



**Certificate
of Amendment**

**Canada Business
Corporations Act**

**Certificat
de modification**

**Loi canadienne sur
les sociétés par actions**

VELAN INC.

014614-5

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of the above-named corporation were amended

Je certifie que les statuts de la société susmentionnée ont été modifiés :

(a) under section 13 of the *Canada Business Corporations Act* in accordance with the attached notice;

a) en vertu de l'article 13 de la *Loi canadienne sur les sociétés par actions*, conformément à l'avis ci-joint;

(b) under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares;

b) en vertu de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;

(c) under section 179 of the *Canada Business Corporations Act* as set out in the attached articles of amendment;

c) en vertu de l'article 179 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes;

(d) under section 191 of the *Canada Business Corporations Act* as set out in the attached articles of reorganization.

d) en vertu de l'article 191 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de réorganisation ci-jointes.

Director - Directeur

September 26, 1996/le 26 septembre 1996

Date of Amendment - Date de modification



Industry Canada Industrie Canada

Canada Business Act Loi canadienne sur les sociétés par actions

FORM 4 ARTICLES OF AMENDMENT (SECTION 27 OR 177)

FORMULE 4 CLAUSES MODIFICATRICES (ARTICLES 27 OU 177)

1 — Name of corporation — Dénomination de la société Velan Inc.	2 — Corporation No. — N° de la société 014614-5
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3 — The articles of the above-named corporation are amended as follows: Les statuts de la société mentionnée ci-dessus sont modifiés de la façon suivante :

The articles of continuance, as amended (the "Articles"), be and are hereby further amended by:

(a) Deleting item 3 of the Articles of the Corporation and replacing same by the following:

"3 - The classes and any maximum number of shares that the Corporation is authorized to issue:

- Unlimited number of Preferred Shares, issuable in series;
- Unlimited number of Subordinate Voting Shares; and
- Unlimited number of Multiple Voting Shares.

A statement of the rights, privileges, restrictions and conditions attached to each class of shares is annexed hereto as Schedule "A" to form part hereof as if recited at length herein."

Date September 26, 1996	Signature <i>Michael D. ...</i>	Title — Titre Director
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FOR DEPARTMENTAL USE ONLY — À L'USAGE DU MINISTÈRE SEULEMENT
Filed — Déposée

SEP 27 1996

SCHEDULE A

- I. The Preferred Shares shall, as a class, carry and be subject to the following rights, privileges, restrictions and conditions:
- (a) The Preferred Shares may at any time and from time to time be issued in one or more series, each series to consist of such number of shares as may, before the issue thereof, be fixed by resolution of the board of directors of the Corporation.
 - (b) The board of directors of the Corporation shall, subject as hereinafter provided and subject to the Canada Business Corporations Act (hereinafter referred to as the "Act"), determine, by resolution duly passed before the issue of the Preferred Shares of each series, the designation, rights, privileges, restrictions and conditions to be attached to the Preferred Shares of such series, including, but without in any way limiting the generality of the foregoing:
 - (i) provisions, if any, with respect to the rights of the holders of the Preferred Shares of such series to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting;
 - (ii) the rate, amount or method of calculation of preferential dividends, whether or not cumulative or non-cumulative or partially cumulative, and whether such rate, amount or method of calculation shall be subject to change or adjustment in the future, the currency or currencies of payment, the date or dates and place or places of payment thereof and the date or dates from which such preferential dividends shall accrue;
 - (iii) the rights of the Corporation, if any, to purchase or redeem the same and the consideration for and the terms and conditions of any such purchase or redemption;
 - (iv) the rights of conversion and/or exchange, if any, and the rates and other terms and conditions of any such rights;
 - (v) the rights of retraction, if any, vested in the holders of shares of such series, and the

prices and the other terms and conditions of any rights of retraction, and whether any additional rights of retraction may be vested in such holders in the future;

- (vi) the terms and conditions of any share purchase plan or sinking fund; and
- (vii) the restrictions, if any, respecting payment of dividends on the Subordinate Voting Shares, the Multiple Voting Shares or any other shares ranking junior to the Preferred Shares;

the whole subject to articles of amendment setting forth the number, designation, rights, privileges, restrictions and conditions to be attached to the Preferred Shares of such series and the issue of a certificate of amendment in respect thereof.

- (c) The Preferred Shares shall, with respect to the payment of dividends, be entitled to preference over the Subordinate Voting Shares, the Multiple Voting Shares and over any other shares ranking junior to the Preferred Shares and
 - (i) no dividends shall at any time be declared or paid or set apart for payment on the Subordinate Voting Shares, the Multiple Voting Shares or on any other shares of the Corporation ranking junior to the Preferred Shares; and
 - (ii) the Corporation shall not redeem or purchase any of the Preferred Shares (less than the total number of Preferred Shares then outstanding) or any shares of the Corporation ranking junior to the Preferred Shares;

unless at the date of such declaration or payment or redemption or purchase, as the case may be, all cumulative dividends up to and including the dividend payment for the last completed period for which such cumulative dividends shall be payable shall have been declared and paid or set apart for payment in respect of each series of cumulative Preferred Shares then issued and outstanding and, in respect of each series of non-cumulative Preferred Shares then issued and outstanding, there shall have been paid or set apart for payment all declared and unpaid non-cumulative dividends.

- (d) In the event of the liquidation, dissolution or wind-up of the Corporation or other distribution of assets of the

Corporation among shareholders for the purpose of winding up its affairs, the holders of the Preferred Shares shall, before any amount shall be paid to or any property or assets of the Corporation distributed among the holders of the Subordinate Voting Shares, the Multiple Voting Shares or any other shares of the Corporation ranking junior to the Preferred Shares, be entitled to receive

- (i) an amount equal to the amount paid up thereon, together with, in the case of cumulative Preferred Shares, all unpaid cumulative dividends (which for such purpose shall be calculated as if such cumulative dividends were accruing from day to day for the period from the expiration of the last period for which cumulative dividends have been paid up to and including the date of distribution) and, in the case of non-cumulative Preferred Shares, all declared and unpaid non-cumulative dividends, and
- (ii) if such liquidation, dissolution, wind-up or distribution shall be voluntary, an additional amount equal to the premium, if any which would have been payable on the redemption of said Preferred Shares respectively if they had been called for redemption by the Corporation on the date of distribution and, if said Preferred Shares could not be redeemed on such date, then an additional amount equal to the greatest premium, if any, which would have been payable on the redemption of said Preferred Shares respectively.

After payment to the holders of the Preferred Shares of the amounts so payable to them, the holders of the Preferred Shares shall not be entitled to share in any further distribution of the property or assets of the Corporation.

- (e) The Preferred Shares of each series shall rank on a parity with the Preferred Shares of every other series with respect to priority in the payment of dividends and distribution of assets in the event of the liquidation, dissolution or wind-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, provided, however, that in case such assets are insufficient to pay in full the amount due on all the Preferred Shares, then such assets shall be applied, firstly, after payment in full of all amounts due to the holders of the Preferred

Shares, to the payment equally and rateably of an amount equal to the price at which the Preferred Shares of each series were issued and the premium thereon, if any, and, secondly, pro rata to the payment of accrued and unpaid cumulative dividends and declared and unpaid non-cumulative dividends.

- (f) The holders of the Preferred Shares shall not, as such, be entitled as of right to subscribe for or purchase or receive the whole or any part of any issue of any shares, bonds, debentures or other securities or any rights to acquire the same, which may from time to time be issued by the Corporation except in accordance with any conversion, exchange or offer rights set forth in the rights, privileges, restrictions and conditions attaching to the Preferred Shares of any series.
- (g) The provisions of paragraph I.(a) to I.(f), inclusive, and of this paragraph (g) may be deleted, varied, modified, repealed, amended or amplified in whole or in part by a Certificate of Amendment, but only with the prior approval of the holders of the Preferred Shares given as hereinafter specified in addition to any other approval required by the Canada Business Corporations Act.

The approval of the holders of the Preferred Shares with respect to any and all matters hereinbefore referred to may be given by a special resolution duly passed by not less than two-thirds (2/3) of the votes cast on a poll at a meeting of the holders of the Preferred Shares duly called and held for the purpose of considering the subject matter of such resolution and at which meeting the holders of not less than a majority of the outstanding Preferred Shares are present in person or represented by proxy in accordance with the by-laws of the Corporation; provided, however, that, if any such meeting, when originally held, the holders of at least a majority of the outstanding Preferred Shares are not present in person or so represented by proxy within thirty (30) minutes after the time fixed for the meeting, then the meeting shall be adjourned to such date, being not more than thirty (30) days later, and to such time and place as may be fixed by the chairman of such meeting and, at such adjourned meeting, the holders of Preferred Shares, present in person or so represented by proxy, whether or not they hold more or less than a majority of all Preferred Shares then outstanding, may transact the business for which the meeting was originally called and a resolution duly passed and carried thereat by not less than two-thirds (2/3) of the votes cast on a poll at such

adjourned meeting shall constitute the approval of the holders of the Preferred Shares hereinbefore mentioned. Notice of any such original meeting of the holders of the Preferred Shares shall be given not less than twenty-one (21) nor more than fifty (50) days prior to the date fixed for such meeting and shall state the nature of the business to be transacted and the text of any resolution to be submitted to the meeting. No notice of the adjourned meeting need be given other than by announcement at the original meeting. The formalities to be observed with respect to the giving of notice of any such original meeting and the conduct of such meeting and of the adjourned meeting shall be those from time to time prescribed in the by-laws of the Corporation with respect to meetings of shareholders or in the Canada Business Corporations Act.

If the deletion, variation, modification, amendment or amplification of the provisions hereinbefore contained especially affects the rights of the holders of Preferred Shares of any series in a manner or to an extent substantially different from that in which the rights of the holders of Preferred Shares of any other series are affected, then such deletion, variation, modification, amendment or amplification shall, in addition to being approved by the holders of the Preferred Shares as hereinabove set forth, be approved by the holders of the Preferred Shares of such series so especially affected, which approval may be expressed by a special resolution passed by not less than two-thirds (2/3) of the votes cast on a poll at a meeting of the holders of Preferred Shares of such series, and the provisions of this paragraph shall apply, mutatis mutandis, with respect to the holding of such meeting.

Any meeting of the holders of the outstanding Preferred Shares may be held at any time and for any purpose, without notice, if all holders of Preferred Shares entitled to vote at the meeting waive notice of the meeting in writing. For the purpose of waiver of notice, the words "in writing" shall, without limitation, include the sending of a telegram, telex, cable, facsimile or any other form of written communication by a shareholder. Any holder of Preferred Shares may waive notice of any meeting either before or after the meeting is held.

Irregularities in the notice or in the giving thereof as well as the accidental omission to give notice of any meeting to, or the non-receipt of any notice by, any holder of Preferred Shares, shall not invalidate any action taken at any meeting.

At any meeting of the holders of Preferred Shares, without distinction as to series, each holder of Preferred Shares shall be entitled to one (1) vote in respect of each preferred share held by him. At any meeting of the holders of Preferred Shares of any particular series, each holder shall be entitled to one (1) vote in respect of each Preferred Share of such series held by him.

II. The Subordinate Voting Shares shall, as a separate class of shares, have attached thereto the following rights, privileges, restrictions and conditions:

- (a) Subject to the prior rights of the holders of the Preferred Shares and any other shares ranking senior to the Subordinate Voting Shares and the Multiple Voting Shares with respect to the payment of dividends, all dividends which may be declared or paid on the Subordinate Voting Shares or the Multiple Voting Shares shall rank equally and all dividends declared and paid shall be declared and paid in identical amounts, on a per share basis, to the holders of the Subordinate Voting Shares and the Multiple Voting Shares, without preference or distinction.
- (b) Each Subordinate Voting Share shall entitle the holder thereof to one (1) vote at all meetings of the shareholders of the Corporation (except as set out below and except at meetings at which only holders of another specified class of shares are entitled to vote pursuant to the provisions hereof or pursuant to the provisions of the Act).

Each Subordinate Voting Share shall entitle the holder thereof to five (5) votes with respect to the following matters:

- (i) the amalgamation of the Corporation with any other corporation other than one or more of the Corporation's subsidiaries;
- (ii) the sale, lease, transfer or other disposition (other than in the ordinary course of business) of all or substantially all of the assets of the Corporation to any corporation other than one or more of the Corporation's subsidiaries;
- (iii) the voluntary liquidation, dissolution or winding-up of the Corporation.

- (c) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares and to any other class of shares ranking prior to the Subordinate Voting Shares or the Multiple Voting Shares, the holders of the Subordinate Voting Shares and the holders of the Multiple Voting Shares shall be entitled to receive the remaining property of the Corporation; the Subordinate Voting Shares and the Multiple Voting Shares shall rank *pari passu* on a per share basis with respect to the payment of dividends and distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among shareholders for the purpose of winding up its affairs.
- (d) In the event of the subdivision or consolidation of the Multiple Voting Shares, the Subordinate Voting Shares will be similarly subdivided or consolidated, as the case may be, and in such event the provisions then attaching to each class of shares shall also attach to that class of shares as subdivided or consolidated.
- (e) Any modifications to the provisions attaching to the Subordinate Voting Shares as a class shall require the affirmative vote of not less than two-thirds (2/3) of the votes cast at separate meetings of the holders of the Subordinate Voting Shares and the Multiple Voting Shares, duly called and held for the purpose, at which meetings, when originally held, the holders of not less than a majority of the outstanding shares of any such class (the "Subject Class") are present in person or represented by proxy in accordance with the by-laws of the Corporation provided, however, that, if at any such meeting, when originally held, the holders of at least a majority of the outstanding shares of the Subject Class are not present in person or so represented by proxy within thirty (30) minutes after the time fixed for the meeting, then the meeting shall be adjourned to such date, being not more than thirty (30) days later, and to such time and place as may be fixed by the chairman of such meeting and, at such adjourned meeting, the holders of shares of the Subject Class, present in person or so represented by proxy, whether or not they hold more or less than a majority of all the shares of the Subject Class then outstanding, may transact the business for which the meeting was originally called and a resolution duly passed and carried thereat by not less than two-thirds

(2/3) of the votes cast on a poll at such adjourned meeting shall constitute the approval of the holders of the shares of the Subject Class hereinbefore mentioned. Notice of any such original meeting of the holders of the shares of the Subject Class shall be given not less than twenty-one (21) nor more than fifty (50) days prior to the date fixed for such meeting and shall state the nature of the business to be transacted and the text of any resolution to be submitted to the meeting. No notice of the adjourned meeting need be given other than by announcement at the original meeting. The formalities to be observed with respect to the giving of notice of any such original meeting and the conduct of such meeting and of the adjourned meeting shall be those from time to time prescribed in the by-laws of the Corporation with respect to meetings of shareholders or in the Canada Business Corporations Act.

III. The Multiple Voting Shares shall, as a separate class of shares, have attached thereto the following rights, privileges, restrictions and conditions:

- (a) Subject to the prior rights of the holders of the Preferred Shares and any other shares ranking senior to the Subordinate Voting Shares and the Multiple Voting Shares with respect to the payment of dividends, all dividends which may be declared or paid on the Multiple Voting Shares or the Subordinate Voting Shares shall rank equally and all dividends declared and paid shall be declared and paid in identical amounts, on a per share basis, to the holders of the Multiple Voting Shares and the Subordinate Voting Shares, without preference or distinction.
- (b) Each Multiple Voting Share shall entitle the holder thereof to five (5) votes at all meetings of the shareholders of the Corporation (except meetings at which only holders of another specified class of shares are entitled to vote pursuant to the provisions hereof or pursuant to the provisions of the Act).
- (c) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares and to any other class of shares ranking prior to the Subordinate Voting Shares or the Multiple Voting Shares, the holders of the Subordinate Voting Shares and the holders of the

Multiple Voting Shares shall be entitled to receive the remaining property of the Corporation; the Subordinate Voting Shares and the Multiple Voting Shares shall rank *pari passu* on a per share basis with respect to the payment of dividends and distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among shareholders for the purpose of winding up its affairs.

- (d) In the event of the subdivision or consolidation of the Subordinate Voting Shares, the Multiple Voting Shares will be similarly subdivided or consolidated, as the case may be, and in such event the provisions then attaching to each class of shares shall also attach to that class of shares as subdivided or consolidated.
- (e) Each holder of a Multiple Voting Share shall be entitled at his option, at any time and from time to time (subject as hereinafter provided), to have all or any number of the Multiple Voting Shares held by him converted into Subordinate Voting Shares on the basis of one (1) Subordinate Voting Share for each Multiple Voting Share in respect of which the conversion right is exercised.

The conversion right provided for in this Section (e) shall be exercised by notice in writing given to the Secretary of the Corporation at the registered or principal office of the Corporation or to the transfer agent for such shares accompanied by the certificate or certificates representing the Multiple Voting Shares in respect of which the holder desires to exercise such right of conversion, and such notice shall be executed by the person registered on the books of the Corporation as the holder of the Multiple Voting Shares or by his duly authorized attorney and shall specify the number of Multiple Voting Shares which the holder desires to have converted. The holder shall pay any governmental or other tax imposed on, or in respect of, such conversion. Upon receipt by the Corporation or the transfer agent for the shares of such notice and certificate or certificates, the Corporation shall issue, or cause to be issued, to the holder so exercising the conversion right in respect of the Multiple Voting Shares, a certificate representing Subordinate Voting Shares upon the basis above prescribed and in accordance with the provisions hereof. The holder of record of any Multiple Voting Shares on the record date for any dividend declared on such share shall be entitled to such dividend notwithstanding that such share shall have been converted into a Subordinate Voting Share after such record date and before the payment of such

dividend. Subject to the foregoing, upon conversion of any Multiple Voting Shares, there shall be no adjustment by the Corporation or by any holder of Multiple Voting Shares on account of any dividends, whether or not earned or declared, either on any Multiple Voting Share so converted or on any Subordinate Voting Share resulting from such conversion. If less than all the Multiple Voting Shares represented by any certificate or certificates are to be converted, the holder shall be entitled to receive at the expense of the Corporation, a new certificate representing the number of Multiple Voting Shares represented by the original certificate or certificates which are not to be converted. Any Multiple Voting Shares so converted shall not be reissued and shall be cancelled. On any conversion of Multiple Voting Shares the certificate or certificates representing Subordinate Voting Shares resulting therefrom shall be issued in the name of the holder of the Multiple Voting Shares converted or, subject to payment by the holder of any security transfer or other applicable taxes, in such name or names as such holder may direct in writing (either in the notice referred to above or otherwise).

The right of a holder of Multiple Voting Shares to convert the same into Subordinate Voting Shares shall be deemed to have been exercised, and the holder of Multiple Voting Shares to be converted shall be deemed to have been a holder of Subordinate Voting Shares for all purposes on the date or dates of receipt by the Corporation or the transfer agent for such shares of the certificate or certificates representing the Multiple Voting Shares to be converted accompanied by notice in writing as referred to above, notwithstanding any delay in the delivery of the certificate or certificates representing the Subordinate Voting Shares into which such Multiple Voting Shares have been converted.

The Multiple Voting Shares which are converted into Subordinate Voting Shares in accordance with the provisions of this Section (e) shall be and shall be deemed to be Subordinate Voting Shares for all purposes and the number of issued Multiple Voting Shares shall be reduced by a number equal to the number of Multiple Voting Shares which shall have been converted into Subordinate Voting Shares in accordance with the provisions of this Section (e).

- (f) Any modifications to the provisions attaching to the Multiple Voting Shares as a class shall require the affirmative vote of not less than two-thirds (2/3) of the votes cast at separate meetings of the holders of the

Subordinate Voting Shares and the Multiple Voting Shares, duly called and held for the purpose, at which meetings, when originally held, the holders of not less than a majority of the outstanding shares of any such class (the "Subject Class") are present in person or represented by proxy in accordance with the by-laws of the Corporation provided, however, that, if at any such meeting, when originally held, the holders of at least a majority of the outstanding shares of the Subject Class are not present in person or so represented by proxy within thirty (30) minutes after the time fixed for the meeting, then the meeting shall be adjourned to such date, being not more than thirty (30) days later, and to such time and place as may be fixed by the chairman of such meeting and, at such adjourned meeting, the holders of shares of the Subject Class, present in person or so represented by proxy, whether or not they hold more or less than a majority of all the shares of the Subject Class then outstanding, may transact the business for which the meeting was originally called and a resolution duly passed and carried thereat by not less than two-thirds (2/3) of the votes cast on a poll at such adjourned meeting shall constitute the approval of the holders of the shares of the Subject Class hereinbefore mentioned. Notice of any such original meeting of the holders of the shares of the Subject Class shall be given not less than twenty-one (21) nor more than fifty (50) days prior to the date fixed for such meeting and shall state the nature of the business to be transacted and the text of any resolution to be submitted to the meeting. No notice of the adjourned meeting need be given other than by announcement at the original meeting. The formalities to be observed with respect to the giving of notice of any such original meeting and the conduct of such meeting and of the adjourned meeting shall be those from time to time prescribed in the by-laws of the Corporation with respect to meetings of shareholders or in the Canada Business Corporations Act.