

SAMPLE SHAREHOLDERS' AGREEMENT

Shareholders' Agreement made the day of , 1997.

AMONG:

[Insert name of Shareholder]
(referred to in this Agreement as "<>")

Of the First Part

-and-

[Insert name of Shareholder]
(referred to in this Agreement as "<>")

Of the Second Part

-and-

[Insert name of Shareholder]
(referred to in this Agreement as "<>")

Of the Third Part

-and-

[Insert name of Shareholder]
(referred to in this Agreement as "<>")

Of the Fourth Part

-and-

[Insert name of Corporation], a corporation incorporated under the laws of
[insert provincial jurisdiction or "Canada"]
(referred to in this Agreement as the "Corporation")

Of the Fifth Part

WHEREAS <>, <>, <> and <> (referred to in this Agreement collectively as the "Shareholders" and individually as a "Shareholder") are each the registered owners of the number of common shares of the Corporation (collectively the "Shares") set forth opposite their names:

<> - <>
<> - <>
<> - <>
<> - <>

AND WHEREAS the parties hereto are desirous of entering into certain arrangements with respect to, among other things, their relationship as Shareholders of the Corporation, the management and control of the Corporation and the transfer of their Shares;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements hereinafter contained, the sum of Ten Dollars (\$10) now paid by each of the parties hereto to the other and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each of the parties hereto, it is hereby agreed among the parties as follows:

SECTION 1 DEFINITIONS

1(1) In this Agreement, unless indicated otherwise, the following terms shall have the following meanings:

- (a) "Act" means the Income Tax Act, RSC 1985, c. 1 (5th Supplement) as amended from time to time and as it reads on the date of this Agreement;
- (b) "Aggregate Purchase Price" means, in relation to a Selling Shareholder, the Purchase Price for each such Share being purchased by an Other Shareholder multiplied by the number of Shares owned by the Selling Shareholder;

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- (c) "Business Day" means a business day in the Province of Ontario.
- (d) "Capital Dividend Account" has the meaning assigned to it by subsection 89(1) "capital dividend account" of the Act;
- (e) "capital dividend" means, in respect of a dividend payable by the Corporation on any of its Shares, a dividend elected in prescribed manner and prescribed form to be paid as a capital dividend from the Corporation's Capital Dividend Account;
- (f) "Controlled Corporation", in relation to any Shareholder, means any corporation which is incorporated and subsisting under the laws of Canada or any Province of Canada, provided that such corporation is "controlled", within the meaning of the Act, by a Shareholder and further provided that such Controlled Corporation and all of its shareholders first enter into an agreement reasonably satisfactory to each of them acting reasonably, and the Corporation, whereby they agree to be bound by the provisions of this Agreement.
- (g) "Estate" means the heirs, executors, administrators and other legal personal representatives of a deceased Shareholder, and, without limiting the generality of the foregoing, a spouse trust created under the terms of the Last Will and Testament of a deceased Shareholder;
- (h) "Fair market value", in relation to a Selling Shareholder's Shares, means that amount which is the fair market value of each of the Selling Shareholder's Shares as at the end of the fiscal quarter of the Corporation immediately preceding the fiscal quarter in which the deceased Shareholder died. Such determination shall be made by the accountants of the Corporation, in writing, and given to all of the Shareholders (including the Estate) and to the Corporation and Insureco within 90 days of the date of the death of the deceased Shareholder, or as soon thereafter as may be reasonably possible. The determination of the fair market value of all of the issued and outstanding Shares made by the accountants shall, for the purposes of this Agreement, be binding and effective upon the Shareholders. In arriving at

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such determination, the accountants shall take into account and apply generally accepted accounting and valuation principles, provided that the accountants shall not have regard to the occurrence of the death of the Selling Shareholder or the imminent possibility thereof. The determination arrived at by the accountants, made as experts and not as umpires or arbitrators, shall be final and binding on all of the parties to this Agreement and no appeal shall lie from such determination. The parties further agree that the accountants should not, in arriving at such determination, attach a discount to the Shares owned by a Selling Shareholder or a Controlled Corporation of a Selling Shareholder by reason that such Shares do not represent a controlling interest in the Corporation.

- (i) "Insureco" means any corporation that is a private corporation, as the expression "private corporation" is defined in subsection 89(1) of the Act, that has been incorporated for the purpose, inter alia, of holding the life insurance policies referred to in Schedule 1 hereto.
- (j) "Purchase Price means the product, X, obtained by applying the following formula:

$$X = A - B$$

where

A is the fair market value of a Share and

B is [if the parties to the Agreement want to discount the Purchase Price by any amount that represents a tax recovery/reduction for a Selling Shareholder due to the payment of a capital dividend, include the following] an amount equal to .375 multiplied by the amount of a capital dividend, if any, that the Corporation or Insureco may elect to pay out of its Capital Dividend Account to satisfy the payment of the Aggregate Purchase Price where the Selling Shareholder is causing the Corporation to redeem its Shares.

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- (k) "Shares" means the issued and outstanding shares of the Corporation and, without limiting the generality of the foregoing description, and for the purposes of section 4 of this Agreement, includes special or preference shares or a demand debenture and General Security Agreement or promissory note that have been issued to a Selling Shareholder in payment of the Aggregate Purchase Price pursuant to subsections 4(8.1) or 4(8.2) of this Agreement, of the Corporation owned by either a
- (i) Selling Shareholder; or,
 - (ii) a Controlled Corporation of a Selling Shareholder.

SECTION 2 PURPOSE AND SCOPE

2(1) This Agreement shall come into force and effect as of the date set out above and shall continue in force until the earlier of:

- (a) the date on which only one Shareholder holds Shares; and
- (b) the date this Agreement is terminated by written agreement executed by all of the Shareholders who continue to hold Shares.
- (c) In the event that any one or more of the Shareholders (the "Selling Shareholders") ceases to be a shareholder of the Corporation pursuant to a sale of shares permitted under [Sections and specify same] of this Agreement, the Selling Shareholder shall have no further rights or obligations pursuant to the provisions of this Agreement but, subject to the provisions of subsection 2(1) hereof, this Agreement shall continue to be binding upon the remaining parties hereto.

2(2) This Agreement shall apply mutatis mutandis:

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- (a) to the Shares as of the date hereof and to any shares into which such shares may be converted, changed, reclassified, subdivided or consolidated;
- (b) to any shares of the Corporation which are received by the Shareholders as a stock dividend;
- (c) to any shares or other securities which may be received by the Shareholders on any amalgamation, arrangement or reorganization involving the Corporation;
- (d) to any additional shares of the Corporation or a Shareholder hereafter issued and allotted to the Shareholders.

(all such shares referred to above are also herein collectively referred to as the "Shares").

2(3) Each of the Shareholders shall vote his Shares and act as a shareholder and in all other respects efforts and take all such steps as may reasonably be within his power so as to the cause the Corporation to comply with and act in a manner contemplated by this Agreement so as to implement to their full extent the provisions of this Agreement and to the extent permitted by law, shall cause any director of the Corporation that it is entitled to nominate to act accordingly.

2(4) The Corporation covenants and agrees to carry on its business and affairs in accordance with the provisions of this Agreement, to be bound by the provisions of this Agreement to the full extent that it has the capacity and power to do so and to take no action which would constitute a contravention of any of the terms or provisions hereof.

SECTION 3

RESTRICTIONS ON ISSUE AND TRANSFER OF SHARES

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3(1) The Shareholders represent and warrant each to the other that the Shares are the only issued and outstanding common shares of the Corporation and that as of the date hereof there are no outstanding options or other rights obligating the Corporation to issue additional shares to any person.

3(2) The Corporation shall not issue any additional shares or grant any option or other right to acquire additional shares without the prior unanimous written consent of the Shareholders holding not less than [insert percentage] per cent (<>%) of the issued and outstanding shares.

3(3) Except as otherwise provided in this Agreement, no Shareholder shall sell, assign, convey, transfer, dispose, mortgage, pledge or otherwise transfer or encumber any of his Shares without the prior written consent of Shareholders holding not less than [insert percentage] per cent (<>%) of the issued and outstanding Shares, provided, however, that any transferee of Shares shall first enter into an agreement in form reasonably satisfactory to the Corporation whereby such transferee agrees to be bound by the provisions of this Agreement.

3(4) Any Shareholder, when not in default hereunder, shall have the right to transfer any of the shares owned by such party to a Controlled Corporation, provided that such Controlled Corporation of a Selling Shareholder and all of its shareholders first enter into an agreement reasonably satisfactory to each of them acting reasonably, and the Corporation, whereby they agree to be bound by the provisions of this Agreement.

3(5) If a Shareholder shall breach this Section 3, then any other Shareholder in addition to all other rights and remedies at law or in equity, shall be entitled to a decree or order restraining such sale, assignment, conveyance, transfer, disposal, mortgage, pledge or other encumbrance, and the offending Shareholder shall not plead in defence thereto that there would be an adequate remedy at law, it being recognized that the injury and damage resulting from such default would be impossible to measure monetarily.

3(6) All share certificates for the Shares shall have thereon the following words:

"Shares represented by the certificate are subject to the terms of a Shareholders' Agreement made the <> day of <>, 1997 among <>, <>, <>,"

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<>and the Corporation and are not transferable except in compliance with the terms and conditions of the said agreement."

SECTION 4 **OPTIONS**

4(1) The Estate, a spouse of a deceased shareholder who is a shareholder, and any trust for the benefit of a deceased shareholder's family members which is a shareholder (collectively the "Selling Shareholder") shall have the right, exercisable at any time after the date of death of a deceased Shareholder to give a written notice executed by the Selling Shareholder (the "Selling Shareholder's Notice") to any one or more of the other Shareholders and/or the Corporation (the "Purchasing Shareholder"), requiring the Purchasing Shareholder to purchase such number, as may be determined in the sole discretion of the Selling Shareholder, of the issued and outstanding Shares of the Corporation beneficially owned by the Selling Shareholder (the "Selling Shareholder's Shares"), at a price for each share equal to the Purchase Price for each such Share.

4(2) Any one (1) or more of the other Shareholders, including the Corporation (referred to in this Section 4 individually or collectively as the case may be as the "Other Shareholder") shall each have the right, exercisable at any time after the date of death of the Selling Shareholder, to give written notice executed by the Other Shareholder ("Other Shareholder's Offer") requiring the Selling Shareholder to sell such number of the Selling Shareholder's Shares as may be determined in the sole discretion of the Other Shareholder (and, subject to subsection 4(3) hereof, where the Other Shareholder is not the Corporation, and subject to subsection 4(2.1) hereof, such number of the Selling Shareholder's Shares shall not exceed the Other Shareholder's proportionate shareholding in the Corporation (excluding the Selling Shareholder's Shares for such purpose and adjusted in accordance with subsection 4(2.1), if applicable)) at a price for each share equal to the Purchase Price for each such Share. On receipt of the Other Shareholder's Offer, the Selling Shareholder shall then have the option, to be exercised by written

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noticed executed by the Selling Shareholder and given to the Other Shareholder within Ten (10) Business Days of receipt of the Other Shareholder's Offer, to

- (a) accept the Other Shareholder's Offer; or,
- (b) reject the Other Shareholder's Offer by written notice executed by the Selling Shareholder given to the Other Shareholder, requiring any or all of the Other Shareholders, by written notice executed by the Selling Shareholder and given to such Other Shareholders, to purchase that number of the Selling Shareholder's Shares as may be determined in the sole discretion of the Selling Shareholder at a price for each share equal to the Purchase Price for each such Share.

4(2.1) If, prior to any of the Other Shareholders making an Other Shareholder's Offer pursuant to subsection 4(2) hereof, the Corporation makes an Other Shareholder's Offer to purchase less than all of the Selling Shareholder's Shares, then the remainder of the Selling Shareholder's Shares shall be available as the subject of an Other Shareholder's Offer being made by the Shareholders who are not the Corporation.

4(3) Other than in the case of an Other Shareholder's Offer being made by the Corporation, each Other Shareholder's Offer shall indicate if such Shareholder wishes to purchase Selling Shareholder's Shares in excess of their proportionate shareholding in the Corporation (excluding the Selling Shareholder's Shares for such purpose). On making the Other Shareholder's Offer, the Other Shareholder shall notify all other Other Shareholders that the Other Shareholder's Offer has been made and the other Other Shareholders shall have Ten (10) Business Days within which to submit an Other Shareholder's Offer, failing which their right to make an Other Shareholder's Offer shall be terminated automatically. In the event that any Other Shareholder(s) do(es) not make an Other Shareholder's Offer after receiving the first Other Shareholder's Offer, or having made an Other Shareholder's Offer, do(es) not indicate that s/he (they) wish to purchase the Selling Shareholder's Shares in excess of their proportionate shareholding, then the Selling Shareholder's Shares that would have been purchased by (each) such Other Shareholder(s) who has (have) either failed to submit an Other Shareholder's Offer or, who, having made an Other Shareholder's Offer has (have) not so indicated a wish to purchase the Selling Shareholder's Shares in excess of their proportionate shareholding, shall be purchased

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pro rata by the (those) Other Shareholder(s) who has (have) made an Other Shareholder's Offer.

4(4) For the purposes of certainty and of this Section 4, any notice delivered by the Selling Shareholder shall, in the exercise of any rights granted under this Section 4, prevail over any earlier or later notice delivered by any other party to this Agreement.

4(5) It shall be a condition of any sale pursuant to this Section 4 that the Other Shareholder(s) and/or the Corporation, as the case may be, shall purchase on a pro rata basis according to the number of the Selling Shareholder's Shares being purchased by the Other Shareholder(s) and/or the Corporation, and the Selling Shareholder shall sell, transfer and assign any and all indebtedness of the Corporation owing to the Selling Shareholder on a dollar-for-dollar basis, verified by the Accountants of the Corporation and adjusted to the time of closing, and acquire, whether by purchase or redemption or purchase for cancellation, any special or preference shares owned by the Selling Shareholder at a price for each such share equal to the Purchase Price for each such special or preference share, together with all security held by the Selling relating thereto.

In addition, any and all guarantees provided by the Selling Shareholder on account of loans to the Corporation shall be released. If the Selling Shareholder is indebted to the Corporation, then the Purchasing Shareholder, or the Other Shareholder, or the Corporate Purchaser, as the case may be, shall have the right to pay, satisfy and discharge such indebtedness out of the Aggregate Purchase Price, and by such sum to reduce the amount payable to such Selling Shareholder.

4(6) In subsections 4(7) and 4(7.1), the following terms have the following meanings:

- (a) the rights referred to in subsections 4(1) and 4(2) are referred to as "option(s)"; and
- (b) as to the exercise of the options described in subsections 4(1) and 4(2), the Selling Shareholder is the "optionor" and the Other Shareholder is the "optionee".

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4(7) The options granted in subsections 4(1) and 4(2) shall be exercisable by the optionor or the optionee, as the case may be, by giving notice in writing addressed to the person(s) for whom or for which it is intended in the manner contemplated by the subsection under which such option is exercised. On the exercise of the option, there shall be constituted a binding agreement of purchase and sale between the parties to the options. The transaction shall be closed at the registered office of the Corporation at 1100 hours (Toronto local time) on the thirtieth (30th) Business Day following the date of the exercise of the option (the "Closing").

4(7.1) The options granted in subsections 4(1) and 4(2) shall be exercisable by the optionor or the optionee, as the case may be, by giving notice in writing addressed to the person(s) for whom or for which it is intended in the manner contemplated by the subsection under which such option is exercised. On the exercise of the option, there shall be constituted a binding agreement of purchase and sale between the parties to the options. The transaction shall be closed at the registered office of the Corporation at 1100 hours (Toronto local time) on the thirtieth (30th) Business Day following the date of the exercise of the option (the "Closing"). The Purchase Price shall be paid as follows:

- (a) as to [insert percentage] Per Cent (<>%) Per Cent of the Aggregate Purchase Price, by certified cheque or bank draft payable to the order of the optionor's solicitors in trust at Closing; and
- (b) as to the balance of the Aggregate Purchase Price, by delivery to the optionor, as the case may be, by delivery to the optionor by the optionee (where the optionee is the Corporation) of a floating charge demand debenture and General Security Agreement with a paid-up capital and/or adjusted cost base and/or principal amount (as the expressions "paid-up capital", "adjusted cost base" and "principal amount" are defined in the Act), as the case may be, equal to the balance of the Aggregate Purchase Price.

4(8) In the event that the Selling Shareholder causes the Corporation to acquire any or all of such Shareholder's Shares, such Shareholder may at its sole and exclusive option cause the Corporation to elect to pay a portion of the Aggregate Purchase Price for such Shares with a capital dividend or capital dividends not exceeding the lesser of

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- (a) Twenty-Five Per Cent (25%) of the capital gain arising on the deemed disposition on the death of the Selling Shareholder; and
- (b) Twenty-Five Per Cent (25%) of the capital loss that would otherwise have been available to the Estate under subsection 164(6) of the Act had the Aggregate Purchase Price been paid as a capital dividend to the Estate.

4(9) The gain or loss referred to in paragraphs 4(8)(a) and 4(8)(b) shall be computed without reference to any taxable capital gains, allowable capital losses and/or unused lifetime capital gains exemption that may be available to the Selling Shareholder under the Act.

SECTION 5 INSURANCE

5(1) The Shareholders (referred to in this Section 5 individually as a "Life Insured") hereby acknowledge that, in order to ensure that sufficient funds will be available for the purposes of this Section 4 of this Agreement, the insurance policies, particulars of which have been set forth in Schedule 1 hereto and initialled by the Life Insured under each policy, have been obtained by the Corporation [or Insureco - see Insureco "Sample Shareholders' Insurance Funding Agreement"] and that the face value of each policy is not, at the date of the execution of this Agreement, less than Five Million Dollars (\$5,000,000). The Shareholders further acknowledge and agree that the provisions of this Section shall apply to any such policies and to any additional policy or policies of insurance which may be obtained by the Corporation, provided that particulars of such additional policy or policies are endorsed on Schedule 1 hereto and initialled by the Life Insured under each such policy.

5(2) The Corporation [or Insureco - see Insureco "Sample Shareholders' Insurance Funding Agreement"] shall pay all premiums in connection with the insurance policy or policies and shall maintain such policy or policies in good standing at all times and shall not deal in any manner with such policy or policies and, without limiting the generality of the foregoing, shall not assign, transfer, dispose of, surrender, borrow upon or in any way encumber such policy or policies.

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SECTION 6
NOTICES

6(1) Any notice, required or permitted to be given pursuant to any provision of this Agreement shall be in writing and shall be sufficiently given if delivered personally or sent by telecopier ("Fax") or mailed by prepaid registered or certified mail,

(a) in the case of [name of shareholder], addressed to [name of shareholder] at:

Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available

(b) and in the case of [name of shareholder], addressed to [name of shareholder] at:

Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available

(c) and in the case of [name of shareholder], addressed to [name of shareholder] at:

Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available

(d) and in the case of [name of shareholder], addressed to [name of shareholder] at:

Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available

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- (e) and in the case of the Corporation, addressed to the Corporation at:
Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available
Attention: President

- (f) and in the case of the Insureco, addressed to Insureco at:

Insert Address, City/Town, Province/State,
Postal Code/Zip Code and Fax Number, if available
Attention: President

or to such other address as the parties may from time to time advise the other parties hereto by notice in writing. Any such notice or other communication, if delivered or mailed, shall be effective when received (or, if not received on a Business Day, on the first Business Day following the day of receipt) and, if telecopied and the applicable answer back received, shall be effective on the first Business Day following the date of transmission. If at the date of any such mailing, postal interruption will or is likely to delay the actual receipt of any notice, direction or other instrument, any such notice, direction or other instrument shall not be mailed but shall be delivered personally.

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