

BY-LAW NUMBER 167 OF 2000
OF THE CITY OF SARNIA

“A By-Law Relating to Hydro Restructuring and to
Authorize the Execution of a Shareholders’ Agreement”

RECITALS:

1. Section 142 of the *Electricity Act, 1998* (Ontario) requires that every municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, shall cause a corporation to be incorporated under the *Ontario Business Corporations Act* for the purpose of carrying on those activities;
2. The Corporation of the City of Sarnia (the "City") distributes and retails electricity through the Hydro Electric Commission of the City of Sarnia (the "Commission").
3. The Corporation of the Village of Alvinston ("Alvinston") distributes and retails electricity through the Alvinston Hydro-Electric Commission ("Alvinston Hydro"), The Corporation of the Village of Oil Springs ("Oil Springs") distributes and retails electricity through the Oil Springs Hydro-Electric Commission ("Oil Springs Hydro"), The Corporation of the Town of Petrolia ("Petrolia") distributes and retails electricity through the Petrolia Hydro-Electric Commission ("Petrolia Hydro"), The Corporation of the Village of Point Edward ("Point Edward") distributes and retails electricity through the Point Edward Hydro-Electric Commission ("Point Edward Hydro"), and The Corporation of the Township of Warwick ("Warwick") distributes and retails electricity through the Warwick Hydro-Electric Commission ("Warwick Hydro") (Alvinston, Oil Springs, Petrolia, Point Edward and Warwick collectively are the "Municipalities" and Alvinston Hydro, Oil Springs Hydro, Petrolia Hydro, Point Edward Hydro, Warwick Hydro and the Commission collectively are the "Predecessor Utilities").
4. The City, together with the Municipalities, desires to authorize the joint incorporation of Bluewater Power Corporation ("BPC"), Bluewater Power Distribution Corporation ("BPDC") and Sarnia Hydro Energy Services Corporation ("SHESC") under the OBCA pursuant to Subsection 142(1) of the *Electricity Act* and Sections 71 and 73 of the *OEB Act* (BPC, BPDC and SHESC are collectively the "Corporations").
5. The City, the Municipalities, the Corporations and the holding corporations of the City and the Municipalities incorporated pursuant to the laws of Ontario (the "HoldCos"), wish to enter into a shareholders' agreement (the "**Shareholders' Agreement**") to provide for the conduct of certain affairs of the Corporations, to provide for certain restrictions on the transfer and ownership of shares in the capital of the Corporations and the HoldCos and to govern the mutual rights and obligations of the City, the Municipalities and the HoldCos with respect to the Corporation and each other;

NOW THEREFORE, the Council of the Corporation of the City of Sarnia enacts as follows:

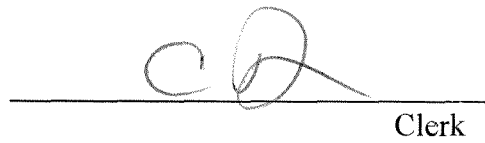
1. The form of Shareholders' Agreement presented to Council among the City, the Municipalities, the HoldCos and the Corporations is hereby authorized and approved.
2. The Mayor and the Clerk are hereby authorized and directed, for and on behalf of the City to execute and deliver the Shareholders' Agreement and to make amendments that they determine to be minor, the execution of the Shareholders' Agreement by such individuals being conclusive evidence of such approval.

3. The Mayor and the Clerk are hereby authorized to do all such acts and things and to execute and deliver all such other documents, instruments and writings as may be necessary or desirable to give effect to the provisions of this by-law and the Shareholders' Agreement.
4. This By-Law comes into effect immediately upon being passed.

FINALLY PASSED THIS 30th DAY OF OCTOBER, 2000.



Mayor



Clerk

SHAREHOLDERS' AGREEMENT

SHAREHOLDERS' AGREEMENT

BETWEEN:

The Corporation of the Village of Alvinston

- and -

The Corporation of the Village of Oil Springs

- and -

The Corporation of the Town of Petrolia

- and -

The Corporation of the Village of Point Edward

- and -

The Corporation of the Township of Warwick

- and -

The Corporation of the City of Sarnia

- and -

Alvinston Electricity Holdings Inc.

- and -

Oil Springs Electricity Holdings Inc.

- and -

Petrolia Electricity Holdings Inc.

- and -

Point Edward Electricity Holdings Inc.

- and -

Warwick Electricity Holdings Inc.

- and -

Sarnia Power Corporation

- and -

Bluewater Power Corporation

- and -

Bluewater Power Distribution Corporation

- and -

Sarnia Hydro Energy Services Corporation

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SHAREHOLDERS' AGREEMENT

THIS AGREEMENT made as of the 1st day of November, 2000

B E T W E E N:

The Corporation of the Village of Alvinston
(hereinafter called "**Alvinston**")

- and -

The Corporation of the Village of Oil Springs
(hereinafter called "**Oil Springs**")

- and -

The Corporation of the Town of Petrolia
(hereinafter called "**Petrolia**")

- and -

The Corporation of the Village of Point Edward
(hereinafter called "**Point Edward**")

- and -

The Corporation of the Township of Warwick
(hereinafter called "**Warwick**")

(Alvinston, Oil Springs, Petrolia, Point Edward and Warwick are hereinafter called the "**Municipal Shareholders**")

- and -

The Corporation of the City of Sarnia

(hereinafter called the "**City Shareholder**")

(the Municipal Shareholders and the City Shareholder are hereinafter called the "**Council Shareholders**")

- and -

Alvinston Electricity Holdings Inc.
(hereinafter called "**Alvinston Holdco**")

- and -

Oil Springs Electricity Holdings Inc.
(hereinafter called "**Oil Springs Holdco**")

- and -

Petrolia Electricity Holdings Inc.
(hereinafter called "**Petrolia Holdco**")

- and -

Point Edward Electricity Holdings Inc.
(hereinafter called "**Point Edward Holdco**")

- and -

Warwick Electricity Holdings Inc.
(hereinafter called "**Warwick Holdco**")

(Alvinston Holdco, Oil Springs Holdco, Petrolia Holdco, Point Edward Holdco and Warwick Holdco are hereinafter called the "**Specified Shareholders**")

- and -

Sarnia Power Corporation
(hereinafter called the "**Sarnia Shareholder**")

(the Specified Shareholders and the Sarnia Shareholder are hereinafter called the
"Shareholders")

- and -

Bluewater Power Corporation
(hereinafter called the **"Corporation"**)

- and -

Bluewater Power Distribution Corporation
(hereinafter called **"BPDC"**)

- and -

Sarnia Hydro Energy Services Corporation
(hereinafter called **"SHESC"**)

RECITALS:

1. The authorized capital of the Corporation consists of an unlimited number of Shares;
2. The issued capital of the Corporation consists of ten thousand (10,000) Shares;
3. SPC, Oil Springs Holdco, Petrolia Holdco, Point Edward Holdco, Warwick Holdco and Alvinston Holdco are the sole registered and beneficial shareholders of the Corporation holding the following numbers of Shares, respectively:

<u>Shareholder</u>	<u>Shares</u>	<u>Percentage of Total</u>
SPC	8,561	85.61%
Oil Springs Holdco	41	0.41%
Petrolia Holdco	758	7.58%
Point Edward Holdco	329	3.29%
Warwick Holdco	230	2.30%
Alvinston Holdco	80	0.80%

4. The Shareholders and Council Shareholders desire to enter into an agreement providing for certain arrangements for the ongoing operation and control of the Corporation and providing for certain restrictions on, and arrangements respecting, dealings with shares of the Corporation and Holdco Shares which are issued and outstanding from time to time;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions.

In this Agreement, unless there is something in the subject matter or context inconsistent therewith,

- (a) "**Act**" means the *Business Corporations Act* (Ontario), and unless otherwise indicated, means such Act as amended and re-enacted from time to time;
- (b) "**Affiliate**" of a particular body corporate means another body corporate which is affiliated with the particular body corporate and for such purposes one body shall be deemed to be affiliated with another body corporate if, but only if, one of them is the Subsidiary of the other or both of them are Subsidiaries of the same body corporate or each of them is Controlled by the same person, and if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other at that time;
- (c) "**Agreement**" means this Agreement including all schedules and exhibits to this Agreement and includes any and every agreement made at any time (whether past,

present or future) which amends or supplements or restates any agreement which is, or is included in, this Agreement;

- (d) **"Articles of Incorporation"** of, or in relation to, a corporation means at any time such original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement, articles of dissolution, articles of revival, letters patent, supplementary letters patent and any other instrument of a substantially similar nature to any of the foregoing, as are in effect at the time for or in relation to the corporation;
- (e) **"Arm's Length"** has the meaning attributed thereto in the *Income Tax Act* (Canada);
- (f) **"Auditor"** means the auditor designated pursuant to section 4.2;
- (g) **"BPDC"** means a corporation to be incorporated under the laws of the Province of Ontario and which is a wholly-owned subsidiary of the Corporation;
- (h) **"Board"** means the Board of Directors of the Corporation;
- (i) **"Business Day"** means any day, other than a day that is a Saturday, a Sunday, a statutory holiday in Ontario or a day on which banks generally are not open to the public for business in the city, town or township that is the principal place of business of the Corporation;
- (j) **"Businesses"** has the meaning ascribed thereto in section 2.1;
- (k) **"City Shareholder"** has the meaning set out in the recitals hereto;
- (l) **"Control"** in relation to a body corporate means control of the body corporate and for purposes of this Agreement a person has, or two or more persons have, control

of a body corporate, and a body corporate is "Controlled" by a person or by two or more persons, if:

- (i) securities of the body corporate to which are attached more than fifty per cent (50%) of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those persons, and
 - (ii) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- (m) "**Corporation**" has the meaning set out in the recitals hereto;
 - (n) "**Council**" means the city, township or village council of a Council Shareholder;
 - (o) "**Council Shareholders**" has the meaning set out in the introduction hereto (the Municipal Shareholders and the City Shareholders are the Council Shareholders);
 - (p) "**Electricity Act**" means the *Electricity Act, 1998*;
 - (q) "**Fair Market Value**" has the meaning set out in Schedule 6.9(a);
 - (r) "**GAAP**" means Canadian generally accepted accounting principles;
 - (s) "**Holdco Share**" means a share of any class in the capital of a corporation where such shares are owned by a Council Shareholder and where such corporation owns, directly or indirectly, any Shares in the Corporation;
 - (t) "**Income Tax Act**" means the *Income Tax Act* of Canada as amended and re-enacted from time to time;

- (u) **"Insolvency Event"** has the meaning ascribed thereto in section 6.9(a);
- (v) **"Insolvent Shareholder"** has the meaning ascribed thereto in section 6.9(a);
- (w) **"Merger Agreement"** means an agreement between the parties dated as of October 30, 2000;
- (x) **"Municipal Shareholders"** has the meaning set out in the introduction hereto (Alvinston, Oil Springs, Petrolia, Point Edward and Warwick are the Municipal Shareholders);
- (y) **"Net Book Value"** means the consolidated net book value of the assets of the Corporation and its Subsidiaries based on the latest audited financial statements for the Corporation;
- (z) **"OEB"** means the Ontario Energy Board;
- (aa) **"OEB Act"** means the *Ontario Energy Board Act, 1998*;
- (bb) **"Party"** means a party to this Agreement including any person that becomes bound by this Agreement as provided herein;
- (cc) **"person"** means and includes any individual, corporation, body corporate, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency or board or commission or authority or other form of entity or organization;
- (dd) **"Prime Rate"** means, for and in relation to any particular day in a calendar month, the variable rate of interest, expressed as a rate per annum, equal to the rate of interest determined by the principal bank of the Corporation (hereinafter in this

section referred to as the "Bank") as, or commonly known as, its prime rate of interest effective for the first day in such calendar month for Canadian dollar loans made by the Bank in Canada from time to time, being a variable per annum reference rate of interest adjusted automatically upon change by the Bank;

- (ee) **"Promissory Note"** means a promissory note due and payable on its terms bearing interest at a rate of 7.25% or as may be revised, calculated and payable quarterly;
 - (ff) **"Related Shareholder"** of a person means at any time a Shareholder that is then, or at any earlier time was an Affiliate of such person;
 - (gg) **"SHESC"** means a corporation incorporated under the laws of the Province of Ontario which is a wholly-owned subsidiary of the Corporation;
 - (hh) **"Share"** means a share of any class in the capital of the Corporation;
 - (ii) **"Shareholder"** means at any time a person that is a party to this Agreement that is bound by this Agreement at the time and holds one or more Shares at the time or a person that becomes bound by this Agreement at any time and is bound by this Agreement at the time and holds one or more Shares at the time, and, for greater certainty, does not include a Council Shareholder;
 - (jj) **"Shareholder Special Approval"** means, with respect to any matter, the approval of such matter by the Sarnia Shareholder and a minimum of one of the Specified Shareholders, acting reasonably and with a view to the best interests of the Corporation and/or a Subsidiary by:
 - (i) a resolution passed at a duly constituted meeting of the Shareholders by the favourable vote of the Sarnia Shareholder plus a minimum of one of the Specified Shareholders; or
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- (ii) one or more instruments in writing which shall have been signed by the Sarnia Shareholder plus a minimum of one of the Specified Shareholders,

and any Shareholder Special Approval given by resolution as aforesaid shall become effective on the day on which such resolution is duly passed and any Shareholder Special Approval given by one or more instruments in writing as aforesaid shall become effective on the effective date shown in such one or more instruments. For purposes of this definition of Shareholder Special Approval, "acting reasonably and with a view to the best interests of the Corporation" means that in determining whether to give approval to a matter each Shareholder will consider whether a proposed course of action may be reasonably anticipated to result in profits for the Corporation and/or a Subsidiary to the benefit of all Shareholders having regard to the general principles annunciated in Section 2.3.

- (kk) "**Share Proportion**" of a Shareholder (determined in relation to one or more particular Shareholders) as at any time means, with respect to a class of shares, the number obtained when the number of shares of a given class held by that Shareholder as at such time is divided by the total number of shares of the same class held by all Shareholders as at such time;
- (ll) "**Specified Shareholders**" has the meaning set out in the recitals hereto (Alvinston Holdco, Oil springs Holdco, Petrolia Holdco, Point Edward Holdco and Warwick Holdco are the Specified Shareholders);
- (mm) "**Subsidiary**" of a particular corporation (including, without limitation, a city, town, township or village) means a body corporate that is:
 - (i) Controlled by:
 - (A) the particular corporation,

- (B) the particular corporation and one or more bodies corporate each of which is Controlled by the particular corporation, or
- (C) two or more bodies corporate each of which is Controlled by the particular corporation, or
- (ii) a Subsidiary of a body corporate that is a Subsidiary of the particular corporation;
- (nn) "**Transfer By-law**" means the Transfer By-laws passed by the Council of each of the Council Shareholders in respect of the incorporation of the Corporation, BPDC and SHESC and the transfer by the Council and such Council Shareholders of employees, assets, liabilities, rights and obligations by such Council Shareholders to the Corporation and/or its Subsidiaries.

1.2 Interpretation.

In this Agreement, unless there is something in the subject matter or context inconsistent therewith,

- (a) (i) words in the singular include the plural and such words shall be construed as if the plural had been used,
 - (ii) words in the plural include the singular and such words shall be construed as if the singular had been used,
 - (iii) words importing the masculine gender or the feminine gender include the feminine gender, the masculine gender and the neuter and shall be construed as if the corresponding word importing the feminine gender, the masculine gender or the neuter had been used, and
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- (iv) words importing the neuter include the masculine gender and the feminine gender and shall be construed as if the corresponding word importing the masculine gender or the feminine gender had been used,

where the context or a party hereto so requires, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made;

- (b) "this Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions refer to this Agreement and not to any particular Article, section, paragraph, subparagraph, clause, subclause or other portion of this Agreement;
 - (c) a reference to any one or more parties to this Agreement shall be deemed to include a reference to the respective heirs, executors, administrators, legal representatives, successors and permitted assigns of each such Party;
 - (d) unless otherwise specifically provided, all references herein to dollar amounts are in Canadian funds;
 - (e) unless otherwise specifically provided, each reference herein, which is to a time or contemplates a time refers to Ontario time; and
 - (f) unless the Shareholders otherwise agree in writing, in applying this Agreement in relation to any transaction, occurrence, event or matter, each term and each expression defined in this Agreement shall be construed and applied using the meaning in effect for such term or expression as at the time immediately before the time of such transaction, occurrence, event or matter.
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1.3 Schedules.

The following are the Schedules attached hereto and incorporated by reference and deemed to be a part hereof:

Schedule 6.9(a) - Determination of Fair Market Value

1.4 Unanimous Shareholder Agreement.

Each of the parties hereby acknowledges and agrees that this Agreement is intended to operate and be construed as a unanimous shareholder agreement with respect to the Corporation and its Subsidiaries within the meaning of the Act.

**ARTICLE 2
BUSINESS OF THE CORPORATION**

2.1 Business of the Corporation.

The Parties acknowledge that the businesses (the "Businesses") which they intend that the Corporation and/or the Subsidiaries carry on are the following, namely:

- (a) the business of distributing electricity; and
 - (b) the business of holding shares in corporations that distribute electricity and/or engage in distribution activities including: meter reading services; billing and collection services; tree trimming services for the purpose of line maintenance; repair and maintenance for the distribution lines and facilities; construction of distribution lines and facilities; general administrative support services; telecommunications services for electricity distribution (e.g. SCADA); street lights and traffic lights services; and
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other services that satisfy the general principles established by the OEB from time to time in its interpretation of section 71 of the OEB Act;

and each Party agrees that none of them shall be affiliated with any person that carries on any of the Businesses other than the Corporation or its Subsidiaries nor may they carry on, directly or indirectly, any of the Businesses other than through the Corporation or its Subsidiaries.

2.2 Rates and Quality of Service.

The Corporation shall, to the extent commercially reasonable and subject to OEB approvals, minimize differences in rates and maintain quality of service attributable to location within the service area, at minimum, at the level prescribed by the OEB in its applicable regulations, rules and policies.

2.3 Investment and Expenditure by the Corporation.

The Corporation or its Subsidiaries shall operate, with a view over time, to ensuring fair and equitable treatment of Shareholders, in proportion to their shares, with respect to expenditures, investments or opportunities for investment related to the Businesses of the Corporation or its Subsidiaries.

**ARTICLE 3
CONTRIBUTIONS OF THE SHAREHOLDERS**

3.1 Credit Facilities.

Each Shareholder shall cooperate with the Corporation to facilitate the establishment by the Corporation of such credit facilities as the directors of the Corporation from time to time determine to be necessary or desirable for the conduct of the business of the Corporation and/or any Subsidiary of the Corporation.

3.2 Ongoing Financing.

Subject to any restrictions on Shareholders contained in applicable laws, if at any time the directors of the Corporation determine that:

- (a) the Corporation requires an amount of money to enable the Corporation or any Subsidiary in the following six (6) months:
 - (i) to carry on its business as contemplated in the then current budget of the Corporation or any Subsidiary, or
 - (ii) to pay its liabilities as they become due, and
- (b) the amount required by the Corporation or any Subsidiary exceeds the funds and credit available to the Corporation or any Subsidiary from its usual sources of financing (the amount of the excess being hereinafter referred to as the "Required Amount"), and
- (c) the Shareholders are requested by the Corporation to provide the Required Amount to the Corporation or any Subsidiary,

and the Corporation gives to all Shareholders a written notice wherein each Shareholder is requested to advance to the Corporation or its Subsidiaries, by way of a loan bearing interest at the Prime Rate plus one per cent (1%) both before and after default calculated monthly repayable within thirty (30) days of demand by the advancing Shareholders, an amount equal to the amount obtained when the Required Amount is multiplied by the Share Proportion of the Shareholder with respect to the Shares, then within thirty (30) days after receiving such notice, each Shareholder shall advance to the Corporation, by way of a non-interest bearing loan, the amount that it is requested to advance as determined in accordance with the notice. All or any portion of an amount that is to be advanced

by a Shareholder may be advanced by a Related Shareholder of such Shareholder. If, within thirty (30) days after receiving such notice, all or any portion of the amount to be advanced by a Shareholder (a "Defaulting Shareholder") has not been advanced in accordance with this section, then, at any time before the Defaulting Shareholder advances such amount, the amount which has not been advanced by or in respect of the Defaulting Shareholder may be advanced by any one or more other Shareholders (any such Shareholder that advances an amount in respect of the Defaulting Shareholder being referred to as a "Supporting Shareholder"). An amount advanced by a Supporting Shareholder in respect of a Defaulting Shareholder shall be a loan of such amount from the Supporting Shareholder to the Defaulting Shareholder which shall bear interest at the Prime Rate plus four per cent (4%) per annum calculated monthly and shall be payable on demand. Each Shareholder hereby agrees that if any amount becomes payable by the Corporation to it at any time when it owes any amount in respect of one or more loans from Supporting Shareholders made pursuant to this section, then to the extent of the amounts owing in respect of such loans, the Corporation shall pay to such Supporting Shareholders, the amount payable to the Defaulting Shareholder and each Shareholder hereby irrevocably authorizes and directs the Corporation to do so.

3.3 Shareholders Inter-Creditor Agreement.

In circumstances other than in Section 3.2, where two or more Shareholders and/or Council Shareholders are joint creditors on a Promissory Note or other similar debt instrument or where a Shareholder and/or Council Shareholder holds a Promissory Note which is one of several Promissory Notes which has been issued by the Corporation and/or the Subsidiaries to all of the Shareholders and/or Council Shareholders, each Promissory Note shall rank equally vis-à-vis each other Promissory Note of the same class, as to the payment of principal and interest in respect of such obligations, provided that the Sarnia Shareholder and/or City Shareholder may request and the other Shareholders and/or Council Shareholders shall agree to subordinate the Corporation and/or Subsidiaries' obligation to pay principal and interest to them in favour of a third party creditor.

ARTICLE 4

OPERATION AND CONTROL OF THE CORPORATION AND SUBSIDIARIES

4.1 Operation and Control.

The Parties hereto shall cause such meetings of directors and Shareholders of the Corporation to be held, votes to be cast, resolutions to be passed, by-laws to be passed, documents to be executed and all things and acts to be done to ensure the following continuing arrangements with respect to the operation and control of the Corporation:

- (1) The Board of the Corporation shall be composed of seven (7) members. The Specified Shareholders as a group shall be entitled, from time to time, by notice to the Corporation and the other Shareholders, to designate one (1) nominee for election or appointment to the Board of the Corporation. The Sarnia Shareholder shall be entitled, from time to time, by notice to the Corporation and the other Shareholders, to designate six (6) nominees for election or appointment to the Board of the Corporation. The Corporation and the Shareholders shall act diligently and promptly to take such actions as are necessary in order that, at any time, the Board of the Corporation includes the then latest nominee designated by the Specified Shareholders and the then latest nominee of the Sarnia Shareholder in accordance with this paragraph for election or appointment to the Board of the Corporation except for any such nominee as is not ready, willing or able to serve as a director of the Corporation.
 - (2) A quorum for a meeting of the directors of the Corporation shall be comprised of four (4) of the seven (7) of the directors of the Corporation.
 - (3) Except as otherwise provided herein, any resolution of the directors of the Corporation shall only be validly passed and effective if at a duly constituted
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meeting of the directors of the Corporation such resolution receives the affirmative vote of at least a majority of the directors participating in the meeting.

- (4) No person shall have a second or casting vote in any circumstances at any meeting of the directors of the Corporation or at any meeting of the Shareholders of the Corporation.
 - (5) All written contracts made, and all cheques and negotiable instruments made or issued, by the Corporation shall be signed by such one or more directors or officers of the Corporation as are from time to time designated or authorized to do so by the by-laws of the Corporation or by a resolution duly passed by the directors of the Corporation.
 - (6) Each of the following shall require Shareholder Special Approval:
 - (a) any change in the number of directors of the Corporation;
 - (b) changing the name of the Corporation or a Subsidiary; adding, changing or removing any restriction on the business of the Corporation or a Subsidiary; creating new classes of shares; or in any other manner amending its articles of incorporation or making, amending or repealing any by-law;
 - (c) amalgamating with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;
 - (d) taking or instituting proceedings for any winding up, arrangement, or dissolution of the Corporation or a Subsidiary;
 - (e) applying to continue as a corporation under the laws of another jurisdiction;
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- (f) issuing, or entering into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or a Subsidiary;
 - (g) redeeming or purchasing any of its outstanding shares;
 - (h) selling and/or purchasing any plant, property or other assets valued in excess of twenty percent (20%) of Net Book Value of the Corporation and its Subsidiaries, provided that where the Corporation or any Subsidiary proposes to acquire another distribution utility valued below the threshold stated above, it shall first be required to provide notice to the Shareholders on a confidential basis; and
 - (i) entering into any transaction or arrangement which would result in the Corporation or a Subsidiary issuing debt or borrowing on an unsecured basis representing more than sixty-five percent (65%) of the total initial capitalization of the Corporation or a Subsidiary.
- (7) December 31st in each calendar year shall be the end of a financial year of the Corporation and its Subsidiaries and shall also be the end of a taxation year for which an applicable return shall be filed pursuant to the relevant taxation legislation.
- (8) The Board may establish compensation for members of the Board and the Chair in amounts sufficient to attract candidates with necessary qualifications and consistent with industry norms and standards for comparable businesses. The compensation paid to members of the Board will be disclosed publicly at the time of any change and at the end of the fiscal year of the Corporation.
- (9) Meetings of the Board of the Corporation may be called by any director of the Corporation and shall be held in Sarnia, Ontario or such location determined by the
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directors from time to time and at least one meeting of the directors of the Corporation shall be held in 2000.

- (10) Meetings of the Shareholders of the Corporation may be called by any director of the Corporation and shall be held in Sarnia, Ontario or such other location determined by the Shareholders from time to time.

4.2 Auditor.

The auditor of the Corporation and its Subsidiaries shall be Kime Mills Dunlop, London, Ontario, unless and until otherwise agreed as provided herein.

4.3 Books of Account.

Proper books of account shall be kept by the Corporation and its Subsidiaries and entries shall be made therein of all such matters, terms, transactions and things as are usually written, recorded or entered in books of account kept by corporations engaged in an enterprise of a similar nature. The books of account for the Corporation shall be kept at the principal place of business of the Corporation.

4.4 Budgets.

In the case of the initial budget and for each and every subsequent financial year of the Corporation, the Corporation shall prepare a budget showing, among other things, in a reasonable degree of detail the anticipated revenues, expenditures and cash flow of the Corporation and its Subsidiaries for such financial year of the Corporation and its Subsidiaries. The budget for any particular financial year of the Corporation and its Subsidiaries shall be prepared and delivered to the Board:

- (a) in the case of the first budget, by December 1, 2000, and
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- (b) in the case of any other financial year commencing with the financial year 2001-2002, at least thirty (30) days prior to the beginning of such financial year.

The Board shall meet to review and discuss the budget for a financial year with a view to agreeing upon a final budget for such financial year.

4.5 Reporting Requirements.

- (1) The Board may from time to time report to the Shareholders on major business developments or materially significant or materially adverse results as the Board, in its discretion, considers appropriate. Such reports may be received and considered by the Council Shareholders at an in camera meeting of Council.
- (2) The Board shall report quarterly to the Shareholders in writing on a confidential basis providing details of interim financial statements, budgets, capitalization and reserves.

4.6 Periodic Financial Statements.

For each quarter the Corporation shall prepare a financial statement which shall include, on a consolidated basis, statements of income, retained earnings and changes in financial position for the month and a balance sheet as at the end of the month and such statement shall be prepared in accordance with GAAP, but need not reflect accruals and adjustments ordinarily made only as at the end of a financial year. The financial statement prepared for such quarter shall be delivered on a confidential basis to each Shareholder within twenty-one (21) days following the end of such quarter.

4.7 Application of Sections 4.1 to 4.6 to Subsidiaries.

Unless the Shareholders otherwise agree in writing and except as provided herein, the provisions of sections 4.1 to 4.6, inclusive, shall apply to each and every Subsidiary of the Corporation; provided that in applying the provisions of such sections to any particular Subsidiary all references to the Corporation in such sections shall be read as a reference to the particular Subsidiary.

ARTICLE 5

**SARNIA HYDRO ENERGY SERVICES CORPORATION AND
BLUEWATER POWER DISTRIBUTION CORPORATION**

5.1 Subsidiaries.

BPDC and SHESC shall carry on the businesses set out under Article 2.1.

5.2 Directors.

- (a) The initial directors of SHESC shall be determined by the directors of the Corporation.
- (b) The initial directors of BPDC shall be determined by the directors of the Corporation.
- (c) the board of directors of each of SHESC and BPDC shall be composed of seven (7) directors, none of whom shall be members of Council or a Mayor.

5.3 Ownership of Shares.

Subject to Sections 4.1(6)(h) and 6.3, all of the issued and outstanding shares in the capital of SHESC and BPDC shall be owned beneficially and held of record by the Corporation as contemplated in the Transfer By-laws and Merger Agreement.

**ARTICLE 6
TRANSFER AND DISPOSITION OF SHARES AND ASSETS**

6.1 Restriction on Transfer.

No Shares of the Corporation or any interest therein shall be sold, exchanged, transferred, disposed of, encumbered, pledged, mortgaged, hypothecated and/or given, directly or indirectly, and no agreement or commitment shall be made to do any of the same except in each case pursuant to the applicable provisions of this Agreement and any attempt to do so without such consent or not pursuant to such provisions shall be void and, because the Parties hereto acknowledge the inadequacy of money damages in such circumstances, shall be subject to specific performance and injunctive relief at the instance of the other Parties hereto.

6.2 Transfer of Holdco Shares.

The Parties agree that the provisions of Article 6 shall apply, with the necessary modifications, to a transfer of any Holdco Share by Municipal Shareholder.

6.3 One Year Share Transfer Restriction.

For one (1) year from the date of this Agreement, the directors of the Corporation may seek out a third party to invest in ten percent (10%) or less of the Corporation and/or the Subsidiaries and to become a party to this Agreement and upon receiving Special Shareholder Approval the Shareholders shall either sell their pro rata portion of ten percent (10%) or less of their Shares in the

Corporation to the third party or approve the equivalent issue of shares from the treasury of the Corporation to the third party.

6.4 Shareholder Consent and Tax Exempt Status of the Corporation.

The Shareholders may vote the Shares owned by them to approve, as required by this Agreement or the Articles, any partial transfer of Shares which is permitted by this Agreement, provided, however, that where the transfer of any Share would, in the opinion of the Sarnia Shareholder, cause the Corporation to lose its exemption from liability for tax under subsection 149 of the *Income Tax Act*, the transfer of share(s) must be approved by the Sarnia Shareholder.

6.5 Permitted Transfers.

- (a) Notwithstanding section 6.1 all or, with the consent of the Board expressed by resolution, part of the Shares of a Shareholder may be transferred to an Affiliate of such Shareholder and Article 7 shall apply, *mutatis mutandis*, to such transfer.
- (b) Notwithstanding section 6.1, all or, with the consent of the Board expressed by resolution, part of the Shares of a Specified Shareholder may be offered for sale to the Corporation, at any time when the Corporation is not in default of a major obligation or insolvent, upon notice to the Corporation and the Corporation shall purchase such Shares at Fair Market Value provided that the Corporation may pay the purchase price to the Specified Shareholder over three (3) years in equal annual instalments bearing interest at the prime rate of the Corporation's primary bank.

6.6 Right of First Refusal.

Subject to the provisions of sections 6.4, 6.8 and 6.9, commencing one (1) year from the execution of this Agreement, if any Shareholder (hereinafter in this section 6.6 called the "Offeror") wishes to sell (other than pursuant to section 6.5) all, or with the consent of the Board expressed by

resolution, part of the Shares owned by it and any Affiliate to a Person with whom it deals at Arm's Length in a bona fide transaction, the Offeror shall give notice (hereinafter in this section 6.6 called the "Selling Notice") to the other holders of Shares (hereinafter in this section 6.6 called collectively the "Offerees" and individually an "Offeree") of its intention to do so. Such Selling Notice shall set forth the number and class of the Shares (hereinafter in this section 6.6 called the "Offered Shares") which the Offeror wishes to sell and have annexed thereto a true copy of the offer, agreement or similar document (the "Offer") containing the terms and conditions pursuant to which the Offeror wishes to sell the Offered Shares to the prospective purchaser, the price per share at which the Offeror is prepared to sell the Offered Shares (which shall be the same as set forth in the Offer) and any other terms and conditions, provided that such must not be contrary to the provisions of Article 7 of this Agreement, and the proposed date of sale (hereafter called the "Sale Date"), which shall not be less than thirty (30) days nor more than sixty (60) days after the date on which the Selling Notice is given to the Offerees. In such event, unless all the Shareholders otherwise agree, the following provisions of this section 6.6 shall govern such purchase and sale:

- (a) the Selling Notice shall be deemed to be an offer, irrevocable within the time hereinafter specified for acceptance, by the Offeror to sell the Offered Shares to the Offerees;
 - (b) within thirty (30) days after receipt of the Selling Notice (the "Acceptance Period"), each Offeree may give to the Offeror a notice of acceptance which shall set forth the number of Offered Shares which such Offeree is willing to purchase from the Offeror;
 - (c) if the Offerees accepting the offer collectively are prepared to purchase all the Offered Shares, then they shall be entitled to purchase the Offered Shares as nearly as may be in proportion to the number of Shares of the Corporation then held by them respectively, provided that, if any such Offeree claims less than its respective proportion, the difference in unclaimed Offered Shares shall be used to satisfy the claims of those who claim in excess of their proportions and if the claims in excess
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are more than sufficient to exhaust such unclaimed Offered Shares, the unclaimed Offered Shares shall be divided *pro rata* among the Offerees desiring to purchase excess shares in proportion to their holdings of Shares of the Corporation immediately prior to the delivery of the Selling Notice, but no Offeree shall be bound to purchase any Offered Shares in excess of the number which it agreed to purchase in its notice of acceptance;

- (d) if none of the Offerees accepts the offer or the Offerees accepting the offer collectively are not prepared to purchase all of the Offered Shares, then, subject to Section 6.4 and Section 2.1, the Offeror may sell all of the Offered Shares to any other person within sixty (60) days after the Sale Date at a price per security not less than and on terms and conditions not more favourable to such person than the price per security and the terms and conditions set forth in the Selling Notice. In the event that the Offeror does not sell the Offered Shares to such person within such sixty (60) day period, then the provisions of this Agreement shall once again apply and so on from time to time;
 - (e) if the Offered Shares shall not be capable, without division into fractions, of being offered to or being divided among such Offerees in the proportions above mentioned, the same shall be offered to or divided among such Offerees as nearly as may be in the proportions hereinbefore mentioned and any balance shall be offered to or divided among such Offerees or some of them in such manner as may be determined by the board of directors of the Corporation;
 - (f) provided that, where a Specified Shareholder is an Offeror and such Offeror gives a Selling Notice to the Offerees, a Shareholder that is not a Specified Shareholder may give to the Offeror a Notice of Acceptance:
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- (i) only within 30 days of the termination of the Acceptance Period provided that no Specified Shareholder has delivered a notice of acceptance during the acceptance period and subsections (a) to (e) shall apply *mutatis mutandis*; or
- (ii) in priority over any other person if the Offerees accepting the offer collectively are not prepared to purchase all of the Offered Shares.

6.7 Piggyback Rights.

Where, after compliance with the provisions of section 6.6, any Shareholder wishes and is entitled to sell all but not less than all of the Shares held by it and each of its Affiliates to a third party, then any such sale, notwithstanding the provisions of section 6.6, shall be permitted only if such third party makes an offer in writing irrevocable for forty-five (45) days to all other Shareholders holding Shares to purchase such Shares held by such Shareholders or their Affiliates at the same price and upon the same terms and conditions.

6.8 Draw Along.

If, (i) an offer is made by a third party to purchase all outstanding Shares held by Shareholders holding more than eighty percent (80%) of the outstanding Shares; or (ii) an amalgamation, merger, plan of arrangement, or other reorganization of the Corporation, for greater certainty, excluding a municipal amalgamation or other restructuring, is proposed by a third party or an offer is made by a third party to purchase all or substantially all of the assets of the Corporation (collectively a "Reorganization"), all Shareholders are required to sell their Shares to the Offeror or approve such Reorganization, as the case may be.

6.9 Insolvency of Shareholder.

- (a) If any Shareholder makes an assignment for the benefit of creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada) or a similar filing or proposal

under any other bankruptcy or insolvency legislation or is declared bankrupt or becomes insolvent, or any trustee, receiver, receiver and manager, liquidator or other officer with similar powers is appointed for such member or for all or any material part of his property (such member being hereinafter referred to as the "Insolvent Shareholder" and any such assignment, proposal, filing, declaration or insolvency or the appointment of any trustee, receiver or receiver and manager, liquidator or other officer with similar powers being hereinafter referred to as an "Insolvency Event"), the other Shareholders (the "Solvent Shareholders") shall be deemed to be entitled, effective immediately prior to the Insolvency Event, to purchase all or any part of the Shares held by the Insolvent Shareholder for a cash purchase price equal to the Fair Market Value of the Shares as determined in accordance with Schedule 6.9(a). Solvent Shareholders shall have ninety (90) days from the date of the final determination of Fair Market Value of the Shares pursuant to Schedule 6.9(a) to deliver to the Insolvent Shareholder (with a copy to the Corporation) a notice in writing setting out therein their respective intentions to purchase, effective immediately prior to the Insolvency Event, all but not less than all of the Shares owned by the Insolvent Shareholders *pro rata*, based on their respective holdings of Shares.

- (b) If the said Shares shall not be capable, without division into fractions, of being divided among such Solvent Shareholders in the proportions above mentioned, the same shall be divided among such Solvent Shareholders as nearly as may be in the proportions hereinbefore mentioned and any balance shall be divided among such Solvent Shareholders or some of them in such manner as may be determined by the board of directors of the Corporation.
 - (c) Subject to the provisions of the Act, if within ninety (90) days of the final determination of the Fair Market Value of the Shares pursuant to Schedule 6.9(a) a notice in writing shall not have been given to the Insolvent Shareholder (with a copy to the Corporation) by all or any of the Solvent Shareholders setting out therein the
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intention of such Solvent Shareholder or Shareholders to purchase, effective immediately prior to the Insolvency Event, all of the Shares owned by the Insolvent Shareholder, then the Corporation shall have the right to redeem and repurchase such portion of the Shares as shall not be the subject of a purchase and sale transaction with the Solvent Shareholder, effective immediately prior to the Insolvency Event, for a cash price equal to the value of the Shares as calculated by reference to the shareholders' equity of the Corporation as shown on the Corporation's most recent financial statements prior to the Insolvency Event prepared in accordance with this Agreement.

- (d) Any transaction of purchase and sale pursuant to this section 6.9 shall be completed in accordance with the provisions of Article 7 hereof but with effect and deemed completion as of the time immediately prior to the occurrence of an Insolvency Event.

6.10 Disposition of Assets.

Where BPDC proposes to sell more than fifty percent (50%) of BPDC's distribution assets located within the municipal boundary of a Specified Shareholder, the Specified Shareholder shall have the right of first refusal to purchase such assets at Fair Market Value plus fifty percent (50%) of any applicable tax payable on the proceeds of the sale by the Corporation, BPDC, the Shareholder or the municipality. The Specified Shareholder in whose municipal boundary the BPDC assets are located shall be entitled to receive written notice from BPDC of any proposed disposition of 50% of its distribution assets and shall have 60 days from the date of such notice to exercise its rights to purchase such assets, failing which the BPDC assets may be sold by BPDC.

ARTICLE 7
GENERAL SALE PROVISIONS

7.1 Sale Provisions.

Each Shareholder who hereafter sells any Shares pursuant to the provisions of this Agreement (such Shareholder being herein sometimes in this Article 7 called the "Seller") shall hereby be deemed to warrant to each other Shareholder or other person who purchases such Shares (such Purchasing Shareholder or other person being herein sometimes called the "Buyer") that, at the time of Closing of the transaction of purchase and sale in question, (a) the Seller shall have good and marketable title to such Shares, and (b) the Buyer will acquire such Shares free of any encumbrance of any kind, and in addition the Seller shall hereby be deemed to agree to indemnify and save the Buyer harmless against any loss suffered by the Buyer as a result of there being any encumbrance upon or any defect in the title of the Seller to such Shares.

7.2 Closing.

Each purchase and sale of Shares between Shareholders pursuant to this Agreement shall, unless otherwise expressly provided herein, be closed at the offices of the Corporation at 10:00 a.m. on the fifteenth (15th) day after the date of the last notice given (or deemed to be given) by the Buyer or the Seller, as the case may be, pursuant to the applicable sections of this Agreement or at such other time and/or on such other day as may be agreed upon by the Seller and the Buyer.

7.3 Conditions and Closing.

At the time of closing of any purchase of Shares of the Corporation as set forth in section 7.2, the Seller shall table:

- (a) a certificate or certificates representing the Shares being sold by the Seller, duly endorsed by the Seller in blank for transfer and with the signature of the Seller
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guaranteed by a Canadian chartered bank and transfers of any Shares being sold in such form as the Buyer may reasonably require;

- (b) in the case of a sale of Shares by a person which is not a natural person, such authorizing resolutions, orders and other instruments as the solicitors for the Buyer shall reasonably consider necessary to effect and evidence a valid transfer of such Shares; and
- (c) evidence of the consent of the Shareholders to the purchase of Shares in question if such consent is required by this Agreement,

and each Buyer shall pay for such Shares by bank draft or certified cheque. If the Seller fails to comply with the requirements set out in this section, the Buyer shall, in addition to its other rights, including its right to specific performance, be entitled to rescind and shall have an action for damages.

7.4 Indebtedness of Seller to Corporation.

If, on the date of closing of any sale and purchase of Shares of the Corporation, the Seller is indebted to the Corporation in an amount recorded on the books of the Corporation and verified by the auditor of the Corporation, then unless otherwise agreed in writing between the Corporation and the Seller, each Buyer shall pay the purchase price payable therefor by it to the Corporation's solicitors, in trust, by tabling and delivering to the Corporation's solicitors, in trust, at the time of closing of such purchase and sale, the purchase price for such Shares. The Corporation's solicitor is hereby authorized by the Seller to apply the total purchase price proceeds to repayment of the indebtedness of the Seller to the Corporation. If such proceeds exceed such indebtedness, the Corporation's solicitors are hereby authorized by the Buyer to pay the excess over to the Seller at the time of closing of such purchase and sale. In the event that the Seller sells all of the Shares of the Corporation owned by it and the indebtedness of the Seller to the Corporation exceeds the

proceeds of such sale, then the Seller shall at the time of closing of such purchase and sale pay the balance of such indebtedness to the Corporation to retire such indebtedness.

7.5 Indebtedness of Corporation to Seller.

If, on the date of closing of any sale and purchase of Shares of the Corporation, the Corporation is indebted to the Seller all of whose Shares are purchased by other Shareholders or other persons pursuant to Article 6, or if such Seller is the guarantor of any indebtedness of the Corporation, the Buyer or Buyers shall, at the time of closing, purchase such indebtedness at its face value or assume such guarantee in either case *pro rata* in accordance with the number of Shares purchased by it or them.

7.6 Agreement, Binding on Transferees.

No Shares of the Corporation shall be effectively issued, sold, assigned, transferred, disposed of or conveyed, whether pursuant to any provision of Article 6 or otherwise, by the Corporation or a Shareholder to any person other than a Shareholder, until the proposed transferee or purchaser executes and delivers to the parties hereto an agreement to the same effect as this Agreement and any further agreement with respect to the Corporation to which the Shareholders are then, or are then required to be, a party, and unless the proposed transferee or purchaser, on becoming a party to this Agreement, would be in compliance with the provisions of this Agreement. Upon the proposed transferee or purchaser so doing, such agreements shall enure to them as if all had executed and delivered the same agreements.

7.7 Continuing Obligations.

Any Shareholder who sells to a person, other than an Affiliate of the Shareholder, all of the Shares of the Corporation owned by it in accordance with the terms of this Agreement shall thereafter be released and discharged from the further performance of all of its covenants and obligations hereunder from and after the date of such sale and compliance by the transferee with

section 7.6 except for any obligations under this Article 7 and any other obligations under this Agreement which expressly or impliedly are to survive any such sale.

7.8 Council Shareholders.

The Parties agree that the provisions of Article 7 shall apply, with the necessary modifications, to a transfer of any Holdco Share of a Municipal Shareholder.

**ARTICLE 8
PRE-EMPTIVE RIGHT**

8.1 Pre-Emptive Right.

Subject to subsection 4.1(6), if the Corporation wishes at any time hereafter to issue any Shares, the Corporation shall first offer them for purchase by the Shareholders by written notice given to each such Shareholder. Such notice shall be given within ten (10) days following approval by the Board of a proposal to issue Shares and shall set forth a description of the Shares to be offered, the proposed purchase price and the purchase date which shall be a date not earlier than thirty (30) days after the date of such notice. Upon receipt of such notice, each such Shareholder shall have the right to subscribe for and purchase at least a number of such Shares determined by multiplying the total number of Shares offered by a fraction the numerator of which shall be the number of Shares owned by such Shareholder at the date of such notice and the denominator of which shall be the total number of Shares outstanding as at the date of such notice. Such right shall be exercised by the Shareholder by giving notice of acceptance to the Corporation within ten (10) days after the receipt of the notice from the Corporation, which notice of acceptance shall set forth the number of Shares which such Shareholder is willing to purchase. In the event that the Shareholder does exercise such right, it shall subscribe, purchase and pay for such Shares on the purchase date set forth in the notice of the Corporation. If all the Shareholders do not subscribe for their respective proportions, the unsubscribed Shares shall be used to satisfy the subscriptions of such Shareholders for Shares in excess of their proportion and, if the subscriptions in excess are

more than sufficient to exhaust such unsubscribed Shares, the unsubscribed Shares shall be divided *pro rata* among the Shareholders desiring Shares as nearly as may be in proportion to the number of Shares held by them respectively at the date of such notice, but no Shareholder shall be bound to take any such Shares in excess of the amount it desires.

8.2 Exchange of Shares.

If at any time any third party acquires, either directly or indirectly, an equity interest in an Affiliate of SHESC, BPDC or the Corporation, other than a corporation carrying on a business which is not a Business, and the Sarnia Shareholder retains an interest, either directly or indirectly, in such an Affiliate, then the Specified Shareholders shall collectively have the right to exchange their Shares in the Corporation for a number of securities of the same class and series of shares as those acquired by such third party, the fair market value of which is equal to the fair market value of such securities in the Corporation.

ARTICLE 9

LEGEND ON SHARE CERTIFICATES

9.1 Legend.

The certificates representing any Shares held by any Shareholder or Holdco Shares held by any Municipal Shareholder, with necessary modifications, shall have typed or otherwise written thereon the following legend:

"The shares represented by this certificate are subject to the provisions of an agreement made as of the 1st day of November, 2000 among the Shareholders of the Corporation as of that date and the Corporation and such other persons as have or shall from time to time become bound by such agreement, as the same may be amended, supplemented and restated from time to time and notice of the terms and conditions of such agreement is hereby given. Such agreement includes restrictions

on the transfer of, and the right to transfer, shares in the capital of the Corporation including the shares represented by this certificate. Such shares may not be sold, assigned, transferred, donated, mortgaged, pledged, hypothecated, charged or otherwise encumbered or dealt with except in accordance with such agreement. A copy of such agreement, as amended, supplemented and restated from time to time may be examined at the principal place of business of the Corporation".

9.2 Corporation to Keep a Copy of the Agreement.

The Corporation shall keep a true copy of this Agreement at its principal place of business and on reasonable prior notice from any Party shall make the same available for examination by such Party during the Corporation's regular hours of business at such office.

**ARTICLE 10
INDEMNIFICATION**

10.1 Indemnity.

Each Shareholder hereby agrees to indemnify, hold harmless, reimburse and defend each and every other Shareholder (hereinafter in this section referred to as an "Indemnified Shareholder"), other than any Related Shareholder of the particular Shareholder, for, from and against any and all liability, loss, damage or expense (including, without limitation, reasonable legal fees and disbursements) and any claim thereof or therefor which:

- (a) is asserted against, imposed on, or incurred or sustained by, any Indemnified Shareholder (regardless of the form or nature of such liability, damage, loss, expense or claim), and
- (b) results from, arises out of or is connected with

- (i) the nonfulfillment or breach by any person (a "Designated Person") that is the particular Shareholder or any Related Shareholder of the particular Shareholder, of any covenant in or obligation under this Agreement, or
- (ii) the negligence or misconduct of (a) any Designated Person or (b) any shareholder, director, officer, employee or agent of any Designated Person or (c) any Affiliate (other than the Corporation or any Subsidiary of the Corporation) of a Designated Person.

ARTICLE 11
TERMINATION

11.1 Termination.

If on any day:

- (a) any particular person (any such person being referred to as a "Terminated Party") that was a Shareholder at any earlier time, does not hold any Shares, and is not pursuant to this Agreement deemed to hold any Shares; and
- (b) there is no Shareholder that is a Related Shareholder of the particular person

then (unless and in any event until the particular person again becomes a Shareholder) after the expiration of such day:

- (c) no further rights or obligations of the particular person shall arise or accrue under this Agreement other than in relation to any rights or obligations respecting or relating to the payment of any amount by or to the particular person pursuant to this Agreement; and
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- (d) this Agreement may be amended, terminated, replaced or superseded at any time by agreement of the Parties hereto, each of whom is not a Terminated Party at that time, it being understood that the same shall not affect the rights or obligations under this Agreement of any person who is then a Terminated Party.

11.2 Council Shareholders.

The Parties agree that the provisions of Article 11 shall apply, with the necessary modifications, to all Council Shareholders.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality.

Each of the Parties, Shareholders, Council Shareholders and their respective Affiliates shall keep in the strictest confidence and shall not disclose and not use, in any manner whatsoever in connection with or relating to, directly or indirectly, any business engaged in or participating in the Businesses or the operation, franchising, development or sale of products or services similar to those of the Corporation or its Subsidiaries, all non-public information pertaining to or concerning the Corporation and its Subsidiaries including, without limitation, budgets, forecasts, analyses, and financial results, costs, margins, wages and salaries, bids and other business activities, all supplier and customer lists, all non-public intellectual property including trade secrets, unfilled patents, trademarks, technical expertise and know-how, documentation including standard terms and agreements and all other information not generally known outside the Corporation or its Subsidiaries except to persons through business dealings with the Corporation or its Subsidiaries. However, no Shareholder or Affiliate thereof shall be obliged to keep in confidence or shall incur any liability for disclosure of information which:

- (a) was already in the public domain or comes into the public domain without any breach of this Agreement;
- (b) is required to be disclosed pursuant to applicable law or court order; or
- (c) is made to the legal representatives to such disclosing party, in which event such disclosing party shall, so far as reasonably possible, cause the recipient to comply with the terms hereof as if it were a party to this Agreement.

ARTICLE 13 GENERAL PROVISIONS

13.1 Further Acts.

The Parties hereto agree to do and to cause to be done all acts and things as directors and shareholders of the Corporation to effect compliance with or waiver of the restrictions on the transfer of shares contained in the Articles of Incorporation or by-laws of the Corporation to give effect to any transfer or intended transfer of Shares required or permitted to be made and recorded as a result of the application of the provisions of this Agreement in order that, notwithstanding such restrictions, the terms and conditions of this Agreement may be carried out.

13.2 Extended Application.

The Parties hereto agree that the provisions of this Agreement relating to Shares of a particular class (and series, if applicable) shall apply *mutatis mutandis*:

- (a) to any shares or securities which result, either directly or indirectly, from the conversion, changing, reclassification, redivision, redesignation, subdivision or consolidation of Shares of such class (and series, if applicable);
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- (b) to any shares or securities in the capital of, or issued by, the Corporation which are received by any one or more Parties hereto as a stock dividend or distribution on or in respect of Shares of such class (and series, if applicable); and
- (c) to any shares or securities in the capital of, or issued by, the Corporation or any successor or continuing body corporate to the Corporation which are received by any one or more Parties hereto (i) on a reorganization, amalgamation, consolidation or merger, statutory or otherwise and (ii) on or in respect of Shares of such class (and series, if applicable).

13.3 Assignment.

Subject to the restrictions to assignment contained herein, this Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns. Except as expressly permitted by this Agreement, the rights of any person under this Agreement shall not be assignable.

Any person (the "Assignor"), other than the Corporation, having rights under this Agreement shall be permitted to assign such rights to another person (the "Assignee") provided

- (a)
 - (i) the Assignor transfers all Shares owned by the Assignor to the Assignee and such transfer complies with this Agreement, and
 - (ii) the Assignor assigns all rights of the Assignor under this Agreement to the Assignee; and
- (b) the Assignee is bound by this Agreement.

13.4 Notices.

The provisions of this section apply to any notice, offer or other communication (any such notice, offer or communication being referred to in this section as a "Notice") contemplated or provided for in this Agreement:

- (1) Manner of Giving Notice. Any Notice required or permitted by this Agreement to be given or sent or delivered to, or received by, a person:
 - (a) shall be in writing;
 - (b) shall be addressed to such person at such person's Notice Address;
 - (c) shall be given to such person:
 - (i) by delivery, including delivery by courier, to such person,
 - (ii) by prepaid registered or certified mail, return receipt requested, mailed in Ontario in an envelope addressed to such person's Notice Address, or
 - (iii) by transmission by telecopier to such person at such person's Telecopier Number to the attention of such person's Telecopier Addressee; and
 - (d) shall, if being given to the Corporation, also be given to each Shareholder other than the Shareholder giving such Notice or any Related Shareholder of such Shareholder.

- (2) Notices shall be given as follows:

If to Alvinston/Alvinston HoldCo, to:

Corporation of the Village of Alvinston
3236 River Street, P.O. Box 28
Alvinston, Ontario
N0N 1A0

Attention: Bob Alderman, Clerk
Fax: (519) 898-5653

If to Oil Springs/Oil Springs HoldCo, to:

Corporation of the Village of Oil Springs
P.O. Box 22
Oil Springs, Ontario
NON 1P0

Attention: Marilyn Sanderson
Fax: (519) 834-2333

If to Petrolia/Petrolia HoldCo, to:

Corporation of the Town of Petrolia
411 Greenfield Street, P.O. Box 1270
Petrolia, Ontario
N0N 1R0

Attention: Terry Blackmore
Fax: (519) 882-3373

If to Point Edward/Point Edward HoldCo, to:

Corporation of the Village of Point Edward
36 St. Clair Street
Point Edward, Ontario
N7V 4G8

Attention: Joe Simon, Clerk Treasurer
Fax: (519) 337-5963

If to Warwick/Warwick HoldCo, to:

Corporation of the Township of Warwick
6332 Nauvoo Road, R.R. #8
Watford, Ontario
N0M 2S0

Attention: Donald Craig, Clerk-Administrator
Fax: (519) 849-6136

If to Sarnia, to:

Corporation of the City of Sarnia
255 North Christina Street
P.O. Box 3018
Sarnia, Ontario
N7T 7N2

Attention: Alex Palimaka, City Solicitor
Fax: (519) 332-8951

If to Sarnia Power Corporation, to:

Sarnia Power Corporation
855 Confederation Street
P.O. Box 2140
Sarnia, Ontario
N7T 7L6

Attention: President
Fax: (519) 344-6094

If to the Corporation, to:

Bluewater Power Corporation
855 Confederation Street
P.O. Box 2140
Sarnia, Ontario
N7T 7L6

Attention: Dave Simmons
Fax: (519) 344-6094

If to the BPDC, to:

855 Confederation Street
P.O. Box 2140
Sarnia, Ontario
N7T 7L6

Attention: Dave Simmons
Fax: (519) 344-6094

If to the SHESC, to:

855 Confederation Street
P.O. Box 2140
Sarnia, Ontario
N7T 7L6

Attention: Dave Simmons
Fax: (519) 344-6094

- (3) Deemed Delivery. Any Notice given to a person as aforesaid:
- (a) if given by delivery (other than by mail), shall be deemed to have been given, sent and delivered to, and received by, such person on the day on which it is so delivered;
 - (b) if given by mail, shall be deemed to have been given, sent and delivered to, and received by, such person on the day on which it is delivered as evidenced by a receipt, acknowledgement or other document issued by a postal authority; and
 - (c) if given by transmission by telecopier, shall be deemed to have been given, sent and delivered to, and received by, such person on the first Business Day after transmission.

13.5 Remedies Cumulative.

The rights and remedies of the Parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided for in law.

13.6 Titles.

The titles to the Articles and certain other provisions hereof have been inserted for ease of reference only and shall not affect the construction or the interpretation of this Agreement.

13.7 Governing Law.

This Agreement shall be deemed to have been made in, and shall be governed by, and be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in such Province.

13.8 Counterparts.

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. The Parties hereto acknowledge that there is no representation, warranty, agreement or understanding between them which has induced any of the Parties hereto to enter into this Agreement except as expressly stated herein.

13.10 Waiver.

Any Party which is entitled to any right or benefit under this Agreement may, and shall be entitled and have the right to, waive any term or condition relating to the application of this Agreement in relation to any matter or transaction provided that any such waiver shall only be effective if it is in writing signed by such Party and delivered to a Party to whom such waiver is directed. If a particular Party waives any term or condition relating to the application of this Agreement in relation to any matter or transaction as aforesaid, then in relation to the specific matter or transaction which is the subject matter of such waiver, each person that is then a Party or that subsequently becomes a Party shall be entitled to rely upon such waiver in the same manner and to the same extent as if such waiver had been directed and delivered to such person by the particular Party.

No failure on the part of any Party to exercise, and no delay by any Party in exercising, any right under this Agreement shall operate as a waiver of such right.

13.11 Time.

Time shall be of the essence in this Agreement.

13.12 Inconsistency with By-Laws.

In the event of any inconsistency between the provisions hereof and the by-laws of any of the Corporation, SHESC or BPDC, this Agreement shall prevail.

13.13 Independent Advice.

EACH OF THE PARTIES HERETO ACKNOWLEDGES AND CONFIRMS THAT IT HAS BEEN ADVISED TO AND HAS HAD AN OPPORTUNITY TO RETAIN COUNSEL AND RECEIVE INDEPENDENT LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT.

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto.

SIGNED, SEALED AND DELIVERED
in the presence of

)
)**The Corporation of the Village of Alvinston**

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)
) By: _____ c/s
) Name:
) Title:

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) By: _____
) Name:
) Title:

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)**The Corporation of the Village of Oil Springs**

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)
) By: _____ c/s
) Name:
) Title:

)
) By: _____
) Name:
) Title:

)
)**The Corporation of the Town of Petrolia**

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)
) By: _____ c/s
) Name:
) Title:

)
) By: _____
) Name:
) Title:

)

**)The Corporation of the Village of
)Point Edward**

)

)

)

By: _____ c/s

)

Name:

)

Title:

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By: _____

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Name:

)

Title:

)

)The Corporation of the Township of Warwick

)

)

)

By: _____ c/s

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Name:

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Title:

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By: _____

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Name:

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Title:

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)The Corporation of the City of Sarnia

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By: _____ c/s

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Name:

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Title:

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By: _____

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Name:

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Title:

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) Alvinston Electricity Holdings Inc.

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)

By: _____ c/s

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Name:

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Title:

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By: _____



) Name:
) Title:
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)
)

) **Oil Springs Electricity Holdings Inc.**
)
)

) By: _____ c/s
)

) Name:
) Title:
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) By: _____
)

) Name:
) Title:
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) **Petrolia Electricity Holdings Inc.**
)
)

) By: _____ c/s
)

) Name:
) Title:
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)

) By: _____
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) Name:
) Title:
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) **Point Edward Electricity Holdings Inc.**
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) By: _____ c/s
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) Name:
) Title:
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) By: _____
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) Name:
) Title:
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) **Warwick Electricity Holdings Inc.**

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) By: _____ c/s

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Name:

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Bluewater Power Corporation

By: _____ c/s

Name:

Title:

By: _____

Name:

Title:

) **Bluewater Power Distribution Corporation**

)
)
)
) By: _____ c/s

) Name:
) Title:

)
)
) By: _____

) Name:
) Title:

) **Sarnia Hydro Energy Services Corporation**

)
)
)
) By: _____ c/s

) Name:
) Title:

)
)
) By: _____

) Name:
) Title:

SCHEDULE 6.9(a)

DETERMINATION OF FAIR MARKET VALUE

- (a) For purposes of this Agreement where referenced, "Fair Market Value" means the price per Share, determined by an independent qualified business valuator (a "Valuator") pursuant to this schedule as of the relevant date, that would be received upon a sale of all of the issued and outstanding Shares in a single transaction determined in an open and unrestricted market between prudent parties, acting at arm's length and under no compulsion to act, and having reasonable knowledge of all relevant facts concerning the Corporation. In determining the Fair Market Value of the Shares, such Valuator shall be considered as an expert and shall not be construed as acting as an arbitrator within the meaning of the *Arbitration Act*, 1991 (Ontario).
 - (b) Such determination of the Fair Market Value of the Shares shall be made as if the Corporation were a "going concern" (except to the extent that market, financial, economic, business or other conditions shall dictate different criteria in the reasonable judgment of the Valuator) without any discount for a minority interest or any premium for control. The value of the Shares shall not be diminished because of the fact that the Shares are not publicly traded or the fact that the Insolvent Shareholder owns a minority interest in the Corporation.
 - (c) Within ten (10) days of the receipt of a notice under subsection 6.5(b) or 6.9(a), the Solvent Shareholders and the Insolvent Shareholder, or the relevant Shareholders under the section of this Agreement giving rise to a determination of Fair Market Value or under Subsection 6.5(b) (the "Relevant Shareholder") and the Corporation shall jointly appoint a Valuator. If the Shareholders and the Corporation are unable to jointly appoint a Valuator within the specified period, the Insolvent Shareholder or the Relevant Shareholder, on the one hand, and the Solvent Shareholders or the other Relevant Shareholders jointly, on the other, shall within ten (10) days of the expiry of such period each appoint a Valuator (the "Designated Valuators") and the two Designated Valuators so appointed shall, within ten (10) days of their appointment, jointly appoint a Valuator.
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- (d) The Shareholders shall instruct the Valuator to prepare and deliver to the Shareholders, as soon as practicable and in any event within a period of thirty (30) days of its appointment, a report setting forth the Valuator's estimate as to the Fair Market Value of the Shares of the Insolvent Shareholder immediately prior to the Insolvency Event or other event giving rise to a determination of Fair Market Value and the basis upon which such estimate has been calculated (the "Valuator's Report").
 - (e) The Valuator shall prepare the Valuator's Report having regard to the factors identified in clauses (a) and (b). The Valuator may also have regard to any representations that any Shareholder may wish to make. The Valuator's Report shall be conclusive and binding. The Fair Market Value so determined shall become the Fair Market Value of the Shares for purposes of the transactions contemplated in section 6.5(b) or 6.9.
 - (f) The costs and expenses of the Designated Valuators incurred in connection with the appointment of the Valuator and/or the Valuator in connection with the preparation of the Valuator's Report shall be paid by the Corporation.
 - (g) Capitalized terms used in this schedule and not defined shall have the meanings ascribed thereto in Article 6 of this Agreement.
 - (h) The provisions of this Schedule 6.9(a) shall apply, with the necessary modifications, to the determination of the Fair Market Value of a Holdco Share.
 - (i) The determination of the Fair Market Value of the assets under Section 6.10 shall be determined by an independent valuator selected by the Parties who shall value the assets as a "going concern" within the boundaries of the Municipality as it stood at the execution of this Agreement (except to the extent that market, financial, economic, business or other conditions shall dictate different criteria in the reasonable judgement of the Valuator).
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BY-LAW NUMBER 167 OF 2000
OF THE CITY OF SARNIA

"A By-Law Relating to Hydro Restructuring and to
Authorize the Execution of a Shareholders' Agreement"

READINGS:

FIRST: Oct. 30, 2000

SECOND: Oct. 30, 2000

THIRD: Oct. 30, 2000

THE CORPORATION OF THE CITY
OF SARNIA (APP:df)
Legal Services
City Hall
Sarnia, Ontario
N7T 7N2