

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

CUMMINS INC.

For the Quarter Ended June 24, 2001

Commission File Number 1-4949

Indiana
(State or Other Jurisdiction of
Incorporation or Organization)

35-0257090
(IRS Employer Identification No.)

500 Jackson Street, Box 3005
Columbus, Indiana
(Address of Principal Executive Offices)

47202-3005
(Zip Code)

812-377-5000
(Registrant's Telephone Number)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the proceeding 12 months and (2) has been subject to such filing requirements for the past 90 days:

Yes
No

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date:

As of June 24, 2001, the number of shares outstanding of the registrant's only class of common stock was 41.3 million.

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CUMMINS INC.
CONSOLIDATED STATEMENT OF EARNINGS
FOR THE SECOND QUARTER AND FIRST HALF
ENDED JUNE 24, 2001 AND JUNE 25, 2000
Unaudited

	<u>Second Quarter</u>		<u>First Half</u>	
<u>Millions, except per share amounts</u>	<u>2001</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>
Net sales	\$1,461	\$1,769	\$2,810	\$3,417
Cost of goods sold	<u>1,192</u>	<u>1,418</u>	<u>2,309</u>	<u>2,731</u>
Gross profit	269	351	501	686
Selling and administrative expenses	183	190	366	384
Research and engineering expenses	58	59	111	118
Net income from joint ventures and alliances	(3)	(3)	(5)	(4)
Interest expense	23	21	46	40
Other (income) expense, net	-	(2)	4	-
Restructuring, asset impairment and other special charges	<u>125</u>	<u>-</u>	<u>125</u>	<u>-</u>
Earnings (loss) before income taxes	(117)	86	(146)	148
(Benefit) provision for income taxes	(39)	22	(46)	39
Minority interest	<u>4</u>	<u>3</u>	<u>8</u>	<u>6</u>
Net earnings (loss)	\$ (82)	\$ 61	\$ (108)	\$ 103
	=====	=====	=====	=====
Basic earnings (loss) per share	\$(2.14)	\$ 1.62	\$ (2.82)	\$ 2.71
Diluted earnings (loss) per share	(2.14)	1.62	(2.82)	2.70
Cash dividends declared per share	.30	.30	.60	.60

CUMMINS INC.
CONSOLIDATED STATEMENT OF FINANCIAL POSITION
Unaudited

<u>Millions, except per share amounts</u>	<u>June 24, 2001</u>	<u>Dec. 31, 2000</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 104	\$ 62
Receivables, net of allowance of \$8	849	724
Inventories	711	770
Other current assets	<u>278</u>	<u>274</u>
	1,942	1,830
Investments and other assets	350	338
Property, plant and equipment less accumulated depreciation of \$1,622 and \$1,598	1,434	1,598
Goodwill , net of amortization of \$46 and \$42	348	354
Other intangibles, deferred taxes and deferred charges	<u>378</u>	<u>380</u>
Total assets	<u>\$4,452</u> =====	<u>\$4,500</u> =====
Liabilities and shareholders' investment		
Current liabilities:		
Loans payable	\$ 22	\$ 156
Current maturities of long-term debt	8	8
Accounts payable	430	388
Other current liabilities	<u>690</u>	<u>671</u>
	1,150	1,223
Long-term debt	<u>915</u>	<u>1,032</u>
Other liabilities	<u>842</u>	<u>837</u>
Minority interest	<u>82</u>	<u>72</u>
Company-obligated mandatory redeemable convertible preferred securities of subsidiary trust holding solely convertible subordinated debentures of the parent	<u>292</u>	<u>-</u>
Shareholders' investment:		
Common stock, \$2.50 par value, 48.5 and 48.6 shares issued	121	122
Additional contributed capital	1,130	1,137
Retained earnings	586	718
Accumulated other comprehensive income	(201)	(167)
Common stock in treasury, at cost, 7.2 shares	(290)	(290)
Common stock held in trust for employee benefit plans 3.0 and 3.1 shares	(145)	(151)
Unearned compensation (ESOP)	<u>(30)</u>	<u>(33)</u>
	1,171	1,336
Total liabilities and shareholders' investment	<u>\$4,452</u> =====	<u>\$4,500</u> =====

First Half Ended

<u>Millions</u>	<u>June 24, 2001</u>	<u>June 25, 2000</u>
Cash flows from operating activities:		
Net earnings (loss)	\$ (108)	\$ 103
Adjustments to reconcile net earnings (loss) to net cash from operating activities:		
Depreciation and amortization	118	117
Restructuring actions	111	(5)
Accounts receivable	(145)	(144)
Inventories	37	(38)
Accounts payable and accrued expenses	80	55
Income taxes payable	(50)	(5)
Equity in losses of joint ventures and alliances	3	4
Other	<u>11</u>	<u>(28)</u>
Total adjustments	<u>165</u>	<u>(44)</u>
Net cash provided by operating activities	<u>57</u>	<u>59</u>
Cash flows from investing activities:		
Property, plant and equipment:		
Additions	(122)	(84)
Disposals	121	16
Investments in joint ventures and alliances	(19)	(36)
Acquisition and disposition of businesses	1	(35)
Other	<u>1</u>	<u>-</u>
Net cash used in investing activities	<u>(18)</u>	<u>(139)</u>
Net cash flows provided by (used in) operating and investing activities	<u>39</u>	<u>(80)</u>
Cash flows from financing activities:		
Proceeds from borrowings	-	168
Payments on borrowings	(6)	(7)
Net payments under short-term credit agreements	(247)	(40)
Repurchases of common stock	-	(16)
Dividend payments	(25)	(25)
Issuance of mandatory redeemable preferred securities	292	-
Other	<u>(10)</u>	<u>1</u>
Net cash provided by financing activities	<u>4</u>	<u>81</u>
Effect of exchange rate changes on cash	<u>(1)</u>	<u>(1)</u>
Net change in cash and cash equivalents	42	-
Cash and cash equivalents at the beginning of the year	<u>62</u>	<u>74</u>
Cash and cash equivalents at the end of the first half	\$ 104 =====	\$ 74 =====

Unaudited

Note 1. Accounting Policies: The Consolidated Financial Statements for the interim periods ended June 24, 2001 and June 25, 2000 have been prepared in accordance with the accounting policies described in the Company's Annual Report to Shareholders and Form 10-K. Management believes the statements include all adjustments of a normal recurring nature necessary to present fairly the results of operations for the interim periods. Inventory values at interim reporting dates are based upon estimates of the annual adjustments for taking physical inventory and for the change in cost of LIFO inventories.

Note 2. Income Taxes: Income tax expense is reported during the interim reporting periods on the basis of the estimated annual effective tax rate for the taxable jurisdictions in which the Company operates.

Note 3. Earnings per Share: Basic earnings per share of common stock are computed by dividing net earnings by the weighted-average number of common shares outstanding during the period. Diluted earnings per share are computed by dividing net earnings by the weighted-average number of shares, assuming the exercise of stock options and conversion of mandatorily redeemable preferred securities when the effect of their exercise is dilutive. Shares of stock held by the employee benefits trust are not included in outstanding shares for EPS until distributed from the trust.

	<u>Second Quarter</u>			<u>First-Half</u>		
	Net	Weighted		Net	Weighted	
Millions, except per	Earnings	Average	Per-Share	Earnings	Average	Per-Share
<u>share amounts</u>	<u>(Loss)</u>	<u>Shares</u>	<u>Amount</u>	<u>(Loss)</u>	<u>Shares</u>	<u>Amount</u>
<u>2001</u>						
Basic	\$ (82)	38.2	\$ (2.14)	\$ (108)	38.2	\$ (2.82)
Options	-	-		-	-	
Preferred securities	—	—		—	—	
Diluted	\$ (82)	38.2	\$ (2.14)	\$ (108)	38.2	\$ (2.82)
	=====	=====		=====	=====	
<u>2000</u>						
Basic	\$ 61	38.1	\$ 1.62	\$ 103	38.2	\$ 2.71
Options	—	—		—	—	
Diluted	\$ 61	38.1	\$ 1.62	\$ 103	38.2	\$ 2.70
	=====	=====		=====	=====	

Note 4. Comprehensive Income: Comprehensive income, which includes net income (loss) and all other non-owner changes in equity during a period, is as follows:

<u>Millions</u>	<u>Second Quarter Ended</u>		<u>First Half Ended</u>	
	<u>June 24, 2001</u>	<u>June 25, 2000</u>	<u>June 24, 2001</u>	<u>June 25, 2000</u>
Net income (loss)	\$ (82)	\$ 61	\$ (108)	\$ 103
Unrealized gain on securities	3	1	3	-
Unrealized loss on derivatives	(1)	-	(1)	-
Translation loss, net of tax	(11)	(35)	(36)	(49)
Comprehensive income (loss)	\$ (91)	\$ 27	\$ (142)	\$ 54
	=====	=====	=====	=====

Note 5. Segment Information: Operating segment information is as follows:

Power Filtration

<u>Millions</u>	<u>Engine</u>	<u>Generation</u>	<u>And Other</u>	<u>Total</u>
<u>Second Quarter Ended June 24, 2001</u>				
Net sales	\$ 786	\$ 384	\$ 291	\$1,461
Earnings (loss) before interest, income taxes and special charges	(24)	32	23	31
Special charges	118	5	2	125
Earnings (loss) before interest and income taxes	(142)	27	21	(94)
Net assets	1,050	421	854	2,325

Second Quarter Ended June 25, 2000

Net sales	\$1,107	\$ 368	\$ 294	\$1,769
Earnings before interest and income taxes	42	30	35	107
Net assets	1,160	578	845	2,583

First Half Ended June 24, 2001

Net sales	\$1,554	\$ 693	\$ 563	\$2,810
Earnings (loss) before interest, income taxes and special charges	(58)	40	43	25
Special charges	118	5	2	125
Earnings (loss) before interest and income taxes	(176)	35	41	(100)

First Half Ended June 25, 2000

Net sales	\$2,152	\$ 697	\$ 568	\$3,417
Earnings before interest and income taxes	70	53	65	188

Reconciliation to Consolidated Financial Statements:

<u>Millions</u>	<u>Second Quarter Ended</u>	
	<u>June 24, 2001</u>	<u>June 25, 2000</u>
Earnings (loss) before interest and income taxes for reportable segments	\$ (94)	\$ 107
Interest expense	23	21
Income tax (benefit) expense	(39)	22
Minority interest	<u>4</u>	<u>3</u>
Net earnings (loss)	\$ (82)	\$ 61
	=====	=====
Net assets for reportable segments	\$2,583	\$2,583
Sold accounts receivable included in segment net assets	116	--
Liabilities deducted in arriving at net assets	1,311	1,971
Deferred tax assets not allocated to segments	423	320
Debt-related costs not allocated to segments	<u>19</u>	<u>19</u>
Total assets	\$4,452	\$4,893
	=====	=====

First Half Ended

<u>Millions</u>	<u>June 24, 2001</u>	<u>June 25, 2000</u>
Earnings (loss) before interest and income taxes for reportable segments	\$ (100)	\$ 188
Interest expense	46	40
Income tax (benefit) expense	(46)	39
Minority interest	<u>8</u>	<u>6</u>
Net earnings (loss)	\$ (108) =====	\$ 103 =====

Note 6. Restructuring, Asset Impairment and Other Special Charges: The second quarter 2001 results included charges of \$125 million (\$84 million after tax, or \$2.20 per share) reflecting restructuring actions, asset impairments and other activities largely focused in the Engine Business. These actions were taken in response to the downturn in the North American heavy-duty truck market and related conditions. The charges include \$110 million attributable to the termination of the development of a new engine platform, \$14 million attributable to employee severance actions and \$1 million attributed to the divestiture of a small business operation.

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Of the \$125 million charge, \$118 million was associated with the Engine Business, \$5 million to the Power Generation Business and \$2 million to the Filtration Business and Other.

The asset impairment charge of \$110 million, calculated in accordance with SFAS No. 121, was for equipment, tooling and related investment supporting an engine development program cancelled during the quarter. The charge includes the investment in equipment in house as well as cancellation charges with equipment suppliers for equipment on order. The expected recovery value for equipment to be disposed of was based upon the estimated salvage value and was netted against the charge.

Workforce reduction actions included overall cutbacks in staffing levels plus the impact of divesting of a small operation. Restructuring charges for workforce reductions included the severance costs and related benefits of terminating 400 salaried employees and 150 hourly employees. Costs for workforce reductions were based on amounts pursuant to benefit programs or statutory requirements of the affected operations.

The restructuring actions will be completed in 2001 and 2002, with the majority of the cash outlays in 2001. Of the total charges associated with the restructuring activities, net cash outlays will approximate \$50 million. The associated annual savings are estimated at \$35 million upon completion of the actions. Approximately \$56 million, primarily related to the write-down of the impaired equipment, has been charged to the restructuring liabilities as of June 24, 2001. Activity in the major components of these charges is as follows:

<u>\$ Millions</u>	<u>Original Provision</u>	<u>Charges 2001</u>	<u>Balance June 24, 2001</u>
Asset impairment - engine development program	\$110	\$ (56)	\$ 54
Workforce reductions	14	-	14
Exit costs	<u>1</u>	<u>-</u>	<u>1</u>
	\$125 =====	\$ (56) =====	\$ 69 =====

In the fourth quarter of 2000, the Company recorded charges of \$160 million reflecting restructuring actions, asset impairments and other activities largely focused in the Engine Business. The actions included \$42 million to reduce the worldwide workforce by 600 salaried employees and 830 hourly employees, \$72 million for impairment of equipment and other assets, \$30 million for impairment of software developed for internal use where the software programs were cancelled prior to implementation and \$16 million associated with exit costs to close or consolidate a number of smaller business operations.

The Company is continuing the restructuring plan implemented in the fourth quarter of 2000. As of June 24, 2001, approximately \$93 million has been charged against the restructuring provisions.

Activity in the major components of these charges is as follows:

<u>\$ Millions</u>	<u>Original</u>	<u>Charges</u>		<u>Balance</u>
	<u>Provision</u>	<u>2000</u>	<u>2001</u>	<u>June 24, 2001</u>
Workforce reductions	\$ 42	\$ (5)	\$ (10)	\$ 27
Impairment of software	30	(30)	-	-
Impairment of equipment and other assets	72	(38)	(5)	29
Exit costs	<u>16</u>	<u>-</u>	<u>(5)</u>	<u>11</u>
	\$160	\$ (73)	\$ (20)	\$ 67
	=====	=====	=====	=====

The Company is concluding the restructuring plan implemented in the third quarter of 1998. As of June 24, 2001, the remaining balance associated with the 1998 restructuring plan is \$12 million. The remaining actions to be completed consist primarily of the payment of severance commitments to terminated employees in 2001 and the remaining payment to the Environmental Protection Agency of \$8 million in July 2001.

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Note 7. Goodwill: Effective January 1, 2002, the Company will adopt SFAS No. 142, a new accounting pronouncement on goodwill and other intangible assets. Under this rule, amortization of goodwill will cease, and the Company will conduct benchmark assessments of existing goodwill for impairment using a fair-value-based approach within six months of adoption. Goodwill amortization of \$3 million and \$6 million was recorded in the second quarter and the first half ended June 24, 2001, respectively, in advance of implementing the new accounting rule. The Company cannot anticipate the conclusions from the benchmark assessment at this time.

Note 8. Sale and Leaseback: In the second quarter of 2001, the Company entered into a sale and leaseback transaction for certain heavy-duty engine manufacturing equipment. Proceeds from the transaction were \$119 million, compared to the equipment net book value of \$104 million. The \$15 million gain will be deferred for the entire lease term due to a residual value guarantee by the Company.

Note 9. Company-Obligated Mandatorily Redeemable Convertible Preferred Securities of Subsidiary Trust Holding Solely Convertible Subordinated Debentures of the Parent: In June 2001, Cummins Capital Trust I (the "Trust"), a wholly-owned subsidiary trust of the Company, issued 6 million shares of 7% convertible quarterly income preferred securities (the "Preferred Securities"), with a liquidation preference of \$50 per share (for a total liquidation value of \$300 million). The Preferred Securities represent an undivided beneficial ownership interest in the assets of the Trust. The payment of distributions out of assets held by the Trust and payments on liquidation of the Trust or the redemption of the Preferred Securities are guaranteed by the Company to the extent the Trust has assets available therefor. This guarantee, when taken together with the Company's obligations under the indenture pursuant to which the Debentures (defined below) were issued, the Debentures, and the Company's obligations under the Trust Agreement, provides a full, irrevocable and unconditional guarantee of all of the Trust's obligations under the Preferred Securities.

Proceeds from the issuance of the Preferred Securities were invested in 7% Convertible Subordinated Debentures (the "Debentures") due June 15, 2031 issued by the Company. The Trust exists solely to issue the Preferred Securities and its own common securities and to invest the proceeds therefrom in the Debentures, which is its sole asset.

Each of the Preferred Securities and the related Debentures are convertible at the option of the holder into shares of the Company's common stock at the rate of 1.0519 shares per Preferred Security (equivalent to a conversion price of \$47.53 per share of Company common stock). The Trust will only convert Debentures pursuant to a notice of conversion by a holder of Preferred Securities.

Holders of the Preferred Securities are entitled to receive preferential cumulative cash distributions at an annual rate of 7% accruing from the date of original issue, commencing September 15, 2001, and payable quarterly in arrears thereafter. The distribution rate and the distribution dates for the Preferred Securities will correspond to the interest rate and interest payment dates on the Debentures. The Company may defer interest payments on the Debentures for a period not to exceed 20 consecutive quarters. If the Company defers interest payments on the Debentures, the Trust will defer distributions on the Preferred Securities for a corresponding period. In this case, distributions on the Preferred Securities will continue to accrue, and the Company will not be permitted to declare or pay any cash distributions with respect to its capital stock or debt securities that rank equally with or junior to the Debentures.

Subject to certain restrictions, the Preferred Securities are redeemable at par value at the Trust's option upon any redemption by the Company of the Debentures after June 15, 2006. Upon repayment at maturity of the Debentures or as a result of the acceleration of the Debentures upon the occurrence of a default, the Preferred Securities are subject to mandatory redemption.

CUMMINS INC
MANAGEMENT'S DISCUSSION AND ANALYSIS OF
RESULTS OF OPERATIONS, CASH FLOW AND FINANCIAL CONDITION

Overview

Net sales were \$1.46 billion in the second quarter of 2001, a decrease of 17 percent from the second quarter of 2000. Earnings before interest and taxes in the second quarter of 2001 were \$31 million, or 2.1 percent of sales, excluding a \$125 million pretax charge in connection with certain restructuring actions and asset impairment write-downs. This compares to earnings before interest and taxes of \$107 million, or 6.0 percent of sales, in the second quarter of 2000. As reported, net earnings were a loss of \$82 million, or \$(2.14) per share, compared to net earnings of \$61 million, or \$1.62 per share, in the second quarter of 2000. Net earnings for the first half of 2001, excluding the charge, were a loss of \$24 million, or \$(.62) per share. As reported, net earnings for the first half of 2001 were a loss of \$108 million, or \$(2.82) per share, compared to earnings of \$103 million, or \$2.70 per share, in the first half of 2000.

Results of Operations

Net Sales:

The Engine Business had lower sales in the second quarter of 2001 than in the year-ago quarter. The Power Generation Business sales were modestly higher. The Filtration Business and Other sales were virtually flat compared to a year ago. The Company's sales for each of its key businesses during the comparative periods were:

\$ Millions	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2001</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>
Engine Business	\$ 786	\$1,107	\$1,554	\$2,152
Power Generation Business	384	368	693	697
Filtration Business and Other	<u>291</u>	<u>294</u>	<u>563</u>	<u>568</u>
	\$1,461	\$1,769	\$2,810	\$3,417
	=====	=====	=====	=====

Engine Business:

In the second quarter of 2001, Engine Business revenues of \$786 million decreased 29 percent as compared to the second quarter of 2000, primarily due to declines in the North American automotive markets. Engine unit shipments for the comparative periods were as follows:

<u>Unit Shipments</u>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2001</u>	<u>2000</u>	<u>2001</u>	<u>2000</u>
Midrange Engines	66,500	89,100	124,800	168,000
Heavy-duty Engines	14,400	25,800	29,000	53,200
High-horsepower Engines	<u>2,800</u>	<u>3,000</u>	<u>5,600</u>	<u>5,500</u>
	83,700	117,900	159,400	226,700
	=====	=====	=====	=====

Automotive Markets:

Sales of \$533 million in the second quarter of 2001 for automotive markets were 34 percent lower than the second quarter of 2000. Heavy-duty truck revenues as a whole were down 41 percent compared to the second quarter of 2000, with engine unit shipments in North America down 57 percent while unit shipments to the rest of the world were down 36 percent.

Medium-duty truck and bus revenues decreased 19 percent from the second quarter of 2000. Medium-duty truck engine shipments were down 31 percent in North America, while international shipments were down 16 percent due to market weakness in Turkey and Latin America. Bus engine shipments were down 17 percent in North America and up 31 percent in international

markets, with significant growth in India.

Revenues of the light-duty automotive and recreational vehicle business were 34 percent lower than the second quarter of 2000. In the second quarter of 2001, Cummins shipped 21,000 engines to DaimlerChrysler, 35 percent lower than in the second quarter of 2000. Shipments for the recreational vehicle markets were down 29 percent, reflecting weakness in the U. S. economy.

Industrial and Other Markets:

Sales to mining and rail markets were flat compared to the second quarter of 2000. Revenues in the mining segment were down 2 percent from the second quarter of 2000, reflecting market share gains in a weak market. Second quarter sales to the rail sector were up 18 percent from the second quarter of 2000, primarily as a result of strong sales in Europe.

Sales to the construction, marine and agriculture markets were 19 percent lower than in the second quarter of 2000. Worldwide sales in the construction equipment market were down 22 percent from the second quarter of 2000 with unit shipments of engines in North America down 36 percent, and shipments of engines to international markets down 14 percent. Revenues in the marine markets were down 16 percent, while sales to the agricultural equipment market were up 13 percent.

Power Generation Business:

In the second quarter of 2001, sales for the Company's Power Generation Business of \$384 million increased 4 percent compared to the second quarter of 2000. The higher revenues resulted from growth in North and South America and Europe. The power shortage in Brazil has produced increased demand for power generation equipment. The North American rental business was strong in the second quarter of 2001, which helped offset the continued impact of the North American economic slowdown on the recreational vehicle market and the telecommunications sector. Genset revenues were up 9 percent from a year ago as the change in genset mix to higher kW units offset volume declines. Alternator revenues were up 7 percent from a year ago, while mobile/recreational vehicle revenues were down 10 percent. Sales of engines to other genset original equipment manufacturers were essentially flat compared to the second quarter of 2000.

Filtration Business and Other

Filtration Business and Other sales of \$291 million in the second quarter of 2001 were essentially unchanged compared to the second quarter of 2000. Within the filtration business, sales decreased 6 percent compared to the second quarter of 2000 due to reductions in demand from North American on-highway and off-highway original equipment manufacturers. Sales to European original equipment manufacturers were also down year over year. Second quarter sales at company-owned distributors were up 7 percent, resulting largely from sales at international distributors acquired since second quarter 2000. Sales at the Holset turbocharger business also increased from a year ago, with significant market share gains in Europe and China.

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International Markets:

In total, international markets represented 46 percent of the Company's revenues in the second quarter of 2001. International sales in total were down 7 percent from the second quarter of 2000. The predominant reason for the decline in international sales from a year ago was from heavy-duty truck production in Canada and Mexico. All other international markets remain relatively stable to modestly lower compared to a year ago. Sales to Europe and the CIS, representing 15 percent of the Company's sales in the second quarter of 2001, were 3 percent lower than the prior year's quarter. Business in Mexico, Brazil and Latin America represented 8 percent of sales in the second quarter of 2001, with revenues 8 percent lower than the year-ago levels. Asia and Australian markets, in total, represented 15 percent of sales in the second quarter of 2001, decreasing 3 percent from the prior year's quarter. Sales to Canada, representing 6 percent of sales in the second quarter of 2001, were 25 percent lower than the second quarter of 2000.

Gross Margin:

The Company's gross margin percentage was 18.4 percent in the second quarter of 2001, compared to 19.8 percent in the prior year's quarter. The decreased margin in 2001 was due to unabsorbed manufacturing costs due to the lower volumes and the impact of exchange rates from currencies in which the Company had significant sales. Most significant was the Brazilian Real, which depreciated over 20 percent from a year ago.

Operating Expenses:

Selling and administrative expenses as a percent of sales were 12.5 percent in the second quarter of 2001, compared to 10.7 percent in the second quarter of 2000, while expenses in absolute dollars decreased \$7 million. Research and engineering expenses were 4.0 percent of sales in the second quarter of 2001 compared to 3.3 percent in the second quarter of 2000, while expenses in absolute dollars decreased \$1 million.

The Company's income from joint ventures and alliances of \$3 million in the second quarter of 2001 equaled income of \$3 million in the second quarter of 2000.

Other:

Interest expense was \$23 million in the second quarter of 2001, compared to \$21 million in the second quarter of 2000, due to increased levels of borrowings. Other expense increased \$2 million from last year's quarter, as a one-time gain from the second quarter of 2000 was not repeated in the second quarter of 2001.

Restructuring, Asset Impairment and Other Special Charges:

The second quarter 2001 results included charges of \$125 million (\$84 million after tax, or \$2.20 per share) reflecting restructuring actions, asset impairments and other activities largely focused in the Engine Business. These actions were taken in response to the downturn in the North American heavy-duty truck market and related conditions. The charges include \$110 million attributable to the termination of the development of a new engine platform, \$14 million attributable to employee severance actions and \$1 million attributed to the divestiture of a small business operation.

Of the \$125 million charge, \$118 million was assigned to the Engine Business, \$5 million to the Power Generation Business and \$2 million to the Filtration Business and Other.

The asset impairment charge of \$110 million, calculated in accordance with SFAS No. 121, was for equipment, tooling and related investment supporting an engine development program cancelled during the quarter. The charge includes the investment in equipment in house as well as cancellation charges with equipment suppliers for equipment on order. The expected recovery value for equipment to be disposed of was based upon the estimated salvage value and was netted against the charge.

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Workforce reduction actions included overall cutbacks in staffing levels plus the impacts of divesting of a smaller operation. Restructuring charges for workforce reductions included the severance costs and related benefits of terminating 400 salaried employees and 150 hourly employees. Costs for workforce reductions were based on amounts pursuant to benefit programs or statutory requirements of the affected operations.

The restructuring actions will be completed in 2001 and 2002 with the majority of the cash outlays in 2001. Of the total charges associated with the restructuring activities, cash outlays will approximate \$50 million. The associated annual savings are estimated at \$35 million upon completion of the actions. Approximately \$56 million, primarily related to the write-down of the impaired equipment, has been charged to the restructuring liabilities as of June 24, 2001.

Provision for Income Taxes:

The Company's income tax provision in the second quarter of 2001 was a benefit of \$39 million, reflecting an estimated effective tax rate of 25 percent for the year from operations and an effective tax rate of 33 percent from special charges.

Cash Flow and Financial Condition

Key elements of cash flows were:

<u>\$ Millions</u>	<u>First Half</u>	
	<u>2001</u>	<u>2000</u>
Net cash provided by operating activities	\$ 57	\$ 59
Net cash used in investing activities	(18)	(139)
Net cash provided by financing activities	4	81
Effect of exchange rate changes on cash	—(1)	—(1)
Net change in cash and cash equivalents	\$ 42 ===	\$ - ===

In the first half of 2001, net cash provided by operating activities was \$57 million. The Company's losses were offset by the non-cash effect of depreciation and amortization. Increases in accounts receivable and decreases in income taxes payable were partially offset by decreases in inventory and increases in accounts payable and accrued expenses. The Company is funding the cash requirements for restructuring actions using cash generated from operations, with the majority of the cash requirement expected to occur in 2001. Net cash used in investing activities included \$122 million of planned capital expenditures and \$19 million related to investments and advances in joint ventures and alliances, offset by \$119 million inflow related to a sale/leaseback of manufacturing equipment. Net cash provided by financing activities in the first half of 2001 included net proceeds from the issue of mandatorily redeemable preferred securities of \$292 million used primarily to reduce short-term credit agreements of \$247 million and for dividend payments of \$25 million.

Environmental Compliance:

The Company's products are subject to extensive global statutory and regulatory requirements that directly or indirectly impose standards with respect to emissions. The Company's engines comply with emissions standards established by all regulatory agencies around the world where the Company sells its products. Emissions standards imposed in the U.S. by the Environmental Protection Agency (EPA) are among the more significant standards to which the Company is subject. In 1998, the Company and other heavy-duty diesel engine manufacturers entered into a Consent Decree with the EPA, the U.S. Department of Justice (DOJ) and the California Air Resources Board regarding diesel engine emissions, imposing standards for lower emissions beginning in October 2002. In June 2001, the EPA and DOJ reaffirmed the U.S. government's intention to enforce the terms of the Consent Decrees entered into in 1998. The Company confirmed that it would meet the Consent Decree deadlines. In addition, the Company expects to meet emissions standards for all markets in which the Company chooses to participate. In the event that the Company failed to comply with such standards, it could result in adverse effects on future financial results.

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FORWARD-LOOKING STATEMENTS

When used herein, the terms "expect, plan, anticipate, believe" or similar expressions, as they relate to the Company or its management, are intended to identify forward-looking statements.

The Company has included certain forward-looking statements in this Management's Discussion and Analysis of Results of Operations, Cash Flow and Financial Condition and in the Company's press releases, teleconferences and other external communications. These statements are based on current expectations, estimates and projections about the industries in which the Company operates, management's beliefs and various assumptions made by management which are difficult to predict. Among the factors that could affect the outcome of the statements are general industry and market conditions and growth rates. Therefore, actual outcomes and their impact on the Company may differ materially from what is expressed or forecasted. The Company undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

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PART II. OTHER INFORMATION

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Item 6. Exhibits and Reports on Form 8-K:

- (a) See the Index to Exhibits on page 16 for a list of exhibits filed herewith.
- (b) The Company filed a Form 8-K Other Event on June 4, 2001, to report the Company's plan to issue mandatorily redeemable convertible preferred securities.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CUMMINS INC.

By: /s/Robert C. Crane
Robert C. Crane
Vice President - Corporate Controller
(Chief Accounting Officer)

August 6, 2001

CUMMINS INC.
INDEX TO EXHIBITS

- 4.1 Indenture (filed herewith)
- 4.2 Amended and Restated Trust Agreement (filed herewith)
- 4.3 Guarantee Agreement (filed herewith)

CUMMINS INC.

TO

BNY MIDWEST TRUST COMPANY

Trustee

Indenture

Dated as of June 18, 2001

7% JUNIOR SUBORDINATED CONVERTIBLE DEBENTURES
DUE JUNE 15, 2031

Certain Sections of this Indenture relating to
Sections 310 through 318 of the
Trust Indenture Act of 1939:

Trust Indenture Act Section	Indenture Section
§ 310 (a) (1)	6.09
(a) (2)	6.09
(a) (3)	Not Applicable
(a) (4)	Not Applicable
(b)	6.08
	6.10
§ 311(a)	6.13
(b)	6.13
§ 312(a)	7.01
	7.02(a)
(b)	7.02(b)
(c)	7.02(c)
§ 313(a)	7.03(a)
(a) (4)	1.01
	10.04
(b)	7.03(a)
(c)	7.03(a)
(d)	7.03(b)
§ 314(a)	7.04

(b)	Not Applicable
(c) (1)	1.02
(c) (2)	1.02
(c) (3)	Not Applicable
(d)	Not Applicable
(e)	1.02
§ 315(a)	6.01
(b)	6.02
(c)	6.01
(d)	6.01
(e)	5.14
§ 316(a)	1.01
(a) (1) (A)	5.02
	5.12
(a) (1) (B)	5.13
(a) (2)	Not Applicable
(b)	5.08
(c)	1.04(c)
§ 317(a) (1)	5.03
(a) (2)	5.04
(b)	10.03
§ 318(a)	1.07

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INDENTURE, dated as of June 18, 2001, between CUMMINS INC., a corporation duly organized and existing under the laws of the State of Indiana (herein called the "*Company*"), having its principal office at 500 Jackson Street, Box 3005 (Mail Code 60118) Columbus, Indiana 47202--3005, and BNY MIDWEST TRUST COMPANY, an Illinois banking corporation, as Trustee (herein called the "*Trustee*").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuances of its creation of an issue of its 7% Junior Subordinated Convertible Debentures Due June 15, 2031 (herein called the "*Debentures*") of substantially the tenor hereinafter provided which evidence loans made to the Company of the proceeds from the issuance by Cummins Capital Trust I, a Delaware business trust (the "*Trust*"), of preferred trust interests in the Trust (the "*Preferred Securities*") and common interests in the Trust (the "*Common Securities*"), and to provide the terms and conditions upon which the Debentures are to be authenticated, issued and delivered.

All things necessary to make the Debentures, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid and legally binding agreement of the company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Debentures by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Debentures, as follows:

1.

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1. *Definitions.* For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:
 1. the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
 2. all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
 3. all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and
 4. the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"*Act*", when used with respect to any Holder, has the meaning specified in Section 1.04.

"*Additional Interest*" means the interest, if any, that shall accrue on any interest on the Debentures that is in arrears or not paid during any Extension Period, which in either case shall accrue at the stated rate per annum specified or determined as specified in such Debenture and compounded quarterly.

"*Additional Sums*" has the meaning specified in Section 10.07.

"*Additional Taxes*" means the sum of any additional taxes, duties and other governmental charges to which the Trust has become subject from time to time as a result of a Tax Event.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; *provided, however*, that an Affiliate of the Company shall not be deemed to include the Trust. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Applicable Price*" has the meaning specified in Section 13.04(d)(i).

"*Authenticating Agent*" means any Person authorized by the Trustee pursuant to Section 6.14 to act on behalf of the Trustee to authenticate Debentures.

"*Bank Credit Agreement*" means the Amended and Restated Credit Agreement dated as of January 8, 1998, among the Company, the banks party thereto and Morgan Guaranty Trust Company of New York, as agent, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreements may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including, without limitation, increasing the amount of available borrowings thereunder or adding Subsidiaries of the Company as additional borrowers or guarantors thereunder) all or any portion of the indebtedness under such agreement or any successor or replacement agreement and whether by the same or any other agent, lender or group of lenders.

"*Board of Directors*" means either the board of directors of the Company or any duly authorized committee of that board.

"*Board Resolution*" means a copy of a resolution certified by the Secretary or any Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"*Business Day*" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not (1) a day on which banking institutions in the City of New York or the City of Chicago are authorized or obligated by law or executive order to close or (2) a day on which the Corporate Trust Office of the Trustee, or the principal office of the Property Trustee under the Trust Agreement is closed for business.

"*Closing Price*" has the meaning specified in Section 13.04(d)(ii).

"*Commission*" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"*Common Securities*" has the meaning specified in the first recital of this Indenture.

"*Common Stock*" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which is not subject to redemption by the Company.

"*Common Stock Fundamental Change*" has the meaning specified in Section 13.04(d)(iii).

"*Company*" means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"*Company Request*" or "*Company Order*" means a written request or order signed in the name of the Company by its Chairman of the Board, any Vice Chairman of the Board, its President or any Vice President, and by its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Trustee.

"*Conversion Agent*" has the meaning specified in Section 13.02(a).

"*Conversion Date*" has the meaning specified in Section 13.02(a).

"*Conversion Price*" has the meaning specified in Section 13.01.

"*Corporate Trust Office*" means the principal office of the Trustee in the City of Chicago at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Finance Unit.

"*corporation*" means a corporation, association, company, joint-stock company or business trust.

"*Currency Agreement*" means, with respect to any Person, any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in currency values to or under which such Person or any of its Subsidiaries is a party or a beneficiary on the date hereof or becomes a party or a beneficiary thereafter.

"*Current Market Price*" means, for any day, the last reported sale price, regular way, on such day of Common Stock, or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the NYSE Composite Transactions Tape, or, if the Common Stock is not listed or admitted to trading on the NYSE on such day, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, if the Common Stock is listed on a national securities exchange, or the Nasdaq National Market, or, if the Common Stock is not quoted or admitted to trading on such quotation system, on the principal quotation system on which the Common Stock may be listed or admitted to trading or quoted, or, if not listed or admitted to trading or quoted on any national securities exchange or quotation system, the average of the closing bid and asked prices of the Common Stock in the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar

generally accepted reporting service, or, if not so available in such manner, as furnished by any NYSE member firm selected from time to time by the Board of Directors for that purpose or, if not so available in such manner, as otherwise determined in good faith by the Board of Directors.

"*Debentures*" or "*Debenture*" has the meaning specified in the first recital of this Agreement.

"*Debt*" means, with respect to any Person at any date of determination (without duplication), (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of letters of credit or bankers' acceptance or other similar instruments (or reimbursement obligations with respect thereto), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person to pay the deferred purchase price of property or services, but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business, (vi) all obligations of such Person as lessee under capitalized leases, (vii) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any asset of such Person, whether or not such Debt is assumed by such Person; *provided, that*, for purposes of determining the amount of any Debt of the type described in this clause, if recourse with respect to such Debt is limited to such asset, the amount of such Debt shall be limited to the lesser of the fair market value of such asset or the amount of such Debt, (viii) all Debt of others guaranteed by such Person to the extent such Debt is guaranteed by such Person, and (ix) to the extent not otherwise included in this definition, all obligations of such Person under Currency Agreements and Interest Rate Agreements. For the purpose of this definition, "*guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep well, to purchase assets, goods, securities or services, to take--or--pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for purposes of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, that* the term "*guarantee*" shall not include endorsements for collection or deposit in the ordinary course of business. The term "*guarantee*" used as a verb has a corresponding meaning.

"*Defaulted Interest*" has the meaning specified in Section 3.07.

"*Depository*" means, with respect to the Debentures issuable or issued in whole or in part in the form of one or more Global Debentures, the Person designated as Depository by the Company (or any successor thereto).

"*Designated Senior and Subordinated Debt*" means (i) Debt under the Bank Credit Agreement and (ii) Debt constituting Senior and Subordinated Debt which, at the time of its determination, (A) has an aggregate principal amount of at least \$20 million and (B) is specifically designated in the instrument evidencing such Senior and Subordinated Debt as "*Designated Senior and Subordinated Debt*" by the Company.

"*Event of Default*" has the meaning specified in Section 5.01.

"*Expiration Time*" has the meaning specified in Section 13.03(a)(vi).

"*Extension Period*" has the meaning specified in Section 3.11.

"*Fundamental Change*" has the meaning specified in Section 13.04(d)(iv).

"*Global Debenture*" means a Debenture in the form prescribed in Section 2.04 evidencing all or part of the Debentures, issued to the Depository or its nominee, and registered in the name of such Depository or its nominee.

"*Guarantee*" means the guarantee by the Company of distributions on the Preferred Securities of the Trust to the extent provided in the Guarantee Agreement, substantially in the form attached hereto as Annex C, as amended from time to time.

"*Holder*" means a Person in whose name a Debenture is registered in the Security Register.

"*Indenture*" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

"*Interest Payment Date*" means the Stated Maturity of an installment of interest on the Debentures.

"*Interest Rate*" means the rate of interest specified or determined as specified in each Debenture as being the rate of interest payable on such Debenture.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in interest rates to or under which such Person or any of its Subsidiaries is a party or a

beneficiary on the date hereof or becomes a party or a beneficiary thereafter.

"*Investment Company Event*" means, in respect of the Trust, the receipt by the Property Trustee on behalf of the Trust of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities practice, to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "*Change in 1940 Act Law*"), that there is more than an insubstantial risk that the Trust is or will be considered an "investment company" that is required to be registered under the 1940 Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities of the Trust.

"*Lien*" means, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance or any kind in respect of such Property. For purposes of this Indenture, the Company shall be deemed to own subject to a Lien any Property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such Property.

"*Liquidated Damages*" has the meaning specified in the form of reverse of Debenture set forth in Section 2.03.

"*Maturity*", when used with respect to any Debenture, means the date on which the principal of such Debenture becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"*1940 Act*" means the Investment Company Act of 1940, as amended.

"*Non Book--Entry Preferred Securities*" has the meaning specified in Section 3.15(a)(ii).

"*Non--Stock Fundamental Change*" has the meaning specified in Section 13.04(d)(v).

"*Notice of Conversion*" means the notice given by a holder of Preferred Securities to the Conversion Agent directing the Conversion Agent to exchange such Preferred Securities for Debentures and to convert such Debentures into Common Stock on behalf of such holder.

"*Notice of Default*" has the meaning specified in Section 5.01(3).

"*NYSE*" means the New York Stock Exchange.

"*Officers' Certificate*" means a certificate signed by the Chairman of the Board, any Vice Chairman of the Board, the President or any Vice President, and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

"*Opinion of Counsel*" means a written opinion of counsel, who may be internal counsel for the Company.

"*Outstanding*", when used with respect to Debentures, means, as of the date of determination, all Debentures theretofore authenticated and delivered under this Indenture, except:

- i. Debentures theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- ii. Debentures for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Debentures; *provided, that*, if such Debentures are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and
- iii. Debentures which have been paid pursuant to Section 3.06, converted into Common Stock pursuant to Article Thirteen or in exchange for or in lieu of which other Debentures have been authenticated and delivered pursuant to this Indenture, other than any such Debentures in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Debentures are held by a bona fide purchaser in whose hands such Debentures are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Debentures have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Debentures owned by the Company or any other obligor upon the Debentures or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Debentures which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Debentures so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Debentures and that the pledgee is not the Company or any other obligor upon the Debentures or any Affiliate of the Company or of such other obligor. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Debentures, if any, known by the Company to be owned or held by or for the account of the Company, or any other obligor on the Debentures or any Affiliate of the Company or such obligor, and, subject to the provisions of Section 6.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Debentures

not listed therein are Outstanding for the purpose of any such determination.

"*Paying Agent*" means any Person authorized by the Company to pay the principal of or interest on any Debentures on behalf of the Company.

"*Payment Blockage Period*" has the meaning specified in Section 12.02.

"*Person*" means any individual, corporation, partnership, joint venture, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*Predecessor Debenture*" of any particular Debenture means every previous Debenture evidencing all or a portion of the same debt as that evidenced by such particular Debenture; and, for the purposes of this definition, any Debenture authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Debenture shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Debenture.

"*Preferred Securities*" has the meaning specified in the first recital of this Indenture.

"*Proceeding*" has the meaning specified in Section 12.03.

"*Property Trustee*" means, in respect of the Trust, the commercial bank or trust company identified as the "Property Trustee" in the Trust Agreement, solely in its capacity as Property Trustee of the Trust under the Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as therein provided.

"*Purchase Agreement*" means the Purchase Agreement dated June 12, 2001 by and among the Trust, the Company and the Purchasers.

"*Purchased Shares*" has the meaning specified in Section 13.03(a)(vi).

"*Purchasers*" with respect to the Preferred Securities, means Goldman, Sachs & Co., J.P. Morgan Securities Inc. and Salomon Smith Barney Inc.

"*Purchaser Stock Price*" has the meaning specified in Section 13.04(d)(vi).

"*Redemption Date*", when used with respect to any Debenture to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"*Redemption Price*", when used with respect to any Debenture to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"*Reference Date*" has the meaning specified in Section 13.03(a)(iv).

"*Reference Market Price*" has the meaning specified in Section 13.04(d)(vii).

"*Regular Record Date*" for the interest payable on any Interest Payment Date means the fifteenth day next preceding such Interest Payment Date; *provided that* as long as the Preferred Securities remain in book--entry form, the Regular Record Date shall be the corresponding record for the payment of distributions on the Preferred Securities.

"*Responsible Officer*", when used with respect to the Trustee, means any vice president, any assistant vice president, the treasurer, any assistant treasurer, any trust officer or assistant trust officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Restricted Preferred Securities*" means all Preferred Securities required to bear any restricted securities legend pursuant to the Trust Agreement.

"*Restricted Securities*" means all the Debentures required pursuant to Section 2.06 to bear a Restricted Securities Legend.

"*Restricted Securities Legend*" has the meaning specified in Section 2.06.

"*Rights Offering*" has the meaning specified in Section 13.03(a)(iv).

"*Security Register*" and "*Security Registrar*" have the respective meanings specified in Section 3.05.

"*Senior and Subordinated Debt*" means the principal of (and premium, if any) and interest on all Debt of the Company whether created, incurred or assumed before, on or after the date of this Indenture; *provided, that* such Senior and Subordinated Debt shall not include (i) Debt of the Company that, when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse, (ii) any other Debt of the Company that by the terms of the instrument creating or evidencing the same is specifically designated as ranking *pari passu* with or junior in right of payment to the Debentures, (iii) any Debt to any Affiliate of the Company including all other debt securities and guarantees issued to any trust, partnership or other entity affiliated

with the Company that is a financing vehicle of the Company in connection with an issuance of preferred securities by such financing entity.

"*Shareholders Rights Plan*" means the Rights Agreement dated as of September 9, 1986, amended and restated as of July 9, 1996, between Cummins Engine Company, Inc. and The First National Bank of Chicago, as Rights Agent, as amended from time to time.

"*Special Event*" means a Tax Event or an Investment Company Event.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.07.

"*Stated Maturity*", when used with respect to any Debenture or any installment of principal thereof or interest thereon, means the date specified in such Debenture as the fixed date on which the principal of such Debenture or such installment of interest is due and payable.

"*Subsidiary*" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"*Tax Event*" means the receipt by the Property Trustee on behalf of the Trust of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities practice (which opinion shall not have been rescinded by such law firm), to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein affecting taxation, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the date of issuance of the Preferred Securities under the Trust Agreement, there is more than an insubstantial risk in each case after the date hereof that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income received or accrued on the Debentures, (ii) interest payable by the Company on the Debentures is not, or within 90 days of the date thereof will not be, deductible by the Company, in whole or in part, for United States Federal income tax purposes or (iii) the Trust is, or will be within 90 days of the date thereof, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

"*Trading Day*" has the meaning specified in Section 13.02(c).

"*Transaction*" has the meaning specified in Section 13.04(a).

"*Trust*" has the meaning specified in the first recital of this Indenture.

"*Trust Agreement*" means the Trust Agreement substantially in the form attached hereto as Annex A, as amended by the Amended and Restated Trust Agreement substantially in the form attached hereto as Annex B, as amended from time to time.

"*Trustee*" means the Person named as the "*Trustee*" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "*Trustee*" shall mean such successor Trustee.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "*Trust Indenture Act*" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"*Trust Securities*" means the Common Securities and Preferred Securities.

"*Vice President*", when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

2. *Compliance Certificates and Opinions.* Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

1. a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
 2. a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
 3. a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
 4. a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.
3. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an

opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

4. *Acts of Holders; Record Dates.* Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section.
- a. The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a Person acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.
 - b. The Company may, in the circumstances permitted by the Trust Indenture Act, but shall not be obligated to, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.
 - c. The ownership of Debentures shall be proved by the Security Register.
 - d. Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Debenture shall bind every future Holder of the same Debenture and the Holder of every Debenture issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Debenture.
 - e. Without limiting the foregoing, a Holder entitled hereunder to give or take any such action with regard to any particular Debenture may do so with regard to all or any part of the principal amount of such Debenture or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any different part of such principal amount.
5. *Notices, Etc., to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,
1. the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be via facsimile) to or with the Trustee at its Corporate Trust Office, or
 2. the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument and labeled "Attention: Vice President - Treasurer" or at any other address previously furnished in writing to the Trustee by the Company.
6. *Notice to Holders; Waiver.* Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at the address of such Holder as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

7. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.
8. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.
9. *Successors and Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.
10. *Separability Clause.* In case any provision in this Indenture or in the Debentures shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
11. *Benefits of Indenture.* Nothing in this Indenture or in the Debentures, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior and Subordinated Debt and the Holders of Debentures, any benefit or any legal or equitable right, remedy or claim under this Indenture.
12. *Governing Law.* THIS INDENTURE AND THE DEBENTURES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.
13. *Legal Holidays.* In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Debenture or the last date on which a Holder has the right to convert his Debentures shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Debentures) payment of interest or principal (and premium, if any) or conversion of the Debentures need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, or on such last day for conversion *provided, that* no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

2.

Debenture Forms

1. *Forms Generally.* The Debentures and the Trustee's certificates of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Debentures, as evidenced by their execution of the Debentures.

The definitive Debentures shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Debentures may be listed, all as determined by the officers executing such Debentures, as evidenced by their execution of such Debentures.

2. *Form of Face of Debenture.*

THE SECURITIES EVIDENCED HEREBY AND THE COMMON STOCK ISSUABLE UPON THEIR CONVERSION HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATIONS UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, IN EACH CASE, IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

7% Junior Subordinated Convertible Debenture Due June 15, 2031

No. _____ \$ _____

CUMMINS INC., a corporation duly organized and existing under the laws of the State of Indiana (herein called the "Company", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to BNY MIDWEST TRUST COMPANY, or registered assigns, the principal sum of _____ United States Dollars on June 15, 2031, and to pay interest thereon from June 18, 2001 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly on March 15, June 15, September 15 and December 15 in each year, subject to deferral as set forth herein, commencing September 15, 2001, at the rate of 7% per annum, until the principal hereof is paid or made available for payment.

Reference is hereby made to the further provisions of this Debenture set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Debenture shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed manually or by facsimile by its duly authorized officers.

Dated:

CUMMINS INC.

By _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Debentures referred to in the within--mentioned Indenture.

Dated:

BNY MIDWEST TRUST COMPANY,
as Trustee

By _____

Authorized Signatory

3.

4. *Form of Reverse of Debenture.*

This Debenture is one of a duly authorized issue of Debentures of the Company designated as its 7% Junior Subordinated Convertible Debentures Due June 15, 2031 (herein called the "Debentures"), limited in aggregate principal amount to \$_____, issued and to be issued under an Indenture, dated as of June 18, 2001 (herein called the "Indenture"), between the Company and BNY Midwest Trust Company, as Trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior and Subordinated Debt and the Holders of the Debentures and of the terms upon which the Debentures are, and are to be, authenticated and delivered. All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The amount of interest payable for any period will be computed on the basis of a 360--day year of twelve 30--day months. For periods less than a full month, interest shall be computed on the actual number of elapsed days over 360 days. In the event that any date on which interest is payable on this Debenture is not a Business Day, then a payment of the interest on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay) with the same force and effect as if made on the date the payment was originally payable. A "Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the City of New York or the City of Chicago are authorized or obligated by law or executive order to remain closed or a day on which the Corporate Trust Office of the Trustee, or the principal office of the Property Trustee under the Trust Agreement is closed for business. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Debenture (or one or more Predecessor Debentures, as defined in the Indenture) is registered at the close of business on the Regular Record Date for such interest, which shall be the fifteenth day next preceding such Interest Payment Date; *provided that* so long as the Preferred Securities remain in book--entry form, the Regular Record Date shall be the corresponding record date for the payment of distributions on the Preferred Securities. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Debenture (or one or more Predecessor Debentures) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Debentures not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debentures may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

The Company shall have the right at any time during the term of this Debenture, from time to time, to extend the interest payment period of such Debenture for up to 20 consecutive quarters with respect to each deferral period (each such deferral period, an "Extension Period"), during which periods the Company shall have the right not to make payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Additional Interest and Liquidated Damages, if any, thereon to the extent permitted by applicable law); *provided that* during any such Extension Period, the Company will not, and will not permit any Subsidiary to (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any shares of the Company's capital stock or (b) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees

of indebtedness for money borrowed) of the Company that rank *pari passu* with or junior to the Debentures (other than (i) any dividend, redemption, liquidation, interest, principal or guarantee payment by the Company where the payment is made by way of securities (including capital stock) that rank *pari passu* with or junior to the securities on which such dividend, redemption, interest, principal or guarantee payment is being made, (ii) redemptions or purchases of any rights pursuant to the Shareholders Rights Plan, or any successor to such Shareholders Rights Plan, and the declaration of a dividend of such rights or the issuance of stock under such plans in the future, (iii) payments under the Guarantee, (iv) purchases of Common Stock related to the issuance of Common Stock under any of the Company's benefit plans for its directors, officers or employees, (v) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one series or class of the Company's capital stock for another series or class of the Company's capital stock and (vi) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided that* no Extension Period shall exceed 20 consecutive quarters or extend beyond the Stated Maturity of this Debenture. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due, the Company may select a new Extension Period, subject to the above requirements. No interest shall be due and payable during an Extension Period except at the end thereof. The Company shall give the Trustee, the Property Trustee and the Administrative Trustees (as defined in the Trust Agreement) notice of its selection of an Extension Period at least one Business Day prior to the earlier of (i) the record date for the date the distributions on the Preferred Securities (or if no Preferred Securities are outstanding, for the date interest on the Debentures would have been payable except for the election to begin such Extension Period) and (ii) the date the Property Trustee (or if no Preferred Securities are outstanding, the Trustee) is required to give notice to the NYSE or other applicable self-regulatory organization or to holders of such Preferred Securities (or, if no Preferred Securities are outstanding, to the Holders of such Debentures) of the record date.

Payment of the principal of (and premium, if any) and interest on this Debenture will be made at the office or agency of the Property Trustee maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated by the Person entitled thereto as specified in the Security Register.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, subordinate and subject in right of payments to the prior payment in full of all Senior and Subordinated Debt (as defined in the Indenture), and this Debenture is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Debenture, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior and Subordinated Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

If a Special Event shall occur and be continuing, the Company may, at its option, subject to the terms and conditions of Article Eleven of the Indenture, redeem this Debenture in whole or, in the case of a Tax Event only, in part, at the Redemption Price set forth in Section 11.09 of the Indenture. Furthermore, at any time on or after June 15, 2006, the Company may, at its option, subject to the terms and conditions of Article Eleven of the Indenture, redeem this Debenture in whole at any time or in part from time to time, at the Redemption Prices set forth in Section 11.08 of the Indenture.

In the event of redemption of this Debenture in part only, a new Debenture or Debentures for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

Subject to the terms and conditions set forth in Article Thirteen of the Indenture, this Debenture is convertible, at the option of the Holder hereof, into shares of Common Stock.

If an Event of Default shall occur and be continuing, the principal of the Debentures may be declared due and payable in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions for satisfaction, discharge and defeasance of the entire indebtedness of this Debenture upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Debentures to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Debentures. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Debentures at the time Outstanding, on behalf of the Holders of all Debentures, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver shall be conclusive and binding upon the Holder of this Debenture and upon all future Holders of this Debenture and of any Debenture issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Debenture.

As provided in, and subject to the provisions of, the Indenture, if an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debentures may declare the

principal amount of all the Debentures to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided that*, if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debentures fail to declare the principal of all the Debentures to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration such principal amount (or specified amount) of and the accrued interest (including any Additional Interest) on all the Debentures shall become immediately due and payable, *provided that* the payment of principal and interest (including any Additional Interest) on such Debentures shall remain subordinated to the extent provided in Article Twelve of the Indenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Debenture at the times, place and rate, and in the coin or currency, herein prescribed.

The holders of the Preferred Securities, the Debentures, the Guarantee and the shares of Common Stock of the Company issuable upon conversion of the Debentures (collectively, the "*Registrable Securities*") are entitled to the benefits of a Registration Rights Agreement, dated as of June 18, 2001, among Cummins Capital Trust I, the Company and the Purchasers named therein (the "*Registration Rights Agreement*"). Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the holders of Registrable Securities that (i) it will, at its cost, within 90 days after the date of original issuance of the Preferred Securities, file a shelf registration statement (the "*Shelf Registration Statement*") with the Commission with respect to the resales of the Registrable Securities, (ii) it will use its best efforts to cause such Shelf Registration Statement to be declared effective by the Commission as promptly as practicable and in no event later than 180 days after the date of original issuance of the Preferred Securities and (iii) the Depositor (as defined in the Trust Agreement) will use its best efforts to maintain such Shelf Registration Statement effective under the Securities Act until the date that is two years after the date such Shelf Registration Statement is declared effective or such earlier date as is provided in the Registration Rights Agreement (the "*Effectiveness Period*"). The Company will be permitted to suspend the use of the prospectus (which is a part of the Shelf Registration Statement) in connection with sales of Registrable Securities by holders during certain periods of time under certain circumstances relating to pending corporate developments relating to the Company and public filings with the Commission and similar events.

If (i) on or prior to 90 days following the date of original issuance of the Preferred Securities, a Shelf Registration Statement has not been filed with the Commission, or (ii) on or prior to the 180th day following the original issuance of the Preferred Securities, such Shelf Registration Statement is not declared effective (each such event, a "*Registration Default*"), additional interest ("*Liquidated Damages*") will accrue on the Debentures and, accordingly, additional distributions will accrue on the Preferred Securities, from and including the day following such Registration Default until such time as such Shelf Registration Statement is filed or such Shelf Registration Statement is declared effective, as the case may be. Liquidated Damages will be paid quarterly in arrears (subject to the Company's ability to defer payment of Liquidated Damages during any Extension Period), with the first quarterly payment due on the first Interest Payment Date following the date on which such Liquidated Damages began to accrue, and will accrue at a rate per annum equal to an additional 0.25% of the principal amount, to and including the 90th day following such Registration Default and 0.50% thereof from and after the 91st day following such Registration Default. In the event that during the Effectiveness Period the Shelf Registration Statement ceases to be effective, or the Company suspends the use of the prospectus which is a part thereof, for more than 30 days, whether or not consecutive, in any 90--day period, or 90 days whether or not consecutive, during any 12--month period then the interest rate borne by the Debentures and the distribution rate borne by the Preferred Securities will each increase by an additional 0.50% per annum from the 31st day of the applicable 90--day period or the 91st day of the applicable 12--month period, as the case may be, that such Shelf Registration Statement ceases to be effective or the Company suspends the use of the prospectus which is a part thereof, as the case may be, until the earlier of such time as (i) the Shelf Registration Statement again becomes effective or the use of the related prospectuses ceases to be suspended, as the case may be, or (ii) the Effectiveness Period expires.

If the Company is required to file, but fails to file a post--effective amendment to the Shelf Registration Statement, or the post--effective amendment is not declared effective within 45 days of the filing of such post--effective amendment, the Company shall pay Liquidated Damages at a rate per annum equal to an additional 0.50% from and including the date of such Registration Default until such time as such Registration Default is cured.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Debenture is registrable in the Security Register, upon surrender of this Debenture for registration of transfer at the office or agency of the Company maintained under Section 10.02 of the Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Debentures, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Debenture for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Debenture is registered as the owner hereof for all purposes, whether or not this Debenture be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Debentures are issuable only in registered form without coupons in denominations of \$50 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Debentures are exchangeable for a like aggregate principal amount of Debentures of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Debenture or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, this Debenture agree that for United States Federal, state and local tax purposes it is intended that this Debenture constitute indebtedness.

THE INDENTURE AND THIS DEBENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

ASSIGNMENT FORM

To assign this Debenture, fill in the form below:

(I) or (we) assign and transfer this Debenture to

(Insert assignee's social security or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to transfer this Debenture on the books of the Company. The agent may substitute another to act for him.

Your Signature: _____
(Sign exactly as your name appears on the other side of this Debenture)

Date: _____

Signature Guarantee:* _____

[Include the following if the Debenture bears a Restricted Securities Legend --

In connection with any transfer of any of the Debentures evidenced by this certificate, the undersigned confirms that such Debentures are being:

CHECK ONE BOX BELOW:

- (1) exchanged for the undersigned's own account without transfer; or
- (2) transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (3) transferred pursuant to and in compliance with Regulation S under the Securities Act of 1933; or
- (4) transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933; or
- (5) transferred pursuant to an effective Registration Statement under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Debentures evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if box (3) or (4) is checked, the Trustee may require, prior to registering any such transfer of the Debentures, such legal opinions, certifications and other information as the Company has reasonably requested in writing and directed the Trustee to require confirmation that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act; *provided, further*, that after the date that a Shelf Registration Statement under the Securities Act of 1933 has been filed and so long as such Shelf Registration Statement continues to be effective, the Trustee may only permit transfers for which box (4) or (5) has been checked.

Signature

Signature Guarantee:* _____

Signature must be guaranteed Signature

[TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.]

The undersigned represents and warrants that it is purchasing this Debenture for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer]

NOTICE OF CONVERSION

To: Cummins Inc.

The undersigned owner of this Debenture hereby irrevocably exercises the option to convert this Debenture, or the portion below designated, into Common Stock of CUMMINS INC. in accordance with the terms of the Indenture referred to in this Debenture, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any Holder, upon the exercise of its conversion rights in accordance with the terms of the Indenture and the Debenture, agrees to be bound by the terms of the Registration Rights Agreement relating to the Common Stock issuable upon conversion of the Debenture.

Date: _____, _____

in whole ____ Portions of Debenture to be converted (\$50
in part ____ or integral multiples thereof):

\$ _____

Signature (for conversion only)

Please Print or Typewrite Name and Address, Including Zip Code, and Social Security or Other Identifying Number

Signature Guarantee:* _____

- 5.
6. *Additional Provisions Required in Global Debenture.* Any Global Debenture issued hereunder shall, in addition to the provisions contained in Sections 2.02 and 2.03 bear a legend in substantially the following form:

"This Debenture is a Global Debenture within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Debenture is exchangeable for Debentures registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture and may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository."

7. *Form of Trustee's Certificate of Authentication.* The form of Trustee's Certificate of Authentication shall be as follows:*

"This is one of the Debentures designated therein referred to in the within mentioned Indenture.

BNY MIDWEST TRUST COMPANY,
as Trustee

By:

Authorized Signatory

Dated:"

8. *Initial Issuance to Property Trustee.* The Debentures initially issued to the Property Trustee of the Trust shall be in the form of one or more individual certificates in definitive, fully registered form without distribution coupons and shall bear the following legend

(the "*Restricted Securities Legend*") unless the Company determines otherwise in accordance with applicable law:

"THE SECURITIES EVIDENCED HEREBY AND THE COMMON STOCK ISSUABLE UPON THEIR CONVERSION HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATIONS UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, IN EACH CASE, IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS."

3.

The Debentures

1. *Title and Terms.* The aggregate principal amount of Debentures that may be authenticated and delivered under this Indenture is limited to \$309,278,400, except for Debentures authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debentures pursuant to Section 3.04, 3.05, 3.06 or 9.06.

The Debentures shall be known and designated as the "7% Junior Subordinated Convertible Debentures Due June 15, 2031" of the Company. Their Stated Maturity shall be June 15, 2031, and they shall bear interest at the rate of 7% per annum, from June 18, 2001 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, as the case may be, payable quarterly on March 15, June 15, September 15 and December 15, subject to deferral as set forth herein, commencing September 15, 2001, until the principal thereof is paid or made available for payment.

The principal of (and premium, if any) and interest on the Debentures shall be payable at the office or agency of the Company in the City of Chicago maintained for such purpose and at any other office or agency maintained by the Company for such purpose; *provided, however*, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

The Debentures shall be redeemable as provided in Article Eleven.

The Debentures shall be subordinated in right of payment to Senior and Subordinated Debt as provided in Article Twelve.

The Debentures shall be convertible as provided in Article Thirteen.

2. *Denominations.* The Debentures shall be issuable only in registered form without coupons and only in denominations of \$50 and any integral multiple thereof.
3. *Execution, Authentication, Delivery and Dating.* The Debentures shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents. The signature of any of these officers on the Debentures may be manual or facsimile.

Debentures bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Debentures or did not hold such offices at the date of such Debentures.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debentures executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Debentures; and the Trustee in accordance with such Company Order shall authenticate and deliver such Debentures as in this Indenture provided and not otherwise.

Each Debenture shall be dated the date of its authentication.

No Debenture shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Debenture a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Debenture shall be conclusive evidence, and the only evidence, that such Debenture has been duly authenticated and delivered hereunder.

4. *Temporary Debentures.* Pending the preparation of definitive Debentures, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Debentures that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Debentures in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Debentures may determine, as evidenced by their execution of such Debentures.

If temporary Debentures are issued, the Company will cause definitive Debentures to be prepared without unreasonable delay. After the preparation of definitive Debentures, the temporary Debentures shall be exchangeable for definitive Debentures upon surrender of the temporary Debentures at any office or agency of the Company designated pursuant to Section 10.02, without

charge to the Holder. Upon surrender for cancellation of any one or more temporary Debentures the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Debentures of authorized denominations. Until so exchanged the temporary Debentures shall in all respects be entitled to the same benefits under this Indenture as definitive Debentures.

5. *Registration, Registration of Transfer and Exchange.* The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes collectively referred to as the "*Security Register*") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Debentures and of transfers of Debentures. The Trustee is hereby appointed "*Security Registrar*" for the purpose of registering Debentures and transfers of Debentures as herein provided.

Upon surrender for registration of transfer of any Debenture at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Debentures of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, Debentures may be exchanged for other Debentures of any authorized denominations and of a like aggregate principal amount, upon surrender of the Debentures to be exchanged at such office or agency. Whenever any Debentures are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Debentures which the Holder making the exchange is entitled to receive.

All Debentures issued upon any registration of transfer or exchange of Debentures shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Debentures surrendered upon such registration of transfer or exchange.

Every Debenture presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Debentures, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Debentures, other than exchanges pursuant to Section 3.04, 9.06, 11.08 or 13.01 not involving any transfer.

Notwithstanding any of the foregoing, the Global Debenture shall be exchangeable pursuant to this Section 3.05 for Debentures registered in the names of Persons other than the Depository for such Debentures or its nominee only if (a) such Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Debenture or such Depository ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and the Company shall not have appointed a successor depository within 90 days after such notice, (b) the Company executes and delivers to the Trustee a Company Order that the Global Debenture shall be so exchangeable or (c) there shall have occurred and be continuing an Event of Default and the Holders of a majority in principal amount of the Outstanding Debentures determine that the Global Debenture will be so exchangeable. The Global Debenture shall be exchangeable for Debentures registered in such names as such Depository shall direct.

Notwithstanding any other provisions in this Indenture, the Global Debenture may not be transferred except as a whole by the Depository with respect to the Global Debenture to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository

Neither the Company nor the Trustee shall be required (i) to issue, register the transfer of or exchange any Debenture during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Debentures selected for redemption under Section 11.03 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Debenture so selected for redemption in whole or in part, except the unredeemed portion of any Debenture being redeemed in part.

The Debentures may not be transferred except in compliance with the Restricted Securities Legend unless otherwise determined by the Company in accordance with applicable law. Upon any distribution of the Debentures to the holders of the Preferred Securities in accordance with the Trust Agreement, the Company and the Trustee shall enter into a supplemental indenture pursuant to Section 9.01(8) to provide for transfer procedures and restrictions with respect to the Debentures substantially similar to those contained in the Trust Agreement to the extent applicable in the circumstances existing at the time of such distribution.

6. *Mutilated, Destroyed, Lost and Stolen Debentures.* If any mutilated Debenture is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Debenture of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Debenture and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of actual notice to the Company or the Trustee that such Debenture has been acquired by a bona fide purchaser, the Company shall execute and upon a Company Order the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Debenture, a new Debenture of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Debenture has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Debenture, pay such Debenture.

Upon the issuance of any new Debenture under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Debenture issued pursuant to this Section in lieu of any destroyed, lost or stolen Debenture shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Debenture shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debentures duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures.

7. *Payment of Interest; Interest Rights Preserved.* Interest on any Debenture which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Debenture (or one or more Predecessor Debentures) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Debenture that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

1. The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Debentures (or their respective Predecessor Debentures) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Debenture and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a special record date (the "*Special Record Date*") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at the address of such Holder as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Debentures (or their respective Predecessor Debentures) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).
2. The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debentures may be listed, and upon such notice as may be required by such exchange (or by the Trustee if the Debentures are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Debenture delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Debenture shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Debenture.

8. *Persons Deemed Owners.* Prior to due presentment of a Debenture for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Debenture is registered as the owner of such Debenture for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.07) interest on such Debenture and for all other purposes whatsoever, whether or not such Debenture be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. No holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company or the Trustee from giving effect to any written certification, proxy, or other authorization furnished by a Depository or impair, as between the Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository (or its nominee) as Holder of any Global Security.
9. *Cancellation.* All Debentures surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Debentures previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Debentures so delivered shall be promptly cancelled by the Trustee. No Debentures shall be authenticated in lieu of or in exchange for any Debentures cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Debentures held by the Trustee shall be disposed of by the Trustee in its customary manner.

10. *Computation of Interest.* Interest on the Debentures shall be computed on the basis of a 360--day year of twelve 30--day months.
11. *Extension of Interest Payment Period.* The Company shall have the right, at any time during the term of the Debentures, so long as no Event of Default has occurred and is continuing, from time to time to extend the interest payment period for the Debentures for up to 20 consecutive quarters with respect to each deferral period (each, an "*Extension Period*") during which periods the Company shall have the right to not make payments of interest (including any Liquidated Damages) on any Interest Payment Date, and at the end of such Extension Period the Company shall pay all interest then accrued and unpaid thereon (together with Additional Interest thereon, if any, at the rate specified for the Debentures to the extent permitted by applicable law), *provided, however,* that during any such Extension Period, the Company shall not, and shall cause any Subsidiary not to, (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock or (b) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees of indebtedness for money borrowed) of the Company that rank *pari passu* with or junior to the Debentures (other than (i) any dividend, redemption, liquidation, interest, principal or guarantee payment by the Company where the payment is made by way of securities (including capital stock) that rank *pari passu* with or junior to the securities on which such dividend, redemption, interest, principal or guarantee payment is being made, (ii) redemptions or purchases of any rights pursuant to the Shareholders Rights Plan, or any successor to such Shareholders Rights Plan, and the declaration of a dividend of such rights or the issuance of stock under such plans in the future, (iii) payments under the Guarantee, (iv) purchases of Common Stock related to the issuance of Common Stock under any of the Company's benefit plans for its directors, officers or employees, (v) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one series or class of the Company's capital stock for another series or class of the Company's capital stock and (vi) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). Prior to the termination of any such Extension Period, the Company may further extend the interest payment period, *provided that* no such Extension Period shall exceed 20 consecutive quarters or extend beyond the Stated Maturity of the Debentures. Upon termination of any Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due, the Company may select a new Extension Period, subject to the above requirements. No interest including Additional Interest and Liquidated Damages, if any, shall be due and payable during an Extension Period, except at the end thereof. The Company shall give the Trustee, the Property Trustee and the Administrative Trustees notice of its selection of such Extension Period at least one Business Day prior to the earlier of (i) the record date for the date the distributions on the Preferred Securities of the Trust (or if no Preferred Securities are outstanding, for the date interest on the Debentures would have been payable except for the election to begin such Extension Period) and (ii) the date the Property Trustee (or, if no Preferred Securities are outstanding, the Trustee) is required to give notice to the NYSE or other applicable self--regulatory organization or to holders of such Preferred Securities (or, if no Preferred Securities are outstanding, to the Holders of such Debentures) of such record date, but in any event not less than one Business Day prior to such record date. Such notice shall specify the period selected.

The Trustee shall promptly give notice of the Company's selection of such Extension Period to the Holders of the outstanding Debentures.

12. *Right of Set--off.* Notwithstanding anything to the contrary in the Indenture, the Company shall have the right to set--off any payment it is otherwise required to make thereunder in respect of the Debentures to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment relating to the Debentures under the Guarantee.
13. *Agreed Tax Treatment.* Each Debenture issued hereunder shall provide that the Company and, by its acceptance of a Debenture or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, such Debenture agree that for United States Federal, state and local tax purposes it is intended that such Debenture constitute indebtedness.
14. *CUSIP Numbers.* The Company in issuing the Debentures may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use such "CUSIP" number in notices of redemption as a convenience to Holders; *provided that* any such notice may state that no representation is made as to the correctness of such number either as printed on the Debentures or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Debentures, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.
15. *Global Debenture.* In connection with distribution of Debentures to holders of the Preferred Securities in connection with the involuntary or voluntary dissolution, winding up or liquidation of the Trust,
- i. the Debentures in certificated form may be presented to the Trustee by the Property Trustee in exchange for one or more global certificates in an aggregate principal amount equal to the aggregate principal amount of all outstanding Debentures (each, a "*Global Debenture*"), to be registered in the name of the Depository, or its nominee, and delivered by the Trustee to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the procedures of the Depository. The Company upon any such presentation shall execute a Global Debenture in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with this Indenture; and
 - ii. if any Preferred Securities are held in non book--entry certificated form, the Debenture in certificated form may be presented to the Trustee by the Property Trustee and any Preferred Security certificate which represents Preferred Securities other than Preferred Securities held by the Depository or its nominee ("*Non Book--Entry Preferred Securities*") will be deemed to represent beneficial interests in Debentures presented to the Trustee by the Property Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book--Entry Preferred Securities until such Preferred Security certificates are presented to the Security Registrar for transfer or reissuance at which time such Non Book--Entry Preferred Security certificates will be canceled and a Debenture, registered in the name of the holder of the Preferred Security certificate or the transferee of the holder of such Preferred Security certificate, as the case may be, with an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Security certificate canceled, will be executed by the Company

and delivered to the Trustee for authentication and delivery in accordance with this Indenture. On issue of such Debentures, Debentures with an equivalent aggregate principal amount that were presented by the Property Trustee to the Trustee will be deemed to have been canceled.

- a. A Global Debenture may be transferred, in whole but not in part, only to another nominee of the Depository, or to a nominee of such successor Depository.
- b. If (i) the Depository notifies the Company that it is unwilling or unable to continue as a depository for such Global Debenture and no successor depository shall have been appointed within 90 days by the Company, (ii) the Depository notifies the Company that it has ceased to be a clearing agency registered under the Exchange Act at which time the Depository is required to be so registered to act as such depository and no successor depository shall have been appointed within 90 days by the Company, (iii) the Company, in its sole discretion, determines that such Global Debenture shall be so exchangeable or (iv) there shall have occurred an Event of Default with respect to such Debentures and the Holders of a majority in principal amount of the Outstanding Debentures determine that such Global Debenture should be so exchangeable, as the case may be, the Company will execute, and, subject to this Article Three, the Trustee, upon written notice from the Company and receipt of a Company Order, will authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. In addition, upon the occurrence of the events specified in (iii) or (iv) above, the Company will execute, and subject to Section 3.05 of this Indenture, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company and a Company Order, will authenticate and make available for delivery the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. Upon the exchange of the Global Debenture for such Debentures in definitive registered form without coupons, in authorized denominations, the Global Debenture shall be canceled by the Trustee. Such Debentures in definitive registered form issued in exchange for the Global Debenture shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debentures to the Depository for delivery to the Persons in whose names such Debentures are so registered.

4.

Satisfaction and Discharge

1. *Satisfaction and Discharge of Indenture.* (A) If at any time (a) the Company shall have paid or caused to be paid the principal of, and interest, if any, on all the Debentures theretofore authenticated (other than Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06), in accordance with the terms of this Indenture and such Debentures or (b) as to Debentures not so paid, the Company shall have delivered to the Trustee for cancellation all Debentures theretofore authenticated (other than any Debentures which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 3.06) or (c) as to Debentures not so paid or delivered for cancellation, (i) all the Debentures shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds money in an amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 4.04) or Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of money, or a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (A) the principal and interest, if any, on all Debentures of such series on each date that such principal or interest, if any, is due and payable and (B) any mandatory sinking fund or analogous payments on the dates on which such payments are due and payable in accordance with the terms of this Indenture and the Debentures; and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company then this Indenture shall cease to be of further effect (except as to (i) any surviving rights of conversion, registration of transfer or exchange of Debentures and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Debentures, (iii) the rights of Holders to receive Debentures, payments of principal thereof, and interest, if any, thereon, upon the original stated due dates therefor or any date of redemption (but not upon acceleration), and remaining rights of such Holders to receive mandatory sinking fund or analogous payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) the rights of Holders as beneficiaries hereof with respect to the property so deposited with the Trustee and payable to all or any of them, (vi) conversion of the Debentures under Article Thirteen, (vii) maintenance of the Trust as a grantor trust under Section 10.08 and (viii) the obligations of the Company under Section 10.02) and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with, and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction and discharge of this Indenture. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Debentures.

(B) In addition to discharge of this Indenture pursuant to the next preceding paragraph (A) the Company shall be deemed to have paid and discharged the entire indebtedness on all the Debentures on the 123rd day after the date of making the deposit referred to in clause (a), and the provisions of this Indenture with respect to the Debentures shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Debentures and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Debentures, (iii) the rights of Holders of Debentures to receive payments of principal

thereof and interest, if any, thereon upon the original stated due dates therefor or any date of redemption (but not upon acceleration), and remaining rights of such Holders to receive mandatory sinking fund or analogous payments, if any, solely from the trust fund referred to in subparagraph (a) below, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) the rights of Holders as beneficiaries hereof with respect to the property so deposited with the Trustee and payable to all or any of them, (vi) conversion of the Debentures under Article Thirteen, (vii) maintenance of the Trust as a grantor trust under the second paragraph of Section 10.08, (viii) the payment of any Additional Sums due under Section 10.07, (ix) the payment of any Trust expenses due under Section 10.10 and (x) the obligations of the Company under Section 10.02), and the Trustee, at the cost and expense of the Company, shall, at the Company's written request, execute proper instruments acknowledging the same, if:

- a. the Company shall have irrevocably deposited or caused to be irrevocably deposited with the Trustee as a trust fund specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Debentures (i) money in an amount, or (ii) Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of money, or (iii) a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification therefor delivered to the Trustee, to pay (A) the principal and interest, if any, on all Debentures on each date that such principal or interest, if any, is due and payable and (B) any mandatory sinking fund or analogous payments on the dates on which such payments are due and payable in accordance with the terms of this Indenture and the Debentures;
- b. no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default with respect to the Debentures shall have occurred and be continuing on the date of such deposit or at any time during the period ending on the 123rd day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period);
- c. such deposit shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound;
- d. the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that (i) if such deposits shall include Government Obligations in respect of any government other than the United States of America, such deposit shall not result in the Company, the Trustee or such trust constituting an "investment company" under the Investment Company Act of 1940, as amended, and (ii) if any such deposit occurs more than one year prior to the Stated Maturity or redemption date of the Debentures, the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred; and
- e. the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this paragraph have been complied with.

(C) The Company shall be released from its obligations under Article Eight and Article Ten (except with respect to maintenance of the Trust as a grantor trust under Section 10.08) with respect to the Debentures Outstanding on and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"). Covenant defeasance means that, with respect to the Outstanding Debentures, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in Article Ten, whether directly or indirectly by reason of any reference elsewhere herein to such Article by reason of any reference in such Article to any other provision herein or by reason of any reference to such Article in any other document, and such omission to comply shall not constitute an Event of Default under Section 5.01. The following shall be the conditions to application of this paragraph (C):

- (a) the Company shall have irrevocably deposited or caused to be irrevocably deposited with the Trustee as a trust fund specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Debentures, (i) money in an amount, or (ii) Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of money in an amount or (iii) a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (A) the principal and interest, if any, on all Debentures on each date that such principal or interest, if any, is due and payable and (B) any mandatory sinking fund or analogous payments on the dates on which such payments are due and payable in accordance with the terms of this Indenture and the Debentures;
- (b) no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing on the date of such deposit or at any time during the period ending on the 123rd day after the date of such deposit (it being understood that this condition shall be deemed satisfied until the expiration of such period);
- (c) such covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound;
- (d) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that (i) if such deposits shall include Government Obligations in respect of any government other than the United States of America, such deposit shall not result in the Company, the Trustee or such trust constituting an "investment company" under the Investment Company Act of 1940, as amended, and (ii) the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and
- (e) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all

conditions precedent herein provided for relating to such covenant defeasance have been complied with.

2. *Application by Trustee of Funds Deposited for Payment of Debentures.* Subject to Section 4.04 and the last paragraph of Section 10.03, all moneys and Government Obligations deposited with the Trustee (or other trustee), and all money received by the Trustee in respect of Government Obligations deposited with the Trustee, pursuant to Section 4.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the Holders of all sums due and to become due thereon for principal and interest, if any; but such money need not be segregated from other funds except to the extent required by law.
3. *Repayment of Moneys Held by Paying Agent.* In connection with the satisfaction and discharge of this Indenture, all moneys then held by any paying agent under the provisions of this Indenture shall, upon written demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.
4. *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Three Years.* Any moneys deposited with or paid to the Trustee or any paying agent for the payment of principal or interest, and not applied but remaining unclaimed for three years after the date upon which such principal or interest shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee or such paying agent, and any Holder shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease; *provided, however*, that the Trustee or such paying agent, before being required to make any such repayment with respect to moneys deposited with it for any payment shall at the expense of the Company, mail by first-class mail to Holders Debentures at their addresses as they shall appear on the Security Register for the Debentures, notice that such moneys remain and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing any unclaimed balance of such moneys then remaining will be repaid to the Company.
5. *Indemnity for Government Obligations.* The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 4.01 or the principal or interest received in respect of such Government Obligations, other than any such tax, fee or other charge which by law is for the account of the Holders for whose benefit such Government Obligations are held.

5.

Remedies

1. *Events of Default.* "Event of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):
 1. default in the payment of any interest upon any Debenture, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an Extension Period); or
 2. default in the payment of the principal of (or premium, if any, on) the Debentures when due whether at Stated Maturity, upon redemption by declaration or otherwise; or
 3. default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Debentures, or by the holder or holders of at least 25% in aggregate liquidation preference of the outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or
 4. failure by the Company to issue the Common Stock upon an appropriate election by the Holder or Holders of the Debentures to convert the Debentures into shares of Common Stock; or
 5. the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or
 6. the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

2. *Acceleration of Maturity; Rescission and Annulment.* If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debentures may declare the principal of all the Debentures to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), provided that, if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debentures fail to declare the principal of all the Debentures to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration such principal amount (or specified amount) of and the accrued interest (including any Additional Interest) on all the Debentures shall become immediately due and payable, provided that the payment of principal and interest (including any Additional Interest) on the Debentures shall remain subordinated to the extent provided in Article Twelve.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Debentures, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

1. the Company has paid or deposited with the Trustee a sum sufficient to pay
 - A. all overdue interest (including any Additional Interest) on all Debentures,
 - B. the principal of (and premium, if any, on) any Debentures which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Debentures,
 - C. to the extent that payment of such interest is lawful, interest upon overdue interest (including any Additional Interest) at the rate borne by the Debentures, and
 - D. all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

2. all Events of Default, other than the non-payment of the principal of Debentures which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

If the holders of a majority in principal amount of the Outstanding Debentures fail to rescind and annul such declaration and its consequences, the holders of a majority in liquidation amount of the Preferred Securities then outstanding shall have such right. No such rescission shall affect any subsequent default or impair any right consequent thereon.

3. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Company covenants that if

1. default is made in the payment of any interest (including any Additional Interest) on any Debenture when such interest becomes due and payable and such default continues for a period of 30 days, or
2. default is made in the payment of the principal of (and premium, if any, on) any Debenture, whether at the Maturity thereof, upon redemption or otherwise,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Debentures, the whole amount then due and payable on such Debentures for principal (and premium, if any) and interest (including Additional Interest), and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest (including any Additional Interest), at the rate borne by the Debentures, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as necessary to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

4. *Trustee May File Proofs of Claim.* In case of any judicial proceeding relative to the Company (or any other obligor upon the Debentures), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Debentures or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

5. *Trustee May Enforce Claims Without Possession of Debentures.* All rights of action and claims under this Indenture or the Debentures may be prosecuted and enforced by the Trustee without the possession of any of the Debentures or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Debentures in respect of which such judgment has been recovered.
6. *Application of Money Collected.* Subject to Article Twelve, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest (including Additional Interest), upon presentation of the Debentures and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest (including Additional Interest) on the Debentures in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Debentures for principal (and premium, if any) and interest (including Additional Interest), respectively; and

THIRD: The balance, if any, to the Company.

7. *Limitation on Suits.* No Holder of any Debenture, including a holder of Preferred Securities acting to enforce the rights of the Property Trustee as a Holder of the Debentures pursuant to Section 6.8 of the Trust Agreement, shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless
1. such Holder has previously given written notice to the Trustee of a continuing Event of Default;
 2. the Holders of not less than 25% in principal amount of the Outstanding Debentures shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
 3. such Holder or Holders have offered to the Trustee reasonable indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
 4. the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
 5. no direction inconsistent with such written request has been given to the Trustee during such 60--day period by the Holders of a majority in principal amount of the Outstanding Debentures;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

8. *Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert.* Notwithstanding any other provision in this Indenture, the Holder of any Debenture shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.07) interest (including any Additional Interest) on such Debenture on the respective Stated Maturities expressed in such Debenture (or, in the case of redemption, on the Redemption Date) and to convert such Debenture in accordance with Article Thirteen and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

For so long as any Preferred Securities remain outstanding, to the fullest extent permitted by law and subject to the terms of this Indenture and the Trust Agreement, upon an Event of Default specified in Sections 5.01(1) or 5.01(2), any holder of Preferred Securities shall have the right to institute a proceeding directly against the Company, for enforcement of payment to such holder of the principal amount of or interest on Debentures having a principal amount equal to the liquidation preference of the Preferred Securities of such holder (a "*Direct Action*"). Notwithstanding any payment made to such holder of Preferred Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of (and premium, if any) or interest on the Debentures held by the Trust or the Property Trustee. In connection with any such Direct Action, the rights of the Company will be subrogated to the rights of any holder of the Preferred Securities to the extent of any payment made by the Company to such holder of Preferred Securities as a result of such Direct Action. Except as set forth in this Section, the holders of Preferred Securities shall have no right to execute any right or remedy available to the Holders of or in respect of, the Debentures.

9. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.
10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Debenture to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.
12. *Control by Holders.* The Holders of a majority in principal amount of the Outstanding Debentures shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, *provided that*
 1. such direction shall not be in conflict with any rule of law or with this Indenture, and
 2. the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and *provided further that*
 3. subject to the provisions of Section 6.01, the Trustee shall have the right to decline to follow such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

Upon receipt by the Trustee of any written notice directing the time, method or place of conducting any such proceeding or exercising any such trust or power, with respect to the Debentures and, if all or part of the Debentures is represented by a Global Security, a record date shall be established for determining Holders of Outstanding Debentures entitled to join in such notice, which record date shall be at the close of business on the day the Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date, *provided, that*, unless the Holders of a majority in principal amount of the Outstanding Debentures shall have joined in such notice prior to the day which is 90 days after such record date, such notice shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90--day period, a new notice identical to a notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.12.

13. *Waiver of Past Defaults.* Subject to Section 9.02 hereof, the Holders of not less than a majority in principal amount of the Outstanding Debentures may on behalf of the Holders of all the Debentures waive any past default hereunder and its consequences, except a default
 1. in the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Debenture (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Trustee), or
 2. in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Debenture affected; *provided, however*, that if the Debentures are held by the Trust or a trustee of the Trust, such waiver shall not be effective until the holders of a majority in liquidation amount of Preferred Securities then outstanding shall have consented to such waiver; *provided, further*, that if the consent of the Holder of each Outstanding Debenture is required, such waiver shall not be effective until each holder of the Trust Securities shall have consented to such waiver.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. If the Holders of a majority in aggregate principal amount of the Outstanding Debentures fail to waive such Event of Default, the holders of a majority in aggregate liquidation amount of Preferred Securities shall have such right. No such rescission shall affect any subsequent default or impair any right consequent thereon.

14. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit (including reasonable fees and expenses of the Trustee and its agents and counsel), and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; *provided that* neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Debentures, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on the Debentures on or after the Maturity of the Debentures or to convert a Debenture in accordance with Article Thirteen.
15. *Waiver of Stay or Extension Laws.* The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

6.

The Trustee

1. Certain Duties and Responsibilities.
 - a. Except during the continuance of an Event of Default,
 - i. the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture,

- and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- ii. in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.
- b. In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.
 - c. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct except that
 - i. this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;
 - ii. the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and
 - iii. the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Holders pursuant to Section 5.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.
 - d. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
 - e. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.
2. *Notice of Defaults.* Within 90 days after actual knowledge by a Responsible Officer of the Trustee of the occurrence of any default hereunder, the Trustee shall transmit by mail to all Holders of Debentures, as their names and addresses appear in the Securities Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however,* that, except in the case of a default in the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on the Debentures, the Trustee shall be protected in withholding such notice if and so long as the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Debentures; and *provided, further,* that, except in the case of any default of the character specified in Section 5.01(3), no such notice to Holders of the Debentures shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.
3. *Certain Rights of Trustee.* Subject to the provisions of Section 6.01:
- a. the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;
 - b. any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;
 - c. whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
 - d. the Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
 - e. the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
 - f. the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;
 - g. the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;
 - h. the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture; and
 - i. the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to

each agent, custodian and other Person employed to act hereunder.

4. *Not Responsible for Recitals or Issuance of Debentures.* The recitals contained herein and in the Debentures, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debentures. The Trustee shall not be accountable for the use or application by the Company of Debentures or the proceeds thereof.
5. *May Hold Debentures.* The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Debentures and, subject to Sections 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.
6. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.
7. *Compensation and Reimbursement.* The Company agrees
 1. to pay to the Trustee from time to time such compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree in writing from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
 2. to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as determined by a court of competent jurisdiction to have been caused by its own negligence or willful default; and
 3. to fully indemnify the Trustee for, and to hold it harmless against, any loss, liability, claim, damage or expense (including the reasonable compensation and the expenses and disbursements of its agents and counsel) except any such loss, liability, claim, damage or expense determined by a court of competent jurisdiction to have been caused by its own negligence or willful default, arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

This Indemnification shall survive the termination of this Agreement and resignation and removal of the Trustee.

To secure the Company's payment obligations in this Section, the Company and the Holders agree that the Trustee shall have a lien prior to the Debentures on all money or property held or collected by the Trustee except assets held in trust to pay principal and premium, if any, or interest on particular Debentures pursuant to Article Four, or pursuant to any redemption pursuant to Article Eleven hereof if monies have been deposited for such redemption and notice has been given and the Redemption Date has passed. Such lien shall survive the satisfaction and discharge of this Indenture and resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(5) or (6) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under the Bankruptcy Reform Act of 1978 or a successor statute.

8. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under the Trust Agreement and the Guarantee.
9. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and is:
 1. a corporation organized and doing business under the laws of the United States of America or of any State, Territory or the District of Columbia, authorized under such laws to exercise corporate trust powers and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority, or
 2. a corporation or other Person organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation or order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination of authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees,

in either case having a combined capital and surplus of at least \$50,000,000 and has its Corporate Trust Office in the City of Chicago, Illinois or the City of New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Neither the Company nor any Person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee hereunder.

10. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at

the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Debentures, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

1. the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Debenture for at least six months, or
1. the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or
2. the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 5.14, any Holder who has been a bona fide Holder of a Debenture for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Debentures delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Debenture for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

1. *Acceptance of Appointment by Successor.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

2. *Merger, Conversion, Consolidation or Succession to Business.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Debentures shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debentures so authenticated with the same effect as if such successor Trustee had itself authenticated such Debentures.
3. *Preferential Collection of Claims Against Company.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Debentures), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).
4. *Appointment of Authenticating Agent.* The Trustee may appoint an Authenticating Agent or Agents which shall be authorized to act on behalf of the Trustee to authenticate Debentures issued upon original issue and upon exchange, registration of transfer, partial conversion or partial redemption or pursuant to Section 3.06, and Debentures so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Debentures by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a

combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

If an appointment is made pursuant to this Section, the Debentures may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Debentures described in the within-mentioned Indenture.

BNY Midwest Trust Company,

As Trustee

By _____,

As Authenticating Agent

By _____,

Authorized Signatory

1.

1. Holders' Lists and Reports by Trustee and Company

1. *Company to Furnish Trustee Names and Addresses of Holders.* The Company will furnish or cause to be furnished to the Trustee
 - a. quarterly, not more than 10 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date, and
 - b. at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

2. *Preservation of Information; Communications to Holders.* The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.
 - a. The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Debentures, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.
 - b. Every Holder of Debentures, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.
3. *Reports by Trustee.* The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.
 - a. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Debentures are listed, with the Commission and with the Company. The Company will notify the Trustee when the Debentures are listed on any stock exchange.
4. *Reports by Company.* The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and

in the manner provided pursuant to such Act; *provided that* any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

2.

Consolidation, Merger, Conveyance, Transfer or Lease

1. *Company May Consolidate, Etc., Only on Certain Terms.* The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:
 1. in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest (including Additional Interest) on all the Debentures and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Article Thirteen;
 2. immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;
 3. such consolidation, merger, conveyance, transfer or lease is permitted under the Trust Agreement and Guarantee and does not give rise to any breach or violation of the Trust Agreement or Guarantee; and
 4. the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.
2. *Successor Substituted.* Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debentures.

3.

Supplemental Indentures

1. *Supplemental Indentures Without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:
 1. to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Debentures; or
 2. to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or
 3. to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article Thirteen; or
 4. to add any additional Events of Default; or
 5. to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, *provided, that* such action pursuant to this Clause (5) shall not adversely affect the interests of the Holders, or, so long as any Preferred Securities shall remain outstanding, the holders of Preferred Securities, in either case in any material respect; or
 6. to evidence and provide for the acceptance of appointment hereunder by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the Trust hereunder by more than one Trustee, pursuant to the requirements of Section 6.11; or
 7. to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, if applicable;
 8. to make provision for transfer procedures, certification, book--entry provisions, the form of restricted securities legends, if any, to be placed on Debentures, and all other matters required pursuant to Section 3.05 or otherwise necessary, desirable or appropriate in connection with the issuance of Debentures to holders of Preferred Securities in the event of a distribution of

Debentures by the Trust if a Special Event occurs and is continuing.

2. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in principal amount of the Outstanding Debentures, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Debenture affected thereby,

(a) Except to the extent permitted by Section 3.11 with respect to the extension of the interest payment period of the Debentures,

1. change the Stated Maturity of the principal of, or any installment of interest (including Additional Interest) on, any Debenture, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Debenture or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or
2. adversely affect any right to convert or exchange any Debenture or modify the provisions of this Indenture with respect to the subordination of the Debentures in a manner adverse to the Holders, or
3. reduce the percentage in principal amount of the Outstanding Debentures, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture, or
4. modify any of the provisions of this Section, Article Four, Section 5.08, Section 5.13 or Section 10.11, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Debenture affected thereby, or the consent of the holders of all the Preferred Securities, as the case may be,

provided that, so long as any Preferred Securities remain outstanding no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate liquidation preference of such Preferred Securities then outstanding unless and until the principal (and premium, if any) of the Debentures and all accrued and unpaid interest (including any Additional Interest) thereon have been paid in full.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

3. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.
4. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Debentures theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.
5. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.
6. *Reference in Debentures to Supplemental Indentures.* Debentures authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debentures so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debentures.

4.

Covenants

1. *Payment of Principal, Premium and Interest.* The Company will duly and punctually pay the principal of (and premium, if any) and interest (including Additional Interest and Liquidated Damages) on the Debentures in accordance with the terms of the Debentures and this Indenture.
2. *Maintenance of Office or Agency.* The Company will maintain in the City of Chicago an office or agency where Debentures may be presented or surrendered for payment, where Debentures may be surrendered for registration of transfer or exchange, where Debentures may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Debentures and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the City of Chicago)

where the Debentures may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the City of Chicago for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

3. *Money for Debenture Payments to Be Held in Trust.* If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of (and premium, if any) or interest (including Additional Interest) or Liquidated Damages on any of the Debentures, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest (including Additional Interest) or Liquidated Damages so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the principal of (and premium, if any) or interest (including Additional Interest) or Liquidated Damages on any Debentures, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Debentures) in the making of any payment in respect of the Debentures, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest (including Additional Interest) or Liquidated Damages on any Debenture and remaining unclaimed for two years after such principal (and premium, if any) or interest (including Additional Interest) or Liquidated Damages has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Debenture shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

4. *Statement by Officers as to Default.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

The Company shall deliver to the Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

5. *Existence.* Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.
6. *Payment of Taxes and Other Claims.* The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; *provided, however*, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.
7. *Additional Sums.* In the event that (a) the Property Trustee is the Holder of all of the Outstanding Debentures, (b) a Tax Event in respect of the Trust shall have occurred and be continuing and (c) the Company shall not have (i) redeemed the Debentures pursuant to Section 11.07, 11.08 or 11.09 or (ii) terminated the Trust pursuant to Section 9.2(b) of the Trust Agreement, the Company shall pay from time to time to the Trust (and its permitted successors or assigns under the Trust Agreement) for so long as the Trust (or its permitted successor or assignee) is the registered Holder of the Debentures, such additional amounts (the "*Additional Sums*") as may be necessary in order that the amount of distributions (including any Additional Amounts (as defined

in the Trust Agreement)) then due and payable by the Trust on the Preferred Securities and Common Securities that at such time remain outstanding in accord with the terms thereof shall not be reduced as a result of any Additional Taxes. Whenever in this Indenture or the Debentures there is a reference in any context to the payment of principal or interest on the Debentures, such mention shall be deemed to include mention of the payments of the Additional Sums provided for in this paragraph to the extent that, in such context, Additional Sums are, were or would be payable in respect thereof pursuant to the provisions of this paragraph and express mention of the payment of Additional Sums (if applicable) in any provisions hereof shall not be construed as excluding Additional Sums in those provisions hereof where such express mention is not made, *provided, however*, that the extension of an interest payment period pursuant to Section 3.11 or the Debentures shall not extend the payment of any Additional Sums that may be due and payable during such interest payment period.

8. *Additional Covenants*. The Company covenants and agrees with each Holder that so long as the Preferred Securities are outstanding, if (i) there shall have occurred any event of which the Company has actual knowledge that (A) with the giving of notice or the lapse of time or both, would constitute an Event of Default hereunder and (B) in respect of which the Company shall not have taken reasonable steps to cure, (ii) the Company shall be in default with respect to its payment of any obligations under the Guarantee or (iii) the Company shall have given notice of its selection of an Extension Period as provided herein and shall not have rescinded such notice, and such period, or any extension thereof, shall be continuing, then the Company shall not, and shall cause any Subsidiary not to, (x) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock or (y) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees of indebtedness for money borrowed) of the Company that rank *pari passu* with or junior to the Debentures (other than (1) any dividend, redemption, liquidation, interest, principal or guarantee payment by the Company where the payment is made by way of securities (including capital stock) that rank *pari passu* with or junior to the securities on which such dividend, redemption, interest, principal or guarantee payment is being made, (2) redemptions or purchases of any rights pursuant to the Shareholders Rights Plan, or any successor to such Shareholders Rights Plan, and the declaration of a dividend of such rights or the issuance of preferred stock under such plans in the future, (3) payments under the Guarantee, (4) purchases of Common Stock related to the issuance of Common Stock under any of the Company's benefit plans for its directors, officers or employees, (5) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one series or class of the Company's capital stock for another series or class of the Company's capital stock and (6) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged).

The Company also covenants with each Holder (i) that for so long as Preferred Securities are outstanding not to cause the Trust to convert the Debentures except pursuant to a notice of conversion delivered to the Conversion Agent by a holder of Preferred Securities (ii) to maintain the reservation for issuance of the number of shares of Common Stock that would be required from time to time upon the conversion of all the Debentures then outstanding, (iii) to deliver shares of Common Stock upon an election by the Holders to convert such Preferred Securities into Common Stock and (iv) to honor all obligations relating to the conversion or exchange of the Preferred Securities into or for Common Stock or Debentures.

9. *Payment of Expenses of the Trust*. In connection with the offering, sale and issuance of the Debentures to the Property Trustee and in connection with the sale of the Preferred Securities by the Trust, the Company shall
1. pay for all costs, fees and expenses relating to the offering, sale and issuance of the Preferred Securities (as defined in the Purchase Agreement), including commissions, discounts and expenses payable pursuant to the Purchase Agreement and compensation of the Trustee in accordance with the provisions of Section 6.07;
 2. be responsible for and pay for all debts and obligations (other than with respect to the Preferred Securities) of the Trust, pay for all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the offering, sale and issuance of the Preferred Securities (including commissions, discounts and expenses in connection therewith), the fees and expenses of the Property Trustee and the Delaware Trustee, the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of Trust assets); and
 3. pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.
10. *Waiver of Certain Covenants*. The Company may omit in any particular instance to comply with any covenant or condition set forth in Sections 10.01 to 10.10, inclusive, if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Debentures shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

5.

Redemption or Exchange of Debentures

1. *Election to Redeem; Notice to Trustee*. The election of the Company to redeem any Debentures shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than 45 days prior to the date fixed for redemption (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of Debentures to be redeemed.
2. *Selection of Debentures to Be Redeemed*. If less than all the Debentures are to be redeemed, the particular Debentures to be

redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee from the Outstanding Debentures not previously called for redemption, by lot or by such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of the Debentures Outstanding, *provided that* the unredeemed portion of the principal amount of the Debentures be in an authorized denomination (which shall not be less than the minimum authorized denomination) for the Debentures.

The Trustee shall promptly notify the Company in writing of the Debentures selected for partial redemption and the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Debentures shall relate, in the case of any Debenture redeemed or to be redeemed only in part, to the portion of the principal amount of such Debenture which has been or is to be redeemed. If the Company shall so direct, Debentures registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the Debentures selected for redemption.

3. *Notice of Redemption.* Notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than the thirtieth day, and not earlier than the sixtieth day, prior to the date fixed for redemption, to each Holder to be redeemed, at the address of such Holder as it appears in the Security Register.

With respect to Debentures to be redeemed, each notice of redemption shall state:

- (a) the Redemption Date;
- (b) the redemption price at which the Debentures are to be redeemed (the "*Redemption Price*");
- (c) if less than all Outstanding Debentures are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Debentures to be redeemed (including, if relevant, the CUSIP or ISIN number);
- (d) that on the Redemption Date the Redemption Price will become due and payable upon each such Debenture or portion thereof, and that upon deposit with the Paying Agent interest thereon, if any, shall cease to accrue on and after the Redemption Date;
- (e) the place or places where the Debentures are to be surrendered for payment of the Redemption Price;
- (f) that a Holder who desires to convert Debentures called for redemption must satisfy the requirements for conversion contained in the Debentures, the then existing conversion price or rate, and the date and time when the option to convert shall expire; and
- (g) applicable CUSIP numbers.

Notice of redemption of Debentures to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Debenture designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debenture.

4. *Deposit of Redemption Price.* Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.03, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Article 4) an amount of money sufficient to redeem on the Redemption Date all the Debentures so called for redemption at the applicable Redemption Price.

If any Debenture called for redemption has been converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Debenture shall (subject to any right of the Holder of such Debenture or any Predecessor Debenture to receive interest as provided in the last paragraph of Section 3.07) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

5. *Debentures Payable on Redemption Date.* If notice of redemption has been given as provided in Section 11.03, the Debentures so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, including any accrued interest (and any Additional Interest) thereon, and from and after such date (unless the Company shall default in the payment of the Redemption Price or any accrued interest on (including any Additional Interest)) such Debentures shall cease to bear interest. Upon surrender of any such Debenture for redemption in accordance with said notice, such Debenture shall be paid by the Company at the Redemption Price, including any accrued interest (and any Additional Interest) to the Redemption Date, *provided, however,* that interest on Debentures whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Debentures, or one or more Predecessor Debentures, registered as such at the close of business on the relevant Regular Record Dates or Special Record Dates, as the case may be, according to the terms and the provisions of Section 3.07.

If any Debenture called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Debenture.

6. *Debentures Redeemed in Part.* In the event of any redemption in part, the Company shall not be required to (i) issue, register the transfer of or exchange any Debenture during a period beginning at 9:00 a.m. (New York City time) 15 Business Days before any selection for redemption of Debentures and ending at 5:00 p.m. (New York City time) on the earliest date in which the relevant notice of redemption is deemed to have been given to all Holders to be so redeemed and (ii) register the transfer of or exchange

any Debentures so selected for redemption, in whole or in part, except for the unredeemed portion of any Debentures being redeemed in part.

Any Debenture that is to be redeemed only in part shall be surrendered at the place of payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Debenture without service charge, a new Debenture or Debentures, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Debenture so surrendered. Each Debenture shall be subject to partial redemption only in the amount of \$50 or integral multiples thereof.

The Debentures are not entitled to the benefit of any sinking or like fund.

7. *Mandatory Redemption.* Upon (i) repayment at maturity or (ii) as a result of acceleration upon the occurrence of an Event of Default, the Company shall redeem all the Outstanding Debentures at a redemption price equal to 100% of the principal amount of such Debentures plus any accrued and unpaid interest, including any Additional Interest, to the date fixed for redemption.
8. *Optional Redemption.* Except as set forth below, on and after June 15, 2006 and subject to the next succeeding sentence, the Company shall have the right, at any time and from time to time, to redeem the Debentures, in whole or in part, upon notice given as set forth in Section 11.03 during the twelve-month periods beginning on June 15 in each of the following years at the indicated Redemption Price (expressed as a percentage of the principal amount of the Debentures being redeemed), together with any accrued but unpaid interest on the portion being redeemed, including Additional Interest, to the date fixed for such redemption:

Year	Redemption Price (% of principal)	Year	Redemption Price (% of principal)
2006	103.50%	2009	101.40%
2007	102.80%	2010	100.70%
2008	102.10%	2011 and thereafter	100.00%

The Company may not redeem the Debentures in whole or in part unless all accrued and unpaid interest has been paid in full on all outstanding Debentures for all quarterly interest periods terminating on or prior to the Redemption Date.

9. *Special Event Redemption.* If a Special Event shall occur and be continuing, the Company shall have the right upon not less than 30 days nor more than 60 days notice to the Holders (i) in the case of an Investment Company Event, to redeem the Debentures in whole but not in part, and (ii) in the case of a Tax Event, to redeem the Debentures in whole or in part, in each case for cash, within 90 days following the occurrence of such Special Event at a Redemption Price equal to the principal amount of such Debentures plus any accrued and unpaid interest, including Additional Interest, to the date fixed for such redemption; *provided, that*, in the case of a Tax Event, the Depositor shall have the right to redeem the Debentures in part if and only for so long as the Depositor shall have elected to pay Additional Sums with respect to the Debentures that remain Outstanding, such that the amount received by the holders of Trust Securities not so redeemed in respect of Distributions (as defined in the Trust Agreement) and other distributions are not reduced as a result of such Tax Event, and shall not have revoked any such election or failed to make such payments.
10. *Exchange of Trust Securities for Debentures.* At any time, the Company shall have the right to terminate the Trust and cause the Debentures to be distributed to the holders of the Preferred Securities in liquidation of the Trust after satisfaction of liabilities to creditors of the Trust as provided by applicable law.

6.

Subordination of Debentures

1. *Debentures Subordinate to Senior and Subordinated Debt.* The Company covenants and agrees, and each Holder, by such Holder's acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the indebtedness represented by the Debentures and the payment of the principal of (and premium, if any) and interest (including Additional Interest) and Liquidated Damages on each and all of the Debentures are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior and Subordinated Debt.
2. *No Payment When Senior and Subordinated Debt in Default.* No payments on account of principal of (and premium, if any) or interest (including Additional Interest) or Liquidated Damages on the Debentures shall be made if at the time of such payment or immediately after giving effect thereto there shall exist a default in any payment with respect to any Senior or Subordinated Debt, and such default shall not have been cured or waived or shall not have ceased to exist. In addition, during the continuance of any other event of default (other than a payment default) with respect to Designated Senior and Subordinated Debt pursuant to which the maturity thereof may be accelerated, from and after the date of receipt by the Trustee of written notice from the holders of such Designated Senior and Subordinated Debt or from an agent of such holders, no payments on account of principal (or premium, if any) or interest (including Additional Interest) in respect of the Debentures may be made by the Company for a period ("*Payment Blockage Period*") commencing on the date of delivery of such notice and ending 179 days thereafter (unless such Payment Blockage Period shall be terminated by written notice to the Trustee from the holders of such Designated Senior and Subordinated Debt or from an agent of such holders, or such event of default has been cured or waived or has ceased to exist). Only one Payment

Blockage Period may be commenced with respect to the Debentures during any period of 360 consecutive days. No event of default that existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to the Designated Senior and Subordinated Debt initiating such Payment Blockage Period shall be or be made the basis for the commencement of any subsequent Payment Blockage Period by the holders of such Designated Senior and Subordinated Debt, unless such event of default shall have been cured or waived for a period of not less than 90 consecutive days.

3. *Payment Over of Proceeds Upon Dissolution, Etc.* Upon any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any liquidation, dissolution, winding up, receivership, reorganization, assignment for the benefit of creditors, marshalling of assets and liabilities or any bankruptcy, insolvency or similar proceedings of the Company (each such event, if any, herein sometimes referred to as a "Proceeding"), all amounts due or to become due upon all Senior and Subordinated Debt shall first be paid in full, in cash or cash equivalents, or payment thereof provided for in accordance with its terms, before any payment is made on account of the principal of (or premium, if any) or interest (including Additional Interest) on the indebtedness evidenced by the Debentures, and upon any such liquidation, dissolution, winding up, receivership, reorganization, assignment for the benefit of creditors, marshalling or proceeding, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which Holders or the Trustee under this Indenture would be entitled, except for the provisions hereof, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior and Subordinated Debt (pro rata to such holders on the basis of the respective amounts of Senior and Subordinated Debt held by such holders, as calculated by the Company) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior and Subordinated Debt may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior and Subordinated Debt in full (including, without limitation, except to the extent, if any, prohibited by mandatory provisions of law, post-petition interest, in any such proceedings), after giving effect to any concurrent payment or distribution to or for the holders of Senior and Subordinated Debt, before any payment or distribution is made to the Holders or to the Trustee under this Indenture.

If, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee under this Indenture or the Holders of the Debentures before all Senior and Subordinated Debt is paid in full or provision is made for such payment in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid or delivered to the holders of such Senior or Subordinated Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior and Subordinated Debt may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior and Subordinated Debt remaining unpaid until all such Senior and Subordinated Debt shall have been paid in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior and Subordinated Debt.

For purposes of this Article, the words, "cash, property or securities" shall not be deemed to include shares of capital stock of the Company as reorganized or readjusted, the payment of which is subordinated (at least to the extent provided in this Article with respect to the Debentures) to the payment of all Senior and Subordinated Debt that may at the time be outstanding; *provided that* (i) the Senior and Subordinated Debt is assumed by the new corporation, if any, resulting from any such arrangement, reorganization or readjustment, and (ii) the rights of the holders of the Senior and Subordinated Debt are not, without the consent of such holders, altered by such arrangement, reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another Person upon the terms and conditions provided in Article Eight shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article Eight. Nothing in this Section shall apply to claims of, or payments to, the Trustee under or pursuant to Article Six, except as provided therein. This Section shall be subject to the further provisions of Section 12.06.

4. *Prior Payment to Senior and Subordinated Debt Upon Acceleration of Debentures.* If any Debentures are declared due and payable before their Stated Maturity, then and in such event the holders of Senior and Subordinated Debt outstanding at the time such Debentures so become due and payable shall be entitled to receive payment in full of all amounts due or to become due on or in respect of such Senior and Subordinated Debt (including any amounts due upon acceleration) before the Holders are entitled to receive any payment (including any payment which may be payable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Debentures) by the Company on account of the principal of (or premium, if any) or interest (including Additional Interest) on the Debentures or on account of the purchase or other acquisition of Debentures.

If, notwithstanding the foregoing, the Company shall make any payment to the Trustee or to any Holder prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section shall not apply to any payment with respect to which Section 12.03 would be applicable.

5. *Payment Permitted If No Default.* Nothing contained in this Article or elsewhere in this Indenture or in any of the Debentures shall prevent (a) the Company, at any time except during the pendency of any case, Proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshalling of assets and liabilities of the Company referred to in Section 12.03 or under the conditions described in Section 12.02 or 12.04, from making payments at any time of principal of (or premium, if any) or interest on the Debentures, or (b) except with respect to the payment over provisions of Sections 12.03 and

12.04 the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Debentures or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

6. *Subrogation to Rights of Holders of Senior and Subordinated Debt.* Subject to the payment in full of all Senior and Subordinated Debt, the rights of the Holders shall be subrogated to the extent of the payments or distributions made to the holders of such Senior and Subordinated Debt pursuant to the provisions of this Article (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of such Senior and Subordinated Debt to receive payments and distributions of cash, property and securities applicable to the Senior and Subordinated Debt until the principal of (and premium, if any) and interest on the Debentures shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior and Subordinated Debt of any cash, property or securities to which the Holders or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Senior and Subordinated Debt by Holders or the Trustee, shall, as among the Company, its creditors other than holders of Senior and Subordinated Debt and the Holders, be deemed to be a payment or distribution by the Company to or on account of the Senior and Subordinated Debt.
7. *Provisions Solely to Define Relative Rights.* The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders on the one hand and the holders of Senior and Subordinated Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Debentures is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior and Subordinated Debt and the Holders, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior and Subordinated Debt, is intended to rank equally with all other general obligations of the Company), to pay to the Holders the principal of (and premium, if any) and interest on the Debentures as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders and creditors of the Company other than the holders of Senior and Subordinated Debt; or (c) prevent the Trustee or the Holders from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior and Subordinated Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.
8. *Trustee to Effectuate Subordination.* Each Holder by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney--in--fact for any and all such purposes.
9. *No Waiver of Subordination Provisions.* No right of any present or future holder of any Senior or Subordinated Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior and Subordinated Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders, without incurring responsibility to the Holders and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders to the holders of Senior and Subordinated Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior and Subordinated Debt, or otherwise amend or supplement in any manner Senior and Subordinated Debt or any instrument evidencing the same or any agreement under which Senior and Subordinated Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior and Subordinated Debt; (iii) release any Person liable in any manner for the collection of Senior and Subordinated Debt; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

10. *Notice to Trustee.* The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Debentures. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior and Subordinated Debt or any default or event of default with respect to any Senior and Subordinated Debt or of any other facts which would prohibit the making of any payment to or by the Trustee in respect of the Debentures, unless and until the Trustee shall have received at its principal Corporate Trust Office written notice thereof from the Company or a holder of Senior and Subordinated Debt or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.01, shall be entitled in all respects to assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section at least three Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Debenture), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within three Business Days prior to such date.

Subject to the provisions of Section 6.01, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior and Subordinated Debt (or a trustee therefor) to establish that such notice has been given by a holder of Senior and Subordinated Debt (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior and Subordinated Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior and Subordinated Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article,

and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

11. *Reliance on Judicial Order or Certificate of Liquidating Agent.* Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.01, and the Holders shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior and Subordinated Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.
12. *Trustee Not Fiduciary for Holders of Senior and Subordinated Debt.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior and Subordinated Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders or to the Company or to any other Person cash, property or securities to which any holders of Senior and Subordinated Debt shall be entitled by virtue of this Article or otherwise.
13. *Rights of Trustee as Holder of Senior and Subordinated Debt; Preservation of Trustee's Rights.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior and Subordinated Debt which may at any time be held by it, to the same extent as any other holder of Senior and Subordinated Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.07.

14. *Article Applicable to Paying Agents.* In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however*, that Section 12.13 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.
15. *Certain Conversions Deemed Payment.* For the purposes of this Article only, (1) the issuance and delivery of junior securities upon conversion of Debentures in accordance with Article Thirteen shall not be deemed to constitute a payment or distribution on account of the principal of (or premium, if any) or interest (including Additional Interest) on Debentures or on account of the purchase or other acquisition of Debentures, and (2) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion of a Debenture shall be deemed to constitute payment on account of the principal of (and premium, if any) such Debenture. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and (b) securities of the Company which are subordinated in right of payment to all Senior and Subordinated Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Debentures are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as among the Company, its creditors other than holders of Senior and Subordinated Debt and the Holders, the right, which is absolute and unconditional, of any Holder to convert such Debenture in accordance with Article Thirteen.

7.

Conversion of Debentures

1. *Conversion Rights.* Subject to and upon compliance with the provisions of this Article Thirteen, the Debentures are convertible at the option of the Holder, at any time prior to 5:00 p.m. New York City time, on June 13, 2031 (or, in the case Debentures called for redemption, the close of business on the Business Day prior to the corresponding Redemption Date) into fully paid and nonassessable shares of Common Stock of the Company at an initial conversion rate of 1.0519 shares of Common Stock for each \$50 in aggregate principal amount of Debentures (equal to an initial conversion price of \$47.53 per share of Common Stock), subject to adjustment as described in this Article Thirteen (as adjusted the "*Conversion Price*"). A Holder may convert any portion of the principal amount of the Debentures into that number of fully paid and nonassessable shares of Common Stock obtained by dividing the principal amount of the Debentures to be converted by such conversion price. All calculations under this Article Thirteen shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be.
2. *Conversion Procedures.* In order to convert all or a portion of the Debentures, the Holder thereof shall deliver to the Property Trustee, as conversion agent or to such other agent appointed for such purposes (the "*Conversion Agent*") an irrevocable Notice of Conversion setting forth the principal amount of Debentures to be converted, together with the name or names, if other than the Holder, in which the shares of Common Stock should be issued upon conversion and, if such Debentures are definitive Debentures, surrender to the Conversion Agent the Debentures to be converted, duly endorsed or assigned to the Company or in blank. In addition, a holder of Preferred Securities may exercise its right under the Trust Agreement to convert such Preferred Securities into Common Stock by delivering to the Conversion Agent an irrevocable Notice of Conversion setting forth the information called for by the preceding sentence and directing the Conversion Agent to (i) exchange such Preferred Security for a portion of the Debentures held by the Trust (at an exchange rate of \$50 principal amount of Debenture for each Preferred Security) and (ii) immediately convert such Debenture, on behalf of such holder, into Common Stock of the Company pursuant to this Article Thirteen and, if such Preferred Securities are in definitive form, surrendering such Preferred Securities, duly endorsed or assigned to the Company or in blank. So long as any Preferred Securities are outstanding, the Trust shall not convert any Debenture except pursuant to a Notice of Conversion delivered to the Conversion Agent by a holder of Preferred Securities. Any reference herein to a "holder" of Preferred Securities shall mean a "Holder" of such securities as defined in the Trust Agreement.

If a Debenture is surrendered for conversion after the close of business on any Regular Record Date and before the opening of business on the corresponding Interest Payment Date, then, notwithstanding such conversion, the interest payable on such Interest Payment Date will be paid in cash to the person in whose name the Debenture is registered at the close of business on such record date, and (other than a Debenture or a portion of a Debenture called for redemption on a redemption date occurring after such record date and prior to such Distribution payment date) when so surrendered for conversion, the Debenture must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date. Except as otherwise provided in the immediately preceding sentence, in the case of any Debenture that is converted, interest whose Maturity Date is after the date of conversion of such Debenture shall not be payable, and the Company shall not make nor be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest on the Debenture being converted, which shall be deemed to be paid in full. Each conversion shall be deemed to have been effected immediately prior to the close of business on the day on which the Notice of Conversion was received (the "*Conversion Date*") by the Conversion Agent from the Holder or from a holder of the Preferred Securities effecting a conversion thereof pursuant to its conversion rights under the Trust Agreement, as the case may be. The Person or Persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of the Conversion Date. As promptly as practicable on or after the Conversion Date, the Company shall issue and deliver at the office of the Conversion Agent, unless otherwise directed by the Holder in the Notice of Conversion, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same. The Conversion Agent shall deliver such certificate or certificates to such Person or Persons.

- a. The Company's delivery upon conversion of the fixed number of shares of Common Stock into which the Debentures surrendered for conversion are convertible (together with the cash payment, if any, in lieu of fractional shares) shall be deemed to satisfy the Company's obligation to pay the principal amount at maturity of the portion of Debentures so converted and any unpaid interest (including Additional Interest) accrued on such Debentures at the time of such conversion.
- b. No fractional shares of Common Stock will be issued as a result of conversion. Instead, the Company shall pay to the Conversion Agent a cash adjustment in an amount equal to the same fraction of the Closing Price of such fractional interest on the date on which the Debentures were duly surrendered to the Conversion Agent for conversion, or, if such day is not a day on which any securities are traded on the national securities exchange or quotation system used to determine the Closing Price (a "*Trading Day*"), on the next Trading Day, and the Conversion Agent in turn will make such payment, if any, to the Holder or the holder of the Preferred Securities so converted.
- c. In the event of the conversion of any Debenture in part only, a new Debenture or Debentures for the unconverted portion thereof will be issued in the name of the Holder thereof upon the cancellation thereof in accordance with Section 3.05.
- d. In effecting the conversion transactions described in this Section 13.02, the Conversion Agent is acting as agent of the holders of Preferred Securities (in the exchange of Preferred Securities for Debentures) and as agent of the Holders (in the conversion of Debentures into Common Stock), as the case may be. The Conversion Agent is hereby authorized (x) if the Trust exists, (i) to exchange Debentures held by the Trust from time to time for Preferred Securities in connection with the conversion of such Preferred Securities in accordance with this Article Thirteen and (ii) to convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Article Thirteen and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount and (y) if the Trust no longer exists to convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Article Thirteen and to deliver to such Holders a new Debenture or Debentures for any resulting unconverted principal amount.
- e. The Company shall reserve, free from pre-emptive rights, out of its authorized but unissued shares, sufficient shares to provide for the conversion of the Debentures from time to time as such Debentures are presented for conversion.

If any shares of Common Stock to be reserved for the purpose of conversion of Debentures hereunder require registration with or approval of any governmental authority under any Federal or State law before such shares may be validly issued or delivered upon conversion, then the Company covenants that it will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be, *provided, however*, that nothing in this Section 13.02 shall be deemed to affect in any way the obligations of the Company to convert Debentures into Common Stock as provided in this Article Thirteen.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the Common Stock, the Company will take all corporate action which may, in the Opinion of Counsel, be necessary in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price. The Company covenants that all shares of Common Stock which may be issued upon conversion of Debentures will upon issue be fully paid and non-assessable by the Company and free of pre-emptive rights.

3. *Conversion Price Adjustments.* The Conversion Price shall be adjusted from time to time as follows:
 - i. In case the Company shall pay or make a dividend or other distribution on Common Stock in shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of

- business on the day following the date fixed for such determination. For the purposes of this subparagraph (i), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company (except to the extent such dividend or distribution is being made with respect to such shares) but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. If such dividend or other distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such record date had not been fixed.
- ii. In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller amount of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective. If such subdivision or combination is not so made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such record date had not been fixed.
- iii. In case the Company shall issue rights or warrants to all holders of Common Stock entitling them (for a period of not more than 45 days after the record date fixed for a distribution of such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price (as hereinafter defined) per share (determined as provided in subparagraph (vii) below) of Common Stock on the date fixed for the determination of shareholders entitled to receive such rights or warrants (other than pursuant to a dividend reinvestment plan or a Shareholders Rights Plan), then the Conversion Price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such Current Market Price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (iii), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company agrees not to issue any rights or warrants in respect of shares of Common Stock held in the treasury of the Company. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Price shall be readjusted to the Conversion Price that would then be in effect had the adjustments made in respect of the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered.
- iv. Subject to the second paragraph of this subparagraph (iv), in case the Company shall, by dividend or otherwise, distribute to all holders of Common Stock (A) shares of capital stock of the Company (other than Common Stock), (B) evidence of indebtedness of the Company and/or (C) other assets (including securities, but excluding (1) any rights or warrants referred to in subparagraph (iii) above, (2) any rights or warrants to obtain capital stock of a company other than the Company or any subsidiary of the Company (including any rights offerings of the Company with respect to capital stock of companies in which the Company has an investment (a "*Rights Offering*")), (3) dividends or distributions in connection with the liquidation, dissolution or winding-up of the Company, (4) dividends payable solely in cash that may from time to time be fixed by the Board of Directors of the Company and (5) dividends or distributions referred to in subparagraph (i) above), then in each case (unless the Company makes the election referred to in the next sentence) the Conversion Price in effect immediately prior to the close of business on the date (the "*Reference Date*") fixed for the payment of such distribution shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the Current Market Price per share (determined as provided in subparagraph (vii) below) of the Common Stock on the Reference Date less the then fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive and shall be described in a statement filed with the Depository, if applicable, and the Trustee) on such Reference Date of the portion of the shares of capital stock of the Company, evidences of indebtedness or other assets so distributed (and for which an adjustment to the Conversion Price has not been made previously pursuant to the terms of this Article Thirteen) applicable to one share of Common Stock and the denominator shall be such Current Market Price per share of the Common Stock, such adjustment to become effective immediately prior to the opening of business on the day following the Reference Date. However, the Company may elect, in its sole discretion, in lieu of the foregoing adjustment, to make adequate provision so that each Holder shall have the right to receive upon conversion thereof the amount and kind of shares of capital stock, evidences of indebtedness or other assets such Holder would have received had such Holder converted such shares on such record date. If the Board of Directors of the Company determines the fair market value of any distribution for purposes of this subparagraph (iv) by reference to the actual or when issued trading market for any securities (including shares of capital stock or evidence of indebtedness of the Company) comprising a distribution of securities, it must in doing so consider the price in such market over the same period used in computing the Current Market Price of the Common Stock. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to

be the Conversion Price that would then be in effect if such record date had not been fixed.

For purposes of this subparagraph (iv), any dividend or distribution that includes both (x) any of the items described in clauses (A), (B) or (C) of the first paragraph of this subparagraph (iv) and (y) Common Stock or rights or warrants to subscribe for or purchase Common Stock of the type referred to in subparagraph (iii) shall be deemed to be (1) a dividend or distribution of shares of capital stock of the Company (other than Common Stock), evidences of indebtedness of the Company or other assets of the type referred to in clause (C) of the first paragraph of this subparagraph (iv) (making any Conversion Price reduction required by this subparagraph (iv)) immediately followed by (2) a dividend or distribution of such Common Stock or rights or warrants to purchase Common Stock of the type referred to in subparagraph (iii) (making any further Conversion Price reduction required by subparagraph (i) or (iii) of this Section 13.03(a)), except (A) the Reference Date of such dividend or distribution as defined in this subparagraph (iv) shall be substituted as "the date fixed for the determination of shareholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of subparagraphs (i) and (iii) of this Section 13.03(a) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of subparagraph (i) of this Section 13.03(a).

If the distribution date for rights under the Shareholders Rights Plan or the date on which the Shareholders Rights Plan becomes operative occurs before the date a Debenture is converted, holders of the Debenture who convert such Debenture after such distribution date or operative date will be entitled to receive the rights that would otherwise be attached (but for the date of conversion) to the Common Stock received upon conversion unless the Board of Directors elects to redeem such rights or such attachment of rights is prohibited under applicable law.

The occurrence of a distribution or the occurrence of any other event as a result of which Holders converting such Debentures into Common Stock hereunder will not be entitled to receive rights issued pursuant to any shareholder protective rights agreement now or hereafter in effect (the "*Other Rights*") in the same amount and manner as if such holders had converted such shares immediately prior to the occurrence of such distribution or other event shall be deemed a distribution of Other Rights for the purposes of conversion adjustments pursuant to this subparagraph (iv). In lieu of making any adjustment to the Conversion Price under this subparagraph (iv) as a result of such a distribution of Other Rights, the Company may elect, in its sole discretion, to provide that Other Rights shall be issuable in the same amount and manner upon conversion of the Debentures without regard to whether the shares of Common Stock issuable upon conversion of the Debentures were issued before or after such distribution or other event.

- v. In case the Company shall, by dividend or otherwise, at any time distribute cash to all holders of Common Stock, excluding (A) any cash dividends on Common Stock to the extent that the aggregate cash dividends per share of Common Stock in any consecutive 12--month period do not exceed the greater of (x) the amount per share of Common Stock of the cash dividends paid on the Common Stock in the immediately preceding 12--month period, to the extent that such dividends for the immediately preceding 12--month period did not require an adjustment to the Conversion Price pursuant to this subparagraph (v) (as adjusted to reflect subdivisions or combinations of the Common Stock) and (y) 15% of the average of the daily Closing Prices (as hereinafter defined) of the Common Stock for the ten consecutive Trading Days immediately prior to the date of declaration of such dividend and (B) any dividend or distribution in connection with the liquidation, dissolution or winding--up of the Company, whether voluntary or involuntary; or any redemption of any Other Rights; *provided, however*, that no adjustment shall be made pursuant to this subparagraph (v) if such distribution would otherwise constitute a Fundamental Change (as hereinafter defined) and be reflected in a resulting adjustment to the Conversion Price as provided in this Article Thirteen) then, in each case (unless the Company makes the election referred to in the proviso following this clause), the Conversion Price in effect immediately prior to the close of business on the date fixed for such payment shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the Closing Price of a share of Common Stock on the date fixed for such payment less the amount of cash so distributed (to the extent not excluded as provided above) applicable to one share of Common Stock, and the denominator shall be the Closing Price of a share of Common Stock on the date fixed for such payment, such reduction to become effective immediately prior to the opening of business on the day following the date fixed for such payment; *provided, however*, that the Company may elect, in its sole discretion, in lieu of the foregoing adjustment, to make adequate provision so that each Holder shall thereafter have the right to receive upon conversion the amount of cash (to the extent not excluded as provided above) such Holder would have received had such Holder converted each Debenture on such record date. If any adjustment is required to be made as set forth in this subparagraph (v) as a result of a distribution which is a dividend described in clause (A) of this subparagraph (v), such adjustment will be based upon the amount by which such distribution exceeds the amount of the dividend permitted to be excluded pursuant to such clause (A) of this subparagraph (v). If an adjustment is required to be made pursuant to this subparagraph (v) as a result of a distribution which is not such a dividend, such adjustment would be based upon the full amount of such distribution. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such record date had not been fixed.
- vi. In case of the consummation of a tender or exchange offer (other than an odd--lot tender offer) made by the Company or any subsidiary of the Company for all or any portion of the outstanding shares of Common Stock to

the extent that the cash and fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive and shall be described in a resolution of such Board) of any other consideration included in such payment per share of Common Stock at the last time (the "*Expiration Time*") tenders or exchanges may be made pursuant to such tender or exchange offer (as amended) exceed by more than 10%, with any smaller excess being disregarded in computing the adjustment to the Conversion Price provided in this subparagraph (vi), the first reported sale price per share of Common Stock on the Trading Day next succeeding the Expiration Time, then the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the first reported sale price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration (excluding that portion of such consideration in excess of the Current Market Price per share that does not exceed 110% of the current Market Price per share) payable to shareholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "*Purchased Shares*") and (y) the product of the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time and the first reported sale price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time.

- vii. For the purpose of any computation under this Article Thirteen, the "*Current Market Price per share*" of Common Stock on any date in question shall be deemed to be the average of the daily Closing Prices for the ten consecutive Trading Days prior to the earlier of the day in question and, if applicable, the day before the "ex" date with respect to the issuance or distribution requiring such computation; *provided, however*, that if another event occurs that would require an adjustment pursuant to this Article Thirteen, the Board of Directors may make such adjustments to the Closing Prices during such ten Trading Day period as it deems appropriate to effectuate the intent of the adjustments in this Section 13.03, in which case any such determination by the Board of Directors shall be set forth in a Board Resolution and shall be conclusive. For purposes of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock is quoted regular way on the New York Stock Exchange Composite Tape or on such successor securities exchange on which the Common Stock may be quoted or listed or in the relevant market from which the Closing Prices were obtained without the right to receive such issuance or distribution, and (2) when used with respect to any tender or exchange offer means the first date on which the Common Stock is quoted regular way on such securities exchange or in such market after the Expiration Time of such offer.
- viii. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described above, only one adjustment shall be made and such adjustment shall be the amount of the adjustment that has the highest absolute value to Holders. Furthermore, no adjustment in the Conversion Price shall be required pursuant to this Section 13.03(a) unless the adjustment would require a change of at least 1% of such price; *provided, however*, that any adjustments which by reason of this subparagraph (viii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations shall be made to the nearest cent (with .005 being rounded upward) or to the nearest 1/10,000th of a share (with .00005 of a share being rounded upward), as the case may be. Notwithstanding anything to the contrary in this Article Thirteen, the Company from time to time may, to the extent permitted by law, reduce the Conversion Price by any amount for any period of at least 20 Business Days, in which case the Company shall give at least 15 days' notice of such reduction to the Holders and the Trustee. In addition, the Company may, at its option, make such reductions in the Conversion Price in addition to those set forth in this Article Thirteen, as it considers to be advisable in order to avoid or diminish any income tax to any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for income tax purposes or for any other reasons.
- ix. In any case in which this Article Thirteen provides that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (A) issuing to any Holder converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such Holder any amount in cash in lieu of any fractional shares pursuant to this Article Thirteen.
- x. For purposes of this Article Thirteen, "Common Stock" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding--up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of this Article Thirteen, shares issuable on conversion of Debentures shall include only shares of the class designated as the Company Common Stock on the date of the initial issuance of Debentures by the Company or shares of any class or classes resulting from any reclassification or reclassification thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding--up of the Company and which are not subject to redemption by the Company; *provided, however*, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

4. *Fundamental Change*. If the Company shall be a party to any transaction or series of transactions constituting a Fundamental Change, including, without limitation, (i) any recapitalization or reclassification of shares of Common Stock (other than a change in the par value or as a result of a subdivision or combination of the Common Stock), (ii) any consolidation of the Company with, or merger of the Company into, any other corporation or any merger of another corporation into the Company as a result of which holders of Common Stock shall be entitled to receive securities or other property or assets (including cash) with respect to or in exchange for Common Stock (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock), (iii) any sale or transfer of all or substantially all of the assets of the Company, or (iv) any compulsory share exchange, pursuant to any of which the holders of Common Stock shall be entitled to receive other securities, cash or other property (each of the foregoing being referred to as a "*Transaction*"), then appropriate provision shall be made as part of the terms of such transaction or series of transactions so that the Holder of each Debenture then outstanding shall have the right thereafter to convert such Debenture only into (A) if any such transaction does not constitute a Common Stock Fundamental Change (as hereinafter defined), the kind and amount of the securities, cash or other property that would have been receivable upon such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange by a holder of the number of shares of Common Stock into which such Debenture might have been converted immediately prior to such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange, after, in the case of a Non--Stock Fundamental Change (as hereinafter defined), giving effect to any adjustment in the Conversion Price required by the provisions which follow in subparagraph (i) of Section 13.04(c), and (B) if any such transaction constitutes a Common Stock Fundamental Change, common stock of the kind received by holders of Common Stock as a result of such Common Stock Fundamental Change in an amount determined pursuant to the provisions which follow in subparagraph (ii) of Section 13.04(c). The company formed by such consolidation or resulting from such merger or that acquires such assets or that acquires the Common Stock, as the case may be, shall enter into a supplemental indenture with the Trustee, satisfactory in form to the Trustee, the provisions of which establishes such right and provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Thirteen. The above provisions shall similarly apply to successive recapitalization, reclassifications, consolidations, mergers, sales, transfers or share exchanges.

- a. Notwithstanding any other provisions in this Article Thirteen to the contrary, if any Fundamental Change (as hereinafter defined) occurs, then the Conversion Price in effect will be adjusted immediately following such Fundamental Change as described below in Section 13.04(c).
- b. For purposes of calculating any adjustment to be made pursuant to this Article Thirteen in the event of a Fundamental Change, immediately following such Fundamental Change (and for such purposes a Fundamental Change shall be deemed to occur on the earlier of (a) the occurrence of such Fundamental Change and (b) the date, if any, fixed for determination of shareholders entitled to receive the cash, securities, property or other assets distributable in such Fundamental Change to holders of the Common Stock):
 - i. in the case of a Non--Stock Fundamental Change, the Conversion Price per share of Common Stock immediately following such Non--Stock Fundamental Change shall be the lower of (A) the Conversion Price in effect immediately prior to such Non--Stock Fundamental Change, but after giving effect to any other adjustments effected pursuant to this Article Thirteen, and (B) the product of (1) the greater of the Applicable Price (as hereinafter defined) or the then applicable Reference Market Price (as hereinafter defined) and (2) a fraction the numerator of which shall be 100 and the denominator of which shall be the amount determined in the next sentence based on the date on which such Non--Stock Fundamental Change occurs. For the twelve month period beginning June 15, 2001, the denominator will be 107.00, and the denominator will decrease by 0.70 during each successive 12--month period; *provided, that* the denominator shall in no event be less than 100.
 - ii. in the case of a Common Stock Fundamental Change, the Conversion Price per share of Common Stock immediately following the Common Stock Fundamental Change shall be the Conversion Price in effect immediately prior to such Common Stock Fundamental Change, but after giving effect to any other adjustments effected pursuant to this Article Thirteen, multiplied by a fraction, the numerator of which is the Purchaser Stock Price (as hereinafter defined) and the denominator of which is the Applicable Price; *provided, however,* that in the event of a Common Stock Fundamental Change in which (A) 100% of the value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror or other third party (and cash, if any, paid with respect to any fractional interests in such common stock resulting from such Common Stock Fundamental Change) and (B) all of the Common Stock shall have been exchanged for, converted into or acquired for common stock (and cash, if any, with respect to fractional interests) of the successor, acquiror or other third party, the Conversion Price per share of Common Stock immediately following such Common Stock Fundamental Change shall be the Conversion Price in effect immediately prior to such Common Stock Fundamental Change divided by the number of shares of common stock of the successor, acquiror, or other third party received by a holder of one share of Common Stock as a result of such Common Stock Fundamental Change.
- c. The following definitions shall apply to terms used in this Article Thirteen:
 - i. "*Applicable Price*" shall mean (A) in the event of a Non--Stock Fundamental Change in which the holders of Common Stock receive only cash, the amount of cash receivable by a holder of one share of Common Stock and (B) in the event of any other Fundamental Change, the average of the Closing Prices for one share of Common Stock during the ten Trading Days immediately prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change or, if there is no such record date, prior to the date upon which the holders of Common Stock shall have the right to receive such cash, securities, property or other assets.
 - ii. "*Closing Price*" with respect to any securities on any day shall mean the closing sale price, regular way, on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices,

- regular way, in each case on the New York Stock Exchange or, if such security is not listed or admitted to trading on such Exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the date in question as reported by the National Quotation Bureau Incorporated, or a similarly generally accepted reporting service or, if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors of the Company for that purpose or a price determined in good faith by the Board of Directors of the Company.
- iii. "*Common Stock Fundamental Change*" shall mean any Fundamental Change in which more than 50% of the value (as determined in good faith by the Board of Directors of the Company) of the consideration received by the holders of Common Stock pursuant to such transactions consists of shares of common stock that, for the ten consecutive Trading Days immediately prior to such Fundamental Change, has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the Nasdaq National Market; *provided, however*, that a Fundamental Change shall not be a Common Stock Fundamental Change unless either (A) the Company continues to exist after the occurrence of such Fundamental Change and the outstanding Preferred Securities continue to exist as outstanding Preferred Securities, or (B) the outstanding Preferred Securities continue to exist as Preferred Securities and are convertible into common stock of the successor to the Company.
 - iv. "*Fundamental Change*" shall mean the occurrence of any transaction or event or series of transactions or events pursuant to which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitutes solely the right to receive cash, securities, property or other assets (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); *provided, however*, in the case of a plan involving more than one such transaction or event, for purposes of adjustment of the Conversion Price, such Fundamental Change shall be deemed to have occurred when substantially all of the Common Stock has been exchanged for, converted into, or acquired for or constitutes solely the right to receive cash, securities, property or other assets, but the adjustment shall be based upon the consideration that the holders of Common Stock received in such transaction or event as a result of which more than 50% of the Common Stock shall have been exchanged for, converted into, or acquired for or shall constitute solely the right to receive such cash, securities, property or other assets.
 - v. "*Non-Stock Fundamental Change*" shall mean any Fundamental Change other than a Common Stock Fundamental Change.
 - vi. "*Purchaser Stock Price*" shall mean, with respect to any Common Stock Fundamental Change, the average of the Closing Prices for one share of the common stock received by holders of Common Stock in such Common Stock Fundamental Change during the ten Trading Days immediately prior to the record date for the determination of the holders of Common Stock entitled to receive such common stock or, if there is no such record date, prior to the date upon which the holders of Common Stock shall have the right to receive such common stock.
 - vii. "*Reference Market Price*" shall initially mean \$26.41 (which is an amount equal to 66 2/3% of the last reported sale price for the Common Stock on the NYSE on June 12, 2001) and, in the event of any adjustment to the Conversion Price other than as a result of a Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the Conversion Price after giving effect to any such adjustment shall always be the same as the ratio of the initial Reference Market Price to the initial Conversion Price set forth in this Article Thirteen.

In determining the amount and type of consideration received by a holder of Common Stock in the event of a Fundamental Change, consideration received by a holder of Common Stock pursuant to a statutory right of appraisal will be disregarded.

- 5. *Notice of Adjustments of Conversion Price.* Whenever the Conversion Price is adjusted as herein provided:
 - a. the Company shall compute the adjusted Conversion Price and shall prepare a certificate signed by the Chief Financial Officer or the Treasurer of the Company setting forth the adjusted conversion price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Trustee, the Conversion Agent and the transfer agent for the Preferred Securities and the Debentures;
 - b. a notice stating the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall as soon as practicable be mailed by the Company to all record holders of Preferred Securities and the Debentures at their last addresses as they appear upon the stock transfer books of the Company and the Trust and the Security Registrar; and
 - c. the Company will, not later than three business days before the relevant conversion price adjustment date disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News containing a notice that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price.
- 6. *Prior Notice of Certain Events.* If:
 - i. the Company shall declare a dividend (or any other distribution) on Common Stock that would cause an adjustment to the Conversion Price of the Debentures pursuant to the terms of any of the subparagraphs above (including such an adjustment that would occur but for the terms of the second sentence of Section 13.03(a) (viii) above); or
 - ii. the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock or combined into a smaller number of shares of Common Stock; or
 - iii. the Company shall authorize the granting to the holders of Common Stock generally of rights or warrants (for a period expiring within 45 days after the record date fixed for a distribution of such rights and warrants) to

- subscribe for or purchase any shares of the Company's capital stock or other capital stock of any class or of any other rights (including any Rights Offerings); or
- iv. of any reclassification of Common Stock (other than a subdivision or combination of the outstanding shares of Common Stock or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company or a compulsory share exchange; or
 - v. of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then the Company shall (i) if any Preferred Securities are outstanding, cause to be filed with the transfer agent for the Preferred Securities, and shall cause to be mailed to the holders of record of the Preferred Securities, at their last addresses as they shall appear upon the stock transfer books of the Trust or (ii) shall cause to be mailed to all Holders at their last addresses as they shall appear in the books and records of the Trust, at least 15 days prior to the applicable record or effective date hereinafter specified, a notice stating (A) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution, rights or warrants or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up (but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the corporate action required to be specified in such notice).

7. *Dividend or Interest Reinvestment Plans.* Notwithstanding anything to the contrary in this Article Thirteen, the issuance of any shares of Common Stock pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Common Stock under any such plan, and the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any employee benefit plan or program of the Company or pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of June 18, 2001, shall not be deemed to constitute an issuance of Common Stock or exercisable, exchangeable or convertible securities by the Company to which any of the adjustment provisions described above applies. There shall also be no adjustment of the Conversion Price in case of the issuance of any stock (or securities convertible into or exchangeable for stock) of the Company except as specifically described in this Article Thirteen.
8. *Certain Additional Rights.* In case the Company shall, by dividend or otherwise, declare or make a distribution on the Common Stock referred to in Section 13.03(a)(iv) or 13.03(a)(v) (including, without limitation, dividends or distributions referred to in the last sentence of Section 13.03(a)(iv)), the Holder, upon the conversion thereof subsequent to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution and prior to the effectiveness of the Conversion Price adjustment in respect of such distribution, shall also be entitled to receive for each share of Common Stock into which the Debentures are converted, the portion of the shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash and assets so distributed applicable to one share of Common Stock; *provided, however,* that, at the election of the Company (whose election shall be evidenced by a resolution of the Board of Directors) with respect to all Holders so converting, the Company may, in lieu of distributing to such Holder any portion of such distribution not consisting of cash or securities of the Company, pay such Holder an amount in cash equal to the fair market value thereof (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors). If any conversion of Debentures described in the immediately preceding sentence occurs prior to the payment date for a distribution to holders of Common Stock which the Holder of Debentures so converted is entitled to receive in accordance with the immediately preceding sentence, the Company may elect (such election to be evidenced by a resolution of the Board of Directors) to distribute to such Holder a due bill for the shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets to which such Holder is so entitled, *provided, that* such due bill (a) meets any applicable requirements of the principal national securities exchange or other market on which the Common Stock is then traded and (b) requires payment or delivery of such shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets no later than the date of payment or delivery thereof to holders of shares of Common Stock receiving such distribution.
9. *Restrictions on Common Stock Issuable Upon Conversion.* Shares of Common Stock to be issued upon conversion of a Debenture in respect of Restricted Preferred Securities shall bear such restrictive legends as the Company may provide in accordance with applicable law.
 - a. If shares of Common Stock to be issued upon conversion of a Debenture in respect of Restricted Preferred Securities are to be registered in a name other than that of the holder of such Preferred Security, then the Person in whose name such shares of Common Stock are to be registered must deliver to the Conversion Agent a certificate satisfactory to the Company and signed by such Person, as to compliance with the restrictions on transfer applicable to such Preferred Security. Neither the Trustee nor any Conversion Agent or Registrar shall be required to register in a name other than that of the holder shares of Common Stock issued upon conversion of any such Debenture in respect of such Preferred Securities not so accompanied by a properly completed certificate.
10. *Trustee Not Responsible for Determining Conversion Price or Adjustments.* Neither the Trustee nor any Conversion Agent shall at any time be under any duty or responsibility to any Holder or to any holder of a Preferred Security to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind of account) of any shares of Common Stock or of any securities or property, which may at any time be issued or delivered upon the conversion of any Debenture; and neither the Trustee nor any Conversion Agent makes any representation with respect

thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property upon the surrender of any Debenture for the purpose of conversion, or, except as expressly herein provided, to comply with any of the covenants of the Company contained in Article Ten or this Article Thirteen.

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

CUMMINS INC.

By: /s/ DONALD TRAPP

Name: Donald Trapp

Title: Vice President -- Treasurer

BNY MIDWEST TRUST COMPANY

By: /s/ C. POTTER

Name: C. Potter

Title: Assistant Vice President

AMENDED AND RESTATED TRUST AGREEMENT

AMONG

CUMMINS INC.
as Depositor,

BNY MIDWEST TRUST COMPANY
as Property Trustee,

THE BANK OF NEW YORK (DELAWARE)
as Delaware Trustee,

AND

THE ADMINISTRATIVE TRUSTEES NAMED HEREIN

Dated as of June 18, 2001

CUMMINS CAPITAL TRUST I

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CUMMINS CAPITAL TRUST I*

Certain Sections of this Trust Agreement
relating to Sections 310 through 318
of the Trust Indenture Act of 1939:

TRUST INDENTURE ACT SECTION	TRUST AGREEMENT SECTION	
Section 310	(a) (1)	8.7
	(a) (2)	8.7
	(a) (4)	2.7(a) (ii)
	(b)	8.8
Section 311	(a)	8.12
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Section 312	(a)	5.7
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	(c)	5.7
Section 313	(a)	8.13(a)
	(c)	10.8
	(d)	8.13(c)
	(a) (4)	8.13(b)
	(b)	8.13(b)
Section 314	(a)	8.14
	(b)	Not Applicable
	(c) (1)	8.15
	(c) (2)	8.15
	(c) (3)	Not Applicable
	(d)	Not Applicable
	(e)	1.1, 8.15
Section 315	(a)	8.1(a), 8.3(a)
	(b)	8.2, 10.8
	(c)	8.1(a)
	(d)	8.1, 8.3
	(e)	Not Applicable
Section 316	(a)	Not Applicable
	(a) (1) (A)	Not Applicable
	(a) (1) (B)	Not Applicable
	(a) (2)	Not Applicable
	(b)	Not Applicable

	(c)	6.7
Section 317	(a) (1)	Not Applicable
	(b)	5.9
Section 318	(a)	10.10

*Note: This reconciliation and tie sheet shall not, for any purpose, be deemed to be a part of the Trust Agreement.

AMENDED AND RESTATED TRUST AGREEMENT, dated as of June 18, 2001 among (i) Cummins Inc., an Indiana corporation (including any successors or assigns, the "Depositor"), (ii) BNY Midwest Trust Company, an Illinois banking corporation, as property trustee (in such capacity, the "Property Trustee" and, in its personal capacity and not in its capacity as Property Trustee, the "Bank"), (iii) The Bank of New York (Delaware), a corporation duly organized and existing under the laws of the State of Delaware, as Delaware trustee (in such capacity, the "Delaware Trustee") and (iv) Tom Linebarger, an individual, Mark Gerstle, an individual, and Donald Trapp, an individual, each of whose address is c/o Cummins Inc., 500 Jackson Street, Columbus, Indiana 47202--3005, (each, an "Administrative Trustee" and, collectively, the "Administrative Trustees" and, collectively with the Property Trustee and Delaware Trustee, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

W I T N E S S E T H:

WHEREAS, the Depositor and certain of the Trustees have heretofore duly declared and established a business trust pursuant to the Delaware Business Trust Act by the entering into a Trust Agreement, dated as of May 3, 2001 (the "Original Trust Agreement"), and by the execution and filing by certain of the Trustees with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on May 3, 2001, attached as Exhibit A, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust (as defined herein) and investing the proceeds thereof in the Debentures (as defined herein);

WHEREAS, as of the date hereof, no interests in the Trust have been issued; and

WHEREAS, the Depositor and the Trustees desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (i) the issuance and sale of the Common Securities (as defined herein) by the Trust to the Depositor, (ii) the issuance and sale of the Preferred Securities (as defined herein) by the Trust pursuant to the Purchase Agreement (as defined herein) and (iii) the acquisition by the Trust from the Depositor of all of the right, title and interest in the Debentures;

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, each party, for the benefit of the other party and for the benefit of the Holders (as defined herein) of the Preferred Securities, hereby amends and restates the Original Trust Agreement in its entirety and agrees as follows:

1.

DEFINED TERMS

1. *Definitions*

. For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- a. the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- b. all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- c. unless the context otherwise requires, any reference to an "Article", "Section" or an "Exhibit" refers to an Article, Section or an Exhibit, as the case may be, of this Trust Agreement; and
- d. the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

"Act" has the meaning specified in Section 6.8.

"Additional Amount" means, with respect to Trust Securities of a given Liquidation Amount and a given period, the amount of Additional Interest (as defined in the Indenture) paid by the Depositor on a Like Amount of Debentures for such period.

"Additional Sums" means, with respect to the Trust Securities, the amount of Additional Sums (as defined in the Indenture) paid by the Depositor on the Debentures.

"Administrative Trustee" means each of Tom Linebarger, Mark Gerstle and Donald Trapp, each solely in his capacity as Administrative Trustee of the Trust formed and continued hereunder and not in his individual capacity, or such Administrative Trustee's successor in interest in such capacity, or any successor in interest in such capacity, or any successor administrative trustee appointed as herein provided.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, *provided, however* that an Affiliate of the Depositor shall not be deemed to include the Trust. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Procedures" means, with respect to any transfer or transaction involving a Global Certificate or beneficial interest therein, the rules and procedures of the Clearing Agency for such security, in each case to the extent applicable to such transaction and as in effect from time to time.

"Bank" has the meaning specified in the preamble to this Trust Agreement.

"Bankruptcy Event" means, with respect to any Person:

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or of any substantial part of its property or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

"Bankruptcy Laws" has the meaning specified in Section 10.9.

"Board of Directors" means either the board of directors of the Depositor or any committee of that board duly authorized to act hereunder.

"Book--Entry Preferred Securities Certificates" means a beneficial interest in the Preferred Securities Certificates, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 5.11.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not (1) a day on which banking institutions in The City of New York or the City of Chicago are authorized or obligated by law or executive order to remain closed or (2) a day on which the Corporate Trust Office of the Property Trustee or the corporate trust office of the Debenture Trustee is closed for business.

"*Certificate Depository Agreement*" means the agreement among the Trust, the Depositor and The Depository Trust Company, as the initial Clearing Agency, dated as of the Closing Date, relating to the Trust Securities Certificates substantially in the form attached as Exhibit B, as the same may be amended and supplemented from time to time.

"*Certificated Preferred Security*" means a Preferred Security in registered, certificated form.

"*Clearing Agency*" means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended, that has been designated to act as depository for the Preferred Securities pursuant to the Certificate Depository Agreement. The Depository Trust Company will be the initial Clearing Agency.

"*Clearing Agency Participant*" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book--entry transfers and pledges of securities deposited with the Clearing Agency.

"*Closing Date*" means a Time of Delivery (as defined in the Purchase Agreement).

"*Commission*" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"*Common Securities Certificate*" means a certificate evidencing ownership of Common Securities, substantially in the form attached as Exhibit C.

"*Common Securities Purchase Agreement*" means the Common Securities Purchase Agreement, dated as of June 18, 2001, between Cummins Capital Trust I and Cummins Inc.

"*Common Security*" means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount with respect to the assets of the Trust of \$50 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Common Stock*" means common stock, \$2.50 par value per share, of the Depositor.

"*Conversion Agent*" has the meaning specified in Section 4.3.

"*Conversion Date*" has the meaning specified in Section 4.3.

"*Conversion Price*" has the meaning specified in Section 4.3.

"*Corporate Trust Office*" means the principal corporate trust office of the Property Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Finance Unit.

"*Current Market Price*", with respect to Common Stock, means, for any day, the closing sale price, regular way, on such day, or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange Consolidated Transactions Tape, or, if Common Stock is not listed or admitted to trading on the New York Stock Exchange on such day, on the principal national securities exchange on which Common Stock is listed or admitted to trading, if Common Stock is listed on a national securities exchange, or the Nasdaq National Market, or, if Common Stock is not quoted or admitted to trading on such quotation system, on the principal quotation system on which Common Stock may be listed or admitted to trading or quoted, or, if not listed or admitted to trading or quoted on any national securities exchange or quotation system, the average of the closing bid and asked prices of Common Stock in the over--the--counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or, if not so available in such manner, as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose or, if not so available in such manner, as otherwise determined in good faith by the Board of Directors.

"*Debenture Event of Default*" means an "*Event of Default*" as defined in the Indenture.

"*Debenture Redemption Date*" means, with respect to any Debentures to be redeemed under the

Indenture, the date fixed for redemption thereof under the Indenture.

"*Debenture Trustee*" means the Person identified as the "*Trustee*" in the Indenture, solely in its capacity as Trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or successor Trustee appointed as provided in the Indenture.

"*Debentures*" means up to \$309,278,400 aggregate principal amount of the Depositor's 7% junior subordinated convertible debentures issued pursuant to the Indenture.

"*Definitive Preferred Securities Certificates*" means either or both (as the context requires) of (a) Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 5.11(a) and (b) Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 5.13.

"*Delaware Business Trust Act*" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801, *et seq.*, as it may be amended from time to time.

"*Delaware Trustee*" means the Person identified as the "Delaware Trustee" in the preamble to this Trust Agreement solely in its capacity as Delaware Trustee of the Trust formed and continued hereunder and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware trustee appointed as herein provided.

"*Depositor*" has the meaning specified in the preamble to this Trust Agreement.

"*Direct Action*" has the meaning specified in Section 6.8.

"*Distribution Date*" has the meaning specified in Section 4.1(a).

"*Distributions*" means amounts payable in respect of the Trust Securities as provided in Section 4.1.

"*Early Termination Event*" has the meaning specified in Section 9.2.

"*Event of Default*" means the occurrence of a Debenture Event of Default, whatever the reason for such Debenture Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

"*Expiration Date*" has the meaning specified in Section 9.1.

"*Global Certificate*" means a Preferred Security that is registered in the Security Register in the name of a Clearing Agency or a nominee thereof.

"*Guarantee*" means the Guarantee Agreement executed and delivered by the Depositor and BNY Midwest Trust Company, an Illinois banking corporation, as guarantee trustee, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the Holders of the Preferred Securities, as amended from time to time.

"*Holder*" means a Person in whose name a Trust Securities Certificate representing a Trust Security is registered, such Person being a beneficial owner within the meaning of the Delaware Business Trust Act.

"*Indenture*" means the junior subordinated convertible indenture, dated as of June 18, 2001 between the Depositor and the Debenture Trustee, as amended or supplemented from time to time.

"*Lien*" means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

"*Like Amount*" means (a) with respect to a redemption of any Trust Securities, Trust Securities having an aggregate Liquidation Amount equal to the principal amount of Debentures to be contemporaneously redeemed in accordance with the Indenture, the proceeds of which will be used to pay the applicable Redemption Price of such Trust Securities, (b) with respect to a distribution of Debentures to Holders of Trust Securities in connection with a dissolution or liquidation of the Trust, Debentures having a principal amount equal to the aggregate Liquidation Amount of the Trust Securities of the Holder to whom such Debentures are distributed, and (c) with respect to any distribution of Additional Amounts to Holders of Trust Securities, Debentures having a principal amount

equal to the Liquidation Amount of the Trust Securities in respect of which such distribution is made.

"*Liquidated Damages*" has the meaning specified in the Indenture.

"*Liquidation Amount*" means an amount with respect to the assets of the Trust equal to \$50 per Trust Security.

"*Liquidation Date*" means each date on which Debentures or cash are to be distributed to Holders of Trust Securities in connection with a termination and liquidation of the Trust pursuant to Section 9.4(a).

"*Liquidation Distribution*" has the meaning specified in Section 9.4(d).

"*1940 Act*" means the Investment Company Act of 1940, as amended.

"*Notice of Conversion*" means the notice given by a holder of Trust Securities to the Conversion Agent directing the Conversion Agent to exchange such Trust Security for Debentures and to convert such Debentures into Common Stock on behalf of such holder. Such notice is substantially in the form set forth in Exhibit G.

"*Officers' Certificate*" means a certificate signed by (i) the Chairman of the Board, a Vice Chairman, the President or a Vice President, and by (ii) the Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary, of the Depositor, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 8.15 shall be the principal executive, financial or accounting officer of the Depositor. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant of condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for the Trust, the Property Trustee or the Depositor, and who may be an employee of any thereof. Any Opinion of Counsel delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(a) a statement that each individual signing the Opinion of Counsel has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each individual in rendering the Opinion of Counsel;

(c) statement that each individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

"*Optional Redemption Price*" means, except as set forth below, with respect to the Preferred Securities, the following percentages of the Liquidation Amounts thereof, and accumulated and unpaid Distributions, if any, to the date fixed for redemption if redeemed during the twelve--month period commencing June 15, in each of the following years indicated:

<u>Year</u>	<u>Redemption Price</u>	<u>Year</u>	<u>Redemption Price</u>
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2006	103.50%	2009	101.40%
2007	102.80%	2010	100.70%
2008	102.10%	2011 and thereafter	100.00%

In the event of a redemption of Trust Securities upon the occurrence of a Special Event (as set forth in the Indenture), Trust Securities shall be redeemed at the redemption price of \$50 per Trust Security and all accumulated and unpaid Distributions, if any to the date fixed for redemption.

"*Original Trust Agreement*" has the meaning specified in the recitals to this Trust Agreement.

"*Outstanding*", when used with respect to Trust Securities, means, as of the date of determination, all Trust Securities theretofore executed and delivered under this Trust Agreement, except:

(a) Trust Securities theretofore canceled by the Security Registrar or delivered to the Security Registrar for cancellation or tendered for conversion;

(b) Trust Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the Holders of such Trust Securities; provided that, if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement; and

(c) Trust Securities which have been paid or in exchange for or in lieu of which other Trust Securities have been executed and delivered pursuant to Section 5.5;

provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Trust Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Trust Securities owned by the Depositor, any Trustee or any Affiliate of the Depositor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Trust Securities that an officer of such Trustee involved in the administration of this Trust Agreement actually knows to be so owned shall be so disregarded and (b) the foregoing shall not apply at any time when all of the Outstanding Trust Securities are owned by the Depositor, one or more of the Trustees and/or any such Affiliate. Trust Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Security Registrar the pledgee's right so to act with respect to such Trust Securities and that the pledgee is not the Depositor or any Affiliate of the Depositor.

"*Owner*" means each Person who is the beneficial owner of a Book--Entry Preferred Securities Certificate as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

"*Paying Agent*" means any paying agent or co--paying agent appointed pursuant to Section 5.9.

"*Payment Account*" means a segregated non--interest bearing corporate trust account maintained by the Property Trustee with the Bank in its trust department for the benefit of the Securityholders in which all amounts paid in respect of the Debentures will be held and from which the Property Trustee shall make payments to the Securityholders in accordance with Section 4.1.

"*Person*" means any individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

"*Preferred Securities Certificate*" means a certificate evidencing ownership of Preferred Securities, substantially in the form attached as Exhibit D.

"*Preferred Security*" means an undivided beneficial interest in the assets of the Trust,

having a Liquidation Amount with respect to the assets of the Trust of \$50 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"*Property Trustee*" means the commercial bank or trust company identified as the "Property Trustee" in the preamble to this Trust Agreement solely in its capacity as Property Trustee of the Trust heretofore formed and continued hereunder and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

"*Purchase Agreement*" means the Purchase Agreement, dated as of June 12, 2001 among the Trust, the Depositor and the Purchasers named therein.

"*Redemption Date*" means, with respect to any Trust Security to be redeemed, each Debenture Redemption Date.

"*Redemption Price*" means, with respect to any Trust Security, \$50 per Trust Security, plus accumulated and unpaid Distributions (including any Additional Amounts) to the date of redemption.

"*Registration Rights Agreement*" means the Registration Rights Agreement, dated June 18, 2001 among the Depositor, the Trust, and the Purchasers named in the Purchase Agreement.

"*Relevant Trustee*" has the meaning specified in Section 8.9.

"*Restricted Securities*" means all Preferred Securities required pursuant to Section 5.4 to bear any Restricted Securities Legend. Such term includes the Global Certificate.

"*Restricted Securities Certificate*" means a certificate substantially in the form set forth in Exhibit E.

"*Restricted Securities Legend*" has the meaning specified in Section 5.15(a).

"*Rule 144A Preferred Securities*" has the meaning specified in Section 5.2.

"*Security Register*" and "*Security Registrar*" have the respective meanings specified in Section 5.4.

"*Securityholder*" has the same meaning as "Holder."

"*Successor Delaware Trustee*" has the meaning specified in Section 8.9.

"*Successor Property Trustee*" has the meaning specified in Section 8.9.

"*Successor Securities*" has the meaning specified in Section 9.5.

"*Trust*" means the Delaware business trust continued hereby and identified on the cover page of this Trust Agreement.

"*Trust Agreement*" means this Amended and Restated Trust Agreement, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including all exhibits hereto, including, for all purposes of this Trust Agreement any such modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Trust Agreement and any such modification, amendment or supplement, respectively.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "*Trust Indenture Act*" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"*Trust Property*" means (a) the Debentures, (b) any cash on deposit in, or owing to, the Payment Account and (c) all proceeds and rights in respect of the foregoing to be held by the Property Trustee pursuant to the terms of this Trust Agreement for the benefit of the Securityholders.

"*Trust Securities Certificate*" means any one of the Common Securities Certificates, the Global Certificates or the Certificated Preferred Securities.

"*Trust Security*" means any one of the Common Securities or the Preferred Securities.

"Trustees" means, collectively, the Property Trustee, the Delaware Trustee and the Administrative Trustees.

"Unrestricted Securities Certificate" means a certificate substantially in the form set forth in Exhibit F.

2.

ESTABLISHMENT OF THE TRUST

1. *Name*

. The Trust created hereby shall be known as "Cummins Capital Trust I," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Trust Securities and the other Trustees, in which name the Trustees may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

2. *Office of the Delaware Trustee; Principal Place of Business*

. The address of the Delaware Trustee in the State of Delaware is White Clay Center, Route 273, Newark, Delaware 19711, Attention: Corporate Trust, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Securityholders and the Depositor. The principal executive office of the Trust is c/o Cummins Inc., 500 Jackson Street, Box 3005 (Mail code 60118), Columbus, Indiana 47202--3005.

3. *Organizational Expenses*

. The Depositor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Depositor shall make no claim upon the Trust Property for the payment of such expenses.

4. *Issuance of the Preferred Securities*

. On June 12, 2001 the Depositor, both on its own behalf and on behalf of the Trust pursuant to the Original Trust Agreement, executed and delivered the Purchase Agreement. On each Closing Date, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver to the Purchasers named in the Purchase Agreement Preferred Securities Certificates, in an aggregate amount acquired by such Purchasers on such Closing Date pursuant to the Purchase Agreement, against receipt of the purchase price of such Preferred Securities of \$50 per Preferred Security, which amount the Administrative Trustees shall promptly deliver to the Property Trustee.

5. *Subscription and Purchase of Debentures; Issuance of the Common Securities*

. On each Closing Date, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver to the Depositor the Common Securities Certificates registered in the name of the Depositor, in the aggregate amount acquired by the Depositor on such Closing Date pursuant to the Common Securities Purchase Agreement against receipt of the purchase price of such Common Securities from the Depositor in the amount of \$50 per Common Security, which amount the Administrative Trustees shall promptly deliver to the Property Trustee. Contemporaneously therewith, the Administrative Trustees, on behalf of the Trust, shall on such Closing Date subscribe to and purchase from the Depositor the Debentures, registered in the name of the Property Trustee (in its capacity as such) and having an aggregate principal amount equal to the aggregate Liquidation Amount of Preferred Securities and Common Securities acquired on such Closing Date by the Purchasers and the Depositor, respectively, and, in satisfaction of the purchase price for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of the amounts delivered on such Closing Date to the Property Trustee pursuant to (i) the second sentence of Section 2.4, and (ii) the first sentence of this Section 2.5.

6. *Declaration of Trust*

. The exclusive purposes and functions of the Trust are (a) to issue and sell Trust Securities and use the proceeds from such sale to acquire the Debentures, (b) to

distribute the Trust's income as provided in this Trust Agreement and (c) to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States Federal income tax purposes as a grantor trust. The Depositor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Trust and the Securityholders. The Administrative Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Property Trustee or the Administrative Trustees set forth herein. The Delaware Trustee shall be one of the Trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Business Trust Act and shall not be entitled to exercise any powers or have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee described in this Trust Agreement.

7. *Authorization to Enter into Certain Transactions*

. The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in Section 2.6 and paragraph (b) of this Section, and in accordance with the following provisions (i) and (ii), the Trustees shall have the exclusive power, duty and the authority to cause the Trust to engage in the following activities:

- i. As among the Trustees, each Administrative Trustee shall have the power and authority to act on behalf of the Trust, acting alone or jointly, with respect to the following matters:
 - A. to issue and sell the Trust Securities, *provided, however*, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, *provided, further*, that there shall be no interests in the Trust other than the Trust Securities, and the issuance of Trust Securities shall be limited to simultaneous issuances of both Preferred Securities and Common Securities on each Closing Date in accordance with the provisions of the Purchase Agreement and the Common Securities Purchase Agreement subject to the issuance of Trust Securities pursuant to Section 5.5 and Successor Securities pursuant to Section 9.5;
 - B. to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the Registration Rights Agreement, the Common Securities Purchase Agreement and the Certificate Depository Agreement and such other agreements as may be necessary or incidental to the purposes and function of the Trust;
 - C. to assist in the registration of the Preferred Securities under the Securities Act of 1933, as amended (the "Securities Act"), and under state securities or blue sky laws, and the qualification of this Trust Agreement as a trust indenture under the Trust Indenture Act;
 - D. to assist in the listing of the Preferred Securities upon such securities exchange or exchanges as shall be determined by the Depositor and the registration of the Preferred Securities under the Securities Exchange Act of 1934, as amended, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing (only to the extent that such listing or registration is requested by the Depositor);
 - E. to appoint a Paying Agent, a Security Registrar and an authenticating agent in accordance with this Trust Agreement;
 - F. to the extent provided in this Trust Agreement, to wind up the affairs of and liquidate the Trust and prepare, execute and file the certificate of cancellation with the Secretary of State of the State of Delaware;
 - G. unless otherwise determined by the Depositor, the Property Trustee or the Administrative Trustees, or as otherwise required by the Delaware Business Trust Act or the Trust Indenture Act, to execute on behalf of

the Trust (either acting alone or together with any other Administrative Trustees) any documents that the Administrative Trustees have the power to execute pursuant to this Trust Agreement; and

H. to take any action incidental to the foregoing as the Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement including, but not limited to:

(x) causing the Trust not to be deemed to be an "investment company" required to be registered under the 1940 Act;

(y) causing the Trust to be classified for United States Federal income tax purposes as a grantor trust; and

(z) cooperating with the Depositor to ensure that the Debentures will be treated as indebtedness of the Depositor for United States Federal income tax purposes;

provided that such action does not adversely affect in any material respect the interests of Securityholders except as otherwise provided in Section 10.2(a).

- ii. As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:
- A. the establishment and maintenance of the Payment Account;
 - B. the receipt of and taking legal title to the Debentures;
 - C. the collection of interest, principal and any other payments made in respect of the Debentures in the Payment Account;
 - D. the distribution from the Trust Property of amounts owed to the Securityholders in respect of the Trust Securities;
 - E. the exercise of all of the rights, powers and privileges of a holder of the Debentures;
 - F. the sending of notices of default, other notices and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;
 - G. the distribution of the Trust Property in accordance with the terms of this Trust Agreement;
 - H. to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;
 - I. after an Event of Default, the taking of any action incidental to the foregoing as is necessary or advisable or as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder);
 - J. subject to this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 2.7(a)(i); and
 - K. to act as Paying Agent and/or Security Registrar to the extent appointed as such hereunder.
- a. So long as this Trust Agreement remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trust shall not, and the Trustees shall not and shall cause the Trust not to (i) invest any proceeds received by the Trust from holding the Debentures (rather, the Trustees shall distribute all such proceeds to the Securityholders pursuant to the terms of this Trust Agreement and the Trust Securities), acquire any investments or engage in any activities not authorized by this Trust Agreement, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, except as expressly provided herein, (iii) take any action that would cause the Trust to fail or cease to qualify as a "grantor trust" for United States Federal income tax purposes, (iv) make any loans or incur any indebtedness for borrowed money or issue any other debt, (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, (vi) possess any power or otherwise act in such a

way as to vary the Trust assets or the terms of the Trust Securities in any way whatsoever except as permitted by the terms of this Trust Agreement, or (vii) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Trust Securities. The Administrative Trustees shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

- b. In connection with the issue and sale of the Preferred Securities, the Depositor shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following actions (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):
- i. to file pursuant to the Registration Rights Agreement with the Commission and to execute on behalf of the Trust a registration statement on the appropriate form in relation to the Preferred Securities, including any amendments thereto;
 - ii. to determine the States and foreign jurisdictions in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by or on behalf of the Trust, and advise the Trustees of actions they must take on behalf of the Trust, and prepare for execution and filing any documents to be executed and filed by the Trust or on behalf of the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such States and foreign jurisdictions;
 - iii. to the extent necessary, to prepare for filing by the Trust with the Commission and to execute on behalf of the Trust a registration statement on Form 8--A relating to the registration of the Preferred Securities under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, including any amendments thereto (it being understood that neither the Trust nor the Depositor has any obligation under the Indenture, the Purchase Agreement or the Trust Agreement to register any Trust Securities under the Securities Exchange Act of 1934, as amended, or to list any Trust Securities on any securities exchange); and
 - iv. any other actions necessary or incidental to carry out any of the foregoing activities.
- c. Notwithstanding anything herein to the contrary, the Administrative Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" required to be registered under the 1940 Act, or taxed as a corporation for United States Federal income tax purposes and so that the Debentures will be treated as indebtedness of the Depositor for United States Federal income tax purposes. In this connection, the Depositor and the Administrative Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Trust Agreement, that each of the Depositor and the Administrative Trustees determines in their discretion to be necessary or desirable for such purposes, so long as such action does not adversely affect in any material respect the interests of the Holders of the Preferred Securities except as otherwise provided in Section 10.2(a).

8. *Assets of Trust*

. The assets of the Trust shall consist of only the Trust Property.

9. *Title to Trust Property*

. Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee for the benefit of the Trust and the Securityholders in accordance with this Trust Agreement. Each Securityholder shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

10. *Responsibilities of the Depositor*

. In connection with the issue and sale of the Preferred Securities, the Depositor is hereby appointed an agent of the Trust pursuant to Section 3806(b)(7) of the Business Trust Act and in such capacity shall have the exclusive right and

responsibility to engage in the following activities:

- a. to prepare a prospectus relating to the offering of Preferred Securities by the Trust and to prepare for filing by the Trust with the Commission, and execute on behalf of the Trust, a registration statement on Form S-3 or on another appropriate form (including, if appropriate, a registration statement under Rule 462(b) of the Securities Act) and any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Preferred Securities;
- b. to determine the States in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such States;
- c. to negotiate the terms of, and execute on behalf of the Trust, the Purchase Agreement providing for the sale of the Preferred Securities; and
- d. to execute and deliver letters, documents or instruments on behalf of the Trust with any Clearing Agency.

The Depositor must exercise the powers set forth in this Section 2.10 in a manner that is consistent with the purposes and functions of the Trust set out in Section 2.6, and the Depositor shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 2.6.

Subject to this Section 2.10, the Depositor shall have none of the powers or the authority of the Property Trustee set forth in Article 8.

11. *Certain Covenants of the Depositor*

- a. On each Closing Date, the Depositor will purchase all of the Common Securities issued by the Trust that shall represent an aggregate Liquidation Amount of no less than 3% of the aggregate Liquidation Amount of the Trust Securities being purchased on such Closing Date;
- b. The Depositor shall maintain directly or indirectly 100% ownership of the Common Securities, *provided that* certain successors that are permitted by the Indenture may succeed to the Guarantor's ownership of the Common Securities;
- c. The Depositor shall not voluntarily terminate, wind-up or liquidate the Trust, except (i) in connection with a distribution of the Debentures to the Holders in liquidation of the Trust or (ii) in connection with certain mergers, consolidations or amalgamations permitted by this Trust Agreement; and
- d. The Depositor will use its reasonable efforts, consistent with the terms and provisions of this Trust Agreement, to cause the Trust to remain classified as a grantor trust and not as an association taxable as a corporation for United States Federal income tax purposes.

12. *Guarantee of Payment of Trust Obligations*

- a. Subject to the terms and conditions of this Section 2.12, the Holder of Common Securities hereby irrevocably and unconditionally guarantees to each Person to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries") the full payment, when and as due, of any and all costs, expenses or liabilities of the Trust (other than obligations of the Trust to make payments to holders of a Trust Security pursuant to the terms thereof) ("Obligations") to such Beneficiaries.
- b. The agreement of the Depositor in Section 2.12(a) is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.
- c. The agreement of the Depositor set forth in Section 2.12(a) shall terminate and be of no further force and effect upon the later of (a) the date on which full payment has been made of all amounts payable to all Holders of all the Preferred Securities (whether upon redemption, liquidation, exchange or otherwise) and (b) the date on which there are no Beneficiaries remaining; *provided, however,* that such agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any Holder of Preferred Securities or any Beneficiary must restore payment of any sums paid under the Preferred Securities, under any Obligation, under the Preferred Securities Guarantee or under this Trust Agreement for any reason whatsoever. Such agreement is continuing, irrevocable, unconditional and absolute.

3.

PAYMENT ACCOUNT

1. *Payment Account*

. On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. The Property Trustee and any agent of the Property Trustee shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Trust Agreement. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Securityholders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

- a. The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest on, and any other payments or proceeds with respect to, the Debentures. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

4.

DISTRIBUTIONS; REDEMPTION; EXCHANGE; CONVERSION

1. *Distributions*

. Distributions on the Trust Securities shall be cumulative, and shall accrue from the date of original issuance, or the most recent Distribution Date (as defined herein) and, except in the event that the Depositor exercises its right to defer the payment of interest on the Debentures pursuant to the Indenture, shall be payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing on September 15, 2001 (which dates correspond to the interest payment dates on the Debentures), when, as and if available for payment by the Property Trustee, as further described in paragraph (c) of this Section 4.1. If any date on which Distributions are otherwise payable on the Trust Securities is not a Business Day, then the payment of such Distributions shall be made on the next succeeding day which is a Business Day (and no interest shall accrue for the period from and after such date until the next succeeding Business Day) with the same force and effect as if made on such date (each date on which Distributions are payable in accordance with this Section 4.1(a), a "Distribution Date").

- a. The Trust Securities represent undivided beneficial interests in the Trust Property, and the Distributions on the Trust Securities shall be payable at a rate of 7% per annum of the Liquidation Amount of the Trust Securities, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The amount of Distributions payable for any period shall be computed on the basis of a 360--day year of twelve 30--day months. For periods less than a full month, Distributions shall reflect interest on Debentures computed on the basis of the actual number of elapsed days based on a 360--day year. The amount of Distributions payable for any period shall include the Additional Amounts, if any.
- b. Distributions on the Trust Securities shall be made by the Property Trustee from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Distributions.
- c. Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Security Register for the Trust Securities on the relevant record date, which shall be the date which is the fifteenth day (whether or not a Business Day) next preceding such Distribution Date.

2. *Optional Redemption, Mandatory Redemption and Special Event Redemption*

. (i) Upon an optional redemption (as set forth in the Indenture) of Debentures, the proceeds from such redemption shall be applied to redeem Trust Securities having an aggregate Liquidation Amount equal to the aggregate principal amount of the Debentures so redeemed by the Depositor at the Optional Redemption Price, (ii) upon a mandatory redemption or a special event redemption (as set forth in the Indenture) of Debentures, the proceeds from such redemption shall be applied to redeem Trust Securities having an aggregate Liquidation Amount equal to the

aggregate principal amount of the Debentures so redeemed by the Depositor, at the Redemption Price.

- a. Notice of redemption (which notice will be irrevocable) shall be given by the Property Trustee by first--class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to the Depositor and each Holder of Trust Securities to be redeemed, at such Holder's address as it appears in the Security Register. All notices of redemption shall state:
 - i. the Redemption Date;
 - ii. the Redemption Price or the Optional Redemption Price, as the case may be;
 - iii. the CUSIP number;
 - iv. if less than all of the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities to be redeemed;
 - v. (A) that a Holder of Preferred Securities who desires to convert such Preferred Securities called for redemption must satisfy the requirements for conversion contained in Section 4.3 below and (B) the Conversion Price;
 - vi. that on the Redemption Date the Redemption Price or the Optional Redemption Price, as the case may be, will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accrue on and after said date; and
 - vii. the place or places where such Trust Securities are to be surrendered for payment of the Redemption Price or the Optional Redemption Price, as the case may be.
- b. The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price or the Optional Redemption Price, as the case may be, with the proceeds from the contemporaneous redemption of Debentures. Redemptions of the Trust Securities shall be made and the Redemption Price or the Optional Redemption Price, as the case may be, shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price or the Optional Redemption Price, as the case may be.
- c. If the Property Trustee gives a notice of redemption pursuant to Section 4.2(b) in respect of any Preferred Securities, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, so long as and to the extent the Preferred Securities are in book--entry--only form, irrevocably deposit with the Clearing Agency for the Preferred Securities funds sufficient to pay the applicable Redemption Price. If the Preferred Securities are no longer in book--entry only form, the Property Trustee, subject to Section 4.2(c), will irrevocably deposit with the Paying Agent funds sufficient to pay the applicable Redemption Price or Optional Redemption Price, as the case may be, on such Preferred Securities held in certificated form and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price or the Optional Redemption Price, as the case may be, to the Holders thereof upon surrender of their Preferred Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Security Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then, upon the date of such deposit, all rights of Securityholders holding Trust Securities so called for redemption will cease, except the right of such Securityholders to receive the Redemption Price or the Optional Redemption Price, as the case may be, but without interest on such Optional Redemption Price or Redemption Price, and such Trust Securities will cease to be Outstanding. In the event that any date on which any Redemption Price or the Optional Redemption Price, as the case may be, is payable is not a Business Day, then payment of the Redemption Price or the Optional Redemption Price, as the case may be, payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date.
- d. If less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Trust Securities to be redeemed shall be allocated on a pro rata basis (based on Liquidation Amounts) among the Common Securities and the Preferred Securities that are to be redeemed. The particular Preferred Securities to be redeemed shall be

selected not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred Securities not previously called for redemption, by lot or by such other method as the Property Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to \$50 or an integral multiple of \$50 in excess thereof) of the Liquidation Amount of the Preferred Securities. The Property Trustee shall promptly notify the Security Registrar and the Conversion Agent in writing of the Preferred Securities selected for redemption and, in the case of any Preferred Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed; it being understood that, in the case of Preferred Securities registered in the name of and held of record by the Clearing Agency (or any successor) or any nominee of the Clearing Agency or any successor, the distribution of the proceeds of such redemption will be made in accordance with the procedures of the Clearing Agency or its nominee. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Preferred Securities shall relate, in the case of any Preferred Securities redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Preferred Securities which has been or is to be redeemed. In the event of any redemption in part, the Trust shall not be required to (i) issue, register the transfer of or exchange any Preferred Security during a period beginning at the opening of business 15 days before any selection for redemption of Preferred Securities and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all holders of Preferred Securities to be so redeemed or (ii) register the transfer of or exchange on any Preferred Securities so selected for redemption, in whole or in part, except for the unredeemed portion of any Preferred Securities being redeemed in part.

3. *Conversion*

. The Holders of Trust Securities, subject to the limitations set forth in this Section, shall have the right at any time prior to the close of business on June 13, 2031 (or, in the case of Trust Securities called for redemption, prior to the close of business on the Business Day prior to the Redemption Date), at their option, to cause the Conversion Agent to convert Trust Securities, on behalf of the converting Holders, into shares of Common Stock in the manner described herein on and subject to the following terms and conditions:

- i. The Trust Securities will be convertible into fully paid and nonassessable shares of Common Stock pursuant to the Holder's direction to the Conversion Agent to exchange such Trust Securities for a Like Amount of the Debentures, and immediately convert such amount of Debentures into fully paid and nonassessable shares of Common Stock at the conversion rate then applicable to the Debentures after taking account of any adjustments to such rate provided for in the Indenture (as so adjusted, the "Conversion Price").
- ii. In order to convert Trust Securities into Common Stock, the Holder of such Trust Securities shall submit to the Conversion Agent an irrevocable Notice of Conversion to convert Trust Securities on behalf of such Holder, together, if the Trust Securities are in certificated form, with such certificates. The Notice of Conversion shall (x) set forth the number of Trust Securities to be converted and the name or names, if other than the Holder, in which the shares of Common Stock should be issued and (y) direct the Conversion Agent (a) to exchange such Trust Securities for a portion of the Debentures held by the Property Trustee (at the rate of exchange specified in the preceding paragraph) and (b) to immediately convert such Debentures, on behalf of such Holder, into Common Stock (at the conversion rate specified in the preceding paragraph). The Conversion Agent shall notify the Property Trustee in writing of the Holder's election to exchange Trust Securities for a portion of the Debentures held by the Property Trustee and the Property Trustee shall, upon receipt of such notice, deliver to the Conversion Agent the appropriate principal amount of Debentures for exchange in accordance with this Section. The Conversion Agent shall thereupon notify the Depositor of the Holder's election to convert such Debentures into shares of Common Stock. Holders of Trust Securities at the close of business on a Distribution payment record date will be entitled to receive the Distribution paid on such Trust Securities on the corresponding Distribution Date notwithstanding the conversion of

such Trust Securities following such record date but prior to such Distribution Date. Except as provided above, neither the Trust nor the Depositor will make, or be required to make, any payment, allowance or adjustment upon any conversion on account of any accumulated and unpaid Distributions whether or not in arrears accrued on the Trust Securities surrendered for conversion, or on account of any accumulated and unpaid dividends on the shares of Common Stock issued upon such conversion. Trust Securities shall be deemed to have been converted immediately prior to the close of business on the day on which an irrevocable Notice of Conversion relating to such Trust Securities is received by the Conversion Agent in accordance with the foregoing provision (the "Conversion Date"). The Person or Persons entitled to receive the Common Stock issuable upon conversion of the Debentures shall be treated for all purposes as the record holder or holders of such Common Stock on the date of conversion. As promptly as practicable on or after the Conversion Date, the Depositor shall issue and deliver, or shall cause to be issued and delivered, at the office of the Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share pursuant to Section 4.3(iv) to the Person or Persons entitled to receive the same, unless otherwise directed by the Holder in the notice of conversion, and the Conversion Agent shall distribute such certificate or certificates and cash to such Person or Persons.

- iii. The Depositor initially appoints BNY Midwest Trust Company not in its individual capacity but solely as conversion agent (the "Conversion Agent") for the purpose of effecting the conversion of Trust Securities in accordance with this Section. In effecting the conversion and transactions described in this Section, the Conversion Agent shall be acting as agent of the Holders of Trust Securities directing it to effect such conversion transactions. The Conversion Agent is hereby authorized to (i) exchange Trust Securities from time to time for Debentures held by the Trust in connection with the conversion of such Trust Securities in accordance with this Section and (ii) convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Section and to deliver to the Property Trustee any new Debenture or Debentures for any resulting unconverted principal amount delivered to the Conversion Agent by the Debenture Trustee.
- iv. No fractional shares of Common Stock will be issued as a result of conversion, but, in lieu thereof, such fractional interest will be paid in cash by the Depositor to the Conversion Agent in an amount equal to the Current Market Price of the fractional share of the Common Stock, and the Conversion Agent will in turn make such payment to the Holder or Holders of Trust Securities so converted.
- v. Nothing in this Section 4.3 shall limit the requirement of the Trust to withhold taxes pursuant to the terms of the Trust Securities or as set forth in this Agreement or otherwise required of the Property Trustee or by law or the Trust to pay any amounts on account of such withholdings.

4. *Subordination of Common Securities*

. Payment of Distributions (including Additional Amounts, if applicable) on, and the Redemption Price (or the applicable Optional Redemption Price) of, the Trust Securities, as applicable, shall be made pro rata based on the Liquidation Amount of such Trust Securities; *provided, however*, that if on any Distribution Date or Redemption Date an Event of Default shall have occurred and be continuing, (i) no payment of any Distribution (including Additional Amounts, if applicable) on, or the Redemption Price of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including Additional Amounts, if applicable) on all Outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the Redemption Price (or the applicable Optional Redemption Price) the full amount of such Redemption Price on all Outstanding Preferred Securities then called for Redemption, shall have been made or provided for, and (ii) all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (or the applicable Additional Amounts, if applicable) on, or the Redemption Price (or the applicable Optional

Redemption Price) of, Preferred Securities then due and payable.

5. *Payment Procedures*

. Payments in respect of the Preferred Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Security Register or, if the Preferred Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, in accordance with the Certificate Depository Agreement, on the applicable Distribution Dates. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Holder of the Common Securities.

6. *Tax Returns and Reports*

. The Administrative Trustees shall prepare (or cause to be prepared), at the Depositor's expense, and file (or cause to be filed) all United States Federal, State and local tax and information returns and reports required to be filed by or in respect of the Trust. In this regard, the Administrative Trustees shall (a) prepare and file (or cause to be prepared or filed) Form 1041 or the appropriate Internal Revenue Service form required to be filed in respect of the Trust in each taxable year of the Trust and (b) prepare and furnish (or cause to be prepared and furnished) to each Securityholder a Form 1099 or the appropriate Internal Revenue Service form required to be furnished to such Securityholder or the information required to be provided on such form. The Administrative Trustees shall provide (or cause to be provided) the Depositor and the Property Trustee with a copy of all such returns, reports and schedules promptly after such filing or furnishing. The Trustees shall comply with United States Federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Securityholders under the Trust Securities.

7. *Payment of Taxes, Duties, Etc. of the Trust*

. Upon receipt under the Debentures of Additional Sums, the Property Trustee, upon receipt of written notice from the Depositor or the Administrative Trustees, shall promptly pay from such Additional Sums any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes), as indicated in such notice, imposed on the Trust by the United States or any other taxing authority.

8. *Payments under Indenture*

. Any amount payable hereunder to any Holder of Preferred Securities (and any Owner with respect thereto) shall be reduced by the amount of any corresponding payment such Holder (or Owner) has directly received pursuant to Section 5.08 of the Indenture in accordance with the terms of Section 6.8 hereof.

5.

TRUST SECURITIES CERTIFICATES

1. *Initial Ownership*

. Upon the formation of the Trust and until the issuance of the Trust Securities, and at any time during which no Trust Securities are Outstanding, the Depositor shall be the sole beneficial owner of the Trust.

2. *The Trust Securities Certificates*

. The Preferred Securities Certificates shall be issued in minimum denominations of \$50 Liquidation Amount and integral multiples of \$50 in excess thereof, and the Common Securities Certificates shall be issued in denominations of \$50 Liquidation Amount and integral multiples thereof. The consideration received by the Trust for the issuance of the Trust Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust. Preferred Securities initially sold to qualified institutional buyers in reliance on Rule 144A under the Securities Act ("Rule 144A Preferred Securities") initially will be represented by one or more certificates in registered, global form (collectively, the "Global Certificates"). The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of at least one Administrative Trustee and the Preferred Securities Certificates shall be authenticated by the Property

Trustee. Trust Securities Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefit of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.4.

3. *Delivery of Trust Securities Certificates*

. On the Closing Date, the Administrative Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.4 and 2.5, to be executed on behalf of the Trust and delivered to or upon the written order of the Depositor, signed by its Chairman of the Board, any Vice Chairman, its President, any Executive Vice President or any Vice President, Treasurer or Assistant Treasurer or Controller without further corporate action by the Depositor, in authorized denominations.

A Common Securities Certificate shall not be valid until executed by at least one Administrative Trustee. A Preferred Securities Certificate shall not be valid until executed by at least one Administrative Trustee and authenticated by the manual signature of an authorized signatory of the Property Trustee. The manual signature of the Property Trustee shall be conclusive evidence that the Preferred Securities Certificate has been authenticated under this Trust Agreement. Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Preferred Securities Certificates for original issue. The signature of any Administrative Trustee on the Trust Securities Certificates may be manual or facsimile.

The Property Trustee may appoint an authenticating agent reasonably acceptable to the Administrative Trustees to authenticate Preferred Securities Certificates. An authenticating agent may authenticate Preferred Securities Certificates whenever the Property Trustee may do so. Each reference in this Trust Agreement to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Depositor or an Affiliate with respect to the authentication of Preferred Securities.

4. *Registration of Transfer and Exchange of Preferred Securities; Restrictions on Transfer*

. The Security Registrar shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a Security Register in which, subject to such reasonable regulations as it may prescribe, the Security Registrar shall provide for the registration of Preferred Securities Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Preferred Securities Certificates as herein provided. The Property Trustee shall be the initial Security Registrar.

Subject to the other provisions of this Trust Agreement regarding restrictions on transfer, upon surrender for registration of transfer of any Preferred Security at an office or agency of the Depositor designated pursuant to Section 5.8 for such purpose, the Depositor shall execute, and the Property Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Preferred Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Trust Agreement.

At the option of the Holder, and subject to the other provisions of this Section 5.4, Preferred Securities may be exchanged for other Preferred Securities of any authorized denomination and of a like Liquidation Amount, upon surrender of the Preferred Securities to be exchanged at any such office or agency. Whenever any Preferred Securities are so surrendered for exchange, the Depositor shall execute, and the Property Trustee shall authenticate and deliver, the Preferred Securities

which the Holder making the exchange is entitled to receive.

All Preferred Securities issued upon any registration of transfer or exchange of Preferred Securities shall be the valid obligations of the Trust, evidencing the same rights, and entitled to the same benefits under this Trust Agreement, as the Securities surrendered upon such registration of transfer or exchange.

Every Preferred Security presented or surrendered for registration of transfer or for exchange shall (if so requested by the Depositor or the Security Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Depositor and the Security Registrar duly executed, by the Holder thereof or such Holder's attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Preferred Securities Certificates, but the Security Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Preferred Securities Certificates.

- a. Notwithstanding any other provision of this Trust Agreement or the Preferred Securities, transfers and exchanges of Preferred Securities and beneficial interests in a Global Certificate of the kinds specified in this Section 5.4(b) shall be made only in accordance with this Section 5.4(b).
 - i. *Non--Global Certificate to Global Certificate.* If the Holder of a Preferred Securities Certificate (other than a Global Certificate) wishes at any time to transfer all or any portion of such Preferred Securities Certificate to a Person who wishes to take delivery thereof in the form of a beneficial interest in a Global Certificate, such transfer may be effected only in accordance with the provisions of this Clause (b) and subject to the Applicable Procedures. Upon receipt by the Security Registrar of (A) such Preferred Securities Certificate as provided in Section 5.11 and instructions satisfactory to the Security Registrar directing that a beneficial interest in the Global Certificate of a specified number of Preferred Securities not greater than the number of Preferred Securities represented by such Preferred Securities Certificate be credited to a specified Clearing Agency Participant's account, then the Security Registrar shall cancel such Preferred Securities Certificate (and issue a new Preferred Securities Certificate in respect of any untransferred portion thereof) as provided in Section 5.11 and increase the aggregate Liquidation Amount of the Global Certificate by the Liquidation Amount represented by such Preferred Securities so transferred as provided in Section 5.11.
 - ii. *Non--Global Certificate to Non--Global Certificate.* A Security that is not a Global Certificate may be transferred, in whole or in part, to a Person who takes delivery in the form of another Security that is not a Global Certificate as provided in Section 5.11, provided that, if the Security to be transferred in whole or in part is a Restricted Security, then the Property Trustee shall have received a Restricted Securities Certificate, satisfactory to the Property Trustee and duly executed by the transferor Holder or such Holder's attorney duly authorized in writing, in which case the transferee Holder shall take delivery in the form of a Restricted Security.
 - iii. *Global Certificate to Non--Global Certificate.* A beneficial interest in a Global Certificate may be exchanged for a Preferred Securities Certificate that is not a Global Certificate as provided in Section 5.11.
- b. *Restricted Securities Legends.* Rule 144A Preferred Securities, Certificated Preferred Securities and their respective Successor Securities shall bear a Restricted Securities Legend as set forth in Section 5.15, subject to the following:
 - i. subject to the following Clauses of this Section 5.4(c), a Preferred Security or any portion thereof which is exchanged, upon transfer or otherwise, for a Global Certificate or any portion thereof shall bear the Restricted Securities Legend borne by such Global Certificate while represented thereby;
 - ii. subject to the following Clauses of this Section 5.4(c), a new Preferred Security which is not a Global Certificate and is issued in exchange for another Preferred Security (including a Global Certificate) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Securities

Legend borne by such other Preferred Security, provided that, if such new Preferred Security is required pursuant to Section 5.4(b)(ii) to be issued in the form of a Restricted Security, it shall bear a Restricted Securities Legend;

- iii. Any Preferred Securities which are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act (including in the Shelf Registration contemplated by the Registration Rights Agreement), together with their Successor Securities shall not bear a Restricted Securities Legend; the Depositor shall inform the Property Trustee in writing of the effective date of any such registration statement registering the Preferred Securities under the Securities Act and shall notify the Property Trustee at any time when prospectuses may not be delivered with respect to Preferred Securities to be sold pursuant to such registration statement. The Property Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in connection with the aforementioned registration statement;
- iv. at any time after the Preferred Securities may be freely transferred without registration under the Securities Act or without being subject to transfer restrictions pursuant to the Securities Act, a new Preferred Security which does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Preferred Security (other than a Global Certificate) or any portion thereof which bears such a legend if the Property Trustee has received an Unrestricted Securities Certificate, duly executed by the Holder of such legended Preferred Security or such Holder's attorney duly authorized in writing, and after such date and receipt of such certificate, the Property Trustee shall authenticate and deliver such a new Preferred Security in exchange for or in lieu of such other Preferred Security as provided in this Article 5;
- v. a new Preferred Security which does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Preferred Security (other than a Global Certificate) or any portion thereof which bears such a legend if, in the Depositor's judgment, placing such a legend upon such new Preferred Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Property Trustee, at the written direction of the Depositor, shall authenticate and deliver such a new Preferred Security as provided in this Article 5; and
- vi. notwithstanding the foregoing provisions of this Section 5.4(c), a Successor Security of a Preferred Security that does not bear a particular form of Restricted Securities Legend shall not bear such form of legend unless the Depositor has reasonable cause to believe that such Successor Security is a "restricted security" within the meaning of Rule 144 under the Securities Act, in which case the Property Trustee, at the written direction of the Depositor, shall authenticate and deliver a new Preferred Security bearing a Restricted Securities Legend in exchange for such Successor Security as provided in this Article 5.

5. *Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates*

. If (a) any mutilated Trust Securities Certificate shall be surrendered to the Security Registrar, or if the Security Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate and (b) there shall be delivered to the Security Registrar and the Administrative Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a bona fide purchaser, the Administrative Trustees, or any one of them, on behalf of the Trust shall execute and make available for authentication, where applicable, and delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like denomination. In connection with the issuance of any new Trust Securities Certificate under this Section, the Security Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicative Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

6. *Persons Deemed Securityholders*

. The Property Trustee and the Security Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Security Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and neither the Property Trustee nor the Security Registrar shall be bound by any notice to the contrary.

7. *Access to List of Securityholders' Names and Addresses*

. The Administrative Trustees or the Depositor shall furnish or cause to be furnished (unless the Property Trustee is acting as Security Registrar with respect to the Trust Securities under the Trust Agreement) a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Securityholders as of the most recent record date (a) to the Property Trustee, quarterly at least 5 Business Days before each Distribution Date, and (b) to the Property Trustee, within 30 days after receipt by the Depositor of a request therefor from the Property Trustee in order to enable the Property Trustee to discharge its obligations under this Trust Agreement, in each case to the extent such information is in the possession or control of the Administrative Trustees or the Depositor and is not identical to a previously supplied list or has not otherwise been received by the Property Trustee in its capacity as Security Registrar. The rights of Securityholders to communicate with other Securityholders with respect to their rights under this Trust Agreement or under the Trust Securities, and the corresponding rights of the Trustee shall be as provided in the Trust Indenture Act, except to the extent Section 3819 of the Delaware Business Trust Act would require greater access to such information, in which case the latter shall apply. Each Holder, by receiving and holding a Trust Securities Certificate, and each Owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee or the Administrative Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

8. *Maintenance of Office or Agency*

. The Security Registrar shall maintain in The City of Chicago an office or offices or agency or agencies where Preferred Securities Certificates may be surrendered for registration of transfer, exchange or conversion and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Security Registrar initially designates 2 North LaSalle Street, Chicago, Illinois 60602, Attention: Corporate Finance Unit, as its principal corporate trust office for such purposes. The Security Registrar shall give prompt written notice to the Depositor and to the Securityholders of any change in the location of the Security Register or any such office or agency.

9. *Appointment of Paying Agent*

. In the event that the Preferred Securities are not in book--entry form only, the Trust shall maintain in the City of Chicago, an office or agency (the "Paying Agent") where the Preferred Securities may be presented for payment. The Paying Agent shall make Distributions to Securityholders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Administrative Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making the Distributions referred to above. The Administrative Trustees may revoke such power and remove the Paying Agent for any reason, including if such Trustees determine in their sole discretion that the Paying Agent shall have failed to perform its obligations under this Trust Agreement in any material respect. The Paying Agent shall initially be the Property Trustee, and any co--paying agent chosen by the Property Trustee and acceptable to the Administrative Trustees and the Depositor in their sole discretion. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Property Trustee and the Depositor. In the event that the Property Trustee shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor that is reasonably acceptable to the Property Trustee and the Depositor to act as Paying Agent (which shall be a bank or trust company). Each successor Paying Agent or any additional Paying Agent shall agree with the Trustees that, as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto

until such sums shall be paid to each Securityholder. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1, 8.3 and 8.6 shall apply to the Property Trustee also in its role as Paying Agent, for so long as the Property Trustee shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

10. *Ownership of Common Securities by Depositor*

. On the Closing Date, the Depositor shall acquire and retain beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, any attempted transfer of the Common Securities shall be void. The Administrative Trustees shall cause each Common Securities Certificate issued to the Depositor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT AS PROVIDED UNDER APPLICABLE LAW OR THE INDENTURE."

11. *Global Securities; Non--Global Securities; Common Securities Certificate*

. Each Global Certificate authenticated under this Trust Agreement shall be registered in the name of the Clearing Agency designated by the Depositor for such Global Certificate or a nominee thereof and delivered to such Clearing Agency or a nominee thereof or custodian therefor, and each such Global Certificate shall constitute a Preferred Security for all purposes of this Trust Agreement.

- a. If a Global Certificate is to be exchanged for Certificated Preferred Securities or canceled in whole, it shall be surrendered by or on behalf of the Clearing Agency, its nominee or custodian to the Property Trustee, as Security Registrar, for exchange or cancellation as provided in this Article 5. If any Global Certificate is to be exchanged for Certificated Preferred Securities or canceled in part, or if another Preferred Security is to be exchanged in whole or in part for a beneficial interest in any Global Certificate, in each case, as provided in Section 5.4, then either (i) such Global Certificate shall be so surrendered for exchange or cancellation as provided in this Article 5 or (ii) the Liquidation Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such Certificated Preferred Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Property Trustee, as Security Registrar, whereupon the Property Trustee, in accordance with the Applicable Procedures, shall instruct the Clearing Agency or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Certificate, the Property Trustee shall, subject to Section 5.4 and as otherwise provided in this Article 5, authenticate and deliver any Preferred Securities issuable in exchange for such Global Certificate (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Clearing Agency or its authorized representative.

Upon the request of the Property Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Depositor shall cause as promptly as practicable to be made available to the Property Trustee a reasonable supply of Preferred Securities that are not in the form of Global Certificates. The Property Trustee shall be entitled to conclusively rely upon any order, direction or request of the Clearing Agency or its authorized representative which is given or made pursuant to this Article 5 if such order, direction or request is given or made in accordance with the Applicable Procedures.

- b. Every Preferred Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Certificate or any portion thereof, whether pursuant to this Article 5 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Certificate, unless such Preferred Security is registered in the name of a Person other than the Clearing Agency for such Global Certificate or a nominee thereof.
- c. The Clearing Agency or its nominee, as registered owner of a Global Certificate, shall be the holder of such Global Certificate for all purposes under the Trust Agreement and the Preferred Securities, and Owners of

beneficial interests in a Global Certificate shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such Owner's beneficial interest in a Global Certificate will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Clearing Agency or its nominee or its participants and such owners of beneficial interests in a Global Certificate will not be considered the owners or holders of such Global Certificate for any purpose of this Trust Agreement or the Preferred Securities.

- d. A single Common Securities Certificate representing the Common Securities shall be issued to the Depositor in the form of a definitive Common Securities Certificate.

12. *Notices to Clearing Agency*

. To the extent that a notice or other communication to the Owners is required under this Trust Agreement, unless and until Definitive Preferred Securities Certificates shall have been issued to Owners pursuant to Section 5.13, the Trustees shall give all such notices and communications specified herein to be given to Owners to the Clearing Agency, and shall have no obligations to provide notices directly to the Owners.

13. *Definitive Preferred Securities Certificates*

. Notwithstanding any other provision in this Trust Agreement, no Global Certificate may be exchanged in whole or in part for Preferred Securities registered, and no transfer of a Global Certificate in whole or in part may be registered, in the name of any Person other than the Clearing Agency for such Global Certificate or a nominee thereof unless (i) such Clearing Agency (A) has notified the Depositor that it is unwilling or unable to continue as Clearing Agency for such Global Certificate or (B) has ceased to be a clearing agency registered as such under the Securities Exchange Act of 1934, as amended, and in either case the Trust and the Depositor thereupon fails to appoint a successor Clearing Agency within 90 days, (ii) the Depositor, at its option, notifies the Property Trustee in writing that it elects to cause the issuance of the Preferred Securities in certificated form or (iii) there shall have occurred and be continuing an Event of Default or any event which after notice or lapse of time or both would be an Event of Default and the Holders of a majority in an aggregate Liquidation Amount of the Outstanding Preferred Securities determine that such Global Certificate will be exchangeable for Certified Preferred Securities. In all cases, Certificated Preferred Securities delivered in exchange for any Global Certificate or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Clearing Agency (in accordance with its customary procedures).

14. *Rights of Securityholders*

. The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Securityholders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights and, when issued and delivered to Securityholders against payment of the purchase price therefor, will be fully paid and nonassessable by the Trust. The Holders of the Trust Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

15. *Restrictive Legends*

. The Global Certificate and the Certificated Preferred Securities that are Restricted Securities shall bear the following legend (the "Restricted Securities Legend") unless the Depositor determines otherwise in accordance with applicable law:

"THE PREFERRED SECURITIES EVIDENCED HEREBY AND THE COMMON STOCK OF CUMMINS INC. ISSUABLE UPON THEIR CONVERSION AND THE DEBENTURES THAT MAY BE ISSUED IN EXCHANGE THEREFOR AND THE

PREFERRED SECURITIES GUARANTEE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, IN EACH CASE, IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS."

6.

ACT OF SECURITYHOLDERS; MEETINGS; VOTING

1. *Limitations on Voting Rights*

. Except as provided in this Section, in Section 8.9 and 10.2 and in the Indenture and as otherwise required by law, no Holder of Preferred Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

- a. Subject to Section 8.2 hereof, if an Event of Default with respect to the Preferred Securities has not occurred or has occurred and been subsequently cured, waived or otherwise eliminated, the provisions of Section 6.1(b)(ii) hereof shall apply. During (x) the period commencing on the date of the occurrence of an Event of Default with respect to the Preferred Securities and ending on the date when such Event of Default is cured, waived or otherwise eliminated, or (y) any period not described in either the preceding sentence or the preceding clause (x), the provisions of Section 6.1(b)(i) shall apply.
- i. The holders of a majority in aggregate Liquidation Amount of the Preferred Securities will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or to exercise any trust or power conferred upon the Property Trustee under the Trust Agreement, including the right to direct the Property Trustee to exercise the remedies available to it as a holder of the Debentures but excluding the right to direct the Property Trustee to consent to an amendment, modification or termination of the Indenture (which shall be as provided below). So long as any Debentures are held by the Property Trustee, the Trustees shall not (A) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on the Debenture Trustee with respect to such Debentures, (B) waive any past default which is waivable under Section 5.13 of the Indenture, (C) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of a majority in aggregate Liquidation Amount of all Outstanding Preferred Securities (except in the case of clause (D), which consent, in the event that no Event of Default shall occur and be continuing, shall be of the Holders of a majority in aggregate Liquidation Amount of all Trust Securities, voting together as a single class); *provided, however*, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Preferred Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities, except by a subsequent vote of the Holders of the Preferred Securities. The Property Trustee shall notify all Holders of record of the Preferred Securities of any notice of default received from the Debenture Trustee with respect to the Debentures. In addition to obtaining the foregoing approvals of the Holders of the Preferred Securities, prior to taking any of the foregoing actions, the Administrative Trustees shall, at the expense of the Depositor, obtain an Opinion of Counsel experienced in

such matters to the effect that the Trust will not be classified as an association taxable as a corporation or partnership for United States Federal income tax purposes on account of such action.

- ii. Subject to Section 8.2 of this Trust Agreement and only if no Event of Default with respect to the Preferred Securities has occurred or after such Event of Default has been cured, waived, or otherwise eliminated, the holders of a majority in aggregate Liquidation Amount of the Common Securities will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or to exercise any trust or power conferred upon the Property Trustee under the Trust Agreement, including the right to direct the Property Trustee to exercise the remedies available to it as a holder of the Debentures but excluding the right to direct the Property Trustee to consent to an amendment, modification or termination of the Indenture (which shall be as provided below). So long as any Debentures are held by the Property Trustee, the Trustees shall not (A) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on the Debenture Trustee with respect to such Debentures, (B) waive any past default which is waivable under Section 5.13 of the Indenture, (C) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of a majority in aggregate Liquidation Amount of all Common Securities (except in the case of clause (D), which consent, in the event that no Event of Default shall occur and be continuing, shall be of the Holders of a majority in aggregate Liquidation Amount of all Trust Securities, voting together as a single class); *provided, however*, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Common Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Common Securities, except by a subsequent vote of the Holders of the Common Securities. The Property Trustee shall notify all Holders of record of the Common Securities of any notice of default actually received from the Debenture Trustee with respect to the Debentures. In addition to obtaining the foregoing approvals of the Holders of the Common Securities, prior to taking any of the foregoing actions, the Administrative Trustees shall, at the expense of the Depositor, obtain an Opinion of Counsel experienced in such matters to the effect that the Trust will not be classified as an association taxable as a corporation or partnership for United States Federal income tax purposes on account of such action.

- b. If any proposed amendment to the Trust Agreement provides for, or the Trustees otherwise propose to effect the dissolution, winding-up or termination of the Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Preferred Securities as a class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of a majority in aggregate Liquidation Amount of the Outstanding Preferred Securities.

2. *Notice of Meetings*

. Notice of all meetings of the Holders of the Preferred Securities, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 10.8 to each Preferred Securityholder of record, at its registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

3. *Meetings of Preferred Security--holders*

. No annual meeting of Securityholders is required to be held. The Administrative Trustees, however, shall call a meeting of Securityholders to vote on any matter upon the written request of the Preferred Securityholders of record of 25% of the Preferred Securities (based upon their Liquidation Amount) and the Administrative

Trustees or the Property Trustee may, at any time in their discretion, call a meeting of the Holders of Preferred Securities to vote on any matters as to which such Holders are entitled to vote.

Holders of record of 50% of the Preferred Securities (based upon their Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of Securityholders.

If a quorum is present at a meeting, an affirmative vote by the Holders of record of Preferred Securities present, in person or by proxy, holding more than a majority of the Preferred Securities (based upon their Liquidation Amount) held by Holders of record of Preferred Securities present, either in person or by proxy, at such meeting shall constitute the action of the Securityholders, unless this Trust Agreement requires a greater number of affirmative votes.

4. *Voting Rights*

. Securityholders shall be entitled to one vote for each \$50 of Liquidation Amount represented by their Trust Securities in respect of any matter as to which such Securityholders are entitled to vote. Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned at such time by the Depositor, the Trustees or any affiliate of any Trustee shall, for purposes of such vote or consent, be treated as if such Preferred Securities were not outstanding.

5. *Proxies, Etc.*

At any meeting of Securityholders, any Securityholders entitled to vote thereat may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Administrative Trustees, or with such other officer or agent of the Trust as the Administrative Trustees may direct, for verification prior to the time at which such vote shall be taken. Only Securityholders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or represented by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

6. *Securityholder Action by Written Consent*

. Any action which may be taken by Securityholders at a meeting may be taken without a meeting if Securityholders holding more than a majority of all Outstanding Trust Securities (based upon their Liquidation Amount) entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any express provision of this Trust Agreement) shall consent to the action in writing.

7. *Record Date for Voting and Other Purposes*

. For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any Distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Trust Agreement, or for the purpose of any other action, the Property Trustee may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders or the payment of Distributions or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

8. *Acts of Securityholders*

. Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by Securityholders or Owners may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders or Owners

in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to an Administrative Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders or Owners signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than the signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of the signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

The ownership of Preferred Securities shall be proved by the Security Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Securityholders and the Administrative Trustees or among such Securityholders or Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Securityholder or Trustee under this Article 6, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

Upon the occurrence and continuation of an Event of Default, the holders of Preferred Securities shall rely on the enforcement by the Property Trustee of its rights as holder of the Debentures against the Depositor. If the Property Trustee fails to enforce its rights as holder of the Debentures after a request therefor by a holder of Preferred Securities, such holder may proceed to enforce such rights directly against the Depositor.

Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Depositor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the Redemption Date), then a holder of Preferred Securities shall have the right to institute a proceeding directly against the Depositor, for enforcement of payment to such holder of the principal amount of or interest on Debentures having a principal amount equal to the aggregate Liquidation Amount of the Preferred Securities of such holder after the respective due date specified in the Debentures (a "Direct Action"). In connection with any such Direct Action, the rights of the Depositor will be subrogated to the rights of any holder of the Preferred Securities to the extent of any payment made by the Depositor to such holder of Preferred Securities as a result of such Direct Action.

A Securityholder may institute a legal proceeding directly against the Depositor under the Guarantee to enforce its rights under the Guarantee without first instituting a legal proceeding against the Guarantee Trustee (as defined in the

Guarantee), the Trust or any Person or entity.

Each Securityholder, by acceptance of a beneficial interest in the Preferred Securities, agrees to treat the Debentures as indebtedness for all United States federal, state and local tax purposes.

9. *Inspection of Records*

. Upon reasonable prior written notice to the Administrative Trustees and the Property Trustee, the records of the Trust shall be open to inspection by Securityholders during normal business hours for any purpose reasonably related to such Securityholder's interest as a Securityholder.

7.

REPRESENTATIONS AND WARRANTIES

1. *Representations and Warranties of the Property Trustee and the Delaware Trustee*

. The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Depositor and the Securityholders that (each such representation and warranty made by the Property Trustee and the Delaware Trustee being made only with respect to itself):

- a. the Property Trustee is a banking corporation duly organized, validly existing and in good standing under the laws of the State of Illinois;
- b. the Delaware Trustee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- c. each of the Property Trustee and the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;
- d. this Trust Agreement has been duly authorized, executed and delivered by each of the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of the Property Trustee and the Delaware Trustee enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;
- e. the execution, delivery and performance by each of the Property Trustee and the Delaware Trustee of this Trust Agreement have been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and does not require any approval of stockholders of the Property Trustee or the Delaware Trustee and such execution, delivery and performance will not (i) violate either of the Property Trustee's or the Delaware Trustee's charter or by-laws, (ii) to the best of its knowledge without independent investigation violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Property Trustee or the Delaware Trustee is a party or by which it is bound, or (iii) violate any law, governmental rule or regulation of the United States, the State of Illinois, the State of Delaware or the State of New York, as the case may be, governing the banking, corporate, or trust powers of the Property Trustee or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Delaware Trustee;
- f. neither the authorization, execution or delivery by the Property Trustee or the Delaware Trustee of this Trust Agreement nor the consummation of any of the transactions by the Property Trustee or the Delaware Trustee (as appropriate in context) contemplated herein or therein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to, any governmental authority or agency under any existing Federal law governing the banking, corporate or trust powers of the Property Trustee or the Delaware Trustee, as the case may be, under the laws of the United States, the State of Illinois, the State of Delaware or the State of New York;
- g. there are no proceedings pending or, to the best of each of the Property Trustee's and the Delaware Trustee's knowledge, threatened against or affecting

the Property Trustee or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal which, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Property Trustee or the Delaware Trustee, as the case may be, to enter into or perform its obligations as one of the Trustees under this Trust Agreement.

2. *Representations and Warranties of Depositor*

. The Depositor hereby represents and warrants for the benefit of the Securityholders that:

- a. the Trust Securities Certificates issued on the Closing Date on behalf of the Trust have been duly authorized and will have been duly and validly executed, issued and delivered by the Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Trust Agreement and the Securityholders will be, as of such date, entitled to the benefits of this Trust Agreement; and
- b. there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by the Property Trustee or the Delaware Trustee, as the case may be, of this Trust Agreement.

8.

THE TRUSTEES

1. *Certain Duties and Responsibilities*

. The duties and responsibilities of the Trustees shall be as provided by this Trust Agreement and, in the case of the Property Trustee, by the Trust Indenture Act. The Property Trustee, before the occurrence of any Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties and obligations as are specifically set forth in this Trust Agreement and the Trust Indenture Act and no implied covenants, duties or obligations shall be read into this Trust Agreement against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 8.2) of which a responsible officer of the Property Trustee has actual knowledge, the Property Trustee shall exercise such rights and powers vested in it by this Trust Agreement and the Trust Indenture Act, and use the same degree of care and skill in its exercise, as a prudent individual would exercise or use under the circumstances in the conduct of his or her own affairs. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section. Nothing in this Trust Agreement shall be construed to release the Administrative Trustees from liability for their own negligent action, their own negligent failure to act, or their own willful misconduct. To the extent that, at law or in equity, an Administrative Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Securityholders, such Administrative Trustee shall not be liable to the Trust or to any Securityholder for such Administrative Trustee's good faith reliance on the provisions of this Trust Agreement or advice of counsel. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Administrative Trustees otherwise existing at law or in equity, are agreed by the Depositor and the Securityholders to replace such other duties and liabilities of the Administrative Trustees.

- a. All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Securityholder, by its acceptance of a Trust Security, agrees that it will look

solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

- b. No provision of this Trust Agreement shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
- i. the Property Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts;
 - ii. the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in Liquidation Amount of the Trust Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Trust Agreement;
 - iii. the Property Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Debentures and the Payment Account shall be to deal with such property as fiduciary assets, subject to the protections and limitations on liability afforded to the Property Trustee under this Trust Agreement and the Trust Indenture Act;
 - iv. the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Depositor and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law; and
 - v. neither the Property Trustee nor the Administrative Trustees shall be responsible for monitoring each other's compliance or the compliance of the Depositor with their respective duties under this Trust Agreement, nor shall the Property Trustee or the Administrative Trustees be liable for each other's default or misconduct or that of the Depositor.

2. Notice of Defaults

. Within ten days after the occurrence of any Event of Default actually known to an officer of the Property Trustee involved in the administration of this Trust Agreement, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such Event of Default to the holders of Preferred Securities, the Administrative Trustees and the Depositor, unless such Event of Default shall have been cured or waived, *provided that*, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or responsible officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Preferred Securities.

- a. Within ten days after the receipt of notice of the Depositor's exercise of its right to extend the interest payment period for the Debentures pursuant to the Indenture, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such exercise to the Securityholders, unless such exercise shall have been revoked.
- b. The Holders of a majority in Liquidation Amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any Event of Default in respect of the Preferred Securities and its consequences, *provided that*, if the underlying Debenture Event of Default:
 - i. is not waivable under the Indenture, the Event of Default under the Trust Agreement shall also not be waivable; or
 - ii. requires the consent or vote of greater than a majority in principal amount of the holders of the Debentures (a "*Super Majority*") to be waived under the Indenture, the Event of Default under the Trust Agreement may only be waived by the vote of the Holders of the same proportion in Liquidation Amount of the Preferred Securities that the relevant *Super Majority*

represents of the aggregate principal amount of the Debentures outstanding.

The provisions of Section 6.1(b) and this Section 8.2(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Preferred Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other default or an Event of Default with respect to the Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Preferred Securities of an Event of Default with respect to the Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Event of Default with respect to the Common Securities for all purposes of this Trust Agreement without any further act, vote, or consent of the Holders of the Common Securities.

- c. The Holders of a majority in Liquidation Amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any Event of Default with respect to the Common Securities and its consequences, *provided that*, if the underlying Debenture Event of Default:
- i. is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 8.2(d), the Event of Default under the Trust Agreement shall also not be waivable; or
 - ii. requires the consent or vote of a Super Majority to be waived, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Trust Agreement as provided below in this Section 8.2(d), the Event of Default under the Trust Agreement may only be waived by the vote of the Holders of the same proportion in Liquidation Amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, that each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The provisions of Section 6.1(b) and this Section 8.2(d) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Preferred Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 8.2(d), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

- d. A waiver of a Debenture Event of Default under the Indenture by the Property Trustee at the written direction of the Holders of the Preferred Securities constitutes a waiver of the corresponding Event of Default under this Trust Agreement. The foregoing provisions of this Section 8.2(e) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Trust Agreement and the Preferred Securities, as permitted by the Trust Indenture Act.

3. *Certain Rights of Property Trustee*

. Subject to the provisions of Section 8.1:

- a. the Property Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith upon any resolution, Opinion of

Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

- b. if no Event of Default has occurred and is continuing and, (i) in performing its duties under this Trust Agreement the Property Trustee is required to decide between alternative courses of action or (ii) in construing any of the provisions in this Trust Agreement the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein or (iii) the Property Trustee is unsure of the application of any provision of this Trust Agreement, then, except as to any matter as to which the Holders of Preferred Securities are entitled to vote under the terms of this Trust Agreement, the Property Trustee shall deliver a notice to the Depositor requesting written instructions of the Depositor as to the course of action to be taken and the Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed in writing to take, or to refrain from taking, by the Depositor; *provided, however*, that if the Property Trustee does not receive such instructions of the Depositor within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Trust Agreement as it shall deem necessary, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;
- c. any direction or act of the Depositor or the Administrative Trustees contemplated by this Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;
- d. whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable that a matter be established before undertaking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate and an Opinion of Counsel which, upon receipt of such request, shall be promptly delivered by the Depositor or the Administrative Trustees;
- e. the Property Trustee shall have no duty to accomplish any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;
- f. the Property Trustee may consult with counsel of its selection (which counsel may be counsel to the Depositor or any of its Affiliates, and may include any of its employees) and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice; and the Property Trustee shall have the right at any time, upon prior notice to the Depositor, to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;
- g. the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any of the Securityholders pursuant to this Trust Agreement, unless such Securityholders shall have offered to the Property Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- h. the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolutions, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by Holders of record of 25% or more of the Preferred Securities (based upon their Liquidation Amount), but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Depositor and shall incur no liability of any kind by reason of such inquiry or investigation;
- i. the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or

attorneys or an Affiliate, and shall not be responsible for the negligence, misconduct or bad faith with respect to the actions or inaction of any agent or attorney appointed with due care by it hereunder;

- j. whenever in the administration of this Trust Agreement the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders of the Trust Securities, which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Trust Securities as would be entitled to direct the Property Trustee under the terms of the Trust Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in acting in accordance with such instructions; and
- k. except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement.

No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

4. *Not Responsible for Recitals or Issuance of Securities*

. The recitals contained herein and in the Trust Securities Certificates shall not be taken as the statements of the Trustees, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Depositor of the proceeds of the Debentures.

5. *May Hold Securities*

. Except as provided in the definition of the term "Outstanding" in Article 1, any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Section 8.8 and 8.12, may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

6. *Compensation; Indemnity; Fees*

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The Depositor agrees:

- a. to pay the Trustees from time to time such compensation for all services rendered by them hereunder as the parties shall agree from time to time in writing (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- b. except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct;
- c. to the fullest extent permitted by applicable law, to fully indemnify and hold harmless (i) each Trustee, (ii) any Affiliate of any Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Trustee, and (iv) any employee or agent of the Trust or its Affiliates (referred to herein as an "Indemnified Person") from and against any and all loss, damage, liability, tax, penalty, expense (including legal fees and expenses) or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such

Indemnified Person by this Trust Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim determined by a court of competent jurisdiction to have been caused by such Indemnified Person's own negligence or willful misconduct with respect to such acts or omissions (or, in the case of the Delaware Trustee, any such loss, damage or claim as may be attributable to its, his or her gross negligence, bad faith or willful misconduct); and

- d. no Trustee may claim any lien or charge on any Trust Property as a result of any amount due pursuant to this Section 8.6.

7. *Property Trustee Required; Eligibility of Trustees*

. There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

- a. There shall at all times be one or more Administrative Trustees hereunder with respect to the Trust Securities. Each Administrative Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.
- b. There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall be either (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity.

8. *Conflicting Interests*

. If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

9. *Resignation and Removal; Appointment of Successor*

. Subject to Sections 8.9(b) and 8.9(c), any Trustee (the "Relevant Trustee") may be appointed or removed without cause at any time:

- i. until the issuance of any Trust Securities, by written instrument executed by the Depositor; and
 - ii. after the issuance of any Securities, by vote of the Holders of a majority in Liquidation Amount of the Common Securities voting as a class.
- a. The Trustee that acts as Property Trustee shall not be removed in accordance with Section 8.9(a) until a successor possessing the qualifications to act as a Property Trustee under Section 8.7 (a "Successor Property Trustee") has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Depositor and the removed Property Trustee.
 - b. The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 8.9(a) until a successor possessing the qualifications to act as Delaware Trustee under Section 8.7 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Depositor and the removed Delaware Trustee.
 - c. A Trustee appointed to office shall hold office until his, her or its successor shall have been appointed or until his, her or its death, removal, resignation, dissolution or liquidation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Depositor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; provided, however, that:

- i. No such resignation of the Trustee that acts as the Property Trustee shall be effective:
 - (1) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Depositor and the resigning Property Trustee; or
 - (2) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities; and
 - ii. no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Depositor and the resigning Delaware Trustee.
 - d. The Holders of the Common Securities shall use their best efforts promptly to appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with Section 8.9(d).
 - e. If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 8.9 within 60 days after delivery pursuant to this Section 8.9 of an instrument of resignation or removal, the Property Trustee or Delaware Trustee resigning or being removed, as applicable, may petition, at the expense of the Depositor, any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.
 - f. No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.
 - g. The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Securityholders in the manner provided in Section 10.8 and shall give notice to the Depositor. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.
 - h. Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Administrative Trustee or a Delaware Trustee who is a natural person dies or becomes, solely in the opinion of the Depositor, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (a) the unanimous act of the remaining Administrative Trustees if there are at least two of them or (b) otherwise by the Depositor (with the successor in each case being a Person who satisfies the eligibility requirement for Administrative Trustees or the Delaware Trustee, as the case may be, set forth in Section 8.7).
 - i. The indemnity provided to a Trustee under Section 8.6 shall survive any Trustee's resignation or removal and the termination of this Trust Agreement.
10. *Acceptance of Appointment by Successor*

. In case of the appointment hereunder of a successor Trustee, such successor Trustee so appointed shall execute, acknowledge and deliver to the Trust and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Depositor or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and if the Property Trustee is the resigning Trustee shall duly assign, transfer and deliver to the successor Trustee all property and money held by such retiring Property Trustee hereunder.

In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee and each successor Relevant Trustee shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant

Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on request of the Trust or any successor Relevant Trustee, such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder.

Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article.

11. *Merger, Conversion, Consolidation or Succession to Business*

. Any corporation into which the Property Trustee, the Delaware Trustee or any Administrative Trustee that is not a natural person may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

12. *Preferential Collection of Claims Against Depositor or Trust*

. If and when the Property Trustee shall be or become a creditor of the Depositor or the Trust (or any other obligor upon the Debentures or the Trust Securities), the Property Trustee shall be subject to and shall take all actions necessary in order to comply with the provisions of the Trust Indenture Act regarding the collection of claims against the Depositor or Trust (or any such other obligor).

13. *Reports by Property Trustee*

. To the extent required by the Trust Indenture Act, within 60 days after December 31 of each year commencing with December 31, 2001 the Property Trustee shall transmit to all Securityholders in accordance with Section 10.8 and to the Depositor, a brief report dated as of such December 31 with respect to:

- i. its eligibility under Section 8.7 or, in lieu thereof, if to the best of its knowledge it has continued to be eligible under said Section, a written statement to such effect;
 - ii. a statement that the Property Trustee has complied with all of its obligations under this Trust Agreement during the twelve--month period (or, in the case of the initial report, the period since the Closing Date) ending with such December 31 or, if the Property Trustee has not complied in any material respects with such obligations, a description of such noncompliance; and
 - iii. any change in the property and funds in its possession as Property Trustee since the date of its last report and any action taken by the Property Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Trust Securities.
- a. In addition, the Property Trustee shall transmit to Securityholders such reports concerning the Property Trustee and its actions under this Trust Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.
 - b. A copy of such report shall, at the time of such transmissions to Holders, be filed by the Property Trustee with each national securities exchange or self--regulatory organization upon which the Trust Securities are listed, with the Commission and with the Depositor.

14. *Reports to the Property Trustee*

. The Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. Delivery of such reports, information and documents to the Property Trustee is for informational purposes only and the Property Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Depositor's compliance with any of its covenants hereunder (as to which the Property Trustee is entitled to rely exclusively on Officers' Certificates).

15. *Evidence of Compliance with Conditions Precedent*

. Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

16. *Number of Trustees*

. The number of Trustees shall be five, provided that the Holder of all of the Common Securities by written instrument may increase or decrease the number of Administrative Trustees. The Property Trustee and the Delaware Trustee may be the same Person.

- a. If a Trustee ceases to hold office for any reason and the number of Administrative Trustees is not reduced pursuant to Section 8.16(a), or if the number of Trustees is increased pursuant to Section 8.16(a), a vacancy shall occur.
- b. The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust .

17. *Delegation of Power*

. Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 2.7(a), including any registration statement or amendment thereof filed with the Commission, or making any other governmental filing.

- a. The Administrative Trustees shall have power to delegate from time to time to such of their number or to the Depositor the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

18. *Appointment of Administrative Trustees*

- a. The Administrative Trustees shall initially be Tom Linebarger, an individual, Mark Gerstle, an individual, and Donald Trapp, an individual, and their successors shall be appointed by the Holders of a majority in Liquidation Amount of the Common Securities and may resign or be removed by the Holders of a majority in Liquidation Amount of the Common Securities at any time. Upon any resignation or removal, the Depositor shall appoint a successor Administrative Trustee. If at any time there is no Administrative Trustee, the Property Trustee or any Holder who has been a Holder of Trust Securities for at least six months may petition any court of competent jurisdiction for the appointment of one or more Administrative Trustees.
- b. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in

accordance with this Section 8.18 or Section 8.9, the Administrative Trustees in office, regardless of their number (and notwithstanding any other provision of this Agreement), shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Trust Agreement.

- c. Notwithstanding the foregoing or any other provision of this Trust Agreement, if any Administrative Trustee who is a natural person dies or becomes, in the opinion of the Holders of a majority in Liquidation Amount the Common Securities, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the unanimous act of the remaining Administrative Trustees, if there were at least two of them prior to such vacancy, and by the Depositor, if there were not two such Administrative Trustees immediately prior to such vacancy (with the successor being a Person who satisfies the eligibility requirement for Administrative Trustees set forth in Section 8.7).

9.

TERMINATION, LIQUIDATION AND MERGER

1. *Termination upon Expiration Date*

. Unless earlier terminated, the Trust shall automatically terminate on June 15, 2031 (the "Expiration Date"), following the distribution of the Trust Property in accordance with Section 9.4.

2. *Early Termination*

. The first to occur of any of the following events is an "Early Termination Event":

- a. the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Depositor;
- b. receipt by the Property Trustee of written notice from the Depositor at any time (which notice is optional and wholly within the discretion of the Depositor) of its intention to terminate the Trust and distribute the Debentures in exchange for the Preferred Securities;
- c. the redemption, conversion or exchange of all of the Trust Securities; and
- d. an order for dissolution of the Trust shall have been entered by a court of competent jurisdiction.

3. *Termination*

. The respective obligations and responsibilities of the Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Securityholders upon the liquidation of the Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2, of all amounts required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of all expenses owed by the Trust; and (c) the discharge of all administrative duties of the Administrative Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders.

4. *Liquidation*

. If an Early Termination Event specified in clause (a), (b) or (d) of Section 9.2 occurs or upon the Expiration Date, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Securityholder an aggregate principal amount of Debentures equal to the aggregate Liquidation Amount of Trust Securities held by such Holder, subject to Section 9.4(d). Notice of liquidation shall be given by the Property Trustee by first--class mail, postage prepaid, mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address as it appears in the Security Register. All notices of liquidation shall:

- i. state the Liquidation Date;
- ii. state that, from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent an aggregate

- principal amount of Debentures equal to the aggregate Liquidation Amount of Trust Securities held by such Holder; and
- iii. provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Debentures, or, if Section 9.4(d) applies, receive a Liquidation Distribution, as the Administrative Trustees or the Property Trustee shall deem appropriate.
 - a. Except where Section 9.2(c) or 9.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Debentures to Securityholders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 45 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Debentures in exchange for the Outstanding Trust Securities Certificates.
 - b. Except where Section 9.2(c) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) the Clearing Agency or its nominee, as the record holder of such Trust Securities, will receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution and (iii) any Trust Securities Certificates not held by the Clearing Agency will be deemed to represent an aggregate principal amount of Debentures equal to the aggregate Liquidation Amount of Preferred Securities held by such Holders, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Trust Securities until such certificates are presented to the Property Trustee for transfer or reissuance.
 - c. If, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practicable, the Trust Property shall be liquidated, and the Trust shall be dissolved, wound--up or terminated, by the Property Trustee in such manner as the Property Trustee determines. In such event, on the date of the dissolution, winding up or other termination of the Trust, Securityholders will be entitled to receive out of the assets of the Trust available for distribution to Securityholders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "*Liquidation Distribution*"). If, upon any such dissolution, winding--up or termination, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a pro rata basis (based upon Liquidation Amounts). The Holder of the Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution, winding--up or termination pro rata (determined as aforesaid) with Holders of Preferred Securities, except that, if a Debenture Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities.

5. *Mergers, Consolidations, Amalgamations or Replacements of the Trust*

. The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other Person, except pursuant to this Section 9.5. At the request of the Depositor, with the consent of the Administrative Trustees and without the consent of the Property Trustee, the Delaware Trustee or the Holders of the Preferred Securities, the Trust may merge with or into, consolidate, amalgamate, be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any State; provided, that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Trust Securities or (b) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "*Successor Securities*") so long as the Successor Securities rank the same as the Preferred Securities rank in priority with respect to Distributions and payments upon liquidation, redemption and otherwise, (ii) the Depositor expressly appoints a trustee of such successor entity, possessing the same powers and duties as the Property Trustee, as the holder of the Debentures, (iii) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any

nationally recognized statistical rating organization, (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect, (v) such successor entity has a purpose identical to that of the Trust, (vi) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease the Depositor has received an Opinion of Counsel to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holder's interest in the new entity) and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease neither the Trust nor such successor entity will be required to register as an "investment company" under the 1940 Act and (vii) the Depositor or any permitted successor or assignee owns all of the Common Securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee. Notwithstanding the foregoing, the Trust shall not, except with the consent of Holders of 100% in aggregate Liquidation Amount of the Preferred Securities, consolidate, amalgamate, merge with or into, be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or the successor entity to be classified as other than a grantor trust for United States Federal income tax purposes.

10.

MISCELLANEOUS PROVISIONS

1. *Limitation of Rights of Securityholders*

. The death or incapacity of any person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement, nor entitle the legal representatives or heirs of such person or any Securityholder for such person to claim an accounting, take any action or bring any proceeding in any court for a partition or winding--up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

2. *Amendment*

. This Trust Agreement may be amended from time to time by the Trustees and the Depositor, without the consent of any Securityholders, (i) to cure any ambiguity, correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, which shall not be inconsistent with the other provisions of this Trust Agreement, (ii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Trust will be classified for United States Federal income tax purposes as a grantor trust at all times that any Trust Securities are Outstanding or to ensure that the Trust will not be required to register as an "investment company" under the 1940 Act, or be classified as other than a grantor trust for United States Federal income tax purposes, or (iii) to maintain the qualification of this Trust Agreement under the Trust Indenture Act; *provided, however*, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any Securityholder, and, in the case of any of the foregoing, any amendments of this Trust Agreement shall become effective when notice thereof is given to the Securityholders.

a. Except as provided in Section 10.2(c) hereof, any provision of this Trust Agreement may be amended by the Trustees and the Depositor with (i) the consent of Holders representing not less than a majority (based upon Liquidation Amounts) of the Trust Securities then Outstanding, acting as a single class, and (ii) receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States Federal income tax purposes or the Trust's exemption from the status of an "investment company" under the 1940 Act, *provided, however*, if any amendment or proposal that would adversely affect the powers, preferences or special rights of the Trust Securities, whether by way of

amendment or otherwise, would adversely affect only the Preferred Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of a majority in Liquidation Amount of such class of Trust Securities.

- b. In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Securityholder (such consent being obtained in accordance with Section 6.3 or 6.6 hereof), this Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date or (ii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment on or after such date; notwithstanding any other provision herein, without the unanimous consent of the Securityholders (such consent being obtained in accordance with Section 6.3 or 6.6 hereof), this paragraph (c) of this Section 10.2 may not be amended.
- c. Notwithstanding any other provisions of this Trust Agreement, no Trustee shall enter into or consent to any amendment to this Trust Agreement which would cause the Trust to fail or cease to qualify for the exemption from the status of an "investment company" under the 1940 Act or be classified as other than a grantor trust for United States Federal income tax purposes.
- d. Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Depositor, this Trust Agreement may not be amended in a manner which imposes any additional obligation on the Depositor.
- e. If any amendment to this Trust Agreement is made, the Administrative Trustees shall promptly provide to the Depositor a copy of such amendment.
- f. Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement which affects its own rights, duties or immunities under this Trust Agreement. The Property Trustee shall be provided with an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Trust Agreement is in compliance with this Trust Agreement.

3. *Separability*

. In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

4. *GOVERNING LAW*

. THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

5. *Payments Due on Non--Business Day*

. If the date fixed for any payment on any Trust Security shall be a day which is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day which is a Business Day (except as otherwise provided in Section 4.1(a) and Section 4.2(d)), with the same force and effect as though made on the date fixed for such payment, and no interest shall accrue thereon for the period after such date.

6. *Successors*

. This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Depositor, the Trust or the Relevant Trustee, including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Depositor that is permitted under Article 8 of the Indenture and pursuant to which the assignee agrees in writing to perform the Depositor's obligations hereunder, the Depositor shall not assign its obligations hereunder.

7. *Headings*

. The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

8. *Reports, Notices and Demands*

. Any report, notice, demand or other communications which by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Securityholder or the Depositor may be given or served in writing by deposit thereof, first--class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Holder of Preferred Securities, to such Holder as such Holder's name and address may appear on the Security Register; and (b) in the case of the Holder of the Common Securities, to Cummins Inc., 500 Jackson Street, Box 3005 (Mail code 60118), Columbus, Indiana 47202--3005; Attention: Vice President--Treasurer.

Any notice to Preferred Securityholders shall also be given to such Owners as have, within two years preceding the giving of such notice, filed their names and addresses with the Property Trustee for that purpose. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given, or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Trust, the Property Trustee, the Delaware Trustee or the Administrative Trustees shall be given in writing (which may be by facsimile transmission) addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee, to BNY Midwest Trust Company, 2 North LaSalle Street, Chicago, Illinois 60602, Attention: Corporate Finance Unit, (b) with respect to the Delaware Trustee, to The Bank of New York (Delaware), White Clay Center, Route 273, Newark, Delaware 19711, with a copy of any such notice to the Property Trustee at its address above, and (c) with respect to the Administrative Trustees, to them at the address for notices to the Depositor, marked "Attention: Vice President--Treasurer." Such notice, demand or other communication to or upon the Trust or the Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust or the Property Trustee.

9. *Trust Indenture Act; Conflict with Trust Indenture Act*

. This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.

- a. The Property Trustee shall be the only Trustee which is the trustee for the purposes of the Trust Indenture Act.
- b. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Trust Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or to be excluded, as the case may be.
- c. The application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

10. *Acceptance of Terms of Trust Agreement, Guarantee and Indenture*

. THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A SECURITYHOLDER OR BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE SECURITYHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT PROVISIONS AND OTHER TERMS OF THE GUARANTEE AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH SECURITYHOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS TO THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS.

11. *Counterparts*

. This Trust Agreement may contain more than one counterpart of the signature page and this Trust Agreement may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

11.

REGISTRATION RIGHTS

1. *Registration Rights*

. The Holders of the Preferred Securities, the Debentures and the Guarantee and the shares of Common Stock of the Depositor issuable upon conversion of the Debentures and/or the Preferred Securities are entitled to the benefits of the Registration Rights Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Trust Agreement to be duly executed as of the day and year first above written.

CUMMINS INC.,
as Depositor

By: /s/ DONALD TRAPP
Name: Donald Trapp

Title: Vice President --
Treasurer

BNY MIDWEST TRUST COMPANY
as Property Trustee

By: /s/ C. POTTER
Name: C. Potter

Title: Assistant Vice President

THE BANK OF NEW YORK (DELAWARE),
as Delaware Trustee

By: /s/ WILLIAM T. LEWIS
Name: William T. Lewis, SVP

Title:

/s/ TOM LINEBARGER
as Administrative Trustee

/s/ MARK GERSTLE
as Administrative Trustee

/s/ DONALD TRAPP
as Administrative Trustee

CERTIFICATE OF TRUST
OF
CUMMINS CAPITAL TRUST I

This Certificate of Trust of Cummins Capital Trust I (the "Trust"), dated May 3, 2001, is being duly executed and filed by The Bank of New York (Delaware), a Delaware banking corporation, and BNY Midwest Trust Company, an Illinois banking corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. § 3801 et seq.)

1. Name: The name of the business trust formed hereby is Cummins Capital Trust I:
2. Delaware: The name and business address of the trustee of the Trust in the State of Delaware is The Bank of New York (Delaware), White Clay Center, Newark, Delaware 19711; Attention: Corporate Trust Administration.
3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned, being the trustees of the Trust, have executed this Certificate of Trust as of the date first--above written.

THE BANK OF NEW YORK (DELAWARE)

By: _____
Name:

BNY MIDWEST TRUST COMPANY

By: _____
Name:

BOOK ENTRY ONLY CORPORATE EQUITY ISSUES

Letter of Representations

[To be Completed by Issuer and Agent]

Cummins Capital Trust I
[Name of Issuer]
BNY Midwest Trust Company
[Name of Agent]

June 18, 2001

[Date]

Attention: General Counsel's Office
The Depository Trust Company

55 Water Street 49th Floor
New York, NY 10041--0099

Re:	7% Convertible Cumulative Quarterly Income Preferred Securities of Cummins Capital Trust I,
	Liquidation Amount \$50 per Convertible Preferred
	Security; CUSIP Number 231029208
	[Issue description, including CUSIP number (the "Securities")]

Ladies and Gentlemen:

This letter sets forth our understanding with respect to certain matters relating to the 7% Convertible Preferred Securities, Liquidation Amount \$50 per Convertible Preferred Security (the "Preferred Securities"), of Cummins Capital Trust I, a Delaware business trust (the "Issuer"), created pursuant to an Amended and Restated Declaration of Trust, among Cummins Inc., as Depositor (the "Company"), BNY Midwest Trust Company, as Property Trustee, The Bank of New York (Delaware), as Delaware Trustee and the Administrative Trustees named therein. The payment of distributions on the Preferred Securities and payments due upon liquidation of the Issuer or redemption of the Preferred Securities, to the extent the Issuer has funds available for the payment thereof, are guaranteed by the Company to the extent set forth in a Guarantee Agreement to be entered into by the Company and BNY Midwest Trust Company, as Guarantee Trustee with respect to the Preferred Securities. The Company and the Issuer propose to sell the Preferred Securities to Goldman, Sachs & Co., J.P. Morgan Securities, Inc. and Salomon Smith Barney Inc. (the "Purchasers") pursuant to a Purchase Agreement, dated June 12, 2001, among the Issuer, the Company and the Purchasers. The Purchasers shall take delivery of the Securities through The Depository Trust Company ("DTC"). Agent is acting as transfer agent, paying agent, and registrar with respect to the Securities.

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with its Rules with respect to the Securities, Issuer and Agent make the following representations to DTC:

1. Prior to closing on the Securities on June 18, 2001 there shall be deposited with DTC one or more Security certificates registered in the name of DTC's nominee, Cede & Co., for each of the Securities with the offering value(s) set forth on Schedule A hereto, the total of which represents 100% of the offering value of such Securities. If, however, the aggregate offering value of the Securities exceeds \$400 million, one certificate shall be issued with respect to each \$400 million of offering value and an additional certificate shall be issued with respect to any remaining offering value. Each Security certificate shall bear the following legend:

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Issuer represents: **[Note: Issuer must represent one of the following, and shall cross out the other.]**

[The Security certificate(s) shall remain in Agent's custody as a "Balance Certificate" subject to the provisions of the Balance Certificate Agreement between Agent and DTC currently in effect.

On each day on which Agent is open for business and on which it receives an instruction originated by a DTC participant ("Participant") through DTC's Deposit/ Withdrawal at Custodian ("DWAC") system to increase the Participant's account by a specified number of Securities (a "Deposit Instruction"), Agent shall, no later than 6:30 p.m. (Eastern Time) that day, either approve or cancel the Deposit Instruction through the DWAC system.

On each day on which Agent is open for business and on which it receives an instruction

originated by a Participant through the DWAC system to decrease the Participant's account by a specified number of Securities (a "Withdrawal Instruction"), Agent shall, no later than 6:30 p.m. (Eastern Time) that day, either approve or cancel the Withdrawal Instruction through the DWAC system.

Agent agrees that its approval of a Deposit or Withdrawal Instruction shall be deemed to be the receipt by DTC of a new reissued or reregistered certificated Security on registration of transfer to the name of Cede & Co. for the quantity of Securities evidenced by the Balance Certificate after the Deposit or Withdrawal Instruction is effected.]]

~~[[The Security certificate(s) shall be custodied with DTC]]~~

2. Issuer: (a) understands that DTC has no obligation to, and will not, communicate to its Participants or to any person having an interest in the Securities any information contained in the Security certificate(s); and (b) acknowledges that neither DTC's Participants nor any person having an interest in the Securities shall be deemed to have notice of the provisions of the Security certificate(s) by virtue of submission of such certificate(s) to DTC.

3. In the event of any solicitation of consents from or voting by holders of the Securities, Issuer or Agent shall establish a record date for such purposes (with no provision for revocation of consents or votes by subsequent holders) and shall send notice of such record date to DTC no fewer than 15 calendar days in advance of such record date. Notices to DTC pursuant to this Paragraph by telecopy shall be directed to DTC's Reorganization Department at (212) 855--5181 or (212) 855--5182. If the party sending the notice does not receive a telecopy receipt from DTC confirming that the notice has been received, such party shall telephone (212) 855--5202. Notices to DTC pursuant to this Paragraph, by mail or by any other means, shall be sent to:

Manager, Reorganization Department
Reorganization Window
The Depository Trust Company
55 Water Street 50th floor
New York, NY 10041--0099

4. In the event of a stock split, recapitalization, conversion, or any similar transaction resulting in the cancellation of all or any part of the Securities represented thereby, Agent shall send DTC a notice of such event as soon as practicable, but in no event less than five business days prior to the effective date of such transaction. Notices pursuant to this Paragraph regarding stock splits shall be directed to DTC's Dividend Department as indicated in Paragraph 6. All other notices pursuant to this Paragraph shall be directed to DTC's Reorganization Department as also indicated in Paragraph 6.

5. In the event of a full or partial redemption, Issuer or Agent shall send a notice to DTC specifying: (a) the amount of the redemption or refunding; (b) in the case of a refunding, the maturity date(s) established under the refunding; and (c) the date such notice is to be distributed to Security holders (the "Publication Date"). Such notice shall be sent to DTC by a secure means (e.g., legible telecopy, registered or certified mail, overnight delivery) in a timely manner designed to assure that such notice is in DTC's possession no later than the close of business on the business day before or, if possible, two business days before the Publication Date. Issuer or Agent shall forward such notice either in a separate secure transmission for each CUSIP number or in a secure transmission for multiple CUSIP numbers (if applicable) which includes a manifest or list of each CUSIP number submitted in that transmission. (The party sending such notice shall have a method to verify subsequently the use of such means and the timeliness of such notice.) The Publication Date shall be no fewer than 30 days nor more than 60 days prior to the redemption date or, in the case of an advance refunding, the date that the proceeds are deposited in escrow. Notices to DTC pursuant to this Paragraph by telecopy shall be directed to DTC's Call Notification Department at (516) 227--4164 or (516) 227--4190. If the party sending the notice does not receive a telecopy receipt from DTC confirming that the notice has been received, such party shall telephone (516) 227--4070. Notices to DTC pursuant to this Paragraph, by mail or by any other means, shall be sent to:

Manager, Call Notification Department
The Depository Trust Company
711 Stewart Avenue
Garden City, NY 11530--4719

6. In the event of an offering or issuance of rights with respect to the Securities

outstanding, Agent shall send DTC's Dividend and Reorganization Departments a notice specifying: (a) the amount of and conditions, if any, applicable to such rights offering or issuance; (b) any applicable expiration or deadline date, or any date by which any action on the part of holders of such Securities is required; and (c) the Publication Date of such notice. The Publication Date will be as soon as practicable after the announcement by the Company of any such offering or issuance of rights with respect to the Securities outstanding. DTC requires that the Publication Date be no fewer than 30 days nor more than 60 days prior to the related payment date, distribution date, or issuance date, respectively. Notices to DTC pursuant to this Paragraph by telecopy shall be sent to DTC's Dividend Department at (212) 855-4545, and receipt of such notices shall be confirmed by telephoning (212) 855-4530. Notices to DTC pursuant to this Paragraph, by mail or any other means, shall be sent to:

Supervisor, Stock Dividends
Dividend Department
The Depository Trust Company
55 Water Street 25th Floor
New York, NY 10041--0099

Notices to DTC pursuant to the above Paragraph by telecopy shall be sent to DTC's Reorganization Department at (212) 855--5259, and receipt of such telecopy shall be confirmed by telephoning (212) 855--5260. Such notices to DTC pursuant to the above Paragraph, by mail or any other means, shall be sent to:

Supervisor, Rights Offerings
Reorganization Department
The Depository Trust Company
55 Water Street 50th Floor
New York, NY 10041--0099

7. In the event of an invitation to tender the Securities (including mandatory tenders, exchanges, and capital changes), notice by Issuer or Agent to Security holders specifying the terms of the tender and the Publication Date of such notice shall be sent to DTC by a secure means (e.g., legible telecopy, registered or certified mail, overnight delivery) in a timely manner designed to assure that such notice is in DTC's possession no later than the close of business on the business day before or, if possible, two business days before the Publication Date. Issuer or Agent shall forward such notice either in a separate secure transmission for each CUSIP number or in a secure transmission for multiple CUSIP numbers (if applicable) which includes a manifest or list of each CUSIP number submitted in that transmission. (The party sending such notice shall have a method to verify subsequently the use and timeliness of such notice). Notices to DTC pursuant to this Paragraph and notices of other corporate actions by telecopy shall be sent to DTC's Reorganization Department at (212) 855--5488, and receipt of such notices shall be confirmed by telephoning (212) 855--5290. Notices to DTC pursuant to this Paragraph, by mail or by any other means, shall be sent to the address indicated in Paragraph 3.

8. All notices and payment advices sent to DTC shall contain the CUSIP number of the Securities and an accompanying description of such Securities.

9. Issuer or Agent shall provide written notice of dividend payment information to DTC as soon as the information is available. Issuer or Agent shall provide such notice directly to DTC electronically, as previously arranged by Issuer or Agent and DTC. If electronic transmission has not been arranged, absent any other arrangements between Issuer or Agent and DTC, such information shall be sent by telecopy to DTC's Dividend Department at (212) 855--4555 or (212) 855--4556. If the party sending the notice does not receive a telecopy receipt from DTC confirming that the notice has been received, such party shall telephone (212) 855--4550. Notices to DTC pursuant to this Paragraph, by mail or by any other means, shall be sent to:

Manager, Announcements
Dividend Department
The Depository Trust Company
55 Water Street 25th Floor
New York, NY 10041--0099

10. Issuer or Agent shall notify DTC's Dividend Department of any dividend payment date with regard to the Securities no later than the close of business preferably five, but no fewer than two, business days prior to such payment date. Agent shall include any available payment information at that time. Notices pursuant to this Paragraph shall be directed to DTC's Dividend Department as indicated in Paragraph 9.

11. Dividend payments and cash distributions shall be received by Cede & Co. as nominee of DTC, or its registered assigns, in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Issuer shall remit by 1:00 p.m. (Eastern Time) on the payment date all such dividend and distribution payments due Agent, or at such earlier time as may be required by Agent to guarantee that DTC shall receive payment in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Absent any other arrangements between Issuer or Agent and DTC, such funds shall be wired to the Dividend Deposit Account number that will be stamped on the signature page hereof at the time DTC executes this Letter of Representations.

12. Issuer or Agent shall provide DTC, no later than 12:00 noon (Eastern Time) on the payment date, automated notification of CUSIP--level detail. If the circumstances prevent the funds paid to DTC from equaling the dollar amount associated with the detail payments by 12:00 noon (Eastern Time), Issuer or Agent must provide CUSIP--level reconciliation to DTC no later than 2:30 p.m. (Eastern Time). Reconciliation must be provided by either automated means or written format. Such reconciliation notice, if sent by telecopy to DTC's Dividend Department, shall be directed to (212) 855--4633, and receipt of such reconciliation notice shall be confirmed by telephoning (212) 855--4430.

13. Redemption payments shall be received by Cede & Co., as nominee of DTC, or its registered assigns, in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Issuer shall remit by 1:00 p.m. (Eastern Time) on the payment date all such redemption payments due Agent, or at such earlier time as required by Agent to guarantee that DTC shall receive payment in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Absent any other arrangements between Agent and DTC, such funds shall be wired to the Redemption Deposit Account number that will be stamped on the signature page hereof at the time DTC executes this Letter of Representations.

14. Reorganization payments resulting from corporate actions (such as tender offers or mergers) shall be received by Cede & Co., as nominee of DTC, or its registered assigns, in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Issuer shall remit by 1:00 p.m. (Eastern Time) on the payment date all such reorganization payments due Agent, or at such earlier time as required by Agent to guarantee that DTC shall receive payment in same--day funds no later than 2:30 p.m. (Eastern Time) on the payment date. Absent any other arrangements between Agent and DTC, such funds shall be wired to the Reorganization Deposit Account number that will be stamped on the signature page hereof at the time DTC executes this Letter of Representations.

15. DTC may direct Issuer or Agent to use any other number or address as the number or address to which notices or payments may be sent.

16. In the event of a redemption, acceleration, or any other similar transaction (e.g., tender made and accepted in response to Issuer's or Agent's invitation) necessitating a reduction in the aggregate principal amount of Securities outstanding or an advance refunding of part of the Securities outstanding, DTC, in its discretion: (a) may request Issuer or Agent to issue and authenticate a new Security certificate; or (b) may make an appropriate notation on the Security certificate indicating the date and amount of such reduction in the number of Securities outstanding, except in the case of final redemption, in which case the certificate will be presented to Issuer or Agent prior to payment, if required.

17. In the event that Issuer determines that beneficial owners of Securities shall be able to obtain certificated Securities, Issuer or Agent shall notify DTC of the availability of certificates. In such event, Issuer or Agent shall issue, transfer, and exchange certificates in appropriate amounts, as required by DTC and others.

18. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent (at which time DTC will confirm with Issuer or Agent the aggregate principal amount of Securities outstanding). Under such circumstances, at DTC's request, Issuer and Agent shall cooperate fully with DTC by taking appropriate action to make available one or more separate certificates evidencing Securities to any Participant having Securities credited to its DTC accounts.

19. Nothing herein shall be deemed to require Agent to advance funds on behalf of Issuer.

20. This Letter of Representations may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all such counterparts together shall constitute but one and the same instrument.

21. This Letter of Representations shall be governed by, and construed in accordance with, the

laws of the State of New York, without giving effect to principles of conflicts of law.

22. The sender of each notice delivered to DTC pursuant to this Letter of Representations is responsible for confirming that such notice was properly received by DTC.

23. Issuer recognizes that DTC does not in any way undertake to, and shall not have any responsibility to, monitor or ascertain the compliance of any transactions in the Securities with the following, as amended from time to time: (a) any exemptions from registration under the Securities Act of 1933; (b) the Investment Company Act of 1940; (c) the Employee Retirement Income Security Act of 1974; (d) the Internal Revenue Code of 1986; (e) any rules of any self-regulatory organizations (as defined under the Securities Exchange Act of 1934); or (f) any other local, state, or federal laws or regulations thereunder.

24. Issuer hereby authorizes DTC to provide to Agent listings of DTC Participants' holdings, known as Security Position Listings ("SPLs"), with respect to the Securities from time to time at the request of the Agent. DTC charges a fee for such SPLs. This authorization, unless revoked by Issuer, shall continue with respect to the Securities while any Securities are on deposit at DTC, until and unless Agent shall no longer be acting. In such event, Issuer shall provide DTC with similar evidence, satisfactory to DTC, of the authorization of any successor thereto so to act. Requests for SPLs shall be sent by telecopy to the Proxy Unit of DTC's Reorganization Department at (212) 855--5181 or (212) 855--5182. Receipt of such requests shall be confirmed by telephoning (212) 855--5202. Requests for SPLs, sent by mail or by any other means, shall be directed to:

Supervisor, Proxy Unit
Reorganization Department
The Depository Trust Company
55 Water Street 50th Floor
New York, NY 10041--0099

25. Issuer and Agent shall comply with the applicable requirements stated in DTC's Operational Arrangements, as they may be amended from time to time. DTC's Operational Arrangements are posted on DTC's website at "www.DTC.org."

26. The following rider(s), attached hereto, are hereby incorporated into this Letter of Representations:

Notes:

A. If there is an Agent (as defined in this Letter of Representations), Agent as well as Issuer must sign this Letter. If there is no Agent, in signing this Letter Issuer itself undertakes to perform all of the obligations set forth herein.

B. Schedule B contains statements that DTC believes accurately describe DTC, the method of effecting book--entry transfers of securities distributed through DTC, and certain related matters.

Very truly yours,

CUMMINS CAPITAL TRUST I

[Issuer]

By:

[Authorized Officer's Signature]

BNY MIDWEST TRUST COMPANY

[Agent]

By:

[Authorized Officer's Signature]

Received and Accepted:

THE DEPOSITARY TRUST COMPANY

cc: Underwriter

6,000,000 7% CONVERTIBLE CUMULATIVE
QUARTERLY INCOME PREFERRED SECURITIES OF
CUMMINS CAPITAL TRUST I, LIQUIDATION AMOUNT
\$50 PER CONVERTIBLE PREFERRED SECURITY
 [Describe Issue]

<u>CUSIP Number</u>	<u>Share Total</u>	<u>Offering (\$) Value</u>
231029208	6,000,000	300,000,000

SAMPLE OFFERING DOCUMENT LANGUAGE
DESCRIBING BOOK--ENTRY--ONLY ISSUANCE

(Prepared by DTC - bracketed material may be applicable only to certain issues)

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully--registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully--registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$400 million, one certificate will be issued with respect to each \$400 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.]
2. DTC is a limited--purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Direct Participants") deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book--entry changes in Direct Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Direct and Indirect Participants are on file with the Securities and Exchange Commission.
3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation

from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book--entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. [Beneficial Owners of Securities may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the security documents. Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners, or in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.]

[6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Securities. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from Issuer or Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividends to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a book--entry credit of tendered Securities to [Tender/Remarketing] Agent's DTC account.]

10. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Security

certificates are required to be printed and delivered.

11. Issuer may decide to discontinue use of the system of book--entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

12. The information in this section concerning DTC and DTC's book--entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

**REPRESENTATIONS FOR RULE 144A SECURITIES
to be included in DTC Letter of Representations**

1. Issuer represents that at the time of initial registration in the name of DTC's nominee, Cede & Co., the Securities were Legally or Contractually Restricted Securities, eligible for transfer under Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and identified by a CUSIP or CINS number assigned to any securities of the same class that were not Legally or Contractually Restricted Securities. Issuer shall ensure that a CUSIP or CINS identification number is obtained for all unrestricted securities of the same class that is different from any CUSIP or CINS identification number assigned to a Legally or Contractually Restricted Security of such class, and shall notify DTC promptly in the event that it is unable to do so. Issuer represents that it has agreed to comply with all applicable information requirements of Rule 144A.

2. Issuer represents that the Securities are: **[Note: Issuer must represent one of the following, and shall cross out the other.]**

~~[an issue of nonconvertible debt securities or nonconvertible preferred stock which is rated in one of the top four categories by a nationally recognized statistical rating organization ("Investment Grade Securities").]~~

[Included within PORTAL, a Self--Regulatory Organization System approved by the Securities and Exchange Commission for the reporting of quotation and trade information of securities eligible for transfer pursuant to Rule 144A) an "SRO Rule 144A System").]

3. If the Securities are not Investment--Grade Securities, Issuer and Agent acknowledge that if such Securities cease to be included in an SRO Rule 144A System during any period in which such Securities are Legally or Contractually Restricted Securities, such Securities shall no longer be eligible for DTC's services. Furthermore, DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under any of the aforementioned circumstances, at DTC's request, Issuer and Agent shall cooperate fully with DTC by taking appropriate action to make available one or more separate certificates evidencing Securities to any DTC Participant ("Participant") having Securities credited to its DTC accounts.

4. Issuer and Agent acknowledge that, so long as Cede & Co. is a record owner of the Securities, Cede & Co. shall be entitled to all applicable voting rights and receive the full amount of all distributions payable with respect thereto. Issuer and Agent acknowledge that DTC shall treat any Participant having Securities credited to its DTC accounts as entitled to the full benefits of ownership of such Securities.

Without limiting the generality of the preceding sentence, Issuer and Agent acknowledge that DTC shall treat any Participant having Securities credited to its DTC accounts as entitled to receive distributions (and voting rights, if any) in respect of the Securities, and to receive from DTC certificates evidencing Securities. Issuer and Agent recognize that DTC does not in any way undertake to, and shall not have any responsibility to, monitor or ascertain the compliance of any transactions in the Securities with any of the provisions: (a) of Rule 144A; (b) of other exemptions from registration under the Securities Act or any other state or federal securities laws; or (c) of the offering documents.

THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT AS PROVIDED UNDER APPLICABLE LAW OR THE INDENTURE

Certificate Number

Number of Common Securities

Certificate Evidencing Common Securities
of
Cummins Capital Trust I

Common Securities
(liquidation amount \$50 per Common Security)

Cummins Capital Trust I, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Cummins Inc. (the "Holder") is the registered owner of _____ common securities of the Trust representing undivided beneficial interests in the assets of the Trust (the "Common Securities"). In accordance with Section 5.10 of the Trust Agreement (as defined below) the Common Securities are not transferable and any attempted transfer hereof shall be void. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of June 18, 2001 as the same may be amended from time to time (the "Trust Agreement") including the designation of the terms of the Common Securities as set forth therein. The Holder is entitled to the benefits of the Common Securities Guarantee Agreement entered into by the Holder, dated as of June 18, 2001 (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed this certificate this ____ day of _____.

CUMMINS CAPITAL TRUST I

By: _____
Name:
As Administrative Trustee

THE PREFERRED SECURITIES EVIDENCED HEREBY AND THE COMMON STOCK OF CUMMINS INC. ISSUABLE UPON THEIR CONVERSION AND THE DEBENTURES THAT MAY BE ISSUED IN EXCHANGE THEREFOR AND THE PREFERRED SECURITIES GUARANTEE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, IN EACH CASE, IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THIS PREFERRED SECURITY IS A BOOK--ENTRY PREFERRED SECURITIES CERTIFICATE WITHIN THE MEANING OF THE TRUST AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE TRUST AGREEMENT AND NO TRANSFER OF THIS PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (55 WATER STREET, NEW YORK), TO CUMMINS CAPITAL TRUST I OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF

DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

Certificate Number

Number of Preferred Securities

CUSIP No.

\$ _____

Certificate Evidencing Preferred Securities

of

Cummins Capital Trust I

7% Convertible Cumulative Quarterly Income Preferred Securities
(liquidation amount \$50 per Preferred Security)

Cummins Capital Trust I, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Cede & Co. (the "Holder") is the registered owner of _____ preferred securities of the Trust representing an undivided beneficial interest in the assets of the Trust and designated the Cummins Capital Trust I 7% Convertible Cumulative Quarterly Income Preferred Securities (liquidation amount \$50 per Preferred Security) (the "Preferred Securities"). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.4 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of June 18, 2001 as the same may be amended from time to time (the "Trust Agreement") including the designation of the terms of Preferred Securities as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by Cummins Inc., an Indiana corporation, and BNY Midwest Trust Company, as Guarantee Trustee, dated as of June 18, 2001 (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed this certificate this ____ day of _____ 2001.

CUMMINS CAPITAL TRUST I

By: _____
Name:
As Administrative Trustee

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Preferred Securities referred to in the within--mentioned Trust Agreement.

Dated: _____

BNY Midwest Trust Company,
as Property Trustee

By:
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____

(Sign exactly as your name appears on the other side of this Preferred Security Certificate)

Signature Guarantee: _____

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE A

The initial liquidation amount of this Global Certificate shall be \$_____. The following increases or decreases in the liquidation amount of this Global Certificate have been made:

Date Made	Amount of increase in Liquidation Amount of this Global Certificate including upon exercise of over-allotment option	Amount of decrease in Liquidation Amount of this Global Certificate	Liquidation Amount of this Global Certificate following such decrease or increase	Signature of authorized officer of Trustee or Securities Custodian

RESTRICTED SECURITIES CERTIFICATE

(For transfers pursuant to Sections 5.4(b) (ii) of the Trust Agreement)

[Property Trustee]

Attention: Corporate Trust Department

Re: 7% Convertible Cumulative Quarterly Income Preferred Securities of Cummins Capital Trust I (the "Securities")

Reference is made to the Amended and Restated Trust Agreement, dated as of June 18, 2001 (the "Trust Agreement"), among Cummins Inc. (the "Company"), BNY Midwest Trust Company, The Bank of

New York (Delaware) and the Administrative Trustees named therein. Terms used herein and defined in the Trust Agreement or in Regulation S or Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to _____ shares of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No(s). _____

CERTIFICATE No(s). _____

The Person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Certificate, they are held through the Clearing Agency or participant in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Certificate, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be transferred to a person (the "Transferee") who will take delivery in the form of a Restricted Security. In connection with such transfer, the Owner hereby certifies that, unless such transfer is being effected pursuant to an effective registration statement under the Securities Act, it is being effected in accordance with Rule 144A or Rule 144 under the Securities Act and all applicable securities laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies as follows:

(1) Rule 144A Transfers. If the transfer is being effected in accordance with Rule 144A:

(A) the Specified Securities are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a "qualified institutional buyer" within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and

(B) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and

(2) Rule 144 Transfers. If the transfer is being effected pursuant to Rule 144:

(A) the transfer is occurring after a holding period of at least one year (computed in accordance with paragraph (d) of Rule 144) has elapsed since the Specified Securities were last acquired from the Trust or from an affiliate of the Trust, whichever is later, and is being effected in accordance with the applicable amount, manner of sale, and notice requirements of Rule 144; or

(B) the transfer is occurring after a holding period of at least two years has elapsed since the Specified Securities were last acquired from the Trust or from an affiliate of the Trust, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Trust.

This certificate and the statements contained herein are made for your benefit and the benefit of the Trust and the Purchasers.

Dated:

(Print the name of the Undersigned below, as such term is defined in the second paragraph of this certificate)

By:

Name:

Title:

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

Signature Guarantee:* _____

UNRESTRICTED SECURITIES CERTIFICATE

(For removal of Restricted Securities Legends pursuant to Section 5.4(c))

[Property Trustee]

Attention: Corporate Trust Department

Re: 7% Convertible Cumulative Quarterly Income Preferred Securities of Cummins Capital Trust I (the "Securities")

Reference is made to the Amended and Restated Trust Agreement, dated as of June 18, 2001 (the "Trust Agreement"), among Cummins Inc. (the "Company"), BNY Midwest Trust Company, The Bank of New York (Delaware) and the Administrative Trustees named therein. Terms used herein and defined in the Trust Agreement or in Regulation S or Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to _____ shares of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No(s). _____

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Certificate, they are held through the Clearing Agency or participant in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Certificate, they are registered in the name of the Undersigned as or on behalf of the Owner.

The Owner has requested that the Specified Securities be exchanged for Securities bearing no Restricted Securities Legend pursuant to Section 5.4(c) of the Trust Agreement. In connection with such exchange, the Owner hereby certifies that the exchange is occurring after a holding period of at least two years (computed in accordance with paragraph (d) of Rule 144) has elapsed since the Specified Securities were last acquired from the Trust or from an affiliate of the Trust, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Trust. The Owner also acknowledges that any future transfers of the Specified Securities must comply with all applicable securities laws of the states of the United States and other jurisdictions.

This certificate and the statements contained herein are made for your benefit and the benefit of the Trust and the Purchasers.

Dated:

(Print the name of the Undersigned below, as such term is defined in the second paragraph of this certificate)

By:

Name:

Title:

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

Signature Guarantee:* _____

NOTICE OF CONVERSION

To: BNY Midwest Trust Company
as Property Trustee of
Cummins Capital Trust I

The undersigned owner of these Trust Securities hereby irrevocably exercises the option to convert these Trust Securities, or the portion below designated, into Common Stock of CUMMINS INC. (the "Cummins Common Stock") in accordance with the terms of the Amended and Restated Trust Agreement (the "Trust Agreement"), dated as of June 18, 2001 by Tom Linebarger, Mark Gerstle and Donald Trapp, as Administrative Trustees, The Bank of New York (Delaware), as Delaware Trustee, BNY Midwest Trust Company, as Property Trustee, Cummins Inc., as Depositor, and by the Holders, from time to time, of individual beneficial interests in the Trust to be issued pursuant to the Trust Agreement. Pursuant to the aforementioned exercise of the option to convert these Trust Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Trust Agreement) to (i) exchange such Trust Securities for a portion of the Debentures (as that term is defined in the Trust Agreement) held by the Trust (at the rate of exchange specified in the terms of the Trust Securities set forth in the Trust Agreement) and (ii) immediately convert such Debentures on behalf of the undersigned, into Cummins Common Stock (at the conversion rate specified in the terms of the Trust Securities set forth in the Trust Agreement).

The undersigned does also hereby direct the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any holder of Trust Securities, upon the exercise of its conversion rights in accordance with the terms of the Trust Agreement and the Preferred Securities, agrees to be bound by the terms of the Registration Rights Agreement relating to the Cummins Common Stock issuable upon conversion of the Preferred Securities.

Date: _____, ____

In whole ___ in part ___

Number of Trust Securities to
be converted:

If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Cummins Common Stock are to be issued, along with the address or addresses of such person or persons

Signature (for conversion only)

Please print or Typewrite Name and Address, Including Zip Code, and Social Security or Other Identifying Number

Signature Guarantee:* _____

GUARANTEE AGREEMENT

between

Cummins Inc.

and

BNY Midwest Trust Company

Relating to the Preferred Securities of

Cummins Capital Trust I

Dated as of June 18, 2001

cROSS rEFERENCE tABLE*

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.1(a)
310(b)	4.1©, 2.8
310©	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314©	2.5
314(d)	Inapplicable
314(e)	1.1, 2.5, 3.2
314(f)	3.2
315(a)	3.1(d)
315(b)	2.7
315©	3.1
315(d)	3.1(d)
316(a)	1.1, 2.6, 5.4
316(b)	5.3

316©	9.2
317(a)	Inapplicable
317(b)	Inapplicable
318(a)	2.1(b)
318(b)	2.1
318©	2.1(a)

*This Cross--Reference Table does not constitute part of the Guarantee Agreement and shall not affect the interpretation of any of its terms or provisions.

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of June 18, 2001, is executed and delivered by Cummins Inc., an Indiana corporation (the "Guarantor") and BNY Midwest Trust Company, an Illinois banking corporation, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of Cummins Capital Trust I, a Delaware statutory business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Trust Agreement (the "Trust Agreement"), dated as of June 18, 2001 among the Trustees named therein, the Guarantor, as Depositor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing up to 6,000,000 of its 7% Convertible Cumulative Quarterly Income Preferred Securities (liquidation preference \$50 per preferred security) (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Trust Agreement;

WHEREAS, the Preferred Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the issuance of the Issuer's Common Securities (as defined below), will be used to purchase the Debentures (as defined in the Trust Agreement) of the Guarantor, which will be deposited with BNY Midwest Trust Company, as Property Trustee under the Trust Agreement, as trust assets;

WHEREAS, as incentive for the Holders to purchase Preferred Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Preferred Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the purchase by each Holder of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Preferred Securities.

1.

DEFINITIONS

1. *Definitions*

. As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct common control with such specified Person, *provided, however*, that an Affiliate of the Guarantor shall not be deemed to include the Issuer. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Bank Credit Agreement" means the Credit Agreement dated as of January 8, 1998, among the Guarantor, the banks party thereto and Morgan Guaranty Trust Company of New York, as agent, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreements may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including, without limitation, increasing the amount of available borrowings thereunder or adding Subsidiaries of the Guarantor as additional borrowers or guarantors thereunder) all or any portion of the indebtedness under such agreement or any successor or replacement agreement and whether by the same or any other agent, lender or group of lenders.

"Common Securities" means the securities representing common beneficial interests in the assets of the Issuer.

"Common Stock" shall mean the common stock, par value \$2.50, per share, of the Guarantor.

"Designated and Subordinated Debt" means (x) all Senior and Subordinated Debt under, or as a result of the Guarantor's guarantee of, indebtedness pursuant to the Bank Credit Agreement and (y) Senior and Subordinated Debt that, at the time of its determination, has an aggregate principal amount in excess of \$20 million and is specifically designated in the instrument evidencing such Senior and Subordinated Debt as "Designated Senior and Subordinated Debt" by the Guarantor.

"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; *provided, however*, that, except with respect to a default in payment of any Guarantee Payments, the Guarantor shall have received written notice of default and shall not have cured such default within 60 days after receipt of such notice.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Trust Agreement) required to be paid on the Preferred Securities, to the extent the Issuer shall have funds on hand available therefor at such time, (ii) the redemption price set forth in the Trust Agreement, including premium, if any, all accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), with respect to the Preferred

Securities called for redemption by the Issuer to the extent the Issuer shall have funds on hand available therefore at such time, and (iii) upon a voluntary or involuntary dissolution, winding--up or liquidation of the Issuer, unless Debentures are distributed to the Holders, the lesser of (a) the aggregate of the liquidation preference of \$50 per Preferred Security plus accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer shall have funds on hand available to make such payment at such time and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer after satisfaction of liabilities to creditors of the Issuer as required by applicable law (in either case, the "Liquidation Distribution").

"Guarantee Trustee" means BNY Midwest Trust Company, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Guarantee Trustee.

"Holder" means any holder, as registered on the books and records of the Issuer, of any Preferred Securities; *provided, however*, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Guarantee Trustee or any Affiliate of the Guarantor or the Guarantee Trustee.

"Indenture" means the Indenture dated as of June 18, 2001, between the Guarantor and BNY Midwest Trust Company, as trustee, as the same may be modified, amended or supplemented from time to time.

"List of Holders" has the meaning specified in Section 2.2 (a).

"Majority in Liquidation Preference of the Preferred Securities" means, except as provided by the Trust Indenture Act, a vote by the Holder(s), voting separately as a class, of more than 50% of the aggregate liquidation preference of all the outstanding Preferred Securities issued by the Issuer.

"Officers' Certificate" means, with respect to any Person, a certificate signed by (i) the Chairman, Chief Executive Officer, President or a Vice President, and by (ii) the Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary of such Person, and delivered to the Guarantee Trustee. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- a. a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;
- b. a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;
- c. a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- d. a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"Payment Blockage Period" has the meaning specified in Section 8.3.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Responsible Officer" means, with respect to the Guarantee Trustee, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer, any Trust Officer or Assistant Trust Officer or any other officer of the Corporate Trust Services Division of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

"Senior and Subordinated Debt" has the meaning specified in the Indenture.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

2.

TRUST INDENTURE ACT

1. *Trust Indenture Act; Application*

. This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

- a. If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act through operation of Section 318(c) thereof,

such imposed duties shall control. If any provision of this Guarantee Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Guarantee Agreement as so modified or to be excluded, as the case may be.

2. *List of Holders*

. The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee (unless the Guarantee Trustee is acting as Security Registrar with respect to the Debentures under the Indenture) (i) quarterly, on or before March 15, June 15, September 15 and December 15 of each year, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders ("List of Holders") as of a date not more than 15 days prior to the delivery thereof, and (ii) at such other times as the Guarantee Trustee may request in writing, within 30 days after the receipt by the Guarantor of any such request, a List of Holders as of a date not more than 15 days prior to the time such list is furnished, in each case to the extent such information is in the possession or control of the Guarantor and is not identical to a previously supplied list of Holders or has not otherwise been received by the Guarantee Trustee. Notwithstanding the foregoing, the Guarantor shall not be obligated to provide such List of Holders at any time the Preferred Securities are represented by one or more Global Certificates (as defined in the Indenture). The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

a. The Guarantee Trustee shall comply with its obligations under Section 311(a), Section 311(b) and Section 312(b) of the Trust Indenture Act.

3. *Reports by the Guarantee Trustee*

. On or before May 15, of each calendar year, the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

4. *Periodic Reports to Guarantee Trustee*

. The Guarantor shall provide to the Guarantee Trustee, the Securities and Exchange Commission and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. The Guarantor shall file annually with the Guarantee Trustee a certificate as to whether or not the Guarantor is in compliance with all the conditions and covenants applicable to it under this Guarantee Agreement.

Delivery of such reports, information and documents to the Property Trustee is for informational purposes only and the Property Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Depositor's compliance with any of its covenants hereunder (as to which the Property Trustee is entitled to rely exclusively on Officers' Certificates).

5. *Evidence of Compliance with Conditions Precedent*

. The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

6. *Events of Default; Waiver*

. The Holders of a Majority in Liquidation Preference of the Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

7. *Event of Default; Notice*

. The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders, notices of any such Event of Default, unless such Event of Default has been cured before the giving of such notice, *provided, that*, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

a. The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless a Responsible Officer charged with the administration of the Trust Agreement shall have obtained written notice, of such Event of Default.

8. *Conflicting Interests*

. The Trust Agreement and the Indenture shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE

1. *Powers and Duties of the Guarantee Trustee*

. This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except a Holder exercising his or her rights pursuant to Section 5.4(iv) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

- a. If an Event of Default actually known to the Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.
- b. The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants or duties shall be read into this Guarantee Agreement against the Guarantee Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to the Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.
- c. No provision of this Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:
 - i. prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred;
 - A. the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement (including pursuant to Section 2.1), and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement; and
 - B. in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Guarantee Agreement (but need not confirm or investigate the accuracy of any mathematical calculation or other facts stated therein);
 - ii. the Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Guarantee Trustee, unless it shall be proved that the Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;
 - iii. the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Preference of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and
 - iv. no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

2. *Certain Rights of Guarantee Trustee*

. Subject to the provisions of Section 3.1:

- i. The Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, proxy, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.
- ii. Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.
- iii. Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor.
- iv. The Guarantee Trustee may consult with legal counsel of its own selection, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such

advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

- v. The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity satisfactory to it, against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided that*, nothing contained in this Section 3.2(a)(v) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement and use the same degree of care and skill in the exercise thereof as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.
 - vi. The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation.
 - vii. The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys or any Affiliate, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder.
 - viii. Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders of a Majority in Liquidation Preference of the Preferred Securities, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in acting in accordance with such instructions.
- a. No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority.

3. *Indemnity*

. The Guarantor agrees to fully indemnify the Guarantee Trustee and its officers, directors and employees for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) incurred without negligence or bad faith on the part of the Guarantee Trustee, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payment as a result of any amount due to it under this Guarantee Agreement.

4.

GUARANTEE TRUSTEE

1. *Guarantee Trustee; Eligibility*

. There shall at all times be a Guarantee Trustee which shall:

- i. not be an Affiliate of the Guarantor; and
 - ii. be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000, and shall be a corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority, then, for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.
- a. If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).
 - b. If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

2. *Appointment, Removal and Resignation of the Guarantee Trustee*

. Subject to Section 4.2(b) the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

- a. The Guarantee Trustee shall not be removed until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.
- b. The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or

subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by an instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

- c. If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

5.

GUARANTEE

1. *Guarantee*

. The Guarantor irrevocably and unconditionally agrees, subject to Article 8, to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer may have or assert other than the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

2. *Waiver of Notice and Demand*

. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

3. *Obligations Not Affected*

. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- a. the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;
- b. the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures as so provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;
- c. any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;
- d. the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;
- e. any invalidity of, or defect or deficiency in, the Preferred Securities;
- f. the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- g. any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders or the Guarantee Trustee to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

4. *Rights of Holders*

. The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) the Holders of a Majority in Liquidation Preference of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer or any other Person; and (v) if an Event of Default with respect to the Debentures constituting the failure to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable has occurred and is continuing, then any Holder shall have the right, which is absolute and unconditional, to proceed directly against the Guarantor to obtain Guarantee

Payments without first waiting to determine if the Guarantee Trustee has enforced this Guarantee Agreement or instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person.

5. *Guarantee of Payment*

. This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon distribution of Debentures to Holders as provided in the Trust Agreement.

6. *Subrogation*

. The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement and shall have the right to waive payment by the Issuer pursuant to Section 5.1; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

7. *Independent Obligations*

. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall (without duplication of amounts paid by or on behalf of the Issuer) be liable as principal and debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

6. COVENANTS

1. *Certain Covenants of the Guarantor*

. The Guarantor covenants and agrees that it will not, and will not permit any subsidiary of the Guarantor to, (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any shares of the Guarantor's capital stock or (ii) make any payment of principal, interest or premium, if any, on or repay or repurchase or redeem any debt securities (including guarantees of indebtedness for money borrowed) of the Guarantor that rank *pari passu* with or junior to the Debentures (other than (a) any dividend, redemption, liquidation, interest, principal or guarantee payment by the Guarantor where the payment is made by way of securities (including capital stock) that rank *pari passu* with or junior to the securities on which such dividend, redemption, interest, principal or guarantee payment is being made, (b) redemptions or purchases of any rights pursuant to the Shareholders Rights Plan (as defined in the Indenture), or any successor to such Shareholders Rights Plan, and the declaration of a dividend of such rights or the issuance of stock under such plans in the future, (c) payments under this Agreement, (d) purchases of Common Stock related to the issuance of Common Stock under any of the Guarantor's benefit plans for its directors, officers or employees, (e) payments or distributions in connection with a reclassification of the Guarantor's capital stock or the exchange or conversion of one series or class of the Guarantor's capital stock for another series or class of the Guarantor's capital stock and (f) purchases of fractional interests in shares of the Guarantor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged) if at such time (x) there shall have occurred any event of which the Guarantor has actual knowledge that (A) with the giving of notice or the lapse of time, or both, would constitute an "Event of Default" under the Indenture with respect to the Debentures and (B) in respect of which the Guarantor shall not have taken reasonable steps to cure, (y) the Guarantor shall be in default with respect to its payment of any obligations under this Guarantee Agreement or (z) the Guarantor shall have given notice of its selection of an Extension Period (as defined in the Indenture) with respect to the Debentures and shall not have rescinded such notice, or such Extension Period, or any extension thereof, shall be continuing.

7. TERMINATION

1. *Termination*

. This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all Preferred Securities, (ii) the distribution of Debentures to the Holders in exchange for all of the Preferred Securities, (iii) full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Issuer or (iv) the distribution, if any, of Common Stock to the holders of the Preferred Securities in respect of the conversion of all such holders' Preferred Securities into Common Stock. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to Preferred Securities or this Guarantee Agreement.

8. SUBORDINATION OF GUARANTEE

1. *Guarantee Subordinate to Senior and Subordinated Debt*

. The Guarantor covenants and agrees, and each Holder, by its acceptance thereof, likewise covenants and agrees, that the payment of the Guarantee Payments pursuant to this Guarantee Agreement are hereby expressly made subordinate and subject in right of payment to the prior payment in full in cash of all amounts then due and payable in respect of all Senior and Subordinated Debt (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed), and that the subordination is for the benefit of the holders of Senior and Subordinated Debt and that no payment of the Guarantee Payments pursuant to this Guarantee Agreement may be made unless full payment of all amounts then due for principal, premium, if any, and interest then due on all Senior and Subordinated Debt by reason of the maturity thereof (by lapse of time, acceleration or otherwise) has been made or duly provided for in cash or in a manner satisfactory to the holders of such Senior and Subordinated Debt.

2. *Payment Over of Proceeds Upon Dissolution, Etc*

. Upon any distribution of the Guarantor's assets in connection with any dissolution, winding up, liquidation or reorganization of the Guarantor, whether voluntary or involuntary, in bankruptcy, insolvency or receivership proceedings (each such event, if any, herein sometimes referred to as a "Proceeding"), or upon an assignment for the benefit of creditors or otherwise: (i) all Senior and Subordinated Debt (including without limitation all interest accruing on or after the filing of any petition in bankruptcy relating to the Guarantor at the relevant contractual rate, whether or not such claim for post-petition interest is allowed in such Proceeding) must be paid in full in cash before the Holders are entitled to any payments or distributions of any kind or character on account of any Guarantee Payments pursuant to this Guarantee Agreement, and (ii) any payment or distribution of the Guarantor's assets of any kind or character, whether in cash, securities or other property, which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Guarantee Payments shall be paid or delivered directly to the holders of such Senior and Subordinated Debt (or their representative or trustee) in accordance with the priorities then existing among such holders until all Senior and Subordinated Debt shall have been paid in full in cash before any payment or distribution is made to the Holders.

In the event that notwithstanding the subordination provisions set forth herein, any payment or distribution of assets of any kind or character is made at a time when the respective payment is not permitted to be made as a result of the subordination provisions described above and before all Senior and Subordinated Debt is paid in full in cash, the Guarantee Trustee or the Holders receiving such payment will be required to pay over such payment or distribution to the holders of such Senior and Subordinated Debt.

The consolidation of the Guarantor with, or the merger of the Guarantor into, another Person or the liquidation or dissolution of the Guarantor following the sale of all or substantially all of its properties and assets as an entirety to another Person upon the terms and conditions set forth in Article Eight of the Indenture shall not be deemed a Proceeding for the purposes of this Section if the Person formed by such consolidation or into which the Guarantor is merged or the Person which acquires by sale such properties and assets as an entirety, as the case may be, shall, as a part of such consolidation, merger, or sale comply with the conditions set forth in Article Eight.

3. *Payment Blockage Upon Acceleration of Designated Senior Indebtedness, Etc*

. During the continuance of any event of default, other than a payment default, with respect to any Designated Senior and Subordinated Debt pursuant to which the maturity thereof may be accelerated, from and after the date of receipt by the Guarantee Trustee of written notice from holders of such Designated Senior and Subordinated Debt or from an agent of such holders, no Guarantee Payments may be made by the Guarantor for a period ("Payment Blockage Period") commencing on the date of delivery of such notice and ending 179 days thereafter (unless such Payment Blockage Period shall be terminated by written notice to the Guarantee Trustee from the holders of a majority of the outstanding principal amount of such Designated Senior and Subordinated Debt or from an agent of such holders, or such event of default has been cured or waived or has ceased to exist); *provided, however*, that notwithstanding anything herein to the contrary, in no event will a Payment Blockage Period extend beyond 179 days from the date on which such Payment Blockage Period was commenced; *provided further*, that not more than one Payment Blockage Period may be commenced with respect to the Guarantee Payments during any period of 360 consecutive days. For all purposes of this Section, no event of default that existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to the Designated Senior and Subordinated Debt initiating such Payment Blockage Period shall be, or be made, the basis for the commencement of a second Payment Blockage Period by the holders of such Designated Senior and Subordinated Debt or their representative whether or not within a period of 360 consecutive days unless such event of default shall have been cured or waived for a period of not less than 90 consecutive days.

In the event that, notwithstanding the foregoing, the Guarantor shall make any payment to the Guarantee Trustee or any Holder prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known, as set forth in Section 8.7, to the Guarantee Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Guarantor.

The provisions of this Section shall not apply to any payment with respect to which Section 8.2 would be applicable.

4. *No Payment When Senior and Subordinated Debt in Default*

. In the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on, or any other amounts owing with respect to, any Senior and Subordinated Debt when the same becomes due and payable or in

the event any judicial proceeding shall be pending with respect to any such default, then, unless and until such default shall have been cured or waived or shall have ceased to exist, no payment or distribution of any kind or character, whether in cash or properties shall be made by the Guarantor on account of any Guarantee Payment.

The Guarantor shall give prompt written notice to the Guarantee Trustee of any default in payment of principal of or interest on any Senior and Subordinated Debt; *provided that* no failure to give such a notice shall have any effect whatsoever on the subordination provisions described herein.

In the event that, notwithstanding the foregoing, the Guarantor shall make any payment to the Guarantee Trustee or any Holder prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known as set forth in Section 8.7, to the Guarantee Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Guarantor.

The provisions of this Section shall not apply to any payment with respect to which Section 8.2 would be applicable.

5. *Guarantee Trustee to Effectuate Subordination*

. Each Holder by his or her acceptance thereof authorizes and directs the Guarantee Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article and appoints the Guarantee Trustee as his or her attorney-in-fact for any and all such purposes.

6. *No Waiver of Subordination Provisions*

. No right of any present or future holder of any Senior and Subordinated Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Guarantor or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Guarantor with the terms, provisions and covenants of this Guarantee Agreement, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

7. *Notice to Guarantee Trustee*

. The Guarantor shall give written notice as soon as commercially practicable to the Guarantee Trustee of any fact actually known to the Guarantor which would prohibit the making of any payment to or by the Guarantee Trustee in respect of the Guarantee Payment. Notwithstanding the provisions of this Article or any other provision of this Guarantee Agreement, the Guarantee Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Guarantee Trustee in respect of the Guarantee Payment, unless and until the Guarantee Trustee shall have received written notice thereof from the Guarantor or a person representing itself as a holder of Senior and Subordinated Debt or from any trustee, agent or representative therefor (whether or not the facts contained in such notice are true).

8. *Reliance on Judicial Order or Certificate of Liquidating Agent*

. Upon any payment or distribution of assets of the Guarantor referred to in this Article, the Guarantee Trustee, subject to the provisions of Article 3, and the Holders shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which a Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Guarantee Trustee or to the Holders, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Guarantor Secured Indebtedness and other indebtedness of the Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

9. *Guarantee Trustee Not Fiduciary for Holders of Senior and Subordinated Debt*

. With respect to the holders of the Senior and Subordinated Debt, the Guarantee Trustee undertakes to perform or observe only such of its obligations and covenants as are set forth in this Article 8, and no implied covenants or obligations with respect to the holders of such Senior and Subordinated Debt shall be read into this Guarantee Agreement against BNY Midwest Trust Company or the Guarantee Trustee, or both. BNY Midwest Trust Company or the Guarantee Trustee, or both, shall not be deemed to owe any fiduciary duty to the holders of such Senior and Subordinated Debt and, subject to the provisions of Section 3.2, neither the Guarantee Trustee nor BNY Midwest Trust Company shall be liable to the holder of any Senior and Subordinated Debt if it shall pay over or deliver to Holders, the Guarantor, or any other person, money or assets to which any holder of such Senior and Subordinated Debt shall be entitled to by virtue of this Article 8 or otherwise.

10. *Rights of Guarantee Trustee as Holder of Senior and Subordinated Debt; Preservation of Guarantee Trustee's Rights*

. The Guarantee Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior and Subordinated Debt which may at any time be held by it, to the same extent as any other holder of Senior and Subordinated Debt, and, subject to the requirements of the Trust Indenture Act, nothing in this Guarantee Agreement shall deprive the Guarantee Trustee of any of its rights as such holder.

11. *Certain Conversions or Exchanges Deemed Payment*

. For the purpose of this Article only, the issuance and delivery of junior securities upon conversion or exchange of Debentures shall not be deemed to constitute a payment on the Guarantee. For the purpose of this Section, the term "junior securities" means (i) shares of any stock of any class of the Guarantor and (ii) securities of the Guarantor which are subordinated in right of payment to all Senior and Subordinated Debt which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Debentures are so subordinated as provided in the Indenture.

12. *Pari Passu Guarantees*

. This Guarantee Agreement shall rank *pari passu* with any other guarantee similar to this Guarantee Agreement on behalf of the holders of preferred securities issued by any other trust established by the Guarantor or its Affiliates. This Guarantee Agreement shall also be *pari passu* in right of payment with the Guarantor's most senior preferred or preference stock.

9.

MISCELLANEOUS

1. *Successors and Assigns*

. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article 8 of the Indenture and pursuant to which the assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder, and any purported assignment other than in accordance with this provision shall be void.

2. *Amendments*

. Except with respect to any changes that do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in Liquidation Preference of the Preferred Securities. The provisions of Article 6 of the Trust Agreement concerning meetings of the Holders shall apply to the giving of such approval. The Guarantor shall furnish the Guarantee Trustee with an Officers' Certificate and an Opinion of Counsel to the effect that any amendment of this Agreement is authorized and permitted.

3. *Notices*

. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows: if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Holders:

Cummins Inc.
500 Jackson Street
Box 3005 (Mail Code 60118)
Columbus, Indiana 47202--3005
Phone No.: (812) 377--3121
Facsimile No.: [●]
Attention: Vice President -- Treasurer

- a. if given to the Issuer, in care of the Guarantee Trustee, at the Issuer's (and the Guarantee Trustee's) address set forth below or such other address as the Guarantee Trustee on behalf of the Issuer may give notice of to the Holders:

Cummins Capital Trust I
500 Jackson Street
Box 3005 (Mail Code 60118)
Columbus, Indiana 47202--3005
Phone No.: (812) 377--3121
Facsimile No.: [●]
Attention: Vice President -- Treasurer

with a copy to:

BNY Midwest Trust Company
2 North LaSalle Street
Suite 1020
Chicago, Illinois 60602
Phone No.: [●]
Facsimile No.: [●]
Attention: Corporate Finance Unit

b. if given to the Guarantee Trustee:

BNY Midwest Trust Company
2 North LaSalle Street
Suite 1020
Chicago, Illinois 60602
Phone No.: [●]
Facsimile No.: [●]
Attention: Corporate Finance Unit

c. if given to any Holder, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

4. *Benefit*

. This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Preferred Securities.

5. *Interpretation*

. In this Guarantee Agreement, unless the context otherwise requires:

- a. capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.1;
- b. a term defined anywhere in this Guarantee Agreement has the same meaning throughout;
- c. all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;
- d. all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;
- e. a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;
- f. a reference to the singular includes the plural and vice versa; and
- g. the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

6. *Governing Law*

. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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

THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

CUMMINS INC.

By: /s/ DONALD TRAPP

Name: Donald Trapp

Title: Vice President -- Treasurer

BNY MIDWEST TRUST COMPANY, as Guarantee
Trustee

By: /s/ C. POTTER

Name: C. Potter

Title: Assistant Vice President