "**Initial Shares**" means 6,376,812 Series A Shares;

(xvii) **"Institutional Investor"** means:

- (1) a "qualified institutional buyer" as such term is defined in Rule 144A promulgated under the *United States Securities Act of 1933*;
- (2) a "Canadian financial institution" as such term is defined under National Instrument 14-101 promulgated under the *Securities Act* (Alberta), or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada);
- (3) a subsidiary of an investor referred to in subparagraph (2) if such investor owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary;
- (4) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada;
- (5) an individual who:
  - a. either alone or with siblings and their spouses, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes; but net of any related liabilities, exceeds U.S. \$100,000,000; and
  - b. has substantial knowledge in financial and business affairs relevant to the energy industry and has made previous investments in the energy industry;
- (6) a corporation wholly-owned by an individual referred to in (5); or
- (7) a Person, trust, mutual, pension or endowment fund, or other entity with net assets of at least U.S. \$100,000,000 as shown on its most recently prepared financial statements and which carries on an energy-related business or has made previous investments in the energy industry; or
- (8) any other Person approved by the Series A Holders holding a majority of the outstanding Series A Shares acting reasonably taking into account the sophistication, net worth, knowledge and experience of such Person as it pertains to the business of the Corporation;

- (xviii) "**Junior Securities**" means, collectively, any shares of any series or class of shares of the Corporation, other than the Series A Shares;
- (xix) "**Liquidation Event**" means any of the following:
  - (1) the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs;
  - (2) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Corporation; or
  - (3) a Change of Control Transaction (unless a majority of the Series A Holders agree otherwise in writing);
- (xx) "**Liquidation Preference Amount**" means, at any time, an amount per Series A Share equal to the Initial Series A Issue Price or, in the event that the Follow-On Shares are issued to the Initial Holder, the Weighted Average Series A Issue Price as adjusted for any stock dividends, combinations or splits with respect to the Series A Shares;
- (xxi) "**Non-Competitor**" means:
  - (1) any Person or any of its Affiliates which does not own more than a 15% interest in any SAGD Project; or
  - (2) any Person or any of its Affiliates that is not employed by, does not own investments of more than 15% or does not have Board representation in, any Person which owns more than a 15% interest in any SAGD Project;
- (xxii) "**Options**" means rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Shares or Convertible Securities (which, for greater certainty, includes Approved Options);
- (xxiii) "**Person**" has the meaning ascribed thereto in the ABCA;
- (xxiv) "**Qualified Private Equity Financing**" means a sale of Common Shares pursuant to one funding round at a single price per Common Share which may have one or more closings over a period not exceeding 30 days to one or more investors other than by way of a public offering, provided that:

- (1) at least one of such investors is an Institutional Investor (other than an existing holder of Series A Shares or Common Shares) which invests not less than \$10 million;
  - (2) the gross proceeds from such sale of Common Shares is at least \$50 million; and
  - (3) the price per Common Share sold at any such closing shall not be less than:
    - a. in the event that the Follow-On Shares are issued to the Initial Holder, \$4.50 provided that all such closings occur within one year following the Follow-On Issue Date; and
    - b. \$5.00 in any other case;
- (xxv) "**Qualified Public Offering**" means the closing of an initial public offering of Common Shares by way of prospectus provided that:
- (1) the aggregate gross proceeds are not less than \$50 million;
  - (2) the issued and outstanding Common Shares are listed and posted for trading on a Recognized Exchange; and
  - (3) the price per Common Share sold in such public offering shall not be less than:
    - a. in the event that the Follow-On Shares are issued to the Initial Holder, \$4.50 provided that such closing occurs within one year following the Follow-On Issue Date; and
    - b. \$5.00 in any other case;
- (xxvi) "**Recognized Exchange**" means the Toronto Stock Exchange, the New York Stock Exchange or the NASDAQ stock market or any successors thereto;
- (xxvii) "**SAGD Project**" means any existing or planned Steam Assisted Gravity Drainage project involving at least 3 sections of land in the Athabasca area of the Province of Alberta;
- (xxviii) "**Series A Conversion Price**" means the Initial Series A Issue Price, as adjusted in accordance with the provisions set forth in Section 5(d) hereof; provided, however, that in the event any Follow-On Shares are issued to the Initial Holder:



- (1) the Series A Conversion Price shall be recomputed as of the Follow-On Issue Date in accordance with the provisions set forth in Section 5(d) for any adjustments between the Series A Original Issue Date and the Follow-On Issue Date assuming that the Series A Conversion Price was equal to the Weighted Average Series A Issue Price on the Series A Original Issue Date and the Follow-On Shares were issued on the Series A Original Issue Date; and
  - (2) any adjustments to the Series A Conversion Price pursuant to section 5(d) to be made subsequent to the Follow-On Issue Date shall be made to the Series A Conversion Price as recomputed pursuant to subparagraph (1) of this definition;
- (xxix) "**Series A Directors**" means the directors who the Series A Holders are exclusively entitled to elect to the Board pursuant to Section 4(b), (c) or (d);
- (xxx) "**Series A Follow-On Proceeds**" means, with respect to the sale of Follow-On Shares, the product obtained by multiplying (1) the number of Follow-On Shares so sold, by (2) the Follow-On Issue Price;
- (xxxi) "**Series A Holders**" means the registered holders of Series A Shares;
- (xxxii) "**Series A Initial Proceeds**" means, with respect to the sale of the Initial Series A Shares, the product obtained by multiplying (1) the number of Initial Series A Shares so sold, by (2) the Initial Series A Issue Price;
- (xxxiii) "**Series A Original Issue Date**" means the date upon which the Series A Shares are issued;
- (xxxiv) "**Transfer**" means any direct or indirect sale, assignment, conveyance or other transfer or disposition of any kind, whether voluntary or be operation of law; and
- (xxxv) "**Triggering Transaction**" has the meaning set forth in Section 5.2(d)(i) hereof; and
- (xxxvi) "**Weighted Average Series A Issue Price**" means, in the event of any issuance of Follow-On Shares, the quotient obtained by dividing:
- (1) the aggregate sum of the Initial Series A Proceeds and the Follow-On Proceeds, by;

- (2) the aggregate number of Series A Shares issued on the Series A Original Issue Date and the Follow-On Issue Date.
  - a. Currency. Unless otherwise indicated, all dollar amounts referred to herein are in the lawful money of Canada.

## **2. Dividends**

The Series A Holders shall not be entitled to dividends or other distributions; provided, however, that in the event that any dividend or other distribution is declared by the Board on any Junior Securities, the Board shall contemporaneously therewith declare a dividend on the Series A Shares then outstanding, payable at the same time as such dividend on any such Junior Securities, in an amount per Series A Share equal to the aggregate amount of such dividends or other distributions that would be payable on all Common Shares into which each such Series A Share could then be converted.

## **3. Liquidation Preference**

- (a) In the event of any Liquidation Event, upon any distribution of any of the assets of the Corporation to the holders of Junior Securities as a result thereof, the Series A Holders shall be entitled to receive, prior and in preference to any such distribution of any of the assets of the Corporation to the holders of Junior Securities, an amount per Series A Share equal to the Liquidation Preference Amount. The Corporation shall provide written notice of any proposed Liquidation Event to the Series A Holders not less than five business days prior to the completion of such Liquidation Event during which the Series A Holders may convert their Series A Shares pursuant to Section 5(a) hereof, which conversion may be made conditional upon the completion of such Liquidation Event.
- (b) All of the preferential amounts to be paid to the Series A Holders under this Section 3 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of Junior Securities in connection with any such Liquidation Event.
- (c) If, in the event of a Liquidation Event, the assets of the Corporation are insufficient to provide for the payment in full of all Liquidation Preference Amounts to which the Series A Holders are entitled pursuant to Section 3(a), then the entire assets of the Corporation legally available for distribution upon any such Liquidation Event shall be distributed ratably among the Series A Holders in proportion to the aggregate of all Liquidation Preference Amounts each such holder is otherwise entitled to receive.
- (d) Whenever the distribution provided for in this Section 3 shall be payable in securities or property other than in cash, the value of such distribution

shall be the fair market value of such securities or other property as determined in good faith by an independent appraiser selected by the Board, the fees and expenses of which shall be paid by the Corporation.

- (e) Except as expressly provided in this Section 3, the Series A Holders shall not be entitled to any further participation in the assets of the Corporation in the event of a Liquidation Event.

#### **4. Shareholder Meetings, Voting Rights and Directors**

- (a) Except as set forth herein or as otherwise required by law, each Series A Holder shall be entitled to the number of votes per Series A Share equal to the number of Common Shares into which each such Series A Share is then convertible and shall vote together with the holders of Common Shares as a single class.
- (b) Subject to Section 4(c) below, the Series A Holders voting as a separate class shall have the exclusive right to elect two directors to the Board, provided, that:
  - (i) if, at any time, the number of Common Shares into which the then outstanding Series A Shares could then be converted represents less than 20% of the Fully-Diluted Common Shares, the number of directors that the Series A Holders shall have the exclusive right to elect pursuant to this Section 4(b) shall be one; and
  - (ii) if, at any time, the number of Common Shares into which the then outstanding Series A Shares could then be converted represents less than 10% of the Fully-Diluted Common Shares, the Series A Holders shall not have any right to elect directors to the Board pursuant to this Section 4(b).
- (c) Notwithstanding the provisions of Section 4(b) above, in the event that the Initial Holder effects a Transfer of all (but not less than all) of the Series A Shares then held by the Initial Holder to any Person prior to the date which is 8 years from the Series A Original Issue Date:
  - (i) if such Person is a Non-Competitor at the time of such Transfer, then the Series A Holders voting as a separate class shall have the exclusive right to elect only one director to the Board; provided, that if, at any time, the number of Common Shares into which the then outstanding Series A Shares could then be converted represents less than 10% of the Fully-Diluted Common Shares, the Series A Holders shall not have any right to elect directors to the Board pursuant to this Section 4(c); and

- (ii) if such Person is not a Non-Competitor at the time of such Transfer, the Series A Holders shall not have any exclusive right to elect any directors to the Board.

provided further, however, that this Section 4(c) shall not apply if such Transfer of Series A Shares occurs on or after the date which is 8 years from the Series A Original Issue Date (in which case, for greater certainty, the provisions set forth in Section 4(b) shall be applicable).

- (d) A vacancy which occurs among the Series A Directors shall only be filled by a vote of the Series A Holders.
- (e) Each Series A Holder shall be entitled to receive notice of and to attend all meetings of shareholders of the Corporation.

## 5. Conversion Rights

- (a) **Optional Conversion.** Each Series A Holder shall be entitled, at its option, to convert all (and not less than all) of its Series A Shares from time to time and at any time after the date of issuance thereof at the office of the Corporation into such number of fully paid and non-assessable Common Shares as is determined by dividing the Liquidation Preference Amount by the Series A Conversion Price in effect at the time of such conversion.
- (b) **Mandatory Conversion.** All of the outstanding Series A Shares shall be automatically converted into such number of fully paid and non-assessable Common Shares as is determined by dividing the Liquidation Preference Amount by the Series A Conversion Price in effect at the time of such conversion immediately and effective upon any one of the following events:
  - (i) a Qualified Private Equity Financing; or
  - (ii) a Qualified Public Offering.
- (c) **Mechanics of Conversion.**
  - (i) No fractional Common Shares shall be issued upon any conversion of Series A Shares. In lieu of any fractional shares to which a Series A Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by (i) if the Common Shares are listed on any Recognized Exchange, the last sales price of the Common Shares on such Recognized Exchange (or the quoted closing ask price if there shall have been no sales) on the date of conversion, or (ii) if the Common Shares shall not be listed, the fair market value per share as determined by the Board, but in any event, no less than the Series A Conversion Price.

- (ii) In connection with the conversion of Series A Shares, before any Series A Holder shall be entitled to receive certificates representing any Common Shares in connection with such conversion, such Series A Holder shall surrender the certificate or certificates representing the Series A Shares being converted at the office of the Corporation and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the name or names in which such holder wishes the certificate or certificates for such Common Shares to be registered. The Corporation shall, as soon as practicable thereafter, issue and deliver to such Series A Holder, a certificate or certificates for the number of Common Shares to which such holder is entitled as aforesaid.
- (iii) Except as contemplated in Section 5(b) above, any conversion of Series A Shares pursuant to this Section 5 shall be deemed to have been made immediately prior to the close of business on the date of surrender of the Series A Shares to be converted, and the Person or Persons entitled to receive the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date or the effective date of mandatory conversion pursuant to Section 5(b) if applicable; provided, however, that notwithstanding the foregoing, if the conversion is in connection with a public offering of Common Shares, any Series A Holder tendering Series A Shares for conversion in connection therewith may condition such conversion upon the closing of the public offering, in which event such conversion shall be deemed to have occurred immediately prior to the closing of such public offering and the Person or Persons entitled to receive the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Shares on such date.

(d) **Adjustments to Series A Conversion Price.**

- (i) **Issuances of Additional Equity Securities.** In the event that the Corporation, at any time after the Series A Original Issue Date, issues or is deemed pursuant to Section 5(d)(ii) to have issued any Additional Equity Securities without consideration or for a consideration per share less than the Series A Conversion Price in effect on the date of and immediately prior to such issue (a "Triggering Transaction"), then and in each such event, the Series A Conversion Price shall be reduced concurrently with such issue to a price (calculated to the nearest cent) determined by multiplying such Series A Conversion Price by a fraction, the numerator of which shall be the number of Fully-Diluted Common Shares outstanding immediately prior to such issue plus the

number of Common Shares which the aggregate consideration received or to be received by the Corporation for the total number of Additional Equity Securities so issued or to be issued would purchase at the Series A Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of Fully-Diluted Common Shares outstanding immediately prior to such issue plus the number of Additional Equity Securities so issued or to be issued.

(ii) **Deemed Issuances of Additional Equity Securities.** In the event that the Corporation at any time or from time to time after the Series A Original Issue Date issues any Options (excluding Approved Options) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of Common Shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number that would result in an adjustment pursuant to Section 5(d)(ii)(2) below) issuable upon the exercise of such Options and the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Equity Securities issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Common Shares are deemed to be so issued:

- (1) no further adjustment in the Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or Common Shares upon the exercise of any such Options or conversion or exchange of any such Convertible Securities;
- (2) if such Options or Convertible Securities by their terms provide, with the passage of time, the occurrence of a Triggering Transaction or similar transaction, or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of Common Shares issuable upon the exercise, conversion or exchange thereof, the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or Convertible Securities;

- (3) upon the expiration or termination of any such Options or any rights of conversion or exchange under any such Convertible Securities which shall not have been exercised, the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:
  - a. in the case of such Convertible Securities or such Options for Common Shares, the only Additional Equity Securities issued were the Common Shares, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefore was the consideration actually received by the Corporation for the issue of all such Options exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and
  - b. in the case of such Options for Convertible Securities only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation therefore was the consideration actually received by the Corporation for the issue of all such Options exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;
- (4) no readjustment pursuant to Section 5(d)(ii)(2) or (3) above shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (a) the Series A Conversion Price on the original adjustment date as further adjusted for other, unrelated transactions, or (b) the Series A Conversion Price that would have resulted from any issuance of Additional Equity Securities between the original adjustment date and such readjustment date; and

- (5) in the case of any such Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Series A Conversion Price shall be made until the expiration or exercise of all such Options, whereupon the appropriate adjustment shall be made in the same manner provided above.

In addition to the foregoing, in the event that any Approved Options by their terms provide, with the passage of time, the occurrence of a Triggering Transaction or similar transaction, or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of Common Shares issuable upon the exercise thereof, any prior adjustments made to the Series A Conversion Price shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it relates to such Approved Options.

- (iii) **No Adjustment of Series A Conversion Price.** Notwithstanding any provision herein to the contrary, no adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Equity Securities unless the consideration per share for such Additional Equity Securities issued or deemed to be issued by the Corporation is less than the Series A Conversion Price in effect on the date of, and immediately prior to, such issue.
- (iv) **Determination of Consideration.** For the purposes of this Section 5(d), the consideration received by the Corporation for the issue of any Additional Equity Securities shall be computed as follows:
- (1) **Cash and Property.** Such consideration shall:
- a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;
  - b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board;
  - c. in case any Options shall be issued in connection with the issue or sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is



allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration; and

- d. in the event other Additional Equity Securities are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses a. and b. above, as determined in good faith by the Board; and

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Equity Securities deemed to have been issued pursuant to Section 5(d)(ii) hereof, relating to Options and Convertible Securities shall be determined by dividing:

- a. the total amount, if any received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- b. the maximum number of Common Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(v) **Adjustments for Stock Dividends, Subdivisions, Combinations or Consolidations of Common Shares.** In the event that the outstanding Common Shares are subdivided (by way of stock dividend, share split or otherwise) into a greater number of Common Shares, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be

proportionately decreased. In the event that the outstanding Common Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of Common Shares, the Series A Conversion Price then in effect shall, concurrent with the effectiveness of such combination or consolidation be proportionately increased.

- (vi) **Adjustment for Reclassification, Exchange and Substitution.** If the Common Shares issuable upon conversion of the Series A Shares shall be changed into the same or a different number of shares of any other class or classes of shares, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 5(d)(v) hereof), then and in each such event, each Series A Holder shall have the right thereafter to convert the Series A Shares into the kind and amount of shares or other securities or property receivable upon such reorganization or reclassification or other change by holders of the number of Common Shares that would have been issuable to the Series A Holders upon conversion of the Series A Preferred immediately before that change, subject to all other adjustments under this Section 5(d).
- (vii) **No Impairment.** The Corporation shall not, by amendment of its articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Series A Holders against impairment.
- (viii) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment on the Series A Conversion Price pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Series A Holder a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Corporation setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any Series A Holder, furnish or cause to be furnished to such Series A Holder a similar certificate setting forth all such adjustment and readjustments, the Series A Conversion Price in effect at such time, and the number of Common Shares or the amount, if any, of other property (as determined under Section 5(d)(vi) hereof), which at such time

would be issuable upon the conversion of the Series A Preferred Shares.

## 6. Restrictions and Limitations

In addition to any other rights provided by law, so long as any Series A Shares are outstanding, the Corporation shall not, without the approval of Series A Holders holding a majority of the outstanding Series A Shares:

- (a) issue any Follow-On Shares other than to the Initial Holder;
- (b) amend, alter or repeal the rights, privileges, restrictions and conditions of the Series A Shares or otherwise amend the articles or bylaws of the Corporation;
- (c) authorize, issue or repurchase any Securities Of the Corporation ranking *pari passu* or senior to the Series A Shares;
- (d) enter into any transaction, or permit any of its subsidiaries to enter into a transaction, with any officer, director, beneficial owner of greater than 7.5% of the Fully Diluted Common Shares, immediate family member or any of the foregoing, or any Affiliate of the foregoing, other than employment transactions with officers of the Corporation in the ordinary course of business consistent with past practices;
- (e) declare or pay any dividends on any securities of the Corporation, provided, however, that in the event that the Initial Holder effects a Transfer prior to the date which is 8 years from the Series A Original Issue Date, of all (but not less than all) of the Series A Shares then held by such Series A Holder to any Person, the provisions of this Section 6(e) shall, effective as of the date of such Transfer, cease to apply and shall thereafter have no force or effect; or
- (f) increase the number of directors of the Corporation as of the Series A Original Issue Date, provided, however, that in the event that the Initial Holder effects a Transfer prior to the date which is 8 years from the Series A Original Issue Date, of all (but not less than all) of the Series A Shares then held by such Series A Holder to any Person who, at the time of such Transfer is not a Non-Competitor, the provisions of this Section 6(f) shall, effective as the date of such Transfer, cease to apply and shall thereafter have no force or effect.

## 7. Reservation of Shares

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares, for the purposes of effecting the conversion of the Series A Shares, such number of its duly authorized Common Shares as shall from time to time be sufficient to effect the conversion of all outstanding Series A Shares.

**8. Certificates**

Upon receipt by the Corporation of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of any certificate evidencing any Series A Shares owned by the Series A Holders, and (in the case of loss, theft or destruction) of an indemnity satisfactory to it, and upon reimbursement to the Corporation of all reasonable expenses incidental thereto, and upon surrender and cancellation of such certificate, if mutilated, the Corporation shall make and deliver in lieu of such certificate a new certificate of like tenor and for the number of shares or other securities evidenced by such certificate which remain outstanding. Upon surrender of any certificate representing any Series A Shares for exchange at the office of the Corporation, the Corporation at its expense will cause to be issued in exchange therefore new certificates in such denomination or denominations as may be requested for the same aggregate number of Series A Shares or Common Shares, as the case may be, represented by the certificate so surrendered and registered as such holder may request.

**9. Assignment or Transfer**

No Series A Holder may sell, assign or transfer any of its Series A Shares unless such holder sells all (but not less than all) of its Series A Shares; provided, however, that the foregoing restriction shall not apply to any sale, assignment or transfer by any Series A Holder to an Affiliate thereof but in any event, no further sale, assignment or transfer of Series A Shares may be made to any other party unless all such Affiliate holders of Series A Shares sell all their Series A Shares to such party

## SCHEDULE OF OTHER PROVISIONS

1. The directors may, between annual meetings of shareholders, appoint one or more additional directors of the Corporation to serve until the next annual meeting of shareholders, but the number of additional directors shall not at any time exceed 1/3 of the number of directors who held office at the expiration of the last meeting of the shareholders of the Corporation.
2. Any meeting of the shareholders of the Corporation may be held in any of the following cities:

St. John's, Newfoundland  
Charlottetown, Prince Edward Island  
Halifax, Nova Scotia  
Saint John, New Brunswick  
Montreal, Quebec  
Quebec City, Quebec  
Toronto, Ontario  
Ottawa, Ontario  
Winnipeg, Manitoba  
Regina, Saskatchewan  
Victoria, British Columbia  
Vancouver, British Columbia

or in any other place selected by the directors of the Corporation in accordance with applicable corporate legislation.