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CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF EARNINGS  
FOR THE THIRD QUARTER AND NINE MONTHS ENDED  
OCTOBER 2, 1994 AND OCTOBER 3, 1993  
Unaudited  
(Millions, Except per Share Amounts)

	Third Quarter		Nine Months	
	1994	1993	1994	1993
NET SALES	\$1,155.5	\$988.3	\$3,459.6	\$3,130.1
Cost of goods sold	861.4	748.9	2,597.2	2,379.1
GROSS PROFIT	294.1	239.4	862.4	751.0
Selling & administrative expenses	161.2	139.1	470.6	425.1
Research & engineering expenses	59.5	49.9	169.9	151.5
Interest expense	4.6	9.0	13.7	27.7
Other (income) expense, net	(3.1)	.6	(3.8)	2.0
Earnings before income taxes	71.9	40.8	212.0	144.7
Provision for income taxes	10.0	-	29.3	14.6
Minority interest	-	.1	-	.1
NET EARNINGS	61.9	40.7	182.7	130.0
Preference stock dividends	-	2.0	-	6.1
EARNINGS AVAILABLE FOR COMMON SHARES	\$ 61.9	\$ 38.7	\$ 182.7	\$ 123.9
Primary earnings per common share	\$ 1.48	\$ 1.11	\$ 4.43	\$ 3.54
Fully diluted earnings per common share	1.48	1.06	4.43	3.37
Cash dividends declared per share	.125	.025	.375	.075

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF FINANCIAL POSITION  
Unaudited  
(Millions, Except per Share Amounts)

10/2/94                      12/31/93

ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 167.6	\$ 77.3
Receivables less allowances of \$10.7 & \$9.5	495.8	426.3
Inventories	541.8	440.2
Other current assets	141.8	127.9
	<u>1,347.0</u>	<u>1,071.7</u>
INVESTMENTS AND OTHER ASSETS	197.6	190.7
PROPERTY, PLANT & EQUIPMENT less accumulated depreciation of \$1,281.0 & \$1,222.3	997.9	958.2
INTANGIBLES, DEFERRED TAXES & DEFERRED CHARGES	169.5	170.0
TOTAL ASSETS	<u>\$2,712.0</u>	<u>\$2,390.6</u>
LIABILITIES AND SHAREHOLDERS' INVESTMENT		
CURRENT LIABILITIES:		
Loans payable	\$ 38.2	\$ 13.4
Current maturities of long-term debt	31.8	32.6
Accounts payable	308.9	267.5
Other current liabilities	453.1	386.8
	<u>832.0</u>	<u>700.3</u>
LONG-TERM DEBT	<u>184.2</u>	<u>189.6</u>
OTHER LIABILITIES	<u>686.7</u>	<u>679.6</u>
SHAREHOLDERS' INVESTMENT:		
Convertible preference stock, no par value, .2 shares outstanding	-	112.2
Common stock, \$2.50 par value, 43.7 & 40.6 shares issued	109.2	101.5
Additional contributed capital	924.5	822.8
Retained earnings	171.2	4.1
Common stock in treasury, at cost, 2.1 shares	(67.3)	(67.3)
Unearned ESOP compensation	(55.0)	(59.3)
Cumulative translation adjustments	(73.5)	(92.9)
	<u>1,009.1</u>	<u>821.1</u>
TOTAL LIABILITIES & SHAREHOLDERS' INVESTMENT	<u>\$2,712.0</u>	<u>\$2,390.6</u>

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF CASH FLOWS  
Unaudited (Millions)

	Nine Months Ended	
	10/2/94	10/3/93
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net earnings	\$182.7	\$130.0
Adjustments to reconcile net earnings to net cash from operating activities:		
Depreciation and amortization	95.6	95.0
Accounts receivable	(59.4)	(69.8)
Inventories	(93.2)	(19.9)
Accounts payable and accrued expenses	96.7	( 4.4)
Other	11.2	12.8
Total adjustments	<u>50.9</u>	<u>13.7</u>
Net cash provided by operating activities	<u>233.6</u>	<u>143.7</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property, plant and equipment:		
Additions	(131.1)	(101.0)
Disposals	4.5	4.9
Investments in and advances to affiliates and unconsolidated companies	(15.8)	( 4.8)
Acquisitions of new businesses, net of cash acquired	-	3.4
Net cash used for investing activities	<u>(142.4)</u>	<u>(97.5)</u>
NET CASH FLOWS FROM OPERATING & INVESTING ACTIVITIES	<u>91.2</u>	<u>46.2</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from borrowings	-	56.5
Payments on borrowings	( 8.4)	(140.3)

Net borrowings under credit agreements	24.3	53.3
Dividend payments	(15.6)	( 8.6)
Other	( 3.0)	( 5.9)
Net cash used for financing activities	( 2.7)	(45.0)
EFFECT OF EXCHANGE RATE CHANGES ON CASH	1.8	.3
NET CHANGE IN CASH & CASH EQUIVALENTS	90.3	1.5
Cash & cash equivalents at beginning of year	77.3	54.2
CASH & CASH EQUIVALENTS AT END OF THE QUARTER	\$167.6	\$ 55.7

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Unaudited

(Dollars in Millions, Unless Otherwise Stated)

NOTE 1. ACCOUNTING POLICIES: The CONSOLIDATED FINANCIAL STATEMENTS for the interim periods ended October 2, 1994 and October 3, 1993 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. In the first nine months of both 1994 and 1993, the Company recognized approximately \$32 related to a reduction in its valuation allowance for tax benefit carryforwards. In the third quarter of 1993, the tax provision included a one-time credit of \$4.4 resulting from the Omnibus Budget Reconciliation Act of 1993. This legislation increased the US corporate income tax rate from 34 percent to 35 percent resulting in a \$4.4 increase in the value of the future tax benefits represented by the Company's net deferred tax assets. The current effect of the rate increase is absorbed by the use of carryforward tax benefits.

NOTE 3. EARNINGS PER SHARE: Primary earnings per share of common stock are computed by subtracting preference stock dividend requirements from net earnings and dividing that amount by the weighted average number of common shares outstanding during the period. The weighted average number of shares, which assumes the exercise of certain stock options granted to employees, was 41.7 million in the third quarter of 1994 and 41.3 million in the first nine months of 1994. In the third quarter and first nine months of 1993, the weighted average number of shares was 34.9 million and 35.0 million, respectively. Fully diluted earnings per share are computed by dividing net earnings by the weighted average number of shares outstanding assuming the exercise of stock options and conversion of debt and preference stock to common stock.

NOTE 4. LONG-TERM DEBT: On September 16, 1994, the Company's \$300 million revolving credit agreement was amended, lowering fees and interest costs and extending the 3-year term that was entered in 1993 to a 5-year term. There were no outstanding borrowings under the facility at October 2, 1994.

NOTE 5. PREFERENCE STOCK REDEMPTION: On January 24, 1994, the Company called for redemption, at a price of \$51.05 per depositary share, plus accrued dividends, of its outstanding Convertible Exchangeable Preference Stock, which had a face value of \$112.2 at December 31, 1993. Holders elected to covert their shares of preference stock into 2.9 million shares of common stock prior to the redemption date.

NOTE 6. COMMON STOCK DIVIDEND AND STOCK REPURCHASE PROGRAM: On October 11, 1994, the Board of Directors increased the Company's quarterly common stock dividend from 12.5 cents per share to 25 cents per share and declared a quarterly common stock dividend of 25 cents per share payable on December 15, 1994 to shareholders of record on December 1. The Board also authorized repurchase by the Company of up to 2.5 million shares of its common stock. At the Company's discretion, repurchases of the stock will be made from time to time in the open market and through privately negotiated transactions.

NOTE 7. ACQUISITION: On October 3, 1994, the Company announced the acquisition of Power Group International (PGI) from 3i Group and Barclays.

PGI, based in Kent, England, is a developer and manufacturer of a broad range of power generation equipment sold under the trade names of Petbow, Auto Diesel and Agreba. The acquisition will be accounted for as a purchase. Accordingly, PGI's results of operations will be included in the Company's Consolidated Statement of Earnings effective in the fourth quarter of 1994.

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES

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

(Dollars in Millions, Unless Otherwise Stated)

OVERVIEW

The Company's net sales of \$1.2 billion in the third quarter of 1994 were \$167.2 higher than in the third quarter of 1993. This 17-percent increase was attributable to continued strong demand in most of the Company's markets. In the first nine months of 1994, the Company's net sales were \$3.5 billion, compared to \$3.1 billion in the first nine months of 1993.

The Company net earnings were \$61.9, or \$1.48 per share, in the third quarter of 1994, compared to \$40.7, or \$1.11 per share, in the third quarter of 1993. For the first nine months of 1994, net earnings were \$182.7, or \$4.43 per share, compared to \$130.0, or \$3.54 per share, in the first nine months of 1993.

RESULTS OF OPERATIONS

The percentage relationships between net sales and other elements of the Company's CONSOLIDATED STATEMENT OF EARNINGS for the comparative reporting periods were:

Percent of Net Sales	Third Quarter		Nine Months	
	1994	1993	1994	1993
Net sales	100.0	100.0	100.0	100.0
Cost of goods sold	74.5	75.8	75.1	76.0
Gross profit	25.5	24.2	24.9	24.0
Selling and administrative expenses	14.0	14.1	13.6	13.6
Research and engineering expenses	5.1	5.0	4.9	4.8
Interest expense	.4	.9	.4	.9
Other (income) expense, net	(.2)	.1	(.1)	.1
Earnings before income taxes	6.2	4.1	6.1	4.6
Provision for income taxes	.8	-	.8	.4
Net earnings	5.4	4.1	5.3	4.2

NET SALES

Sales for each of the Company's markets for the comparative reporting periods were:

	Third Quarter		Nine Months	
	1994	1993	1994	1993
Heavy-duty truck	\$ 353	\$ 268	\$1,042	\$ 928
Midrange truck	136	156	370	343
Power generation	249	244	746	694
Bus and light commercial vehicles	138	73	441	337
Industrial products	122	98	388	349
Government	15	33	45	88
Marine	17	13	56	51
Fleetguard, Holset and Cummins Electronics (a)	126	103	372	340
Net sales	\$1,156	\$ 988	\$3,460	\$3,130

(a) Excludes sales of McCord effective with the third quarter of 1993

Sales to the heavy-duty truck market in the third quarter of 1994 were over 30 percent higher than in the third quarter of 1993. In the first nine months of 1994, sales to this market were approximately 12 percent

higher than the 1993 level. Shipments of engines for heavy-duty trucks in North America in the third quarter and first nine months of 1994 were 16 percent and 12 percent higher, respectively, than the comparable period of 1993. This market continues to operate at record levels, with current projections for truck production to reach 205,000 units in 1994.

In the third quarter and first nine months of 1994, shipments of the Company's heavy-duty truck engines for international markets were 48 percent and 30 percent higher, respectively, than in the comparable periods of 1993. In the United Kingdom, the Company's largest market for heavy-duty truck engines outside the United States, business conditions continue to improve, with engine shipments in the third quarter of 1994 approximately 6 percent higher than in the third quarter of 1993.

Sales to the midrange truck market in the third quarter of 1994 were \$20 lower than in the third quarter of 1993. However, sales to this market in the first nine months of 1994 were \$370, compared to \$343 in the first nine months of 1993, an increase of 8 percent. The increase in sales in 1994 has been due to higher engine shipments in both North American and international markets.

Power generation sales in the third quarter of 1994 were \$249, compared to \$244 in the third quarter of 1993. In the first nine months of 1994, power generation sales were 7 percent higher than in the first nine months of 1993. The increase in sales in 1994 was due to demand for industrial generator sets, particularly in international markets, and for power units in recreational vehicles. On October 3, 1994, the Company announced the acquisition of Power Group International (PGI), a major developer and manufacturer of a broad range of power generation equipment sold under the trade names of Petbow, Auto Diesel and Agreba. PGI, based in Kent, England, had sales of \$86 in 1993.

Sales for bus and light commercial vehicles were \$138 in the third quarter of 1994, compared to \$73 in the third quarter of 1993. In the first nine months of 1994, sales for this market were over 30 percent higher than the prior year's level. The increase in sales in 1994 was due primarily to demand for midrange engines for the Chrysler Dodge Ram pickup truck. During the third quarter of 1993, shipments of these engines were reduced substantially due to Chrysler's changeover to its new T300 model.

Sales of industrial products, which traditionally are affected seasonally in the third quarter, were 24 percent higher in the third quarter of 1994, compared to the same quarter of 1993. The increase in sales was due to improvements in both North American and international markets for construction and agricultural equipment. Sales in the first nine months of 1994 were 11 percent higher than the first nine months of 1993.

Engine shipments for all markets in the comparative reporting periods were:

	Third Quarter		Nine Months	
	1994	1993	1994	1993
Midrange engines	46,900	32,000	144,500	119,500
Heavy-duty engines	24,500	20,200	73,400	64,500
High-horsepower engines	2,100	2,300	6,600	6,500
Total engine shipments	73,500	54,500	224,500	190,500

In the third quarter and first nine months of 1994, sales of filters, turbochargers and electronic controls were 22 percent and 9 percent higher, respectively, than the comparable periods of 1993. The increase in sales of Fleetguard, Holset and Cummins Electronics during 1994 was due primarily to demand worldwide for the Company's filter products, which were approximately 15 percent higher in the third quarter of 1994, compared to the third quarter of 1993, and increased demand for turbochargers.

#### GROSS PROFIT

In the third quarter and first nine months of 1994, the Company's gross profit percentage was 25.5 percent and 24.9 percent of net sales, respectively, compared to 24.2 percent and 24.0 percent in the comparative periods of 1993. The key factor contributing to the improved margin in 1994 was the increase in demand for the Company's products in all key domestic and international markets. The cost of product coverage programs, which includes both warranty and extended coverage programs, was 2.0 percent of net sales in the third quarter of 1994, compared to 2.3 percent in the third quarter of 1993. When the Company introduces new products, it typically uses higher accrual rates for these programs. Actual claims experience for the 1994 products has confirmed that these engines are performing well in the field. The Company adjusted its accrual rates accordingly, resulting in lower product coverage expense in the third quarter of 1994. In the first nine months of 1994, the cost of

product coverage programs was 2.4 percent of net sales, compared to 2.3 percent in the first nine months of 1993.

#### OPERATING EXPENSES

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Selling and administrative expenses of \$161.2 in the third quarter of 1994 and \$470.6 in the first nine months of 1994 were \$22.1 and \$45.5 higher, respectively, than the corresponding periods of 1993. The increase in expenditures in 1994 was primarily attributable to variable operating expenses related to the higher sales volumes. The increase of \$9.6 and \$18.4 million in research and engineering expenses in the third quarter and first nine months of 1994, compared to the respective periods of 1993, was due to continued expenditures for fuel systems and for ongoing product development.

#### INTEREST EXPENSE

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Interest expense was \$4.6 in the third quarter of 1994 and \$13.7 in the first nine months of 1994, compared to \$9.0 and \$27.7 in the respective periods of 1993. The decrease in interest expense in 1994 was due to the Company's early retirement and redemption of debt obligations during 1993.

#### OTHER INCOME AND EXPENSE

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Other income and expense includes a variety of items, such as translation, interest income, earnings of unconsolidated companies and royalty income. Income of \$3.1 in the third quarter of 1994 was related to foreign exchange gains, interest income and technical fees.

#### PROVISION FOR INCOME TAXES

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As disclosed in NOTE 2 to the CONSOLIDATED FINANCIAL STATEMENTS, the Company reduced its valuation allowance for tax benefit carryforwards approximately \$32 in the first nine months of both 1994 and 1993. The tax provision in the third quarter of 1993 included a one-time credit of \$4.4 resulting from the Omnibus Budget Reconciliation Act of 1993.

#### CASH FLOW AND FINANCIAL CONDITION

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Key elements of the CONSOLIDATED STATEMENT OF CASH FLOWS were:

	First Nine Months	
	1994	1993
Net cash provided by operating activities	\$233.6	\$143.7
Net cash used for investing activities	(142.4)	(97.5)
Net cash flows from operating and investing activities	91.2	46.2
Net cash used for financing activities	( 2.7)	(45.0)
Effect of exchange rate changes on cash	1.8	.3
Net change in cash and cash equivalents	\$ 90.3	\$ 1.5

The Company's cash reserves increased by \$90.3 during the first nine months of 1994 to \$167.6. During the first nine months of 1994, the Company generated cash flows from operating activities of \$233.6, compared to \$143.7 in the first nine months of 1993, due to improved earnings and net working capital requirements. Investing activities required net cash resources of \$142.4 for capital expenditures and investments in and advances to affiliates and unconsolidated companies in the first nine months of 1994.

As disclosed in NOTE 5 to the CONSOLIDATED FINANCIAL STATEMENTS, the Company called for redemption of its preference stock on January 24, 1994. In lieu of accepting the cash redemption price, holders elected to convert their shares of preference stock into common stock of the Company.

Total indebtedness (including the guaranteed notes of the ESOP Trust) was \$254.2 million at the end of the third quarter of 1994. The Company's debt-to-capital ratio was 20.1 percent at the end of the third quarter of 1994, compared to 22.3 percent at December 31, 1993. As disclosed in NOTE 4 to the CONSOLIDATED FINANCIAL STATEMENTS, the Company amended its \$300 revolving credit agreement to extend the term to five years and to make certain other changes.

On January 25, 1994, Moody's Investors Service upgraded the ratings of the

senior debt of the Company to investment grade (from Bal to Baa2). Moody's stated that the action reflected the favorable intermediate-term outlook for the Company's sales and operating performance as a result of the Company's stronger and more diversified customer base, the expansion of its international presence and better cost controls.

As disclosed in NOTE 6 to the CONSOLIDATED FINANCIAL STATEMENTS, on October 11, 1994, the Board of Directors increased Cummins' quarterly common stock dividend from 12.5 cents per share to 25 cents per share and authorized repurchase by the Company of up to 2.5 million shares of its common stock.

PART II. OTHER INFORMATION

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

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- (a) See the Index to Exhibits on Page 13 for a list of exhibits filed herewith.
- (b) The Company was not required to file a Form 8-K during the third quarter of 1994.

SIGNATURES

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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 ENGINE COMPANY, INC.

By: /s/John McLachlan  
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John McLachlan  
Vice President - Corporate Controller  
(Chief Accounting Officer) October 28, 1994

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES

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| 3(b) By-laws of Cummins Engine Company, Inc., as amended and restated effective as of August 12, 1994 (filed herewith)                            | 14       |
| 10(b) Five-year Performance Plan (filed herewith)                                                                                                 | 29       |
| 10(d) Supplemental Life Insurance and Deferred Income Plan (filed herewith)                                                                       | 35       |
| 10(h) Key Executive Compensation Protection Plan (filed herewith)                                                                                 | 43       |
| 10(i) Excess Benefit Retirement Plan (filed herewith)                                                                                             | 47       |
| 11 Schedule of Computation of Per Share Earnings for the Third Quarter and Nine Months Ended October 2, 1994 and October 3, 1993 (filed herewith) | 53       |
| 27 Financial Data Schedule                                                                                                                        | 54       |
| 4(b) Amended and Restated Credit Agreement (filed herewith)                                                                                       | 55       |





CUMMINS ENGINE COMPANY, INC.

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EXHIBIT 3(b)

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BY-LAWS

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(As amended and restated effective as of August 12, 1994)

Article I. Meetings of Shareholders

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Section 1.1. Annual Meetings. Annual meetings of the shareholders of the Corporation shall be held each year on such date, at such hour and at such place within or without the State of Indiana as shall be designated by the Board of Directors. In the absence of such designation, the meeting shall be held on the first Tuesday of April of each year at the principal office of the Corporation at 11:00 a.m. (local time). The Board of Directors may, by resolution, change the date or time of such annual meeting. If the day fixed for any annual meeting of shareholders shall fall on a legal holiday, then such annual meeting shall be held on the first following business day that is not a legal holiday.

Section 1.2. Special Meetings. Special meetings of the shareholders of the Corporation may be called at any time only by the Board of Directors or the Chairman of the Board.

Section 1.3. Proper Business. To be properly brought before an annual meeting, business must be specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors, or otherwise properly brought before the meeting by a shareholder. For business to be properly brought before an annual meeting by a shareholder, the shareholder must have given written notification thereof, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation not later than 90 days in advance of the Originally Scheduled Date of such meeting (provided, however, that if the Originally Scheduled Date of such meeting is earlier than the date specified in these By-Laws as the date of the annual meeting if the Board of Directors does not determine otherwise, such written notice may be so given and received not later than the close of business on the 10th day following the date of the first public disclosure, which may include any public filing by the Corporation with the Securities and Exchange Commission, of the Originally Schedule Date of such meeting). Any such notification by a shareholder shall set forth as to each matter the shareholder proposes to bring before the meeting (a) brief description of the business described to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address of the shareholder proposing such business, (c) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, and (d) any material interest of the shareholder in such business. To be properly brought before a special meeting of shareholders called pursuant to Section 1.2, business must be specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors or must otherwise be properly brought before the meeting by or at the direction of the Board of Directors. No business shall be conducted at a meeting of shareholders except in accordance with this paragraph, and the chairman of any meeting of shareholders may refuse to permit any business to be brought before a meeting without compliance with the foregoing procedures. For purposes of these By-Laws, the "Originally Scheduled Date" of any meeting of shareholders shall be the date such meeting is scheduled to occur in the notice of such meeting first given to shareholders regardless of whether any subsequent notice is given for such meeting or the record date of such meeting is changed.

Section 1.4. Notices. A written notice, stating the date, time and place of any meeting of the shareholders, and in the case of a special meeting the purpose or purposes for which such meeting is called, shall be delivered or mailed by the Secretary of the Corporation, to each shareholder of record of the Corporation entitled to notice of or to vote at such meeting no fewer than ten (10) nor more than sixty (60) days before the date of the meeting.

Notice of shareholders' meetings, if mailed, shall be mailed, postage prepaid, to each shareholder at the shareholder's address shown in the Corporation's current record of shareholders.

Except as provided by the Indiana Business Corporation Law or the Corporation's Restated Articles of Incorporation, notice of a meeting of shareholders is required to be given only to shareholders entitled to vote at the meeting; provided, however, notice of a meeting of shareholders shall be given to shareholders not entitled to vote if a purpose for the meeting is to vote on any amendment to the Corporation's Restated Articles of Incorporation, a merger or share exchange to which the Corporation would be a party, a sale of the Corporation's assets, or dissolution of the Corporation.

A shareholder or the shareholder's proxy may at any time waive notice of a meeting if the waiver is in writing and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. A shareholder's attendance at a meeting, whether in person or by proxy, (a) waives objection to lack of notice or defective notice of the meeting, unless the shareholder or the shareholder's proxy at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder or the shareholder's proxy objects to considering the matter when it is presented. Each shareholder who has in the matter above provided waived notice or objection to notice of a shareholders' meeting shall be conclusively presumed to have been given due notice of such meeting, including the purpose or purposes thereof.

If an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment, unless a new record date is or must be established for the adjourned meeting.

Section 1.5. Voting. Except as otherwise provided by the Indiana Business Corporation Law or the Corporation's Restated Articles of Incorporation, each share of the capital stock of any class of the Corporation that is outstanding at the record date established for any annual or special meeting of shareholders and is outstanding at the time of and represented in person or by proxy at the annual or special meeting, shall entitle the record holder thereof, or the record holder's proxy, to one (1) vote on each matter voted on at the meeting.

Section 1.6. Quorum. Unless the Corporation's Restated Articles of Incorporation or the Indiana Business Corporation Law provides otherwise, at all meetings of shareholders a majority of the votes entitled to be cast on a matter, represented in person or by proxy, constitutes a quorum for action on the matter. Action may be taken at a shareholders' meeting only on matters with respect to which a quorum exists; provided, however, that any meeting of shareholders, including annual and special meetings and any adjournments thereof, may be adjourned to a later date although less than a quorum is present. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

Section 1.7. Vote Required to Take Action. If a quorum exists as to a matter to be considered at a meeting of shareholders, action on such matter (other than the election of Directors) is approved if the votes properly cast favoring the action exceed the votes properly cast opposing the action, except as the Corporation's Restated Articles of Incorporation or the Indiana Business Corporation Law require a greater number of affirmative votes. Directors shall be elected by a plurality of the votes properly cast.

Section 1.8. Record Date. Only such persons shall be entitled to notice of or to vote, in person or by proxy, at any shareholders' meeting as shall appear as shareholders upon the books of the Corporation as of such record date as the Board of Directors shall determine, which date may not be earlier than the date seventy (70) days immediately preceding the meeting. In the absence of such determination, the record date shall be the fiftieth (50th) day immediately preceding the date of such meeting. Unless otherwise provided by the Board of Directors, shareholders shall be determined as of the close of business on the record date.

Section 1.9. Proxies. A shareholder's shares may be voted either in person or by proxy. A shareholder may appoint a proxy to vote or otherwise act for the shareholder (including authorizing the proxy to receive, or to waive, notice of any shareholders' meetings within the

effective period of such proxy) by signing an appointment form, either personally or by the shareholder's attorney-in-fact. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes and is effective for eleven (11) months unless a shorter or longer period is expressly provided in the appointment form. The proxy's authority may be limited to a particular meeting or may be general and authorize the proxy to represent the shareholder at any meeting of shareholders held within the time provided in the appointment form. Subject to the Indiana Business Corporation Law and to any express limitation on the proxy's authority appearing on the face of the appointment form, the Corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 1.10. Organization. At every meeting of the shareholders, the Chairman of the Board, or, in the Chairman's absence, a person designated by the Chairman shall act as a chairman. The Secretary of the Corporation shall act as secretary of such meeting or, in the Secretary's absence, the chairman shall appoint a secretary.

Section 1.11. Voting Lists. At least five business days before each meeting of shareholders, the officer or agent having charge of the stock transfer books shall make a complete list of the shareholders entitled to notice of a shareholders' meeting, arranged in alphabetical order, with the address and number of shares so entitled to vote held by each, which list shall be on file at the principal office of the Corporation and subject to inspection by any shareholder entitled to vote at the meeting. Such list shall be produced and kept open at the time and place of the meeting and subject to the inspection of any shareholder during the holding of such meeting. The original stock register or transfer book, or a duplicate thereof, kept in this state, shall be the only evidence as to who are the shareholders entitled to examine such list or the stock ledger or transfer book or to vote at any meeting of the shareholders.

Section 1.12. Inspectors of Election. The Board of Directors may appoint Inspectors of Election to serve at meetings of shareholders. If, at the time of any meeting, any Inspector so appointed shall be absent, the presiding officer may appoint an Inspector to serve in place of the absent Inspector.

Section 1.13. Conduct of Meeting. At any meeting of shareholders of the Corporation, the Chairman of the Board (or, in the absence of the Chairman of the Board, such person designated by the Chairman pursuant to Section 1.10 of these By-Laws) shall prescribe the order of business to be conducted at the meeting and establish procedures incident thereto.

## Article II. Directors

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Section 2.1. Number, Qualification and Terms. The business and affairs of the Corporation shall be managed under the direction of a Board of Directors. The number of Directors shall be fixed by resolution of the Board of Directors from time to time. It shall be the policy of the Corporation that no person seventy-two years of age or more shall be elected to the Board of Directors. Any Director who attains the age of seventy-two years during the Director's term of office shall be eligible to remain a Director for the duration of the term for which the Director was elected but shall not be eligible for re-election. In recognition of the unique and continuing contribution J. Irwin Miller has made and is making in the development of the Corporation, this age limitation shall not apply to J. Irwin Miller.

Each Director shall be elected for a term of office to expire at the annual meeting of shareholders next following the Director's election, except that each Director elected pursuant to Section 2.2 of this Article II shall hold office until the next annual meeting of shareholders. Despite the expiration of a Director's term, the Director shall continue to serve until the Director's successor is elected and qualified, or until the earlier of the Director's death, resignation, disqualification or removal, or until there is a decrease in the number of Directors.

The Directors and each of them shall have no authority to bind the Corporation except when acting as a Board.

Section 2.2. Vacancies. Any vacancy occurring in the Board of Directors, from whatever cause arising, including an increase in the number of Directors, shall be filled by selection of a successor by a majority vote of the remaining members of the Board of Directors (although less than a quorum) until the next annual meeting of the shareholders.

Section 2.3. Quorum and Vote Required to Take Action. A majority of the whole Board of Directors shall be necessary to constitute a quorum for the transaction of any business, except the filling of vacancies; provided that less than two Directors shall not constitute a quorum. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present shall be the act of the Board of Directors, unless the act of a greater number is required by the Indiana Business Corporation Law, the Corporation's Restated Articles of Incorporation or these By-Laws.

Section 2.4. Regular Meetings. The Board of Directors shall meet regularly, without notice, at such times and places as may be specified from time to time by the Board of Directors or the Chairman of the Board (but no fewer than one time annually) for the purpose of transacting such business as properly may come before the meeting.

Section 2.5. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or a majority of the Directors upon not less than twenty-four (24) hours' notice given to each Director of the date, time and place of the meeting, which notice need not specify the purpose or purposes of the special meeting. Such notice may be communicated in person (either in writing or orally), by telephone, telegraph, teletype or other form of wire or wireless communication, or by mail, and shall be effective at the earlier of the time of its receipt or, if mailed, five (5) days after its mailing. Notice of any meeting of the Board may be waived in writing at any time if the waiver is signed by the Director entitled to the notice and is filed with the minutes or corporate records. A Director's attendance at or participation in a meeting waives any required notice to the Director of the meeting, unless the Director at the beginning of the meeting (or promptly upon the Director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 2.6. Written Consents. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each Director, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section 2.6. is effective when the last Director signs the consent, unless the consent specifies a different prior or subsequent effective date, in which cases the action is effective on or as of the specified date. A consent signed under this Section 2.6 shall have the same effect as a unanimous meeting vote of all members of the Board and may be described as such in any document.

Section 2.7. Participation by Conference Telephone. The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or through the use of, any means of communication, such as conference telephone, by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by such means shall be deemed to be present in person at the meeting.

Section 2.8. Organization. At every meeting of the Board of Directors, the Chairman of the Board, or in the Chairman's absence, a person designated by the Chairman, shall act as chairman. The Secretary of the Corporation shall act as secretary of such meeting or, in the Secretary's absence, the Chairman shall appoint a secretary.

Section 2.9. Resignation. A Director may resign at any time by delivering written notice to the Chairman of the Board, the Secretary of the Corporation, the Board of Directors, or such other officer as the Board of Directors may designate, and such resignation shall become effective upon such delivery unless the notice specifies a later effective date.

Section 2.10. Compensation. Any Director who is also an officer of the Corporation shall receive no separate compensation for serving as Director. Each Director who is not an officer of the Corporation shall be paid such compensation, by way of salary, fees for attendance at meetings of the Board of Directors, special consulting fees, or other remuneration, as shall be fixed from time to time by resolution of the Board of Directors. Each Director shall be reimbursed by the Corporation for travel expenses incurred in attending such meetings.

Section 2.11. Nominations. Nominations for the election of Directors may be made by the Board of Directors or by any shareholder entitled to vote for the election of Directors who complies fully with the

requirements of these By-Laws. Any shareholder entitled to vote for the election of Directors at a meeting may nominate a person or persons for election as Directors only if written notice of such shareholder's intent to make such nominations is given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation not later than 90 days in advance of the Originally Scheduled Date of such annual meeting (provided, however, that if the Originally Scheduled Date of such meeting is earlier than the date specified in these By-Laws as the date of the annual meeting if the Board of Directors does not determine otherwise, such written notice may be so given and received not later than the close of business on the 10th day following the date of the first public disclosure, which may include any public filing by the Corporation with the Securities and Exchange Commission, of the Originally Scheduled Date of such meetings). Each such notice shall set forth (a) the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (d) such other information regarding each nominee proposed by such shareholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated, by the Board of Directors; and (e) the consent of each nominee to serve as a Director of the Corporation if so elected. The chairman of any meeting of shareholders to elect Directors and the Board of Directors may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure. This Section 2.11 shall not affect the right of the holders of either Preference or Preferred Stock to nominate and elect Directors in the event such right arises.

Section 2.12. Vice Chairman of the Board. The Board of Directors shall elect a Vice Chairman of the Board of Directors from among its members. The Vice Chairman of the Board shall perform such duties and functions as may be assigned to the Vice Chairman from time to time by the Board of Directors.

Section 2.13. Chairman of the Executive Committee. The Board of Directors shall elect a Chairman of the Executive Committee from among the members of the Board of Directors. The Chairman of the Executive Committee shall preside at meetings of the Executive Committee, and shall perform such other duties and functions as may be assigned to the Chairman of such Committee from time to time by the Board of Directors.

### Article III. Committees of the Board of Directors

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#### Section 3.1. General.

(a) The Board of Directors may create one (1) or more committees and appoint members of the Board of Directors to serve on them, by resolution of the Board of Directors adopted by a majority of all the Directors in office when the resolution is adopted. Each committee may have one (1) or more members, and all the members of a committee shall serve at the pleasure of the Board of Directors.

(b) To the extent specified by the Board of Directors in the resolution creating a committee (as such resolution may be amended by the Board of Directors from time to time), and except as otherwise provided in the Indiana Business Corporation Law, each committee may exercise all of the authority of the Board of Directors.

(c) Except to the extent inconsistent with the resolutions creating a committee, the provisions of these By-Laws which govern meetings, action without meetings, notice and waiver of notice, quorum and voting requirements and telephone participation in meetings of the Board of Directors, apply to each committee and its members as well.

(d) A member of a committee of the Board of Directors who is also an officer of the Corporation shall receive no separate compensation for serving as a member of such committee. Each member of a committee of the Board of Directors who is not an officer of the Corporation shall be paid such compensation for attendance at committee meetings as shall be fixed from time to time by resolution of the Board of Directors. Committee members shall be reimbursed by the Corporation for travel expenses incurred in attending committee meetings.

## Section 3.2 Executive Committee.

(a) The Board of Directors shall elect from its members an Executive Committee consisting of not less than three members to serve at the pleasure of the Board of Directors. During the intervals between the meetings of the Board of Directors, the Executive Committee shall possess and may exercise, except as described in Section 3.1(b) of this Article III, all the power of the Board of Directors in the management and direction of the business and affairs of the Corporation. All Directors, including those Directors who are not designated members of the Executive Committee, may attend meetings of the Executive Committee. The Chairman of the Executive and Finance Committee shall preside at all meetings of such Committee. The Secretary of the Corporation, or, in the Secretary's absence, a person appointed by the Chairman of the Executive Committee, shall act as secretary of such Committee.

(b) The Executive Committee shall keep regular minutes of its proceedings and all action by the Committee shall be reported to the Board of Directors at its meeting next following the meeting of the Committee.

## Article IV. Officers

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Section 4.1. Designation and Selection. The Board of Directors shall elect as officers of the Corporation a Chairman of the Board, a Chief Executive Officer, a President, and a Chief Operating Officer. The Chief Executive Officer shall appoint a Secretary and such other officers of the Corporation as the Chief Executive Officer deems appropriate, which appointments shall be presented to the Board of Directors for ratification.

### Section 4.2. Duties and Functions.

(a) Chairman of the Board. The Chairman of the Board shall be a member of the Board of Directors and shall, when present, preside at all meetings of the Board of Directors and of the shareholders. The Chairman of the Board shall perform such other duties and functions as may be assigned to the Chairman of the Board from time to time by the Board of Directors.

(b) Chief Executive Officer. The Chief Executive Officer shall be a member of the Board of Directors and shall perform such other duties and functions as may be assigned from time to time by the Board of Directors.

(c) President. The President shall be a member of the Board of Directors and shall perform such other duties and functions as may be assigned the President from time to time by the Board of Directors or the Chief Executive Officer.

(d) Chief Operating Officer. The Chief Operating Officer shall be a member of the Board of Directors and shall perform such other duties as may be assigned from time to time by the Board of Directors or the Chief Executive Officer.

(e) Secretary. The Secretary shall keep a record of proceedings at all meetings of the Board of Directors and of the shareholders, shall have custody of the corporate records and seal of the Corporation, shall be responsible for authenticating records of the Corporation, and shall perform such other duties and functions as may be assigned to the Secretary from time to time by the Chairman of the Board.

(f) Other Officers. Each other officer appointed by the Chairman of the Board shall have and perform such powers, duties and functions as may be assigned to such officer from time to time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President, or the Chief Operating Officer.

Section 4.3. Removal. The Board of Directors may remove any officer at any time with or without cause by resolution adopted by a majority of the whole Board of Directors. An officer appointed by the Chairman of the Board may also be removed at any time, with or without cause, by the Chairman of the Board.

Section 4.4 Resignations. Any corporate officer may resign at any time by delivering written notice thereof to the Board of Directors, the Chairman of the Board or the Secretary. Such resignation shall take effect at the time delivered unless a later time is specified therein. The acceptance of such resignation shall not be necessary to make it effective.

Section 4.5. Compensation. The Board of Directors shall fix the

salary and other compensation for officers of the Corporation who are also Directors of the Corporation and may delegate to the Chairman of the Board authority to fix salaries and other compensation of all remaining officers of the Corporation.

Section 4.6. Special Authority. The Chairman of the Board or the President, or other officers designated by either of them, shall have authority to execute guarantees, indentures for monies borrowed by the Corporation, appointments of powers of attorney and proxies to act on behalf of the Corporation, instruments for the devise or conveyance of real estate or creation of mortgages, bank forms required to open, maintain or close bank accounts, and any other written agreements to which the Corporation shall be a party which pertain to the routine operation of the Corporation and are regularly being made in the ordinary course of carrying on such operations.

#### Article V. Stock

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Section 5.1. Execution. The certificates of stock of the Corporation shall be signed by the President or a Vice President and the Secretary; provided, however, that where such certificates are also signed by a transfer agent or a registrar or both, the signature of such corporate officers may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of its issue.

Section 5.2. Contents. Each certificate shall state on its face the name of the Corporation and that it is organized under the laws of the State of Indiana, the name of the person to whom it is issued, and the number and class of shares and the designation of the series, if any, the certificate represents, and shall state conspicuously on its front or back that the Corporation will furnish the shareholder, upon the shareholder's written request and without charge, a summary of the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series (and the authority of the Board of Directors to determine variations for future series).

Section 5.3. Transfer Agents and Registrars. The Corporation may have one or more transfer agents and one or more registrars of its shares, whose respective duties the Board of Directors may from time to time define. No certificate for shares shall be valid until countersigned by a transfer agent if the Corporation has a transfer agent or until registered by a registrar if the Corporation has a registrar.

Section 5.4. Transfers. Shares of stock shall be transferable on the books of the Corporation by the person named in the certificate or by such person's attorney upon surrender of the certificate properly endorsed. The Corporation may deem and treat the person in whose name shares of stock stand on the books of the Corporation as the owner thereof for purposes of voting, dividends and all other purposes.

Section 5.5. Stock Transfer Records. There shall be entered upon the stock records of the Corporation the number of each certificate issued, the name and address of the registered holder of such certificate, the number, kind and class of shares represented by such certificate, the date of issue, whether the shares are originally issued or transferred, the registered holder from whom transferred and such other information as is commonly required to be shown by such records. The stock records of the Corporation shall be kept as its principal office, unless the Corporation appoints a transfer agent or registrar, in which case the Corporation shall keep at its principal office a complete and accurate shareholders' list giving the names and addresses of all shareholders and the number and class of shares held by each. If a transfer agent is appointed by the Corporation, shareholders shall give written notice of any changes in their addresses from time to time to the transfer agent.

Section 5.6. Loss, Destruction or Mutilation of Certificates. The holder of any shares of the capital stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of the certificate therefor, and the Board of Directors may, in its discretion, cause to be issued to the holder a new certificate or certificates of stock, upon the surrender of the mutilated certificate, or, in the case of loss or destruction, upon satisfactory proof of such loss or destruction. The Board of Directors may, in its discretion, require the holder of the lost or

destroyed certificate or the holder's legal representative to give the Corporation a bond in such sum and in such form, and with such surety or sureties as it may direct, to indemnify the Corporation, its transfer agents and registrars, if any, against any claim that may be made against them or any of them with respect to the capital stock represented by the certificate or certificates alleged to have been lost or destroyed, but the Board of Directors may, in its discretion, refuse to issue a new certificate or certificates, save upon the order of a court having jurisdiction in such matters.

Section 5.7. Form of Certificates. The form of the certificates for shares of the capital stock of the Corporation shall conform to the requirements of Section 5.2 of the By-Laws and be in such printed form as shall from time to time be approved by resolution of the Board of Directors.

#### Article VI. Indemnification of Directors and Officers

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Section 6.1. Mandatory. The Corporation shall, to the fullest extent permitted by Sections 1 through 13 of Indiana Code Ch. 23-1-37 as in effect April 1, 1986, (i) indemnify any person who is or was a Director or officer of the Corporation (and the heirs and legal representatives thereof) against expenses (including attorneys' fees), judgments, fines, and penalties and amounts paid in settlement resulting from any action, suit or proceeding threatened or brought against such person by reason of such person's serving in such position or serving another enterprise in any capacity at the request of the Corporation, and (ii) pay for or reimburse the reasonable expenses incurred by such person in advance of the final disposition of the action, suit or proceeding.

Section 6.2. Discretionary. Separate and apart from, and in addition to, the mandatory indemnification required under Section 6.1 of this Article, the Corporation may, in its sole discretion, provide for indemnification of any person in accordance with the provisions of Indiana Code Ch. 23-1-37, as from time to time amended, or superseding statutory provisions.

Section 6.3. Other Capacity Service. Any Director or officer of the Corporation serving in any capacity (i) another corporation, of which a majority of the shares entitled to vote in the election of its directors is held, directly or indirectly, by the Corporation, or (ii) any employee benefit plan of the Corporation or of another corporation described in Subsection (i) of this Section, shall be deemed to be doing so at the request of the Corporation.

Section 6.4. Applicable Law. Any person entitled to be indemnified as a matter of right pursuant to this Article VI may elect to have the right to indemnification interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action, suit or proceeding, to the extent permitted by Indiana law, or on the basis of the applicable law in effect at the time indemnification is sought.

Section 6.5. Rights. The right to be indemnified pursuant to this Article VI (i) shall be a contract right of each individual entitled to be indemnified hereunder, (ii) is intended to be retroactive and shall be available with respect to events occurring prior to the adoption hereof, and (iii) shall continue to exist with respect to events occurring prior to any rescission or restrictive modification of this Article VI.

Section 6.6. Claims. If a claim for indemnification pursuant to this Article VI is not paid in full by the Corporation within ninety days after a written request therefor has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled also to be paid the expense of prosecuting such claim. Neither the failure of the Corporation (including its Board of Directors, special legal counsel or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, special legal counsel or its shareholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant had not met the applicable standard of conduct.

#### Article VII. Miscellaneous

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Section 7.1. Indiana Business Corporation Law. The provisions of the Indiana Business Corporation Law, as amended, applicable to all matters relevant to, but not specifically covered by, these By-Laws are hereby, by reference, incorporated in and made a part of these By-Laws.

Section 7.2. Fiscal Year. The fiscal year of the Corporation shall end on the 31st of December of each year.

Section 7.3. Control Share Act. The provisions of Chapter 42 of the Indiana Business Corporation Law, Ind. Code 23-1-42-1 et seq., shall not apply to control share acquisitions of shares of the Corporation.

Section 7.4. Seal. The Corporation shall have a corporate seal, which shall have inscribed the name of the Corporation and the word "INDIANA" around the outer edge and the words "CORPORATE SEAL" in the center.

Section 7.5. Contracts and Other Instruments. Bonds, contracts, deeds, leases and other obligations and instruments of the Corporation may be signed in the name of and on behalf of the Corporation by (i) officers or their designees, and (ii) agents of the Corporation as may be specifically authorized by resolution of the Board of Directors.

Section 7.6. Books and Records. Subject to the laws of the State of Indiana, the books of account, records, documents and papers of the Corporation may be kept at any place or places within or without the State of Indiana.

Section 7.7. Amendments. These By-Laws may be rescinded, changed or amended, and provisions hereof may be waived, at any meeting of the Board of Directors by the affirmative vote of a majority of the entire number of Directors at the time, except as otherwise required by the Corporation's Restated Articles of Incorporation or by the Indiana Business Corporation Law.

Section 7.8. Definition of Articles of Incorporation and Restated Articles of Incorporation. The term "Articles of Incorporation" and "Restated Articles of Incorporation" as used in these By-Laws mean the Restated Articles of Incorporation of the Corporation as from time to time in effect.

CUMMINS ENGINE COMPANY, INC.

EXHIBIT 10(i)

EXCESS BENEFIT RETIREMENT PLAN

Effective as of March 1, 1984  
Amended as of October 24, 1986  
Amended as of January 12, 1989  
Amended as of February 14, 1989

Purpose:

Section 415 of the Internal Revenue Code (the "Code"), as amended by the Employee Retirement Income Security Act of 1974 (the "Act") and the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), imposes certain dollar limitations on the annual retirement benefit payable to an individual after December 31, 1982, and Section 401(a)(17) of the Code, as added by the Tax Reform Act of 1986 ("TRA") imposes a dollar limitation on the annual compensation taken into account for any purpose after December 31, 1988 under qualified pension plans such as the Cummins Engine Company, Inc., and Affiliates Retirement Plan "A" (the "Retirement Plan"). Cummins Engine Company, Inc. ("Cummins") has amended the Retirement Plan to conform to the benefit and compensation limitations of the Code, the Act, TRA and TEFRA, and such amendments (the "Limitation Amendments") have reduced the benefits that certain employees of Cummins and its Affiliates (as such term is defined under the Retirement Plan) would otherwise be entitled to receive under the Retirement Plan. Cummins and such Affiliates have adopted this Plan so that eligible employees shall receive retirement benefits in the same amounts they would have received under the Retirement Plan were it not for the Limitation Amendments.

Section 1. Definitions:

- a) "Employee" is defined for the purpose of this Plan as that term is defined under the Retirement Plan.
- b) "Participants" is defined as any employee who has a current accrued retirement benefit in excess of the benefit limitations of Section 415 of the Code.
- c) "Joint Annuitant" is defined for the purposes of this Plan as that term is defined under the Retirement Plan.
- d) "Plan" is defined as the Excess Benefit Retirement Plan of Cummins Engine Company, Inc., as amended from time to time.
- e) "Change of Control" means the occurrence of any of the following:
- (i) there shall be consummated (A) any consolidation or merger of Cummins in which Cummins is not the continuing or surviving corporation or pursuant to which shares of Cummins common stock would be converted in whole or in part into cash, other securities or other property, other than a merger of Cummins in which the holders of Cummins common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all the assets of Cummins, or
  - (ii) the stockholders of Cummins shall approve any plan or proposal for the liquidation or dissolution of Cummins, or
  - (iii) any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Cummins or a subsidiary thereof or any employee benefit plan sponsored by Cummins or a subsidiary thereof or a corporation owned, directly or indirectly, by the stockholders of Cummins in substantially the same proportions as their ownership of stock of Cummins, shall become the beneficial owners (within the meaning of Rule 13d-3 under the Exchange Act) of securities of Cummins representing 25 percent or more of the combined voting power of Cummins' then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors ("Voting Shares"), as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, or

(iv) at any time during a period of two consecutive years, individuals who, at the beginning of such period constituted the Board of Directors of Cummins, shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by Cummins stockholders of each new director during such 2-year period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such 2-year period, or

(v) any other event shall occur that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.

## Section 2. Benefits:

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- a) Cummins will pay or cause to be paid to each Participant or the Participant's Joint Annuitant, as the case may be, who is entitled to receive payments under the Retirement Plan, an amount which is equivalent to the excess, if any, of
- (i) the amount such Participant or Joint Annuitant would have been entitled to receive under the Retirement Plan for each calendar year, taking into account all the provisions of the Retirement Plan as are from time to time in effect and applicable to the Participant or Joint Annuitant except for the Limitation Amendments, minus
  - (ii) the amount such Participant or Joint Annuitant was entitled to receive under the Retirement Plan for such year taking into account the Limitation Amendments. Payments hereunder shall be made at approximately the same time as payments are made to the Participant or Joint Annuitant under the Retirement Plan, except as provided in Section 2(b) below.
- b) If a Participant or Joint Annuitant is entitled to a benefit pursuant to Section 2(a) hereof, Cummins shall pay to such Participant or Joint Annuitant the amount determined as follows:
- (i) If the benefit to which the Participant or the Participant's Joint Annuitant is entitled:
    - (A) is less than \$100 per month, the benefit will be paid in an actuarially equivalent lump sum
    - (B) has an actuarially equivalent lump-sum value which is greater than \$100 per month, the benefit will be payable in the same form as the Participant's or Joint Annuitant's Retirement Plan benefit.
- Cummins shall determine the times at which such payments shall be made, but they shall commence not later than one year after the commencement of benefits under the Retirement Plan and shall thereafter be made at least annually and over the same period that such payments would be made if they were paid under the Retirement Plan. Notwithstanding the foregoing, on request of the Participant or Joint Annuitant, Cummins may, in its sole discretion, accelerate the remaining unpaid portion of such payments into one or more payments having, in the aggregate, an equivalent actuarial value.
- (ii) All lump-sum equivalent benefits payable under this Plan will be calculated using:
    - (A) the interest rate used by the Pension Benefit Guaranty Corporation in determining the value of immediate benefits as of the immediately preceding January 1, and
    - (B) the mortality tables in Attachment A.
- c) Notwithstanding anything contained in this Section 2 to the contrary, following a Change of Control, each Participant shall be entitled to receive a lump-sum payment of the actuarial equivalent of the benefits accrued and remaining unpaid as of the date of such Change of Control, calculated using the assumptions referenced in subsection (b)2. above. In addition, the accrued benefits of each Participant (other than one who is a terminated vested participant in the Retirement Plan) shall be calculated assuming, solely for the purpose of computing benefits, including the reduction of Retirement Plan benefits for early commencement, that the Participant has already satisfied the conditions for unreduced benefits at the earliest possible time, taking into consideration the Participant's age and service with Cummins, its subsidiaries and affiliates.
- d) If payment of a benefit pursuant to subsection (c) of this

Section 2 (the "Lump Sum") causes the Lump Sum and any other payments made in connection with a Change of Control (together with the Lump Sum, the "Total Payments") to be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code, Cummins shall pay the Participant an additional amount (the "Gross-up Payment") such that the net amount retained by the Participant, after deduction of any Excise Tax paid or payable (and not grossed-up under a similar provision of another plan or program sponsored by Cummins) on the Lump Sum and such other Total Payments and any Federal, state and local income tax and Excise Tax upon the payment provided for by this subsection (d), shall be equal to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum, a Gross-up Payment shall be made, but shall only be equal to the increase in the Excise Tax (plus any Federal, state and local income tax and Excise Tax on such Gross-up Payment) arising solely as a result of the Lump Sum.

For purposes of determining whether any of the payments described above will be subject to the Excise Tax and the amount of such Excise Tax,

(i) any other payments or benefits received or to be received by the Participant in connection with a change in control of Cummins, whether payable pursuant to the terms of this Plan or any other plan, arrangement or agreement with Cummins, its successors, any person whose actions result in a change in control of Cummins or any corporation affiliated (or which, as a result of the completion of a transaction causing a Change of Control, will become affiliated) with Cummins within the meaning of Section 1504 of the Code shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by Cummins' independent auditors and acceptable to the Participant the payments (in whole or in part) do not constitute parachute payments, or such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code either in their entirety or in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax,

(ii) the amount of the payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (A) the total amount of the payments or (B) the amount of excess parachute payments within the meaning of Section 280G(b)(1) (after applying clause (i), above), and

(iii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by Cummins' independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-up Payment, the Participant shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which the Gross-up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Participant's residence on the date of payment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time of payment, the Participant shall repay to Cummins at the time that the amount of such reduction in Excise Tax is finally determined the portion of the Gross-up Payment attributable to such reduction (plus the portion of the Gross-up Payment attributable to the Excise Tax and Federal and state and local income tax imposed on the Gross-up Payment being repaid by the Participant if such repayment results in a reduction in Excise Tax and/or a Federal and state and local income tax deduction) plus interest on the amount of such repayment at the rate provided in Section 1274(d) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time of the Gross-up Payment (including by reasons of any payment the existence or amount of which cannot be determined at the time of the Gross-up Payment), Cummins shall make an additional Gross-up Payment in respect to such excess (plus any interest payable with respect to such excess) at the time that the amount of such excess is finally determined.

### Section 3. Miscellaneous:

a) Cummins shall be under only a contractual obligation to make payments to the Participant or Joint Annuitant referred to herein

when due, and the method of making provision for the payment of such benefits shall be solely in the discretion of the Plan Administrator referred to in Section 3(g) hereof.

- b) Nothing contained herein shall confer any right of an employee to be continued in the employee of Cummins or an Affiliate or shall affect the right of the employee to participate in and receive benefits under and in accordance with any pension, profit sharing, incentive compensation or other benefit plan or other benefit plan or program of Cummins or an Affiliate.
- c) This Plan shall continue in force with respect to any Participant until the termination of the right of such Participant or his Joint Annuitant to receive benefits under the Retirement Plan, or, if later, the completion of any payments due under Sections 2(b) or 2(c) hereof, and shall be binding upon any successor to substantially all the assets of Cummins. Cummins may, however, at any time, amend the Plan to provide that no additional benefits shall accrue with respect to any Participant under the Plan, provided, however, that no such amendment shall deprive any Participant or Joint Annuitant of any benefit that accrued under the Plan prior to such amendment. Cummins may also, at any time, amend this Plan retroactively or otherwise if and to the extent that such action is deemed appropriate in light of government regulations or other legal requirements.
- d) Cummins assumes no contractual obligation as to the continuance of this Plan. Cummins may also, at any time, terminate the plan, provided, however, that all benefits accrued under the Plan prior to the termination date will be paid in an actuarially equivalent lump sum.
- e) No right or interest of a Participant or Joint Annuitant under this Plan shall be subject to voluntary or involuntary alienation, assignment or transfer of any kind.
- f) Any elections to be made under this Plan shall be made in the manner prescribed under equivalent provisions of the Retirement Plan.
- g) The administration of this Plan shall be the responsibility of the Pension Policy Committee of Cummins, or such other person or entity as Cummins shall designate. Decisions of such administrator of the Plan shall be final and binding upon each Affiliate that shall have adopted this Plan, employees of such Affiliates and the Joint Annuitant of such employees.
- h) If any payment to be made under this Plan is to be made on account of an employee who was employed by an affiliate that shall have adopted this Plan, the cost of such payment shall be borne in such proportions as Cummins and such Affiliate shall agree.

This Plan shall be effective as of March 1, 1984.

CUMMINS ENGINE COMPANY, INC.

EXHIBIT 10(i)

EXCESS BENEFIT RETIREMENT PLAN

Effective as of March 1, 1984  
Amended as of October 24, 1986  
Amended as of January 12, 1989  
Amended as of February 14, 1989

Purpose:

Section 415 of the Internal Revenue Code (the "Code"), as amended by the Employee Retirement Income Security Act of 1974 (the "Act") and the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), imposes certain dollar limitations on the annual retirement benefit payable to an individual after December 31, 1982, and Section 401(a)(17) of the Code, as added by the Tax Reform Act of 1986 ("TRA") imposes a dollar limitation on the annual compensation taken into account for any purpose after December 31, 1988 under qualified pension plans such as the Cummins Engine Company, Inc., and Affiliates Retirement Plan "A" (the "Retirement Plan"). Cummins Engine Company, Inc. ("Cummins") has amended the Retirement Plan to conform to the benefit and compensation limitations of the Code, the Act, TRA and TEFRA, and such amendments (the "Limitation Amendments") have reduced the benefits that certain employees of Cummins and its Affiliates (as such term is defined under the Retirement Plan) would otherwise be entitled to receive under the Retirement Plan. Cummins and such Affiliates have adopted this Plan so that eligible employees shall receive retirement benefits in the same amounts they would have received under the Retirement Plan were it not for the Limitation Amendments.

Section 1. Definitions:

- a) "Employee" is defined for the purpose of this Plan as that term is defined under the Retirement Plan.
- b) "Participants" is defined as any employee who has a current accrued retirement benefit in excess of the benefit limitations of Section 415 of the Code.
- c) "Joint Annuitant" is defined for the purposes of this Plan as that term is defined under the Retirement Plan.
- d) "Plan" is defined as the Excess Benefit Retirement Plan of Cummins Engine Company, Inc., as amended from time to time.
- e) "Change of Control" means the occurrence of any of the following:
- (i) there shall be consummated (A) any consolidation or merger of Cummins in which Cummins is not the continuing or surviving corporation or pursuant to which shares of Cummins common stock would be converted in whole or in part into cash, other securities or other property, other than a merger of Cummins in which the holders of Cummins common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all the assets of Cummins, or
  - (ii) the stockholders of Cummins shall approve any plan or proposal for the liquidation or dissolution of Cummins, or
  - (iii) any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Cummins or a subsidiary thereof or any employee benefit plan sponsored by Cummins or a subsidiary thereof or a corporation owned, directly or indirectly, by the stockholders of Cummins in substantially the same proportions as their ownership of stock of Cummins, shall become the beneficial owners (within the meaning of Rule 13d-3 under the Exchange Act) of securities of Cummins representing 25 percent or more of the combined voting power of Cummins' then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors ("Voting Shares"), as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, or

(iv) at any time during a period of two consecutive years, individuals who, at the beginning of such period constituted the Board of Directors of Cummins, shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by Cummins stockholders of each new director during such 2-year period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such 2-year period, or

(v) any other event shall occur that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.

## Section 2. Benefits:

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- a) Cummins will pay or cause to be paid to each Participant or the Participant's Joint Annuitant, as the case may be, who is entitled to receive payments under the Retirement Plan, an amount which is equivalent to the excess, if any, of
- (i) the amount such Participant or Joint Annuitant would have been entitled to receive under the Retirement Plan for each calendar year, taking into account all the provisions of the Retirement Plan as are from time to time in effect and applicable to the Participant or Joint Annuitant except for the Limitation Amendments, minus
  - (ii) the amount such Participant or Joint Annuitant was entitled to receive under the Retirement Plan for such year taking into account the Limitation Amendments. Payments hereunder shall be made at approximately the same time as payments are made to the Participant or Joint Annuitant under the Retirement Plan, except as provided in Section 2(b) below.
- b) If a Participant or Joint Annuitant is entitled to a benefit pursuant to Section 2(a) hereof, Cummins shall pay to such Participant or Joint Annuitant the amount determined as follows:
- (i) If the benefit to which the Participant or the Participant's Joint Annuitant is entitled:
    - (A) is less than \$100 per month, the benefit will be paid in an actuarially equivalent lump sum
    - (B) has an actuarially equivalent lump-sum value which is greater than \$100 per month, the benefit will be payable in the same form as the Participant's or Joint Annuitant's Retirement Plan benefit.
- Cummins shall determine the times at which such payments shall be made, but they shall commence not later than one year after the commencement of benefits under the Retirement Plan and shall thereafter be made at least annually and over the same period that such payments would be made if they were paid under the Retirement Plan. Notwithstanding the foregoing, on request of the Participant or Joint Annuitant, Cummins may, in its sole discretion, accelerate the remaining unpaid portion of such payments into one or more payments having, in the aggregate, an equivalent actuarial value.
- (ii) All lump-sum equivalent benefits payable under this Plan will be calculated using:
    - (A) the interest rate used by the Pension Benefit Guaranty Corporation in determining the value of immediate benefits as of the immediately preceding January 1, and
    - (B) the mortality tables in Attachment A.
- c) Notwithstanding anything contained in this Section 2 to the contrary, following a Change of Control, each Participant shall be entitled to receive a lump-sum payment of the actuarial equivalent of the benefits accrued and remaining unpaid as of the date of such Change of Control, calculated using the assumptions referenced in subsection (b)2. above. In addition, the accrued benefits of each Participant (other than one who is a terminated vested participant in the Retirement Plan) shall be calculated assuming, solely for the purpose of computing benefits, including the reduction of Retirement Plan benefits for early commencement, that the Participant has already satisfied the conditions for unreduced benefits at the earliest possible time, taking into consideration the Participant's age and service with Cummins, its subsidiaries and affiliates.
- d) If payment of a benefit pursuant to subsection (c) of this

Section 2 (the "Lump Sum") causes the Lump Sum and any other payments made in connection with a Change of Control (together with the Lump Sum, the "Total Payments") to be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code, Cummins shall pay the Participant an additional amount (the "Gross-up Payment") such that the net amount retained by the Participant, after deduction of any Excise Tax paid or payable (and not grossed-up under a similar provision of another plan or program sponsored by Cummins) on the Lump Sum and such other Total Payments and any Federal, state and local income tax and Excise Tax upon the payment provided for by this subsection (d), shall be equal to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum, a Gross-up Payment shall be made, but shall only be equal to the increase in the Excise Tax (plus any Federal, state and local income tax and Excise Tax on such Gross-up Payment) arising solely as a result of the Lump Sum.

For purposes of determining whether any of the payments described above will be subject to the Excise Tax and the amount of such Excise Tax,

(i) any other payments or benefits received or to be received by the Participant in connection with a change in control of Cummins, whether payable pursuant to the terms of this Plan or any other plan, arrangement or agreement with Cummins, its successors, any person whose actions result in a change in control of Cummins or any corporation affiliated (or which, as a result of the completion of a transaction causing a Change of Control, will become affiliated) with Cummins within the meaning of Section 1504 of the Code shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by Cummins' independent auditors and acceptable to the Participant the payments (in whole or in part) do not constitute parachute payments, or such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code either in their entirety or in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax,

(ii) the amount of the payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (A) the total amount of the payments or (B) the amount of excess parachute payments within the meaning of Section 280G(b)(1) (after applying clause (i), above), and

(iii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by Cummins' independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-up Payment, the Participant shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which the Gross-up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Participant's residence on the date of payment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time of payment, the Participant shall repay to Cummins at the time that the amount of such reduction in Excise Tax is finally determined the portion of the Gross-up Payment attributable to such reduction (plus the portion of the Gross-up Payment attributable to the Excise Tax and Federal and state and local income tax imposed on the Gross-up Payment being repaid by the Participant if such repayment results in a reduction in Excise Tax and/or a Federal and state and local income tax deduction) plus interest on the amount of such repayment at the rate provided in Section 1274(d) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time of the Gross-up Payment (including by reasons of any payment the existence or amount of which cannot be determined at the time of the Gross-up Payment), Cummins shall make an additional Gross-up Payment in respect to such excess (plus any interest payable with respect to such excess) at the time that the amount of such excess is finally determined.

### Section 3. Miscellaneous:

a) Cummins shall be under only a contractual obligation to make payments to the Participant or Joint Annuitant referred to herein



when due, and the method of making provision for the payment of such benefits shall be solely in the discretion of the Plan Administrator referred to in Section 3(g) hereof.

- b) Nothing contained herein shall confer any right of an employee to be continued in the employee of Cummins or an Affiliate or shall affect the right of the employee to participate in and receive benefits under and in accordance with any pension, profit sharing, incentive compensation or other benefit plan or other benefit plan or program of Cummins or an Affiliate.
- c) This Plan shall continue in force with respect to any Participant until the termination of the right of such Participant or his Joint Annuitant to receive benefits under the Retirement Plan, or, if later, the completion of any payments due under Sections 2(b) or 2(c) hereof, and shall be binding upon any successor to substantially all the assets of Cummins. Cummins may, however, at any time, amend the Plan to provide that no additional benefits shall accrue with respect to any Participant under the Plan, provided, however, that no such amendment shall deprive any Participant or Joint Annuitant of any benefit that accrued under the Plan prior to such amendment. Cummins may also, at any time, amend this Plan retroactively or otherwise if and to the extent that such action is deemed appropriate in light of government regulations or other legal requirements.
- d) Cummins assumes no contractual obligation as to the continuance of this Plan. Cummins may also, at any time, terminate the plan, provided, however, that all benefits accrued under the Plan prior to the termination date will be paid in an actuarially equivalent lump sum.
- e) No right or interest of a Participant or Joint Annuitant under this Plan shall be subject to voluntary or involuntary alienation, assignment or transfer of any kind.
- f) Any elections to be made under this Plan shall be made in the manner prescribed under equivalent provisions of the Retirement Plan.
- g) The administration of this Plan shall be the responsibility of the Pension Policy Committee of Cummins, or such other person or entity as Cummins shall designate. Decisions of such administrator of the Plan shall be final and binding upon each Affiliate that shall have adopted this Plan, employees of such Affiliates and the Joint Annuitant of such employees.
- h) If any payment to be made under this Plan is to be made on account of an employee who was employed by an affiliate that shall have adopted this Plan, the cost of such payment shall be borne in such proportions as Cummins and such Affiliate shall agree.

This Plan shall be effective as of March 1, 1984.

CUMMINS ENGINE COMPANY, INC.

EXHIBIT 10(i)

EXCESS BENEFIT RETIREMENT PLAN

Effective as of March 1, 1984  
Amended as of October 24, 1986  
Amended as of January 12, 1989  
Amended as of February 14, 1989

Purpose:

Section 415 of the Internal Revenue Code (the "Code"), as amended by the Employee Retirement Income Security Act of 1974 (the "Act") and the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), imposes certain dollar limitations on the annual retirement benefit payable to an individual after December 31, 1982, and Section 401(a)(17) of the Code, as added by the Tax Reform Act of 1986 ("TRA") imposes a dollar limitation on the annual compensation taken into account for any purpose after December 31, 1988 under qualified pension plans such as the Cummins Engine Company, Inc., and Affiliates Retirement Plan "A" (the "Retirement Plan"). Cummins Engine Company, Inc. ("Cummins") has amended the Retirement Plan to conform to the benefit and compensation limitations of the Code, the Act, TRA and TEFRA, and such amendments (the "Limitation Amendments") have reduced the benefits that certain employees of Cummins and its Affiliates (as such term is defined under the Retirement Plan) would otherwise be entitled to receive under the Retirement Plan. Cummins and such Affiliates have adopted this Plan so that eligible employees shall receive retirement benefits in the same amounts they would have received under the Retirement Plan were it not for the Limitation Amendments.

Section 1. Definitions:

- a) "Employee" is defined for the purpose of this Plan as that term is defined under the Retirement Plan.
- b) "Participants" is defined as any employee who has a current accrued retirement benefit in excess of the benefit limitations of Section 415 of the Code.
- c) "Joint Annuitant" is defined for the purposes of this Plan as that term is defined under the Retirement Plan.
- d) "Plan" is defined as the Excess Benefit Retirement Plan of Cummins Engine Company, Inc., as amended from time to time.
- e) "Change of Control" means the occurrence of any of the following:
- (i) there shall be consummated (A) any consolidation or merger of Cummins in which Cummins is not the continuing or surviving corporation or pursuant to which shares of Cummins common stock would be converted in whole or in part into cash, other securities or other property, other than a merger of Cummins in which the holders of Cummins common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all the assets of Cummins, or
  - (ii) the stockholders of Cummins shall approve any plan or proposal for the liquidation or dissolution of Cummins, or
  - (iii) any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Cummins or a subsidiary thereof or any employee benefit plan sponsored by Cummins or a subsidiary thereof or a corporation owned, directly or indirectly, by the stockholders of Cummins in substantially the same proportions as their ownership of stock of Cummins, shall become the beneficial owners (within the meaning of Rule 13d-3 under the Exchange Act) of securities of Cummins representing 25 percent or more of the combined voting power of Cummins' then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors ("Voting Shares"), as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, or

(iv) at any time during a period of two consecutive years, individuals who, at the beginning of such period constituted the Board of Directors of Cummins, shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by Cummins stockholders of each new director during such 2-year period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such 2-year period, or

(v) any other event shall occur that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.

## Section 2. Benefits:

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- a) Cummins will pay or cause to be paid to each Participant or the Participant's Joint Annuitant, as the case may be, who is entitled to receive payments under the Retirement Plan, an amount which is equivalent to the excess, if any, of
- (i) the amount such Participant or Joint Annuitant would have been entitled to receive under the Retirement Plan for each calendar year, taking into account all the provisions of the Retirement Plan as are from time to time in effect and applicable to the Participant or Joint Annuitant except for the Limitation Amendments, minus
  - (ii) the amount such Participant or Joint Annuitant was entitled to receive under the Retirement Plan for such year taking into account the Limitation Amendments. Payments hereunder shall be made at approximately the same time as payments are made to the Participant or Joint Annuitant under the Retirement Plan, except as provided in Section 2(b) below.

- b) If a Participant or Joint Annuitant is entitled to a benefit pursuant to Section 2(a) hereof, Cummins shall pay to such Participant or Joint Annuitant the amount determined as follows:

(i) If the benefit to which the Participant or the Participant's Joint Annuitant is entitled:

(A) is less than \$100 per month, the benefit will be paid in an actuarially equivalent lump sum

(B) has an actuarially equivalent lump-sum value which is greater than \$100 per month, the benefit will be payable in the same form as the Participant's or Joint Annuitant's Retirement Plan benefit.

Cummins shall determine the times at which such payments shall be made, but they shall commence not later than one year after the commencement of benefits under the Retirement Plan and shall thereafter be made at least annually and over the same period that such payments would be made if they were paid under the Retirement Plan. Notwithstanding the foregoing, on request of the Participant or Joint Annuitant, Cummins may, in its sole discretion, accelerate the remaining unpaid portion of such payments into one or more payments having, in the aggregate, an equivalent actuarial value.

(ii) All lump-sum equivalent benefits payable under this Plan will be calculated using:

(A) the interest rate used by the Pension Benefit Guaranty Corporation in determining the value of immediate benefits as of the immediately preceding January 1, and

(B) the mortality tables in Attachment A.

- c) Notwithstanding anything contained in this Section 2 to the contrary, following a Change of Control, each Participant shall be entitled to receive a lump-sum payment of the actuarial equivalent of the benefits accrued and remaining unpaid as of the date of such Change of Control, calculated using the assumptions referenced in subsection (b)2. above. In addition, the accrued benefits of each Participant (other than one who is a terminated vested participant in the Retirement Plan) shall be calculated assuming, solely for the purpose of computing benefits, including the reduction of Retirement Plan benefits for early commencement, that the Participant has already satisfied the conditions for unreduced benefits at the earliest possible time, taking into consideration the Participant's age and service with Cummins, its subsidiaries and affiliates.

- d) If payment of a benefit pursuant to subsection (c) of this

Section 2 (the "Lump Sum") causes the Lump Sum and any other payments made in connection with a Change of Control (together with the Lump Sum, the "Total Payments") to be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code, Cummins shall pay the Participant an additional amount (the "Gross-up Payment") such that the net amount retained by the Participant, after deduction of any Excise Tax paid or payable (and not grossed-up under a similar provision of another plan or program sponsored by Cummins) on the Lump Sum and such other Total Payments and any Federal, state and local income tax and Excise Tax upon the payment provided for by this subsection (d), shall be equal to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum, a Gross-up Payment shall be made, but shall only be equal to the increase in the Excise Tax (plus any Federal, state and local income tax and Excise Tax on such Gross-up Payment) arising solely as a result of the Lump Sum.

For purposes of determining whether any of the payments described above will be subject to the Excise Tax and the amount of such Excise Tax,

(i) any other payments or benefits received or to be received by the Participant in connection with a change in control of Cummins, whether payable pursuant to the terms of this Plan or any other plan, arrangement or agreement with Cummins, its successors, any person whose actions result in a change in control of Cummins or any corporation affiliated (or which, as a result of the completion of a transaction causing a Change of Control, will become affiliated) with Cummins within the meaning of Section 1504 of the Code shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by Cummins' independent auditors and acceptable to the Participant the payments (in whole or in part) do not constitute parachute payments, or such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code either in their entirety or in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax,

(ii) the amount of the payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (A) the total amount of the payments or (B) the amount of excess parachute payments within the meaning of Section 280G(b)(1) (after applying clause (i), above), and

(iii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by Cummins' independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-up Payment, the Participant shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which the Gross-up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Participant's residence on the date of payment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time of payment, the Participant shall repay to Cummins at the time that the amount of such reduction in Excise Tax is finally determined the portion of the Gross-up Payment attributable to such reduction (plus the portion of the Gross-up Payment attributable to the Excise Tax and Federal and state and local income tax imposed on the Gross-up Payment being repaid by the Participant if such repayment results in a reduction in Excise Tax and/or a Federal and state and local income tax deduction) plus interest on the amount of such repayment at the rate provided in Section 1274(d) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time of the Gross-up Payment (including by reasons of any payment the existence or amount of which cannot be determined at the time of the Gross-up Payment), Cummins shall make an additional Gross-up Payment in respect to such excess (plus any interest payable with respect to such excess) at the time that the amount of such excess is finally determined.

### Section 3. Miscellaneous:

a) Cummins shall be under only a contractual obligation to make payments to the Participant or Joint Annuitant referred to herein

when due, and the method of making provision for the payment of such benefits shall be solely in the discretion of the Plan Administrator referred to in Section 3(g) hereof.

- b) Nothing contained herein shall confer any right of an employee to be continued in the employee of Cummins or an Affiliate or shall affect the right of the employee to participate in and receive benefits under and in accordance with any pension, profit sharing, incentive compensation or other benefit plan or other benefit plan or program of Cummins or an Affiliate.
- c) This Plan shall continue in force with respect to any Participant until the termination of the right of such Participant or his Joint Annuitant to receive benefits under the Retirement Plan, or, if later, the completion of any payments due under Sections 2(b) or 2(c) hereof, and shall be binding upon any successor to substantially all the assets of Cummins. Cummins may, however, at any time, amend the Plan to provide that no additional benefits shall accrue with respect to any Participant under the Plan, provided, however, that no such amendment shall deprive any Participant or Joint Annuitant of any benefit that accrued under the Plan prior to such amendment. Cummins may also, at any time, amend this Plan retroactively or otherwise if and to the extent that such action is deemed appropriate in light of government regulations or other legal requirements.
- d) Cummins assumes no contractual obligation as to the continuance of this Plan. Cummins may also, at any time, terminate the plan, provided, however, that all benefits accrued under the Plan prior to the termination date will be paid in an actuarially equivalent lump sum.
- e) No right or interest of a Participant or Joint Annuitant under this Plan shall be subject to voluntary or involuntary alienation, assignment or transfer of any kind.
- f) Any elections to be made under this Plan shall be made in the manner prescribed under equivalent provisions of the Retirement Plan.
- g) The administration of this Plan shall be the responsibility of the Pension Policy Committee of Cummins, or such other person or entity as Cummins shall designate. Decisions of such administrator of the Plan shall be final and binding upon each Affiliate that shall have adopted this Plan, employees of such Affiliates and the Joint Annuitant of such employees.
- h) If any payment to be made under this Plan is to be made on account of an employee who was employed by an affiliate that shall have adopted this Plan, the cost of such payment shall be borne in such proportions as Cummins and such Affiliate shall agree.

This Plan shall be effective as of March 1, 1984.

CUMMINS ENGINE COMPANY, INC.

EXHIBIT 10(i)

EXCESS BENEFIT RETIREMENT PLAN

Effective as of March 1, 1984  
Amended as of October 24, 1986  
Amended as of January 12, 1989  
Amended as of February 14, 1989

Purpose:

Section 415 of the Internal Revenue Code (the "Code"), as amended by the Employee Retirement Income Security Act of 1974 (the "Act") and the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), imposes certain dollar limitations on the annual retirement benefit payable to an individual after December 31, 1982, and Section 401(a)(17) of the Code, as added by the Tax Reform Act of 1986 ("TRA") imposes a dollar limitation on the annual compensation taken into account for any purpose after December 31, 1988 under qualified pension plans such as the Cummins Engine Company, Inc., and Affiliates Retirement Plan "A" (the "Retirement Plan"). Cummins Engine Company, Inc. ("Cummins") has amended the Retirement Plan to conform to the benefit and compensation limitations of the Code, the Act, TRA and TEFRA, and such amendments (the "Limitation Amendments") have reduced the benefits that certain employees of Cummins and its Affiliates (as such term is defined under the Retirement Plan) would otherwise be entitled to receive under the Retirement Plan. Cummins and such Affiliates have adopted this Plan so that eligible employees shall receive retirement benefits in the same amounts they would have received under the Retirement Plan were it not for the Limitation Amendments.

Section 1. Definitions:

- a) "Employee" is defined for the purpose of this Plan as that term is defined under the Retirement Plan.
- b) "Participants" is defined as any employee who has a current accrued retirement benefit in excess of the benefit limitations of Section 415 of the Code.
- c) "Joint Annuitant" is defined for the purposes of this Plan as that term is defined under the Retirement Plan.
- d) "Plan" is defined as the Excess Benefit Retirement Plan of Cummins Engine Company, Inc., as amended from time to time.
- e) "Change of Control" means the occurrence of any of the following:
- (i) there shall be consummated (A) any consolidation or merger of Cummins in which Cummins is not the continuing or surviving corporation or pursuant to which shares of Cummins common stock would be converted in whole or in part into cash, other securities or other property, other than a merger of Cummins in which the holders of Cummins common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all the assets of Cummins, or
  - (ii) the stockholders of Cummins shall approve any plan or proposal for the liquidation or dissolution of Cummins, or
  - (iii) any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Cummins or a subsidiary thereof or any employee benefit plan sponsored by Cummins or a subsidiary thereof or a corporation owned, directly or indirectly, by the stockholders of Cummins in substantially the same proportions as their ownership of stock of Cummins, shall become the beneficial owners (within the meaning of Rule 13d-3 under the Exchange Act) of securities of Cummins representing 25 percent or more of the combined voting power of Cummins' then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors ("Voting Shares"), as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, or

(iv) at any time during a period of two consecutive years, individuals who, at the beginning of such period constituted the Board of Directors of Cummins, shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by Cummins stockholders of each new director during such 2-year period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such 2-year period, or

(v) any other event shall occur that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.

## Section 2. Benefits:

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- a) Cummins will pay or cause to be paid to each Participant or the Participant's Joint Annuitant, as the case may be, who is entitled to receive payments under the Retirement Plan, an amount which is equivalent to the excess, if any, of
- (i) the amount such Participant or Joint Annuitant would have been entitled to receive under the Retirement Plan for each calendar year, taking into account all the provisions of the Retirement Plan as are from time to time in effect and applicable to the Participant or Joint Annuitant except for the Limitation Amendments, minus
  - (ii) the amount such Participant or Joint Annuitant was entitled to receive under the Retirement Plan for such year taking into account the Limitation Amendments. Payments hereunder shall be made at approximately the same time as payments are made to the Participant or Joint Annuitant under the Retirement Plan, except as provided in Section 2(b) below.
- b) If a Participant or Joint Annuitant is entitled to a benefit pursuant to Section 2(a) hereof, Cummins shall pay to such Participant or Joint Annuitant the amount determined as follows:
- (i) If the benefit to which the Participant or the Participant's Joint Annuitant is entitled:
    - (A) is less than \$100 per month, the benefit will be paid in an actuarially equivalent lump sum
    - (B) has an actuarially equivalent lump-sum value which is greater than \$100 per month, the benefit will be payable in the same form as the Participant's or Joint Annuitant's Retirement Plan benefit.
- Cummins shall determine the times at which such payments shall be made, but they shall commence not later than one year after the commencement of benefits under the Retirement Plan and shall thereafter be made at least annually and over the same period that such payments would be made if they were paid under the Retirement Plan. Notwithstanding the foregoing, on request of the Participant or Joint Annuitant, Cummins may, in its sole discretion, accelerate the remaining unpaid portion of such payments into one or more payments having, in the aggregate, an equivalent actuarial value.
- (ii) All lump-sum equivalent benefits payable under this Plan will be calculated using:
    - (A) the interest rate used by the Pension Benefit Guaranty Corporation in determining the value of immediate benefits as of the immediately preceding January 1, and
    - (B) the mortality tables in Attachment A.
- c) Notwithstanding anything contained in this Section 2 to the contrary, following a Change of Control, each Participant shall be entitled to receive a lump-sum payment of the actuarial equivalent of the benefits accrued and remaining unpaid as of the date of such Change of Control, calculated using the assumptions referenced in subsection (b)2. above. In addition, the accrued benefits of each Participant (other than one who is a terminated vested participant in the Retirement Plan) shall be calculated assuming, solely for the purpose of computing benefits, including the reduction of Retirement Plan benefits for early commencement, that the Participant has already satisfied the conditions for unreduced benefits at the earliest possible time, taking into consideration the Participant's age and service with Cummins, its subsidiaries and affiliates.
- d) If payment of a benefit pursuant to subsection (c) of this

Section 2 (the "Lump Sum") causes the Lump Sum and any other payments made in connection with a Change of Control (together with the Lump Sum, the "Total Payments") to be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code, Cummins shall pay the Participant an additional amount (the "Gross-up Payment") such that the net amount retained by the Participant, after deduction of any Excise Tax paid or payable (and not grossed-up under a similar provision of another plan or program sponsored by Cummins) on the Lump Sum and such other Total Payments and any Federal, state and local income tax and Excise Tax upon the payment provided for by this subsection (d), shall be equal to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum and such other Total Payments. If any of such other Total Payments are subject to the Excise Tax without regard to the Lump Sum, a Gross-up Payment shall be made, but shall only be equal to the increase in the Excise Tax (plus any Federal, state and local income tax and Excise Tax on such Gross-up Payment) arising solely as a result of the Lump Sum.

For purposes of determining whether any of the payments described above will be subject to the Excise Tax and the amount of such Excise Tax,

(i) any other payments or benefits received or to be received by the Participant in connection with a change in control of Cummins, whether payable pursuant to the terms of this Plan or any other plan, arrangement or agreement with Cummins, its successors, any person whose actions result in a change in control of Cummins or any corporation affiliated (or which, as a result of the completion of a transaction causing a Change of Control, will become affiliated) with Cummins within the meaning of Section 1504 of the Code shall be treated as "parachute payments" within the meaning of Section 280G(b) (2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b) (1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by Cummins' independent auditors and acceptable to the Participant the payments (in whole or in part) do not constitute parachute payments, or such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b) (4) of the Code either in their entirety or in excess of the base amount within the meaning of Section 280G(b) (3) of the Code, or are otherwise not subject to the Excise Tax,

(ii) the amount of the payments that shall be treated as subject to the Excise Tax shall be equal to the lesser of (A) the total amount of the payments or (B) the amount of excess parachute payments within the meaning of Section 280G(b) (1) (after applying clause (i), above), and

(iii) the value of any non-cash benefits or any deferred payment or benefit shall be determined by Cummins' independent auditors in accordance with the principles of Section 280G(d) (3) and (4) of the Code. For purposes of determining the amount of the Gross-up Payment, the Participant shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which the Gross-up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Participant's residence on the date of payment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time of payment, the Participant shall repay to Cummins at the time that the amount of such reduction in Excise Tax is finally determined the portion of the Gross-up Payment attributable to such reduction (plus the portion of the Gross-up Payment attributable to the Excise Tax and Federal and state and local income tax imposed on the Gross-up Payment being repaid by the Participant if such repayment results in a reduction in Excise Tax and/or a Federal and state and local income tax deduction) plus interest on the amount of such repayment at the rate provided in Section 1274(d) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time of the Gross-up Payment (including by reasons of any payment the existence or amount of which cannot be determined at the time of the Gross-up Payment), Cummins shall make an additional Gross-up Payment in respect to such excess (plus any interest payable with respect to such excess) at the time that the amount of such excess is finally determined.

### Section 3. Miscellaneous:

a) Cummins shall be under only a contractual obligation to make payments to the Participant or Joint Annuitant referred to herein



when due, and the method of making provision for the payment of such benefits shall be solely in the discretion of the Plan Administrator referred to in Section 3(g) hereof.

- b) Nothing contained herein shall confer any right of an employee to be continued in the employee of Cummins or an Affiliate or shall affect the right of the employee to participate in and receive benefits under and in accordance with any pension, profit sharing, incentive compensation or other benefit plan or other benefit plan or program of Cummins or an Affiliate.
- c) This Plan shall continue in force with respect to any Participant until the termination of the right of such Participant or his Joint Annuitant to receive benefits under the Retirement Plan, or, if later, the completion of any payments due under Sections 2(b) or 2(c) hereof, and shall be binding upon any successor to substantially all the assets of Cummins. Cummins may, however, at any time, amend the Plan to provide that no additional benefits shall accrue with respect to any Participant under the Plan, provided, however, that no such amendment shall deprive any Participant or Joint Annuitant of any benefit that accrued under the Plan prior to such amendment. Cummins may also, at any time, amend this Plan retroactively or otherwise if and to the extent that such action is deemed appropriate in light of government regulations or other legal requirements.
- d) Cummins assumes no contractual obligation as to the continuance of this Plan. Cummins may also, at any time, terminate the plan, provided, however, that all benefits accrued under the Plan prior to the termination date will be paid in an actuarially equivalent lump sum.
- e) No right or interest of a Participant or Joint Annuitant under this Plan shall be subject to voluntary or involuntary alienation, assignment or transfer of any kind.
- f) Any elections to be made under this Plan shall be made in the manner prescribed under equivalent provisions of the Retirement Plan.
- g) The administration of this Plan shall be the responsibility of the Pension Policy Committee of Cummins, or such other person or entity as Cummins shall designate. Decisions of such administrator of the Plan shall be final and binding upon each Affiliate that shall have adopted this Plan, employees of such Affiliates and the Joint Annuitant of such employees.
- h) If any payment to be made under this Plan is to be made on account of an employee who was employed by an affiliate that shall have adopted this Plan, the cost of such payment shall be borne in such proportions as Cummins and such Affiliate shall agree.

This Plan shall be effective as of March 1, 1984.

CUMMINS ENGINE COMPANY, INC., AND SUBSIDIARIES

EXHIBIT 11

SCHEDULE OF COMPUTATION OF PER SHARE EARNINGS  
 FOR THE THIRD QUARTER ENDED OCTOBER 2, 1994 AND OCTOBER 3, 1993  
 (Millions, Except per Share Data)

|                                                                                        | Third Quarter                 |                 | Nine Months                   |                 |
|----------------------------------------------------------------------------------------|-------------------------------|-----------------|-------------------------------|-----------------|
|                                                                                        | Weighted<br>Average<br>Shares | Net<br>Earnings | Weighted<br>Average<br>Shares | Net<br>Earnings |
| 1994                                                                                   |                               |                 |                               |                 |
| Shares outstanding & earnings<br>available for common stock<br>shareholders            | 41.6                          | \$61.9          | 41.1                          | \$182.7         |
| Options                                                                                | .1                            | -               | .2                            | -               |
| Used in the determination of<br>primary and fully diluted<br>earnings per common share | 41.7                          | \$61.9          | 41.3                          | \$182.7         |
| Primary and fully diluted<br>earnings per share                                        |                               | \$1.48          |                               | \$ 4.43         |
| 1993                                                                                   |                               |                 |                               |                 |
| Shares outstanding & earnings<br>available for common stock<br>shareholders            | 34.7                          | \$38.7          | 34.6                          | \$123.9         |
| Options                                                                                | .2                            | -               | .4                            | -               |
| Used in the determination of<br>primary earnings per common<br>share                   | 34.9                          | 38.7            | 35.0                          | 123.9           |
| Liquid yield option notes                                                              | 1.0                           | .9              | 1.0                           | 2.6             |
| Convertible preference stock                                                           | 3.0                           | 2.0             | 3.0                           | 6.1             |
| Other                                                                                  | -                             | (.4)            | -                             | (1.2)           |
| Used in the determination of<br>fully diluted earnings per<br>common share             | 38.9                          | \$41.2          | 39.0                          | \$131.4         |
| Earnings per share:                                                                    |                               |                 |                               |                 |
| Primary                                                                                |                               | \$1.11          |                               | \$ 3.54         |
| Fully diluted                                                                          |                               | \$1.06          |                               | \$ 3.37         |

<TABLE> <S> <C>

<ARTICLE> 5

| <S>                          | <C>           | <C>           |
|------------------------------|---------------|---------------|
| <PERIOD-TYPE>                | 9-MOS         | YEAR          |
| <FISCAL-YEAR-END>            | DEC-31-1994   | DEC-31-1993   |
| <PERIOD-END>                 | OCT-02-1994   | DEC-31-1993   |
| <CASH>                       | 167,600,000   | 77,300,000    |
| <SECURITIES>                 | 0             | 0             |
| <RECEIVABLES>                | 506,500,000   | 435,800,000   |
| <ALLOWANCES>                 | 10,700,000    | 9,500,000     |
| <INVENTORY>                  | 541,800,000   | 440,200,000   |
| <CURRENT-ASSETS>             | 1,347,000,000 | 1,071,700,000 |
| <PP&E>                       | 2,278,900,000 | 2,180,500,000 |
| <DEPRECIATION>               | 1,281,000,000 | 1,222,300,000 |
| <TOTAL-ASSETS>               | 2,712,000,000 | 2,390,600,000 |
| <CURRENT-LIABILITIES>        | 832,000,000   | 700,300,000   |
| <BONDS>                      | 184,200,000   | 189,600,000   |
| <COMMON>                     | 109,200,000   | 101,500,000   |
| <PREFERRED-MANDATORY>        | 0             | 0             |
| <PREFERRED>                  | 0             | 12,200,000    |
| <OTHER-SE>                   | 899,900,000   | 607,400,000   |
| <TOTAL-LIABILITY-AND-EQUITY> | 2,712,000,000 | 2,390,600,000 |
| <SALES>                      | 3,459,600,000 | 4,247,900,000 |
| <TOTAL-REVENUES>             | 3,459,600,000 | 4,247,900,000 |
| <CGS>                        | 2,597,200,000 | 3,211,000,000 |
| <TOTAL-COSTS>                | 640,500,000   | 788,800,000   |
| <OTHER-EXPENSES>             | 0             | 0             |
| <LOSS-PROVISION>             | 2,400,000     | 5,400,000     |
| <INTEREST-EXPENSE>           | 13,700,000    | 36,300,000    |
| <INCOME-PRETAX>              | 212,000,000   | 205,000,000   |
| <INCOME-TAX>                 | 29,300,000    | 22,300,000    |
| <INCOME-CONTINUING>          | 182,700,000   | 182,600,000   |
| <DISCONTINUED>               | 0             | 0             |
| <EXTRAORDINARY>              | 0             | (5,500,000)   |
| <CHANGES>                    | 0             | 0             |
| <NET-INCOME>                 | 182,700,000   | 177,100,000   |
| <EPS-PRIMARY>                | 4.43          | 4.79          |
| <EPS-DILUTED>                | 4.43          | 4.63          |

</TABLE>

CUMMINS ENGINE COMPANY, INC.

EXHIBIT 4 (b)

AMENDED AND RESTATED CREDIT AGREEMENT

AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 16, 1994, among CUMMINS ENGINE COMPANY, INC., an Indiana corporation (the "Company"), the banks and other financial institutions listed in Schedule I hereto (the "Banks") and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, a New York banking corporation ("Morgan"), as administrative agent for the Banks (in such capacity, the "Agent").

W I T N E S S E T H :

WHEREAS, the Company, the Banks listed as Existing Banks on Schedule I hereto (the "Existing Banks") and the Agent are parties to a Credit Agreement, dated as of June 4, 1993 (as amended, supplemented or otherwise modified to the Effective Date (as defined below), the "Existing Credit Agreement"); and

WHEREAS, the Company has requested the Banks to amend and restate the Existing Credit Agreement (i) to extend the maturity of the Existing Credit Agreement, (ii) to provide for the Banks to continue to extend credit to the Company in order to enable it to borrow revolving credit loans and (iii) to continue to provide a procedure pursuant to which the Company may invite the Banks to bid on an uncommitted basis on short-term borrowings by the Company scheduled to mature within 180 days or six months of borrowing and in any event on or prior to the Maturity Date; and

WHEREAS, the Banks are willing to amend and restate the Credit Agreement, to continue to extend the credit and continue to provide the procedure for uncommitted short-term borrowings requested by the Company on the terms and conditions herein set forth;

NOW, THEREFORE, the Company, the Agent and the Banks amend and restate the Existing Credit Agreement, effective as of the Effective Date, as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

"Acquiring Person" shall mean any person who is or becomes the beneficial owner, directly or indirectly, of 10% or more of the outstanding common stock of the Company.

"Adjusted CD Rate" shall mean, with respect to any Certificate of Deposit Loan, an interest rate per annum (rounded upwards, if not already a whole multiple of 1/16 of 1%, to the next higher 1/16 of 1%) equal to the sum of (a) a rate per annum equal to the product of (i) the Fixed Certificate of Deposit Rate in effect for the Interest Period applicable to such Loan and (ii) Statutory Reserves, plus (b) the Assessment Rate. For purposes hereof, the term "Fixed Certificate of Deposit Rate" shall mean the arithmetic average (rounded upwards, if not already a whole multiple of 1/16 of 1%, to the next higher 1/16 of 1%) of the respective rates notified to the Agent by each of the Reference Banks as the average rate bid at or about 10:00 a.m., New York City time, on the first Business Day of the Interest Period applicable to such Certificate of Deposit Loan by three New York City negotiable certificate of deposit dealers of recognized standing selected by such Reference Bank for the purchase at face value of negotiable certificates of deposit of major United States money center banks in a principal amount approximately equal to such Reference Bank's portion of the principal amount of the Standby Borrowing of which such Certificate of Deposit Loan forms a part and with a maturity comparable to such Interest Period.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. For purposes of the foregoing, the term "control" (including the terms "controlling", "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the

power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Amended and Restated Credit Agreement, as amended, supplemented or otherwise modified from time to time.

"Alternate Base Loan" shall mean any Loan with respect to which the Company shall have selected an interest rate based on the Alternate Base Rate in accordance with the provisions of Article II.

"Alternate Base Rate" shall mean for any day, an interest rate per annum (rounded upwards, if not already a whole multiple of 1/16 of 1%, to the next higher 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect for such day plus 1/2 of 1%. For purposes hereof, the term "Prime Rate" shall mean the rate of interest per annum publicly announced by Morgan from time to time as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective on the date such change is announced as effective. "Base CD Rate" shall mean the sum of (x) the product of (i) the Three-Month Secondary CD Rate and (ii) Statutory Reserves and (y) the Assessment Rate. "Three-Month Secondary CD Rate" shall mean, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day is not a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day), or, if such rate shall not be so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three month certificates of deposit of major money center banks in New York City received at 10:00 a.m., New York City time, on such day (or, if such day shall not be a Business Day, on the next preceding Business Day) by Morgan from three New York City negotiable certificate of deposit dealers of recognized standing selected by it. "Federal Funds Effective Rate" shall mean, for any day the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it. For purposes of this Agreement, any change in the Alternate Base Rate due to a change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate, respectively. If for any reason the Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Base CD Rate or the Federal Funds Effective Rate, or both, for any reason, including the inability or failure of the Agent to obtain sufficient quotations in accordance with the terms hereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), or both, of the first sentence of this definition, as appropriate, until the circumstances giving rise to such inability no longer exist.

"Applicable Margin" shall mean for each day and each type of Standby Loan, the rate per annum set forth below under the relevant column heading opposite the applicable ratings by Standard & Poor's Ratings Group and/or Moody's Investors Service, Inc. in effect on such day in respect of the Company's senior, unsecured, non-credit enhanced, long-term debt:

| Ratings<br>(S&P/<br>Moody's)        | LIBOR<br>Margin | CD<br>Margin | ABR<br>Margin |
|-------------------------------------|-----------------|--------------|---------------|
| BB-/Ba3<br>or below<br>(or unrated) | 1.500%          | 1.625%       | 1.000%        |
| BB/Ba2                              | 0.875           | 1.000        | -0-           |
| BB+/Ba1                             | 0.750           | 0.875        | -0-           |
| BBB-/Baa3                           | 0.375           | 0.500        | -0-           |
| BBB/Baa2                            | 0.275           | 0.400        | -0-           |
| BBB+/Baa1                           | 0.250           | 0.375        | -0-           |
| A-/A3<br>or higher                  | 0.230           | 0.355        | -0-           |

In the event that the ratings of Standards & Poor's Ratings Group and Moody's Investors Service, Inc. ("Ratings") do not coincide for any day and the Ratings differential is one level, the applicable margin set forth above for the higher of such two Ratings shall be the Applicable Margin in effect for such day. In the event that the Ratings do not coincide for any day and the Ratings differential is two levels or more, the applicable margin set forth above for the midpoint of such two Ratings shall be the Applicable Margin in effect for such day, provided, however, that if there is no midpoint Rating, the applicable margin set forth above for the higher of the intermediate levels shall be the Applicable Margin in effect for such day. Any change in the Applicable Margin shall be effective as of the date on which the applicable rating agency announces the applicable change in ratings.

"Approval Period" shall mean the period prior to and until 21 calendar days after the date on which a Change of Control shall have occurred.

"Assessment Rate" shall mean for any date the annual rate (rounded upwards, if not already a whole multiple of 1/16 of 1%, to the next higher 1/16 of 1%) most recently estimated by the Agent as the then current net annual assessment rate that will be employed in determining amounts payable by Morgan to the Federal Deposit Insurance Corporation ("FDIC") (or any successor) for insurance by the FDIC (or such successor) of time deposits made in dollars at its domestic offices.

"Attributable Value" of any Sale and Lease-Back Transaction shall mean, at any time, an amount equal to the product of (i) the greater of (A) the net proceeds of the sale of the property subject thereto and (B) the fair market value of such property at the time of such sale (as determined by the Board of Directors of the Company or by an independent appraiser) and (ii) a fraction the numerator of which equals the number of full years in the term of the relevant lease remaining at such time and the denominator of which equals the number of full years in the term of such lease at such time, in each case computed without regard to any renewal or extension options (other than those at the option of the lessor) contained in such lease.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States.

"Borrowing" shall mean a Competitive Borrowing or a Standby Borrowing.

"Business Day" shall mean any day (other than a day which is a Saturday, Sunday or legal holiday in the State of New York or the State of Indiana) on which banks and the Federal Reserve Bank of New York are open for business in New York City; provided, however, that when used in connection with a LIBOR Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London Interbank Market.

"Capital Lease Obligations" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"CDC" shall mean Consolidated Diesel Company, a North Carolina general partnership.

"CDI" shall mean Consolidated Diesel, Inc., a Delaware corporation and wholly owned subsidiary of CDC.

"CDNC" shall mean Consolidated Diesel of North Carolina, Inc., a North Carolina corporation and wholly owned subsidiary of CDI.

"CEHC" shall mean Cummins Engine Holding Company, Inc., an Indiana corporation and wholly owned subsidiary of the Company whose only purpose is and hereafter shall be to own and hold a partnership interest in CDC.

"Certificate of Deposit Loan" shall mean any Standby Loan with respect to which the Company shall have selected an interest rate based on the Adjusted CD Rate in accordance with the provisions

of Article II.

"Change in Control" shall mean (i) any person or group of persons within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, becomes the beneficial owner, directly or indirectly, of 30% or more of the outstanding common stock of the Company or (ii) individuals who constitute the Continuing Directors cease for any reason to constitute at least a majority of the Board of Directors of the Company (which, for the purpose of this definition, shall not be deemed to mean any committee of the Board of Directors of the Company); provided, however, that in the case of either (i) or (ii) a Change of Control shall not be deemed to have occurred if the event set forth in such (i) or (ii) shall have been approved during the Approval Period by a majority of the Continuing Directors.

"Closing Date" shall mean June 4, 1993.

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time.

"Commitment" shall mean, with respect to each Bank, after giving effect to Section 9.16, the commitment of such Bank hereunder as set forth in Schedule I hereto, as such Bank's commitment may be permanently terminated or reduced from time to time pursuant to Section 2.6. The Commitments shall automatically and permanently terminate on the Maturity Date.

"Competitive Bid" shall mean an offer by a Bank to make a Competitive Loan pursuant to Section 2.2.

"Competitive Bid Rate" shall mean, as to any Competitive Bid made by a Bank pursuant to Section 2.2(b), either the Competitive Fixed Rate or the Competitive LIBO Rate, as the case may be, offered by the Bank making such Competitive Bid.

"Competitive Bid Request" shall mean a request made pursuant to Section 2.2 in the form of Exhibit A-1.

"Competitive Borrowing" shall mean a borrowing consisting of concurrent Competitive Loans from each of the Banks whose Competitive Bid as a part of such borrowing has been accepted by the Company under the bidding procedure described in Section 2.2.

"Competitive Fixed Rate" shall mean, as to any Competitive Bid made by a Bank pursuant to Section 2.2(b), the fixed rate of interest offered by the Bank making such Competitive Bid.

"Competitive Fixed Rate Loan" shall mean any Competitive Loan with respect to which the Company shall have selected a Competitive Fixed Rate in accordance with the provisions of Article II.

"Competitive LIBO Rate" shall mean, as to any Competitive Bid made by a Bank pursuant to Section 2.2(b), the sum of (i) the LIBO Rate determined for such Competitive Bid plus (or minus) (ii) the margin above or (below) the LIBO Rate offered by the Bank making such Competitive Bid.

"Competitive LIBO Rate Loan" shall mean any Competitive Loan with respect to which the Company shall have selected an interest rate based on the Competitive LIBO Rate in accordance with the provisions of Article II.

"Competitive Loan" shall mean a Loan from a Bank to the Company pursuant to the bidding procedure described in Section 2.2, the interest rate applicable to which shall be either a Competitive Fixed Rate or a Competitive LIBO Rate, as the case may be, offered by such Bank, and accepted by the Company.

"Competitive Note" shall mean a promissory note of the Company in the form of Exhibit D-1, executed and delivered as provided in Section 2.8.

"Consolidated" shall mean, as applied to any financial or accounting term with respect to any person, such term determined on a consolidated basis in accordance with GAAP for such person and all consolidated subsidiaries thereof.

"Consolidated Indebtedness" shall mean the Indebtedness of the Company and its Subsidiaries, computed and Consolidated in accordance with GAAP; provided, however, that the term "Consolidated Indebtedness" shall in any event (i) exclude Indebtedness of CDC and its subsidiaries to the extent that the portion thereof attributable to the Company (through the

Company's interest in CDC) is less than \$100,000,000 and (ii) include Indebtedness of CDC and its subsidiaries to the extent that the portion thereof attributable to the Company (through the Company's interest in CDC) is in excess of \$100,000,000 and (iii) exclude Guarantees of the Company outstanding from time to time in an aggregate amount not to exceed \$85,000,000.

"Consolidated Net Income" for any period shall mean the net earnings (loss) of the Company and its Subsidiaries for such period, computed and Consolidated in accordance with GAAP, as set forth in the Consolidated statement of earnings for such period delivered by the Company pursuant to Section 5.4.

"Continuing Director" shall mean any member of the Board of Directors of the Company who is not affiliated with an Acquiring Person and who was a member of the Board of Directors of the Company immediately prior to the time that the Acquiring Person became an Acquiring Person and any successor to a Continuing Director who is not affiliated with the Acquiring Person and is recommended to succeed a Continuing Director by a majority of Continuing Directors who are then members of the Board of Directors of the Company.

"Default" shall have the meaning assigned to such term in Section 4.2(c).

"dollars" and the symbol "\$" shall mean the lawful currency of the United States of America.

"Eligible Assignee" shall have the meaning assigned to such term in Section 9.4(c).

"Effective Date" shall mean the date on which the conditions set forth in Section 4.1 are satisfied, which, unless otherwise agreed by the parties hereto, shall be a date on or before October 31, 1994.

"Environmental Laws": any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, duly authorized, written requirements of any Governmental Authority or other requirements of law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that is a member of a group of which the Company is a member and which is treated as a single employer under Section 414 of the Code.

"Events of Default" shall have the meaning assigned to such term in Article VII.

"Facility Fee" shall have the meaning assigned to such term in Section 2.5(a).

"Facility Fee Rate" shall mean for each day, the rate per annum set forth below opposite the applicable ratings by Standard & Poor's Ratings Group and/or Moody's Investors Service, Inc. in effect on such day in respect of the Company's senior, unsecured, non-credit enhanced, long-term debt:

| Ratings<br>(S&P/<br>Moody's)        | Facility<br>Fee Rate |
|-------------------------------------|----------------------|
| BB-/Ba3<br>or below<br>(or unrated) | .500%                |
| BB/Ba2                              | .375                 |
| BB+/Ba1                             | .375                 |
| BBB-/Baa3                           | .225                 |
| BBB/Baa2                            | .175                 |
| BBB+/Baa1                           | .150                 |



In the event that the Ratings do not coincide for any day and the Ratings differential is one level, the Facility Fee Rate set forth above for the higher of such two Ratings shall be the Facility Fee Rate in effect for such day. In the event that the Ratings do not coincide for any day and the Ratings differential is two levels or more, the Facility Fee Rate set forth above for the midpoint of such two Ratings shall be the Facility Fee Rate in effect for such day, provided, however, that if there is no midpoint Rating, the Facility Fee Rate set forth above for the higher of the intermediate levels shall be the Facility Fee Rate in effect for such day. Any change in the Facility Fee Rate shall be effective as of the date on which the applicable rating agency announces the applicable change in ratings.

"Financial Officer" of any person shall mean its chief financial officer, principal accounting officer, treasurer or any assistant treasurer.

"GAAP" shall mean generally accepted accounting principles as described in the last paragraph of this Article I.

"Governmental Authority" shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Guarantee" of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (c) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that, in the case of the Company and its Subsidiaries, the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"Indebtedness" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services, (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (f) all Guarantees by such person of Indebtedness of others, (g) all Capital Lease Obligations of such person, (h) any minimum pension liability required to be reflected on such person's statement of financial position pursuant to Statement of Financial Accounting Standards No. 87, and (i) all obligations of such person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any person shall also include the Indebtedness of any partnership in which such person is a general partner, except to the extent that recourse against such general partner (as a general partner) has been contractually waived or limited. Notwithstanding the foregoing, the term "Indebtedness", in respect of the Company and its Subsidiaries shall not include (i) deferred compensation for officers and employees of the Company or any of its Subsidiaries and (ii) trade payables incurred in the ordinary course of business.

"Interest Payment Date" shall mean (i) with respect to any LIBOR Loan, Certificate of Deposit Loan or Alternate Base Loan, the last day of the Interest Period applicable thereto and, in the case of a LIBOR Loan or a Certificate of Deposit Loan with an Interest Period of 6 months or 180 days, respectively, the day that would have been the Interest Payment Date for such Loan had an Interest Period of 3 months or 90 days, respectively, been applicable to such Loan and (ii) in the case of a Competitive Loan, the last day of the Interest Period applicable thereto and; if such Competitive Loan bears interest at the Competitive LIBO

Rate with an Interest Period of 6 months, the day that would have been the Interest Payment Date for such Competitive Loan had an Interest Period of 3 months been applicable to such Competitive Loan.

"Interest Period" shall mean (i) as to any LIBOR Loan, the period commencing on the date of such Loan and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter, as the Company may elect, (ii) as to any Certificate of Deposit Loan, a period of 30, 60, 90 or 180 days' duration, as the Company may elect, commencing on the date of such Loan, (iii) as to any Alternate Base Loan, the period commencing on the date of such Loan and ending 30 days later or, if earlier, on the Maturity Date or the date of prepayment of such Loan and (iv) as to any Competitive Loan, the period commencing on the date of such Loan and ending on the date specified in the Competitive Bid in which the offer to make the Competitive Loan was extended, which shall not be (x) in the case of a Competitive Fixed Rate Loan, earlier than 7 days after the date of such Loan or later than 180 days after the date of such Loan or (y) in the case of a Competitive LIBO Rate Loan earlier than one month after the date of such Loan (or, in either case, such other period as the Company may request and the Agent approve); provided, however, that (x) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, with respect to LIBOR Loans and Competitive LIBO Rate Loans only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (y) no Interest Period may be selected that ends later than the Maturity Date. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"LIBO Rate" shall mean the average (rounded upwards, if not already a whole multiple 1/16 of 1%, to the next higher 1/16 of 1%) of the respective rates notified to the Agent by each of the Reference Banks equal to the rate at which dollar deposits approximately equal in principal amount to (i) such Reference Bank's portion of the Standby Borrowing of which such LIBOR Loan forms a part or (ii) in the case of a Competitive LIBO Rate Loan, \$5,000,000, as the case may be, and with a maturity equal to the applicable Interest Period are offered to the London Branch of such Reference Bank in immediately available funds in the London Interbank Market for Eurodollars at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"LIBOR Loan" shall mean any Standby Loan with respect to which the Company shall have selected an interest rate based on the LIBO Rate in accordance with the provisions of Article II.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" shall mean a Competitive Loan (which Competitive Loan may be made as a Competitive Fixed Rate Loan or a Competitive LIBO Rate Loan, as permitted hereby) or a Standby Loan (which Standby Loan may be made as a LIBOR Loan, a Certificate of Deposit Loan or an Alternate Base Loan, as permitted hereby).

"Loan Documents" shall mean this Agreement, the Notes and any other document or agreement entered into in connection herewith.

"Material Adverse Effect" shall mean (a) a material adverse effect on the business, assets, operations, prospects or condition, financial or otherwise, of the Company and the Subsidiaries taken as a whole, (b) a material impairment of the ability of the Company to perform any of its obligations under any Loan Document or (c) a material impairment of the rights or benefits of the Banks under any Loan Document.

"Maturity Date" shall mean September 15, 1999.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Company or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within

any of the preceding five plan years made or accrued an obligation to make contributions.

"Note" shall mean a Competitive Note or a Standby Note of the Company, executed and delivered as provided in Section 2.8.

"Other Taxes" shall have the meaning assigned to such term in Section 2.20(b).

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"person" shall mean any natural person, corporation, trust, association, company, partnership, joint venture or government, or any agency or political subdivision thereof.

"Plan" shall mean any pension plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code and which is maintained for employees of the Company or any ERISA Affiliate.

"Priority Indebtedness" shall mean, at any time, without duplication, (i) the aggregate principal amount of all Indebtedness of the Company and all the Subsidiaries then outstanding which Indebtedness is secured by Liens on property and assets of the Company or any Subsidiary (other than Indebtedness described in clauses (b) through (k) of Section 6.1), (ii) the Attributable Value at such time of all Sale and Lease-Back Transactions which are subject to Section 6.2 and (iii) the aggregate principal amount of all Indebtedness of all the Subsidiaries then outstanding (other than Indebtedness of Subsidiaries payable to the Company or any wholly owned Subsidiary).

"Reference Banks" shall mean Morgan, Chemical Bank and Bank of America National Trust and Savings Association.

"Register" shall have the meaning given such term in Section 9.4(e).

"Regulation D" shall mean Regulation D of the Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulation G" shall mean Regulation G of the Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board, as from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board, as from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Reportable Event" shall mean any reportable event as defined in Section 4043(b) of ERISA or the regulations issued thereunder with respect to a Plan (other than a Plan maintained by an ERISA Affiliate which is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414).

"Required Banks" shall mean, at any time, Banks having Commitments representing at least 66-2/3% of the Total Commitment; provided, however, that for purposes of the last paragraph of Article VII, or if the Commitments shall have been terminated, "Required Banks" shall mean Banks holding Loans representing at least 66-2/3% of the aggregate principal amount of the Loans outstanding (in each case only if there are Loans then outstanding).

"Responsible Officer" of any corporation shall mean any executive officer or financial officer of such corporation and any other officer or similar official thereof responsible for the administration of the obligations of such corporation in respect of this Agreement.

"Sale and Lease-Back Transaction" shall have the meaning assigned to such term in Section 6.2.

"Significant Subsidiary" shall mean any Subsidiary, including its subsidiaries, which meets any of the following conditions:

- (i) the Company's and the other Subsidiaries' investments in and advances to such Subsidiary exceed 10% of the Consolidated total

assets of the Company as of the end of the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.4(a);

- (ii) the total assets (after intercompany eliminations) of such Subsidiary exceed 10% of the Consolidated total assets of the Company as of the end of the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.4(a);
- (iii) the net sales of such Subsidiary exceed 10% of the Consolidated net sales of the Company for the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.4(a); or
- (iv) such Subsidiary is deemed to be a Significant Subsidiary pursuant to Section 6.3(b)(i).

"Standby Borrowing" shall mean a borrowing consisting of simultaneous Standby Loans from each of the Banks distributed ratably among the Banks in accordance with their respective Commitments.

"Standby Borrowing Request" shall mean a request made pursuant to Section 2.3 in the form of Exhibit A-2.

"Standby Loan" shall have the meaning given such term in Section 2.1.

"Standby Note" shall mean a promissory note of the Company in the form of Exhibit D-2, executed and delivered as provided in Section 2.8.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including without limitation any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority to which any of the Banks is subject (a) with respect to the LIBO Rate, for Eurocurrency Liabilities (as defined in Regulation D), and (b) with respect to the Adjusted CD Rate or the Base CD Rate (as such term is used in the definition of "Alternate Base Rate"), for new negotiable non-personal time deposits in dollars of over \$100,000 with maturities approximately equal to the applicable Interest Period. Such reserve percentages shall include, without limitation, those imposed under Regulation D. LIBOR Loans and Competitive LIBO Rate Loans shall be deemed to constitute Eurocurrency Liabilities and as such shall be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Bank under Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"subsidiary" shall mean, with respect to any person (herein referred to as the "parent"), any corporation, association or other business entity (i) of which securities or other ownership interests representing more than 50% of the ordinary voting power are, at the time any determination is being made, owned, controlled or held by the parent or one or more subsidiaries of the parent or (ii) which is, at the time any determination is made, otherwise controlled (by contract or agreement or otherwise) by the parent or one or more subsidiaries of the parent.

"Subsidiary" shall mean any subsidiary of the Company; provided, however, that CDC shall not be deemed to be a subsidiary of the Company by reason solely of meeting the requirements of clause (ii) in the definition of the term "subsidiary".

"Tangible Net Worth" shall mean, at any date, (i) the sum of the Company's and its Consolidated Subsidiaries' capital stock, additional contributed capital, earnings retained in the business and any other account (less treasury stock) which, in accordance with GAAP, constitutes Consolidated shareholders' investment (which does not include minority interests of persons other than the Company and the Subsidiaries in Subsidiaries); less (ii) (x) to the extent included in the determination of consolidated total assets of the Company, goodwill, research and development expenses, trademarks, trade names, copyrights, patents, patent applications and rights in any thereof, other similar intangibles, deferred charges and any other items which are treated as intangibles in accordance with GAAP (other than any

intangible assets reflected on the Company's statement of financial position pursuant to paragraph 37 of Statement of Financial Accounting Standards No. 87), (y) all write-ups subsequent to April 4, 1993, in the book value of any asset owned by the Company or its Subsidiaries (other than purchase accounting adjustments in connection with assets acquired after April 4, 1993); and (z) cash held in a sinking or other analogous fund, established for the purpose of redeeming, retiring or prepaying any capital stock; provided, however, that in determining Tangible Net Worth the effect of any foreign currency translation adjustments shall be excluded.

"Taxes" shall have the meaning assigned to such term in Section 2.20(a).

"Total Commitment" shall mean at any time the aggregate amount of the Banks' Commitments as in effect at such time.

Transactions" shall have the meaning assigned to such term in Section 3.2.

"type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, "Rate" shall mean the Competitive Fixed Rate, the Competitive LIBO Rate, the LIBO Rate, the Adjusted CD Rate and the Alternate Base Rate.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP as in effect from time to time (provided, however, that, for purposes of determining compliance with any covenant set forth in Article VI, such terms shall be construed in accordance with GAAP as in effect on the date of this Agreement applied on a basis consistent with the application used in the Company's audited financial statements referred to in Section 3.5 but with such changes therein as shall be approved or concurred in by the Company's independent public accountants) and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices, except as otherwise expressed herein. The definitions in this Article I shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" as used in this Agreement shall be deemed in each case to be followed by the phrase "without limitation". The word "or" shall not be deemed to be exclusive. Section, Schedule and Exhibit references are references to Sections of, and Schedules and Exhibits to, this Agreement, unless otherwise specified herein.

## II. LOANS

1. Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Bank, severally and not jointly, agrees to make standby revolving credit loans ("Standby Loans") to the Company, at any time and from time to time on and after the Closing Date and until the earlier of the Maturity Date and the termination of the Commitment of such Bank in accordance with the terms hereof, subject, however, to the conditions that (i) at no time shall (A) the sum of (x) the outstanding aggregate principal amount of all Standby Loans made by all Banks plus (y) the outstanding aggregate principal amount of all Competitive Loans made by all Banks exceed (B) the Total Commitment and (ii) at all times the outstanding aggregate principal amount of all Standby Loans made by a Bank shall equal the product of (x) the percentage which its Commitment represents of the Total Commitment times (y) the outstanding aggregate principal amount of all Standby Loans made by all Banks. After giving effect to Section 9.16, each Bank's Commitment is set forth opposite its name in Schedule I. Such Commitments may be terminated or reduced from time to time pursuant to Section 2.6.

Within the foregoing limits, the Company may borrow, repay, prepay and reborrow hereunder, on and after the Closing Date and prior to the Maturity Date, subject to the terms, provisions and limitations set forth herein.

2. Competitive Bid Procedure. (a) In order to request Competitive Bids, the Company shall hand deliver or telecopy to the Agent a duly completed Competitive Bid Request in the form of Exhibit

A-1, to be received by the Agent not later than 10:00 a.m., New York City time, five Business Days before a proposed Competitive Borrowing with respect to that portion of such Competitive Bid Request which is for Competitive LIBO Rate Loans or one Business Day before a proposed Competitive Borrowing with respect to that portion of such Competitive Bid Request which is for Competitive Fixed Rate Loans. A Competitive Bid Request that does not conform substantially to the format of Exhibit A-1 may be rejected in the Agent's sole discretion, and the Agent shall promptly notify the Company of such rejection by telecopier. Such request shall in each case refer to this Agreement and specify (i) the date of the requested Competitive Borrowing (which shall be a Business Day) and the aggregate principal amount thereof (which shall not be less than \$10,000,000 or greater than the Total Commitment and shall be an integral multiple of \$1,000,000), (ii) the Interest Period with respect thereto (which may not end after the Maturity Date) and (iii) the type of the requested Competitive Borrowing. Promptly after its receipt of a Competitive Bid Request that is not rejected as aforesaid, the Agent shall invite by telecopier (in the form set forth in Exhibit B) the Banks to bid, on the terms and conditions of this Agreement, to make Competitive Loans pursuant to such Competitive Bid Request.

(a) Each Bank may, in its sole discretion, make a Competitive Bid to the Company responsive to the Competitive Bid Request. Each Competitive Bid by a Bank must be received by the Agent via telecopier, in the form of Exhibit C hereto, not later than 10:00 a.m., New York City time, three Business Days prior to the Business Day of a proposed Competitive Borrowing with respect to that portion of the Competitive Bid which is for Competitive LIBO Rate Loans or on the Business Day of a proposed Competitive Borrowing with respect to that portion of the Competitive Bid which is for Competitive Fixed Rate Loans. Competitive Bids that do not conform substantially to the format of Exhibit C may be rejected by the Agent after conferring with, and upon the instruction of, the Company, and the Agent shall notify the Bank making such nonconforming bid of such rejection as soon as practicable. Each Competitive Bid shall refer to this Agreement and specify (i) the principal amount (which shall be in a minimum principal amount of \$5,000,000 and in an integral multiple of \$1,000,000 and which may equal (but not exceed) the entire principal amount of the Competitive Borrowing requested by the Company) of the Competitive Loan of the applicable type that the Bank is willing to make to the Company and (ii) the Competitive Bid Rate (to the nearest 1/10,000 of 1%) at which the Bank is prepared to make the Competitive Loan. A Competitive Bid submitted by a Bank pursuant to this paragraph (b) shall be irrevocable.

(b) The Agent shall promptly notify the Company by telecopier of all the Competitive Bids made, the Competitive Bid Rate and the principal amount of each Competitive Loan in respect of which a Competitive Bid was made and the identity of the Bank that made each bid. The Agent shall send a copy of all Competitive Bids to the Company for its records as soon as practicable after completion of the bidding process set forth in this Section 2.2.

(c) The Company may in its sole and absolute discretion, subject only to the provisions of this paragraph (d), accept or reject any Competitive Bid referred to in paragraph (c) above. The Company shall notify the Agent by telecopier whether and to what extent it has decided to accept or reject any of or all the bids referred to in paragraph (c) above, not later than 11:00 a.m., New York City time, on the Business Day on which such Competitive Bids were due in accordance with Section 2.2(b); provided, however, that (i) the failure by the Company to give such notice shall be deemed to be a rejection of all the bids referred to in paragraph (c) above, (ii) the Company shall not accept a bid made at a particular Competitive Bid Rate if the Company has decided to reject a bid made at a lower Competitive Bid Rate, (iii) the aggregate amount of the Competitive Bids accepted by the Company shall not exceed the principal amount specified in the Competitive Bid Request for Competitive Loans of the applicable type, (iv) if the Company shall accept a bid or bids made at a particular Competitive Bid Rate but the amount of such bid or bids shall cause the total amount of bids to be accepted by the Company to exceed the amount specified in the Competitive Bid Request for Competitive Loans of the applicable type, then the Company shall (notwithstanding the minimum bid acceptance amount required by clause (vi) below) accept a portion of such bid or bids in an aggregate amount equal to the amount specified in the Competitive Bid Request for Competitive Loans of the applicable type; (v) if the Company shall accept bids made at a particular Competitive Bid Rate but shall be restricted by other conditions hereof from borrowing the principal amount of Competitive Loans specified in the Competitive Bid Request in respect of which bids at such Competitive Bid Rate have been made or if the Company shall accept bids made at a particular Competitive Bid Rate but the aggregate amount of bids made at such rate shall exceed the amount specified in the Competitive Bid Request for Competitive Loans of the

applicable type, then the Company shall accept a pro rata portion of each bid made at such Competitive Bid Rate aggregating the portion of Competitive Loans with respect to which bids at such rate have been received; provided, however, that if the available principal amount of Competitive Loans to be so allocated is not sufficient to enable Competitive Loans to be so allocated to each such Bank in a minimum principal amount of \$5,000,000 and in integral multiples of \$1,000,000, the Company shall select the Banks to be allocated such Competitive Loans in a principal amount of \$5,000,000, but may round allocations up to the next higher multiple of \$1,000,000 if necessary; and (vi) except as provided in clauses (iv) and (v) above, no bid shall be accepted for a Competitive Loan unless such Competitive Loan is in a minimum principal amount of \$5,000,000 and an integral multiple of \$1,000,000 and is part of a Competitive Borrowing in a minimum principal amount of \$10,000,000. A notice given by the Company pursuant to this paragraph (d) shall be irrevocable.

(d) The Agent shall promptly notify each bidding Bank whether or not its Competitive Bid has been accepted (and if so, in what amount and at what Competitive Bid Rate) by telecopier sent by the Agent, and each successful bidder will thereupon become bound, subject to the other applicable conditions hereof, to make the Competitive Loan in respect of which its bid has been accepted.

(e) A Competitive Bid Request shall not be made within five Business Days of the date of any other Competitive Bid Request, unless the Company and the Agent shall mutually agree otherwise.

(f) If the Agent shall elect to submit a Competitive Bid in its capacity as a Bank, it shall submit such bid directly to the Company one quarter of an hour earlier than the latest time at which the other Banks are required to submit their bids to the Agent pursuant to paragraph (b) above.

(g) All notices required by this Section 2.2 and by Section 2.3 shall be given in accordance with Section 9.1.

3. Standby Borrowing Procedure. In order to effect a Standby Borrowing, the Company shall give the Agent written or telecopier notice, in the form of Exhibit A-2 hereto, (x) in the case of LIBOR Loans, not later than 11:00 a.m., New York City time, three Business Days before a proposed Standby Borrowing, (y) in the case of Certificate of Deposit Loans, not later than 11:00 a.m., New York City time, two Business Days before a proposed Standby Borrowing and (z) in the case of Alternate Base Loans, not later than 11:00 a.m., New York City time, on the Business Day of a proposed Standby Borrowing. Such notice shall be irrevocable and shall in each case refer to this Agreement and specify (a) whether the Standby Loans then being requested are to be LIBOR Loans, Certificate of Deposit Loans or Alternate Base Loans, (b) the date of such Standby Loans (which shall be a Business Day) and the aggregate amount thereof (which shall not be less than \$10,000,000 and shall be an integral multiple of \$1,000,000) and (c) the Interest Period with respect thereto (which shall not end later than the Maturity Date). If no Interest Period with respect to any LIBOR Loan or Certificate of Deposit Loan is specified in any such notice, then (i) in the case of a LIBOR Loan, the Company shall be deemed to have selected an Interest Period of one month's duration and (ii) in the case of a Certificate of Deposit Loan, the Company shall be deemed to have selected an Interest Period of 30 days' duration. If the type of Standby Loan is not specified in such notice, the Company shall be deemed to have selected an Alternate Base Loan. The Agent shall promptly advise the other Banks of any notice given pursuant to this Section 2.3 and of each Bank's portion of the requested Standby Borrowing by telecopier. Each Standby Borrowing shall consist of Standby Loans of the same type made to the Company as of the same day and having the same Interest Period.

4. Refinancings. The Company may refinance all or any part of any Loan with a Loan of the same or a different type made pursuant to Section 2.2 or Section 2.3, subject to the conditions and limitations set forth in this Agreement, including refinancings of Competitive Loans with Standby Loans and Standby Loans with Competitive Loans. Any Loan or part thereof so refinanced shall be deemed to be repaid in accordance with Section 2.8 with the proceeds of a new borrowing hereunder and the proceeds of the new Loan, to the extent they do not exceed the principal amount of the Loan being refinanced, shall not be paid by the Banks to the Agent or by the Agent to the Company pursuant to Section 2.7(c); provided, however, that (i) if the principal amount extended by a Bank in a refinancing is greater than the principal amount extended by such Bank in the Borrowing being refinanced, then such Bank shall pay such difference to the Agent for distribution to the Banks described in (ii) below, (ii) if the principal amount extended by a Bank in the Borrowing being refinanced is greater than the principal amount being extended by such Bank in the refinancing, the Agent shall return the difference to such Bank out of amounts

received pursuant to (i) above and (iii) to the extent any Bank fails to pay the Agent amounts due from it pursuant to (i) above, any Loan or portion thereof being refinanced shall not be deemed repaid in accordance with Section 2.8 to the extent of such failure and the Company shall pay such amount to the Agent pursuant to Section 2.8.

5. Fees. (a) The Company agrees to pay to each Bank, through the Agent, on each March 31, June 30, September 30 and December 31 and on the Maturity Date, in immediately available funds, a facility fee (a "Facility Fee"), calculated at a rate per annum equal to the Facility Fee Rate in effect from time to time on the average daily amount of the Commitment of such Bank, whether used or unused, during the preceding quarter (or shorter period commencing with the Effective Date or ending with the Maturity Date or any other date on which the Commitment of such Bank shall be terminated). All Facility Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Facility Fee due to each Bank shall commence to accrue on the Effective Date and shall cease to accrue on the earlier of the Maturity Date and the termination of the Commitment of such Bank as provided herein.

(a) The Company agrees to pay to J.P. Morgan Securities Inc. ("JPMSI"), as arranger, for its own account, on the Effective Date the arrangement fees in the amounts previously agreed to by the Company and JPMSI in writing.

(b) The Company agrees to pay to the Agent for its own account the administrative fees and competitive auction fees in the amounts and on the dates previously agreed to by the Company and the Agent in writing.

6. Termination and Reduction of Commitments. (a) Subject to Section 2.12(b), the Company may permanently terminate, or from time to time in part permanently reduce, the Total Commitment, in each case upon at least five Business Days' prior written or telecopier notice to the Agent; provided, however, the Company may not terminate or partially reduce the Total Commitment at any time to an amount less than the sum of all Loans then currently outstanding (after giving effect to any prepayment of Standby Loans on such date). Such notice shall specify the date and the amount of the termination or reduction of the Total Commitment. Each partial reduction of the Total Commitment shall be in a minimum aggregate principal amount of \$10,000,000 and in an integral multiple of \$5,000,000. Each reduction in the Commitments pursuant to this paragraph shall be made ratably among the Banks in accordance with their respective Commitments.

(a) Simultaneously with any termination or reduction of Commitments pursuant to this Section 2.6, the Company shall pay to the Agent for the accounts of the Banks the Facility Fees on the amount of the Total Commitment so terminated or reduced accrued through the date of such termination or reduction.

7. Loans. (a) Each Borrowing made by the Company on any date shall be (i) in the case of Competitive Loans, in an integral multiple of \$1,000,000 and in a minimum aggregate principal amount of \$10,000,000 and (ii) in the case of Standby Loans, in an integral multiple of \$1,000,000 and in a minimum aggregate principal amount of \$10,000,000. Competitive Loans shall be made by the Banks in accordance with Section 2.2(d), and Standby Loans shall be made by the Banks ratably in accordance with their respective Commitments on the date of the Standby Borrowing; provided, however, that the failure of any Bank to make any Loan shall not relieve any other Bank of its obligation to lend hereunder.

(a) Each Standby Loan shall be a LIBOR Loan, a Certificate of Deposit Loan or an Alternate Base Loan, as the Company may request subject to and in accordance with Section 2.3. Each Bank may at its option make any LIBOR Loan by causing a foreign branch or affiliate of such Bank to make such Loan; provided, however, that any exercise of such option shall not affect the obligation of the Company to repay such Loan in accordance with the terms of the applicable Note and this Agreement. Loans of more than one type may be outstanding at the same time; provided, however, that the Company shall not be entitled to request any Loan which, if made, would result in an aggregate of more than six separate Standby Loans of any Bank or more than six separate Competitive Loans of any Bank being outstanding hereunder at any one time. For purposes of the foregoing, Loans having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Loans.

(b) Subject to Section 2.4, each Bank shall make its portion of each Borrowing on the proposed date thereof by paying the amount required to the Agent in New York, New York in immediately available funds not later than 1:00 p.m., New York City time, and the Agent shall by 3:00 p.m., New York City time, credit the amounts so received



to the general deposit account of the Company with the Agent or, if Loans are not made on such date because any condition precedent to a Borrowing herein specified shall not have been met, return the amounts so received to the respective Banks as soon as practicable.

8. Notes. The Competitive Loans made to the Company by each Bank shall be evidenced by a single Competitive Note duly executed on behalf of the Company, dated the Effective Date, in substantially the form attached hereto as Exhibit D-1, with the blanks appropriately filled, payable to the order of such Bank in a principal amount equal to the Total Commitment. The Standby Loans made to the Company by each Bank shall be evidenced by a single Standby Note duly executed on behalf of the Company, dated the Effective Date, in substantially the form attached hereto as Exhibit D-2, with the blanks appropriately filled, payable to the order of such Bank in a principal amount equal to the Commitment of such Bank. The outstanding principal balance of each Competitive Loan and Standby Loan, as evidenced by the relevant Note, shall be payable on the last day of the Interest Period applicable to such Loan. Each Note shall bear interest from the date thereof on the outstanding principal balance thereof as set forth in Section 2.9. Each Bank shall, and is hereby authorized by the Company to, endorse on the schedule attached to the relevant Note held by such Bank or on a continuation thereof or otherwise record in its internal records an appropriate notation evidencing the date and amount of each Competitive Loan or Standby Loan, as applicable, of such Bank, each payment or prepayment of principal of any Competitive Loan or Standby Loan, as applicable, and the other information provided for on such schedule; provided, however, that the failure of any Bank to make such a notation or any error therein shall not in any manner affect the obligation of the Company to repay the Competitive Loans or Standby Loans, as applicable, made by such Bank in accordance with the terms of the relevant Note and this Agreement.

9. Interest on Loans. (a) Subject to the provisions of Section 2.10, each LIBOR Loan shall bear interest at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the LIBO Rate for the Interest Period in effect for such Loan, plus the Applicable Margin. Interest on each LIBOR Loan shall be payable on each Interest Payment Date applicable thereto. The applicable LIBO Rate for each Interest Period shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(a) Subject to the provisions of Section 2.10, each Certificate of Deposit Loan shall bear interest at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the Adjusted CD Rate for the Interest Period in effect for such Loan, plus the Applicable Margin. Interest on each Certificate of Deposit Loan shall be payable on each Interest Payment Date applicable thereto. The applicable Adjusted CD Rate for each Interest Period shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(b) Subject to the provisions of Section 2.10, each Alternate Base Loan shall bear interest at a rate per annum (if the Alternate Base Rate is based on the Prime Rate, computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, or, if the Alternate Base Rate is based on the Base CD Rate or the Federal Funds Effective Rate, computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the Alternate Base Rate, plus the Applicable Margin, if any. Interest on each Alternate Base Loan shall be payable on each Interest Payment Date applicable thereto. The applicable Alternate Base Rate during each Interest Period shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(c) Subject to the provisions of Section 2.10, each Competitive Loan shall bear interest at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the Competitive Fixed Rate or Competitive LIBO Rate offered by the Bank making such Competitive Loan and accepted by the Company pursuant to Section 2.2. Interest on each Competitive Loan shall be payable on each Interest Payment Date applicable thereto.

(d) If any Reference Bank shall for any reason no longer have a Commitment or any Loans, such Reference Bank shall thereupon cease to be a Reference Bank, and if, as a result, there shall only be one Reference Bank remaining, the Agent (after consultation with the Banks and with the approval of the Company) shall, by notice to the Company and the Banks, designate another Bank as a Reference Bank so that there shall at all times be at least two Reference Banks.

(e) Each Reference Bank shall use its reasonable best efforts to furnish quotations of rates to the Agent as contemplated hereby. If any of the Reference Banks shall be unable or shall otherwise fail to

supply such rates to the Agent upon its request, the rate of interest shall, subject to the provisions of Section 2.11, be determined on the basis of the quotations of the remaining Reference Banks or Reference Bank.

10. Interest on Overdue Amounts. If the Company shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, the Company shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount from the date of such default (i) until the last day of the then-current Interest Period, if any, with respect thereto at a rate per annum equal to the higher of 2% above the rate that would otherwise be applicable thereto and 2% above the Alternate Base Rate and (ii) thereafter up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum (if the Alternate Base Rate is based on the Prime Rate, computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, or, if the Alternate Base Rate is based on the Base CD Rate or the Federal Funds Effective Rate, computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the Alternate Base Rate plus 2% per annum.

11. Alternate Rate of Interest. (a) In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a LIBOR Loan or a Competitive LIBO Rate Loan, the Agent shall have determined that (i) deposits in the amount of the requested principal amount of such LIBOR Loan or Competitive LIBO Rate Loan are not generally available in the London Interbank Market, (ii) the rate at which such deposits are being offered will not adequately and fairly reflect the cost to any Bank of making or maintaining such LIBOR Loan or Competitive LIBO Rate Loan during such Interest Period, or (iii) reasonable means do not exist for ascertaining the LIBO Rate, then the Agent, as soon as practicable thereafter, shall give written or telecopier notice of such determination to the Company and the Banks. In the event of any such determination, any request by the Company for a LIBOR Loan or Competitive LIBO Rate Loan shall be deemed to be a request for an Alternate Base Loan until the circumstances giving rise to such notice no longer exist. Each determination by the Agent under this Section 2.11(a) shall be conclusive absent manifest error.

(a) In the event, and on each occasion, that on or before the date on which the Adjusted CD Rate for a Certificate of Deposit Loan is to be determined, the Agent shall have determined that (i) such Adjusted CD Rate cannot be determined for any reason, including the inability of the Reference Banks to obtain sufficient bids in accordance with the terms of the definition of Fixed Certificate of Deposit Rate, or (ii) that the Adjusted CD Rate for such Certificate of Deposit Loan will not adequately and fairly reflect the cost to any Bank of making or maintaining such Certificate of Deposit Loan during such Interest Period, then the Agent, as soon as practicable thereafter, shall give written or telecopier notice of such determination to the Company and the Banks. In the event of any such determination, any request by the Company for a Certificate of Deposit Loan shall be deemed to be a request for an Alternate Base Loan until the circumstances giving rise to such notice no longer exist. Each determination by the Agent under this Section 2.11(b) shall be conclusive absent manifest error.

12. Prepayment of Loans. (a) Prior to the Maturity Date, the Company shall have the right at any time to prepay any Standby Borrowing, in whole or in part, subject to the requirements of Sections 2.15 and 2.16 but otherwise without premium or penalty, upon at least three (or, if such prepayment is solely of Alternate Base Rate Loans, one) Business Days' prior written or telecopier notice to the Agent; provided, however, that each such partial prepayment shall be in an integral multiple of \$1,000,000 and in a minimum aggregate principal amount of \$5,000,000. The Company shall not have the right to prepay any Competitive Loan without the consent of the Bank which has made such Competitive Loan.

(a) On the date of any termination or reduction of the Total Commitment pursuant to Section 2.6, the Company shall pay or prepay so much of the Standby Loans as shall be necessary in order that the aggregate principal amount of the Loans outstanding will not exceed the Total Commitment following such termination or reduction. Any such payment or prepayment shall be applied to such Borrowing or Borrowings which are Standby Loans as the Company shall select. All prepayments under this paragraph shall be subject to Sections 2.15 and 2.16.

(b) Each notice of prepayment shall specify the prepayment date and the aggregate principal amount of each Borrowing or portion thereof to be prepaid, shall be irrevocable and shall commit the Company to prepay such Borrowing by the amount stated therein. All prepayments under this Section 2.12 shall be accompanied by accrued interest on

the principal amount being prepaid to the date of prepayment.

13. Reserve Requirements; Change in Circumstances. (a) It is understood that the cost to each Bank of making or maintaining any of the Loans may fluctuate as a result of the applicability of, or changes in, reserve requirements imposed by the Board, including reserve requirements under Regulation D in connection with Eurocurrency Liabilities (as defined in Regulation D) at the ratios provided for in Regulation D from time to time. The Company agrees to pay to each Bank from time to time, as provided in paragraph (d) below, such amounts as shall be necessary to compensate such Bank for the portion of the cost of making or maintaining LIBOR Loans and Competitive LIBO Rate Loans resulting from any such reserve requirements, it being understood that the rates of interest applicable to LIBOR Loans and Competitive LIBO Rate Loans have been determined on the assumption that no such reserve requirements exist or will exist and that such rates do not reflect costs imposed on the Banks in connection with such reserve requirements. It is agreed that, for purposes of this paragraph (a), the LIBOR Loans and Competitive LIBO Rate Loans made hereunder shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D) and to be subject to the reserve requirements of Regulation D without benefit of or credit for proration, exemptions or offsets which might otherwise be available to the Banks from time to time under Regulation D.

(a) Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to any Bank of the principal of or interest on any LIBOR Loan, Certificate of Deposit Loan or Competitive Loan made by such Bank or any fees or other amounts payable hereunder (other than (x) taxes imposed on the overall net income of such Bank by the jurisdiction in which such Bank has its principal office or under the laws of which such Bank is organized or by any political subdivision or taxing authority therein (or any tax which is enacted or adopted by such jurisdiction, political subdivision or taxing authority as a direct substitute for any such taxes) or (y) any tax, assessment, or other governmental charge that would not have been imposed but for the failure of such Bank to comply with any certification, information, documentation or other reporting requirement which such Bank would have been capable of complying with), (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by such Bank (except any reserve requirement reflected in the Adjusted CD Rate), or (iii) shall impose on such Bank or the London Interbank Market any other condition affecting this Agreement or any LIBOR Loan, Certificate of Deposit Loan or Competitive Loan made by such Bank, and the result of any of the foregoing shall be to increase the cost to such Bank of making or maintaining any LIBOR Loan, Certificate of Deposit Loan or Competitive Loan or to reduce the amount of any sum received or receivable by such Bank hereunder (whether of principal, interest or otherwise) in respect thereof by an amount deemed in good faith by such Bank to be material, then the Company shall pay such additional amount or amounts as will compensate such Bank for such additional costs incurred or reduction to such Bank upon demand by such Bank.

(b) If, after the date hereof, any Bank shall have determined that the applicability of any law, rule, regulation or guideline adopted pursuant to or arising out of the July 1988 report of the Basel Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards", or the adoption after the date hereof of any other law, rule, regulation or guideline regarding capital adequacy, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or any lending office of such Bank) or any Bank's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Bank's capital or on the capital of such Bank's holding company, if any, as a consequence of its obligations hereunder (including its Commitment) to a level below that which such Bank or such Bank's holding company could have achieved but for such adoption, change or compliance (taking into consideration such Bank's policies and the policies of such Bank's holding company with respect to capital adequacy) by an amount deemed by such Bank to be material, then the Company shall pay to such Bank such additional amount or amounts as will compensate such Bank or such Bank's holding company for any such reduction suffered.

(c) A certificate of a Bank setting forth in reasonable detail (i) such amount or amounts as shall be necessary to compensate such Bank (or participating banks or other entities pursuant to Section 9.4) as specified in paragraph (a), (b) or (c) above, as the case may be, and (ii) the calculation of such amount or amounts under clause (i) shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay such Bank the amount shown as due on any such certificate within 10 days after its receipt of the same.

(d) Failure on the part of any Bank to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of such Bank's rights to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to such period or any other period. The protection of this Section 2.13 shall be available to each Bank regardless of any possible contention of invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

14. Change in Legality. (a) Notwithstanding anything to the contrary herein contained, if any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for any Bank to make or maintain any LIBOR Loan or Competitive LIBO Rate Loan or to give effect to its obligations with respect to LIBOR Loans or Competitive LIBO Rate Loans as contemplated hereby, then, by written notice to the Company and to the Agent, such Bank may:

(i) declare that LIBOR Loans will not thereafter be made by such Bank hereunder, whereupon any subsequent request for a LIBOR Loan shall, as to such Bank only, be deemed a request for an Alternate Base Loan unless such declaration is subsequently withdrawn; and

(ii) require that all outstanding LIBOR Loans and Competitive LIBO Rate Loans made by it be converted to Alternate Base Loans, in which event (A) all such LIBOR Loans and Competitive LIBO Rate Loans shall be automatically converted to Alternate Base Loans as of the last day of the Interest Period then applicable thereto or, if so required by law, as of the effective date of such notice as provided in paragraph (b) below and (B) all payments and prepayments of principal which would otherwise have been applied to repay the converted LIBOR Loans and Competitive LIBO Rate Loans shall instead be applied to repay the Alternate Base Loans resulting from the conversion of such LIBOR Loans and Competitive LIBO Rate Loans.

(b) For purposes of this Section 2.14, a notice to the Company by any Bank pursuant to paragraph (a) above shall be effective on the date of receipt thereof by the Company.

15. Indemnity. The Company shall indemnify each Bank against any loss or reasonable expense which such Bank may sustain or incur as a consequence of (v) any failure by the Company to fulfill on the date of any borrowing hereunder the applicable conditions set forth in Article IV, (w) any failure by the Company to borrow hereunder after a notice of borrowing pursuant to Article II has been given or after bids have been accepted, (x) any payment, prepayment or conversion of a LIBOR Loan, Certificate of Deposit Loan or Competitive Loan required by any other provision of this Agreement or otherwise made on a date other than the last day of the applicable Interest Period, (y) any default in the payment or prepayment of the principal amount of any Loan or any part thereof or interest accrued thereon, as and when due and payable (at the due date thereof, by notice of prepayment or otherwise), and (z) the occurrence of any Event of Default, including any loss or reasonable expense sustained or incurred or to be sustained or incurred in liquidating or employing deposits from third parties acquired to effect or maintain such Loan or any part thereof as a LIBOR Loan, Certificate of Deposit Loan or Competitive Loan. Such loss or reasonable expense shall include an amount equal to the excess, if any, as reasonably determined by each Bank of (i) its cost of obtaining the funds for the Loan being paid, prepaid or converted or not borrowed (based on the LIBO Rate or the Adjusted CD Rate or, in the case of a Competitive Fixed Rate Loan, the fixed rate of interest applicable thereto) for the period from the date of such payment, prepayment or conversion or failure to borrow to the last day of the Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for the Loan which would have commenced on the date of such failure to borrow) over (ii) the amount of interest (as reasonably determined by such Bank) that would be capitalized by such Bank in reemploying the funds so paid, prepaid or converted or not borrowed for such period or Interest Period, as the case may be. A certificate of each Bank setting forth any amount or amounts which such Bank is entitled to receive pursuant to this Section 2.15 shall be delivered to the Company and shall be conclusive, if made in good

faith, absent manifest error. The Company shall pay the relevant Bank the amount shown as due on the relevant certificate within 10 days after its receipt of the same.

16. Pro Rata Treatment. Except as permitted under Section 2.13(c) and Section 2.14 with respect to interest, (i) each payment or prepayment of principal and each payment of interest with respect to a Competitive Borrowing (at a particular Competitive Bid Rate) or a Standby Borrowing shall be made pro rata among the Banks in accordance with the respective principal amounts of the Loans extended by each Bank, if any, with respect to such Competitive Borrowing or Standby Borrowing, and (ii) Standby Loans shall be made pro rata among the Banks in accordance with their respective Commitments.

17. Sharing of Setoffs. Each Bank agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Company, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Bank under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means obtain payment (voluntary or involuntary) in respect of the Notes held by it as a result of which the unpaid principal portion of the Notes held by it shall be proportionately less than the unpaid principal portion of the Notes held by any other Bank, it shall be deemed to have simultaneously purchased from such other Bank at face value a participation in the Notes held by such other Bank, so that the aggregate unpaid principal amount of the Notes and participations in Notes held by each Bank shall be in the same proportion to the aggregate unpaid principal amount of all Notes then outstanding as the principal amount of the Notes held by it prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Notes outstanding prior to such exercise of banker's lien, setoff or counterclaim; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this section 2.17 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Company expressly consents to the foregoing arrangements and agrees that any Bank holding a participation in a Note deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Company to such Bank as fully as if such Bank had made a Loan directly to the Company in the amount of such participation.

18. Payments. The Company shall make each payment hereunder and under the Notes not later than 12:00 noon (New York City time) on the day when due in lawful money of the United States (in freely transferable dollars) to the Agent at its offices at 60 Wall Street, New York, New York 10260 for the account of the Banks, in immediately available funds.

19. Payments on Business Days. Except as set forth in the definition of "Interest Period" as applied to LIBOR Loans and Competitive LIBO Rate Loans, if any payment to be made hereunder or under any Note becomes due and payable on a day other than a Business Day, such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in computing interest, if any, in connection with such payment.

20. Taxes. (a) Any and all payments by the Company hereunder and under the other Loan Documents shall be made, in accordance with Sections 2.18 and 2.19, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) taxes imposed on the Agent's or any Bank's income and franchise taxes imposed on the Agent or any Bank by the United States or any jurisdiction in which the Agent or such Bank has its principal office or under the laws of which the Agent or such Bank is organized or any political subdivision or taxing authority and (ii) United States withholding taxes payable with respect to payments hereunder or under the other Loan Documents under laws (including any statute, treaty, ruling, determination or regulation) in effect on the Closing Date or, with respect to any Eligible Assignee that becomes entitled to the rights of a Bank hereunder, the date of the Assignment and Acceptance pursuant to which it becomes so entitled (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Company shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to the Banks or the Agent (x) the sum payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.20) such Bank or the Agent (as the case may be) shall receive an amount equal to the sum it would have

received had no such deductions been made, (y) the Company shall make such deductions and (z) the Company shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with applicable law. The Company shall not be required to pay any amounts pursuant to clause (x) of the preceding sentence to any Bank or Agent organized under the laws of a jurisdiction outside the United States unless such Bank or the Agent has provided to the Company, promptly upon receipt of written request from the Company, a complete and valid Internal Revenue Service Form 1001 or 4224 or other applicable certificate, form or document prescribed by the United States Internal Revenue Service certifying as to such Bank's or the Agent's entitlement to an exemption from, or reduction of, United States withholding on payments to be made hereunder or under the other Loan Documents.

(a) In addition, the Company agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement (hereinafter referred to as "Other Taxes").

(b) The Company shall indemnify each Bank and the Agent for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.20) paid by such Bank or the Agent, as the case may be, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be made within 30 days after the date any Bank or the Agent, as the case may be, makes written demand therefor. If a Bank or the Agent shall become aware that it is entitled to receive a refund in respect of Taxes or Other Taxes, or in respect of interest or penalties, it shall promptly notify the Company of the availability of such refund and shall, within 30 days after receipt of a request by the Company, apply for such refund at the Company's expense. If any Bank or the Agent receives a refund in respect of any Taxes or Other Taxes, or in respect of interest or penalties, for which such Bank or the Agent has received payment from the Company hereunder, it shall promptly notify the Company of such refund and shall, within 30 days after receipt of a request by the Company (or promptly upon receipt, if the Company has requested application for such refund pursuant hereto), repay such refund to the Company without interest (other than interest received from the taxing authority); provided, however, that the Company, upon the request of such Bank or the Agent, agrees to return such refund (plus penalties, interest or other charges) to such Bank or the Agent in the event such Bank or the Agent is required to repay such refund.

(c) Within 30 days after the date of any payment of Taxes or Other Taxes withheld by the Company in respect of any payment to any Bank or the Agent, the Company will furnish to the Agent, at its address referred to in Section 10.1, the original or a certified copy of a receipt evidencing payment thereof.

(d) Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section 2.20 shall survive the payment in full of principal and interest hereunder and the termination of this Agreement.

(e) Any Bank claiming any additional amounts payable pursuant to this Section 2.20 shall use its best efforts (consistent with legal and regulatory restrictions) to file any certificate or document requested by the Company or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such additional amounts which may thereafter accrue and would not, in the sole determination of such Bank, be otherwise disadvantageous to such Bank.

21. Tax Reports. (a) With respect to each Bank which is organized under the laws of a jurisdiction outside the United States, on the Closing Date or, with respect to each Eligible Assignee that becomes entitled to the rights of a Bank hereunder, the date of the Assignment and Acceptance pursuant to which it becomes so entitled, and from time to time thereafter if requested by the Company or the Agent or required by the Internal Revenue Service of the United States, each such Bank shall provide the Agent and the Company with the forms prescribed by the Internal Revenue Service of the United States certifying as to its status for purposes of determining the applicability of any exemption from United States withholding taxes with respect to all payments to be made hereunder to such Bank or other documents satisfactory to the Company and the Agent indicating that all payments to be made hereunder to such Bank are subject to such tax at a rate reduced by an applicable tax treaty. Unless the Company and the Agent have received such forms or such documents validly indicating that payments hereunder are not subject to United States withholding tax or are subject to such tax at a rate reduced by

an applicable tax treaty, the Company or the Agent shall withhold taxes from such payments at the applicable statutory rate in the case of payments to or for any Bank organized under the laws of a jurisdiction outside the United States.

(a) Any Bank that sells any participation pursuant to Section 9.4(b) shall give the Company and the Agent immediate notice of such participation, setting forth the names of each of the participants, the amounts of such participations and indicating the country of residence of each of the participants. Notwithstanding any other provision contained herein to the contrary, the Company and the Agent shall be entitled to deduct and withhold United States withholding taxes with respect to all payments to be made hereunder to or for such Bank as may be required by United States law due to such participations and neither the Company nor the Agent shall be required to indemnify such Bank with respect to such deductions or withholdings and such Bank shall indemnify and hold harmless the Company and the Agent from and against any tax, interest, penalty or other expense that the Company and the Agent may incur as a consequence of any failure to withhold United States taxes applicable because of any participation arrangement that is not fully disclosed to them as required hereunder.

### III. REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Agent and to each of the Banks that:

1. Organization; Powers. The Company and each Subsidiary (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in every jurisdiction where such qualification is required, except where the failure so to qualify would not result in a Material Adverse Effect, and (d) has the corporate power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and to borrow hereunder.

2. Authorization. The execution, delivery and performance by the Company of each of the Loan Documents and the borrowings hereunder (collectively, the "Transactions") (a) have been duly authorized by all requisite corporate and, if required, stockholder action and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Company or any Subsidiary, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which the Company or any Subsidiary is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon any property or assets of the Company or any Subsidiary.

3. Enforceability. This Agreement and the Notes and each other Loan Document to which it is a party have been duly executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms. The Loans and all other obligations or liabilities of the Company hereunder shall not be subordinated in right of payment or in any other respect to any other Indebtedness of the Company.

4. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, except such as have been made or obtained and are in full force and effect.

5. Financial Statements. The Company has heretofore furnished to the Banks its Consolidated statements of financial position and statements of earnings and cash flows (i) as of and for the fiscal year ended December 31, 1993, audited by and accompanied by the opinion of Arthur Andersen & Co., independent public accountants, and (ii) as of and for the fiscal quarter and six month period ended July 3, 1994, certified by its chief financial officer. Such financial statements present fairly the financial condition and results of operations of the Company and its Consolidated Subsidiaries as of such dates and for such periods. Such statements of financial position and the notes thereto disclose all material liabilities, direct or contingent, of the Company and its Consolidated Subsidiaries as of the

dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis. As of the Effective Date, there has been no material adverse change in the financial condition or in the operations of the Company and its Subsidiaries taken as a whole since December 31, 1993.

6. Environmental Matters. As of the Effective Date, there are no chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes, whether solid, gaseous or liquid in nature, at any premises owned, operated, controlled or used by the Company or any of its Subsidiaries where the presence of such substances has resulted or could result in a Material Adverse Effect and neither the Company nor any of its Subsidiaries nor any of their respective predecessors in interest have manufactured, processed, distributed, used, treated, stored, disposed, transported or handled any such substances, where such actions have resulted or could result in a Material Adverse Effect. As of the Effective Date, there is no ambient air, surface water, groundwater or land contamination within, under or relating to any real property of the Company or any of its Subsidiaries or other location geologically or hydrologically connected to such properties and none of such properties has been used for the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any substance described in the preceding sentence where such uses or contaminations have resulted or could result in a Material Adverse Effect.

7. Title to Properties; Possession Under Leases. (a) The Company and each of the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and assets, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.1.

(a) The Company and each of the Subsidiaries has complied with all obligations under all material leases to which it is a party and all such leases are in full force and effect. The Company and each of the Subsidiaries enjoys peaceful and undisturbed possession under all such material leases.

8. Subsidiaries. Schedule 3.8 sets forth as of the Effective Date a list of all Subsidiaries of the Company and the percentage ownership interest of the Company therein.

9. Litigation; Compliance with Laws.

(a) As of the Effective Date, there are not any actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any business, property or rights of any such person (i) which involve any Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could, individually or in the aggregate, result in a Material Adverse Effect.

(b) Neither the Company nor any of the Subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could result in a Material Adverse Effect.

10. Agreements. (a) As of the Effective Date, neither the Company nor any of the Subsidiaries is a party to any agreement or instrument or subject to any corporate restriction that has resulted or could result in a Material Adverse Effect.

(a) Neither the Company nor any of the Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing indebtedness, or any other material agreement or instrument to which it is a party or by which it or any of its properties or assets are or may be bound, where such default could result in a Material Adverse Effect.

(b) Except as set forth in Schedule 3.10, neither the Company nor any Subsidiary is a party to or is bound by the terms of (i) any indenture or other agreement or instrument evidencing indebtedness or (ii) any certificate of designation or other certificate, agreement or instrument relating to any capital stock, in either case which contains a provision granting the holders thereof the right to require the Company or any Subsidiary to buy all or any part of such indebtedness or capital stock (or any other provision having substantially the same effect) other than sinking fund and conversion provisions and provisions requiring repayment upon default.



11. Federal Reserve Regulations. The making of the Loans hereunder and the use of the proceeds thereof as contemplated hereby will not violate or be inconsistent with Regulation G, U or X.

12. Investment Company Act; Public Utility Holding Company Act. Neither the Company nor any Subsidiary is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

13. Tax Returns. The Company and each Subsidiary has filed or caused to be filed all Federal, state and local tax returns required to have been filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessments received by it, except taxes that are being contested in accordance with Section 5.3.

14. Employee Benefit Plans. The Company and each of its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder. No Reportable Event has occurred as to which the Company or any ERISA Affiliate was required to file a report with the PBGC, and the present value of all benefit liabilities under each Plan (based on those assumptions used to fund such Plan) did not, as of the last annual valuation date applicable thereto, exceed by a material amount the value of the assets of such Plan. Neither the Company nor any ERISA Affiliate has incurred any Withdrawal Liability that materially adversely affects the financial condition of the Company and its ERISA Affiliates taken as a whole. Neither the Company nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization or has been terminated, within the meaning of Title IV of ERISA, and no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated, where such reorganization has resulted or can reasonably be expected to result in an increase in the contributions required to be made to such Plan that would materially and adversely affect the financial condition of the Company and its ERISA Affiliates taken as a whole.

15. No Material Misstatements. No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Company to the Agent or any Bank in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading.

#### IV. CONDITIONS OF LENDING

1. Conditions to Initial Loans. The effectiveness of this Agreement and the obligation of each Bank to make its initial Loan hereunder is subject to the satisfaction of the following conditions precedent:

(a) The Agent shall have received one or more counterparts of this Agreement, executed by a duly authorized officer of each party hereto.

(b) The Agent shall have received for the account of each Bank a Standby Note and a Competitive Note (which, in the case of each Existing Bank, shall be delivered in exchange for such Existing Bank's Notes issued under the Existing Credit Agreement) conforming to the requirements hereof and executed by a duly authorized officer of the Company, and the Agent shall promptly forward such new Notes to the appropriate Banks and return the old Notes to the Company.

(c) The Agent shall have received, with a counterpart for each Bank, a certificate of the Secretary or Assistant Secretary of the Company dated the Effective Date, substantially in the form of Exhibit E with appropriate insertions and attachments.

(d) The Agent shall have received, with a copy for each Bank, an opinion of the General Counsel to the Company with respect to paragraphs 1 through 3 and 5 through 9 of Exhibit G and of Cravath, Swaine & Moore with respect to paragraph 4 of Exhibit G, each dated the Effective Date and addressed to the Agent and the Banks, covering the matters set forth in Exhibit G. Such opinion of the General Counsel to the Company shall also cover such other matters incident to the transactions contemplated by this Agreement as the Agent shall reasonably require.

(e) The Agent shall have received all fees, if any, owing pursuant to Section 2.5.

(f) All other documents and legal matters in connection with the

transactions contemplated by this Agreement shall be satisfactory in form and substance to the Agent and its counsel.

2. Conditions to Each Loan. The obligations of each of the Banks to make Loans on the date of each Borrowing hereunder, including the initial Loans and each refinancing of any Loan with a new Loan as contemplated by Section 2.4, shall be subject to the following conditions precedent:

(a) The Agent shall have received a notice of such Borrowing as required by Section 2.2 or Section 2.3, as applicable.

(b) The representations and warranties set forth in Article III shall be true and correct in all material respects on and as of the date of such Borrowing with the same effect as if made on and as of such date, except to the extent that such representations and warranties expressly relate to an earlier date.

(c) The Company shall be in compliance with all the terms and provisions set forth herein on its part to be observed or performed, and immediately before and after such borrowing no Event of Default or event which upon notice or lapse of time or both would constitute an Event of Default (a "Default") shall have occurred and be continuing.

The occurrence of the Effective Date and each Borrowing hereunder shall be deemed to be a representation and warranty by the Company on the date of such Borrowing as to the matters specified in paragraphs (b) and (c) of this Section 4.2.

#### V. AFFIRMATIVE COVENANTS

The Company covenants and agrees with the Agent and each Bank that so long as this Agreement shall remain in effect or the principal of or interest on any Loan, any fees or any other expenses or amounts payable under any Loan Document shall be unpaid, unless the Required Banks shall otherwise consent in writing, the Company will, and will cause each of the Subsidiaries to:

1. Existence; Businesses and Properties. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.3.

(a) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently conducted and operated; comply in all material respects with all applicable laws, rules, regulations and orders of any Governmental Authority, whether now in effect or hereafter enacted; and at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

2. Insurance. Keep its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law.

3. Obligations and Taxes. Pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Company or such Subsidiary shall, to the extent required by GAAP applied on a consistent basis, set aside on its books adequate reserves with respect thereto.

4. Financial Statements, Reports, etc. In the case of the Company, furnish to the Agent and each Bank:

(a) within 90 days after the end of each fiscal year, its Consolidated statements of financial position and related statements of earnings and cash flows, showing the financial condition of the Company and its Consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, all audited by Arthur Andersen & Co. or other independent public accountants of recognized national standing acceptable to the Required Banks and accompanied by an opinion of such accountants (which shall not be qualified in any material respect except with the consent of the Required Banks) to the effect that such Consolidated financial statements fairly present the financial condition and results of operations of the Company on a Consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its Consolidated statements of financial position and related statements of earnings and cash flows, showing the financial condition of the Company and its Consolidated Subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of the Company on a Consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of the accounting firm or Financial Officer opining on or certifying such statements (which certificate, when furnished by an accounting firm, may be limited to accounting matters and disclaim responsibility for legal interpretations) (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Agent demonstrating compliance with the covenants contained in Sections 6.6 and 6.7;

(d) promptly after the occurrence of any event or condition which makes the information thereon inaccurate, incomplete or untrue, an update to Schedule 3.8;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by it with the Securities and Exchange Commission, or any governmental authority succeeding to any of or all the functions of such Commission, or with any national securities exchange, or distributed to its shareholders, as the case may be; and

(f) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Company or any Subsidiary, or compliance with the terms of any Loan Document, as the Agent may reasonably request.

5. Litigation and Other Notices. Furnish to the Agent and each Bank prompt written notice of the following:

(a) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against the Company or any Affiliate thereof which, if adversely determined, could result in a Material Adverse Effect; and

(c) any development that has resulted in, or could reasonably be anticipated to result in, a Material Adverse Effect.

6. ERISA. (a) Comply in all material respects with the applicable provisions of ERISA and (b) furnish to the Agent (i) as soon as possible, and in any event within 30 days after any Responsible Officer of the Company or any ERISA Affiliate knows or has reason to know that any Reportable Event has occurred that alone or together with any other Reportable Event could reasonably be expected to result in liability of the Company to the PBGC in an aggregate amount exceeding \$1,500,000, a statement of a Financial Officer of the Company setting forth details as to such Reportable Event and the action that the Company proposes to take with respect thereto,

together with a copy of the notice of such Reportable Event, if any, given to the PBGC, (ii) promptly after receipt thereof, a copy of any notice the Company or any ERISA Affiliate may receive from the PBGC relating to the intention of the PBGC to terminate any Plan or Plans (other than a Plan maintained by an ERISA Affiliate which is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) or to appoint a trustee to administer any such Plan, (iii) within 10 days after a filing with the PBGC pursuant to Section 412(n) of the Code of a notice of failure to make a required installment or other payment with respect to a Plan, a statement of a Financial Officer of the Company setting forth details as to such failure and the action that the Company proposed to take with respect thereto, together with a copy of such notice given to the PBGC and (iv) promptly and in any event within 30 days after receipt thereof by the Company or any ERISA Affiliate from the sponsor of a Multiemployer Plan, a copy of each notice received by the Company or any ERISA Affiliate concerning (A) the imposition of Withdrawal Liability by a Multiemployer Plan in an amount exceeding \$7,500,000 or (B) a determination that a Multiemployer Plan is, or is expected to be, terminated or in reorganization, both within the meaning of Title IV of ERISA, and which, in each case, is expected to result in an increase in annual contributions of the Company or an ERISA Affiliate to such Multiemployer Plan in an amount exceeding \$1,500,000.

7. Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and permit any representatives designated by the Agent or any Bank to visit and inspect the financial records and the properties of the Company or any Subsidiary at reasonable times and as often as requested and to make extracts from and copies of such financial records, and permit any representatives designated by any Agent or any Bank to discuss the affairs, finances and condition of the Company or any Subsidiary with the officers thereof and independent accountants therefor.

8. Use of Proceeds. Use the proceeds of the Loans for its general corporate purposes.

9. Compliance with Laws. (a) Comply with all applicable laws, statutes, rules and regulations (including, without limitation, all applicable Environmental Laws) and obtain and comply in all material respects with and maintain any and all licenses, approvals, notifications, registrations or permits required by applicable laws, statutes, rules and regulations (including, without limitation, all applicable Environmental Laws) except to the extent that failure to do so could not be reasonably expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions, if any, required under applicable Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding, in any such case, Environmental Laws except to the extent that, in any such case, the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not be reasonably expected to have a Material Adverse Effect.

## VI. NEGATIVE COVENANTS

The Company covenants and agrees with the Agent and each Bank that, so long as this Agreement shall remain in effect or the principal of or interest on any Loan, any fees or any other expenses or amounts payable under any Loan Document shall be unpaid, unless the Required Banks shall otherwise consent in writing, the Company will not, and will not cause or permit any of the Subsidiaries to:

1. Negative Pledge. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of Subsidiaries) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, except:

(a) Liens securing Indebtedness (other than Indebtedness described in clauses (b) through (k) below) to the extent and only to the extent that the aggregate amount of Priority Indebtedness shall not exceed \$200,000,000 at any time;

(b) Liens (including deposits) in connection with or to secure performance of bids, tenders, contracts (other than contracts creating or evidencing or executed in connection with the incurrence of Indebtedness) or leases (other than Capital Lease Obligations) or to secure statutory obligations, surety or appeal bonds or indemnity, performance or similar bonds;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Company or any Subsidiary; provided,

however, that (i) such Lien is not created in contemplation of or in connection with such acquisition and (ii) such Lien does not apply to any other property or assets of the Company or any subsidiary;

(d) Liens for taxes not yet due or which are being contested in compliance with Section 5.3;

(e) carriers', warehousemen's, mechanic's, materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations which are not due or which are being contested in compliance with Section 5.3;

(f) pledges and deposits and other liens made in the ordinary course of business in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations;

(g) zoning restrictions, easements, rights-of-way restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the real property subject thereto or interfere with the ordinary conduct of the business of the Company or any of the Subsidiaries;

(h) Liens (including deposits) in connection with self-insurance;

(i) judgment or other similar Liens in connection with legal proceedings, provided that the execution or other enforcement of such liens is effectively stayed and the claims secured thereby are being actively contested in good faith by appropriate proceedings;

(j) Liens arising in connection with advances or progress payments under government contracts; and

(k) Liens on assets of Subsidiaries securing Indebtedness payable to the Company or any wholly owned Subsidiary.

2. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "Sale and Lease-Back Transaction"), unless, after giving effect to such Sale and Lease-Back Transaction, the aggregate amount of Priority Indebtedness shall not exceed \$200,000,000, except that the Company or any Subsidiary may enter into Sale and Lease-Back Transactions without restriction if the equipment subject to such Sale and Lease-Back Transaction was purchased by the Company or any Subsidiary within six months of the date of such Sale and Leaseback Transaction; provided, however, that an agreement characterized by the parties thereto as a lease solely for income tax purposes and as to which such parties have elected to have the provisions of the former Section 168(f)(8) of the Internal Revenue Code of 1954 apply shall not be considered a Sale and Lease-Back Transaction.

3. Mergers, Consolidations, and Sales of Assets. In the case of the Company and any Significant Subsidiary, merge with or into or consolidate with any other person, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets (whether now owned or hereafter acquired), except that (a) the Company and any Significant Subsidiary may sell inventory or receivables in the ordinary course of business and (b) if at the time thereof and immediately after giving effect thereto no Event of Default or Default has occurred and is continuing (i) any Significant Subsidiary may merge with or into, or sell, transfer, lease or otherwise dispose of all or any substantial part of its assets to the Company or a wholly owned Subsidiary; provided, however, that such wholly owned Subsidiary shall thereafter be deemed a Significant Subsidiary hereunder and (ii) the Company or any Significant Subsidiary may merge with or into or consolidate with any other person if the surviving corporation in such merger or consolidation shall be the Company or such Significant Subsidiary; provided, however, that in each case under clause (b) above the Company shall have delivered to the Banks a certificate of a Responsible Officer of the Company and an opinion of counsel for the Company, each stating that such consolidation, merger, sale, transfer, lease or other disposition complies with this Section 6.3 and that all conditions precedent herein provided for relating to such transaction have been complied with.

4. Indebtedness of Subsidiaries. In the case of the Subsidiaries, incur, create, assume or permit to exist any Indebtedness if after giving effect thereto, Priority Indebtedness would exceed \$200,000,000.

5. Amendments of Certain Agreements. In any material respect, amend, modify, supplement or waive any of the provisions of any instrument evidencing or relating to any subordinated Indebtedness unless such amendment, modification, supplement or waiver is approved in writing by the Required Banks.

6. Tangible Net Worth. In the case of the Company, permit Tangible Net Worth to be at any time less than the sum of (a) \$650,000,000 plus (b) an amount equal to 25% of the sum of the amounts of Consolidated Net Income for each of the fiscal quarters commencing with and including the quarter ended July 3, 1994 to and including the most recent fiscal quarter ended prior to the date on which the calculation of Tangible Net Worth is made (without including any fiscal quarter in which such Consolidated Net Income is a negative number).

7. Leverage. In the case of the Company, permit the ratio of its Consolidated Indebtedness to the sum of its Consolidated Indebtedness and Tangible Net Worth to be at any time equal to or greater than 0.5 to 1.0.

8. Ownership of Significant Subsidiaries. Cease to maintain at any time direct or indirect ownership of securities or other ownership interests representing not less than the greater of (x) a majority of the ordinary voting power of each Significant Subsidiary and (y) such voting power as provides effective control of the policy and direction of each Significant Subsidiary.

#### VII. EVENTS OF DEFAULT

In case of the happening of any of the following events (herein called "Events of Default"):

(a) any representation or warranty made, or deemed made, in or in connection with any Loan Document or the borrowings hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment

(c) default shall be made in the payment of any interest on any Loan or any fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance by the Company or any Subsidiary of any covenant, condition or agreement contained in Section 5.5(a) or (b), Section 5.8 or Article VI and such default shall continue unremedied for a period of five Business Days after the earlier of (i) a Responsible Officer of the Company becoming aware thereof and (ii) notice thereof from the Agent or any Bank to the Company;

(e) default shall be made in the due observance or performance by the Company or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of ten Business Days after notice thereof from the Agent or any Bank to the Company;

(f) the Company or any Subsidiary shall (i) fail to pay any of its Indebtedness in excess of \$10,000,000 in the aggregate when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or (ii) fail to observe or perform any term, covenant or condition on its part to be observed or performed under any agreement or instrument relating to any such Indebtedness, when required to be observed or performed, and such failure shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure is to accelerate, or permit the acceleration of, the maturity of such Indebtedness or such Indebtedness has been accelerated and such acceleration has not been rescinded; or any amount of Indebtedness in excess of \$10,000,000 shall be required to be prepaid, defeased, purchased or otherwise acquired by the Company or any Subsidiary (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company or any Subsidiary, or of a substantial part of the property or assets of the Company or any Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal or state bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Subsidiary, or for a substantial part of the property or assets of the Company or a Subsidiary, or (iii) the winding-up or liquidation of the Company or any Subsidiary; and such proceeding or petition shall continue undismissed for 60 days, or an order or decree approving or ordering any of the foregoing shall be entered;

(h) the Company or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal or state bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Subsidiary, or for a substantial part of the property or assets of the Company or any subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$10,000,000 shall be rendered against the Company, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed;

(j) a Reportable Event or Reportable Events, or a failure to make a required payment (within the meaning of Section 412(n)(1)(A) of the Code) shall have occurred with respect to any Plan or Plans that reasonably could be expected to result in liability of the Company to the PBGC or to a Plan in an aggregate amount exceeding \$7,500,000 and, within 30 days after the reporting of any such Reportable Event to the Agent or after the receipt by the Agent of the statement required pursuant to Section 5.6(b)(iii), the Agent shall have notified the Company in writing that (i) the Required Banks have made a determination that, on the basis of such Reportable Event or Reportable Events or the failure to make a required payment, there are reasonable grounds (A) for the termination of such Plan or Plans by the PBGC, (B) for the appointment by the appropriate United States District Court of a trustee to administer such Plan or Plans or (C) for the imposition of a lien in favor of a Plan and (ii) as a result thereof an Event of Default exists hereunder; or a trustee shall be appointed by a United States District Court to administer any such Plan or Plans; or the PBGC shall institute proceedings to terminate any such Plan or Plans;

(k) (i) the Company or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan, (ii) the Company or such ERISA Affiliate does not have reasonable grounds for contesting such Withdrawal Liability and is not in fact contesting such Withdrawal Liability in a timely and appropriate manner, and (iii) the amount of such Withdrawal Liability specified in such notice, when aggregated with all other amounts required to be paid to Multiemployer Plans in connection with Withdrawal Liabilities (determined as of the date or dates of such notification), exceeds \$7,500,000 or requires payments exceeding \$1,500,000 in any year;

(l) the Company or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, if solely as a result of such reorganization or termination the aggregate annual contributions of the Company and its ERISA Affiliates to all Multiemployer Plans that are then in reorganization or have been or are being terminated have been or will be increased over the amounts required to be contributed to such Multiemployer Plans for their most recently completed plan years by an amount exceeding \$1,500,000; or

(m) a Change in Control shall occur; or a change in control allowing the holders of debt securities of the Company to have the right to cause the repurchase by the Company of their debt securities (as described in any Prospectus Supplement related to debt securities

of the Company issued pursuant to the Registration Statement filed with the Securities and Exchange Commission on September 15, 1989) shall occur;

then, and in every such event (other than an event referred to in paragraph (m) above or an event with respect to the Company described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Agent may, and at the request of the Required Banks shall, by notice to the Company, take either or both, of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable, whereupon the principal of the Loans, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Company accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Company, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event referred to in paragraph (m) above or any event with respect to the Company described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Company accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Company, anything contained herein or in any other Loan Document to the contrary notwithstanding.

#### VIII. THE AGENT

In order to expedite the transactions contemplated by this Agreement, Morgan Guaranty Trust Company of New York is hereby appointed to act as Agent on behalf of the Banks. Each of the Banks and each holder of any Note by its acceptance thereof hereby irrevocably authorizes the Agent to take such actions on behalf of such Bank or holder and to exercise such powers as are specifically delegated to the Agent by the terms and provisions hereof, together with such actions and powers as are reasonably incidental thereto. The Agent is hereby expressly authorized by the Banks, without hereby limiting any implied authority, (a) to receive on behalf of the Banks all payments of principal of and interest on the Loans and all other amounts due to the Banks hereunder and promptly to distribute to each Bank its proper share of each payment so received; (b) to give notice on behalf of each of the Banks to the Company of any Event of Default of which the Agent has actual knowledge acquired in connection with its agency hereunder; and (c) to distribute to each Bank copies of all notices, financial statements and other materials delivered by the Company pursuant to this Agreement as received by the Agent.

Neither the Agent nor any of its directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or wilful misconduct, or be responsible for any statement, warranty or representation herein or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by the Company of any of the terms, conditions, covenants or agreements contained in any Loan Document. The Agent shall not be responsible to the Banks or the holders of the Notes for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement, the Notes or any other Loan Documents or other instruments or agreements. The Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof until it shall have received from the payee of such Note notice, given as provided herein, of the transfer thereof. The Agent shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Banks and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Banks and each subsequent holder of any Note. The Agent shall, in the absence of knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Neither the Agent nor any of its directors, officers, employees or agents shall have any responsibility to the Company on account of the failure of or delay in performance or breach by any Bank of any of its obligations hereunder or to any Bank on account of the failure of or delay in performance or breach by any other Bank or the Company of any of their respective obligations hereunder or under any other Loan Document or in connection herewith or therewith. The Agent may execute any and all duties hereunder by or through agents or employees and shall be entitled to rely upon the advice of legal counsel selected by it with respect to all matters arising hereunder and shall not be liable for any action taken or



suffered in good faith by it in accordance with the advice of such counsel.

The Banks hereby acknowledge that the Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Banks.

Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by notifying the Banks and the Company. Upon any such resignation, the Required Banks shall have the right to appoint a successor. Upon the acceptance of any appointment as the Agent hereunder by a successor agent, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations hereunder. After an Agent's resignation hereunder, the provisions of this Article and Section 9.5 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

With respect to the Loans made by it hereunder and the Notes issued to it, the Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Bank and may exercise the same as though it were not the Agent, and the Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Company or any Subsidiary or other Affiliate thereof as if it were not the Agent.

Each Bank agrees (i) to reimburse the Agent, on demand, in the amount of its pro rata share (based on its Commitment hereunder at the time of the event giving rise to such reimbursement, or if at such time the Commitments have been terminated, based on its then outstanding Loans) of any expenses incurred for the benefit of the Banks by the Agent, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Banks, which shall not have been reimbursed by the Company and (ii) to indemnify and hold harmless the Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against it in its capacity as Agent or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the Company; provided, however, that no Bank shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or wilful misconduct of the Agent or any of its directors, officers, employees or agents.

Each Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

#### IX. MISCELLANEOUS

1. Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed or sent by telecopy, graphic scanning or other telegraphic communications equipment of the sending party, as follows:

(a) if to the Company, to it at Cummins Engine Company, Inc., 500 Jackson Street, Box 3005, Columbus, Indiana 47202-3005, Attention of Robert L. Fealy, Vice President-Treasurer (Telephone No. (812) 377-3275; Telecopy No. (812) 377-1087);

(b) if to the Agent, to it at Morgan Guaranty Trust Company, 60 Wall Street, New York, New York 10260, Attention of Kit C. Wong (Telephone No. (212) 648-7340; Telecopy No. (212) 648-5336); and

(c) if to a Bank, to it at its address (or telecopy number) set forth in Schedule I.

All notices and other communications given to any party hereto in

accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or if sent by telecopier, graphic scanning or other telegraphic communications equipment of the sender, or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.1 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.1.

2. Survival of Agreement. All covenants, agreements, representations and warranties made by the Company herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Agent and the Banks and shall survive the making by the Banks of the Loans and the execution and delivery to the Banks of the Notes evidencing such Loans, regardless of any investigation made by the Agent or the Banks or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated.

3. Binding Effect. This Agreement shall become effective as of the Effective Date when it shall have been executed by the Company and the Agent and when the Agent shall have received copies hereof which, when taken together, bear the signatures of each Bank, and thereafter shall be binding upon and inure to the benefit of the Company, the Agent and each Bank and their respective successors and permitted assigns.

4. Successors and Assigns; Participations. (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of the Company or the Banks that are contained in this Agreement shall bind and inure to the benefit of their respective successors and permitted assigns. The Company may not assign or transfer any of its rights or obligations hereunder without the prior written consent of all the Banks, except that the Company may assign its rights and obligations hereunder to the surviving corporation in a transaction permitted under Section 6.3(b) (ii) without the prior written consent of all the Banks.

(a) Each Bank may without the consent of the Company sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the same portion of the Loans owing to it and the Note or Notes held by it); provided, however, that (i) such Bank's obligations under this Agreement shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the cost protection provisions contained in Section 2.13 and Section 2.15 and (iv) the Company, the Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement; provided, however, that each Bank shall retain the sole right and responsibility to enforce the obligations of the Company relating to the Loans, including the right to approve any amendment, modification or waiver of any provision of this Agreement other than amendments, modifications or waivers with respect to any fees payable hereunder or the amount of principal or the rate of interest payable on, or the dates fixed for any payment of principal of or interest on, the Loans.

(b) Each Bank may without the consent of the Company assign to an Affiliate of such Bank and, with the consent of the Company to another Bank or one or more additional banks or financial institutions (each, an "Eligible Assignee"), all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the same portion of the Loans at the time owing to it and the Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all the assigning Bank's rights and obligations under this Agreement, (ii) in the case of a partial assignment, unless otherwise agreed to by the Company, the amount of the Commitment of the assigning Bank after giving effect to such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Agent) shall be in a minimum principal amount of \$10,000,000 and an integral multiple of \$1,000,000, (iii) unless otherwise agreed to by the Company, the amount of the Commitment assigned to the assignee Bank shall be in a minimum principal amount of \$10,000,000 and an integral multiple of \$1,000,000 and (iv) the parties to each such assignment shall execute and deliver to the

Agent, for its acceptance and recording in the Register, an Assignment and Acceptance in the form of Exhibit F, together with any Standby Note or Standby Notes subject to such assignment and the assigning Bank shall deliver a processing and recordation fee of \$2,500 to the Agent in connection therewith; provided, further, that if the Company has reduced the Total Commitment pursuant to Section 2.6 hereof, the minimum principal amount described in each of clause (ii) and (iii) above shall also be reduced to an amount equal to 3-1/3% of the Total Commitment at the time of any such assignment, rounded to the nearest integral multiple of \$1,000,000. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least five Business Days after the execution thereof (unless otherwise agreed to by the Agent, the assignor Bank and the assignee Bank), (x) the Eligible Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Bank hereunder and (y) the assignor Bank thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Bank's rights and obligations under this Agreement, such assigning Bank shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the Bank assignor thereunder and the Eligible Assignee confirm to and agree with each other and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, such Bank assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such Bank assignor makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Company or the performance or observance of its obligation under this Agreement or any other instrument or document furnished pursuant hereto or thereto; (iii) such Eligible Assignee confirms that it has received a copy of this Agreement together with copies of the most recent financial statements delivered pursuant to Section 3.5 or 5.4 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Eligible Assignee will, independently and without reliance upon the Agent, such Bank assignor or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Eligible Assignee appoints and authorizes the Agent to take such action as the Agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent by the terms hereof, together with such powers as are reasonably incidental thereto; (vi) such Eligible Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Bank and (vii) such Eligible Assignee confirms that it is an Eligible Assignee as defined above.

(d) The Agent shall maintain at its offices in New York City a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Banks and the Commitment of, and principal amount of the Loans owing to, each Bank from time to time (the "Register"). The entries in the Register shall be conclusive, in the absence of manifest error, and the Company, the Agent and the Banks may treat each person whose name is recorded in the Register as a Bank hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Company or any Bank at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an assigning Bank and an Eligible Assignee together with any Standby Note or Standby Notes subject to such assignment, the written consent of the Company to such assignment (if required hereby) and the fee referred to in paragraph (c) above, the Agent shall, if such Assignment and Acceptance has been completed and is precisely in the form of Exhibit F hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Banks and the Company. Within five Business Days after receipt of such notice, the Company, at its own expense, shall execute and deliver to the Agent in exchange for the surrendered Standby Note or Standby Notes (x) a new Competitive Note to the order of such Eligible Assignee in an amount equal to the Total Commitment, and a new Standby Note or Standby Notes to the order of such Eligible Assignee in an amount equal to its portion of the

Commitment assumed by it pursuant to such Assignment and Acceptance and (y), if the assigning Bank has retained any Commitment hereunder, a new Standby Note or Standby Notes to the order of the assigning Bank in an amount equal to the Commitment retained by it hereunder. Such new Standby Note or Standby Notes shall be in an aggregate principal amount equal to the aggregate principal amount of such surrendered Standby Note or Standby Notes and such new Standby Notes and Competitive Note shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of Exhibit D-1 or D-2, as applicable, hereto. Canceled Standby Notes shall be returned to the Company.

(f) Subject to Section 9.11 hereof, any Bank may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.4, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Company or the Subsidiaries furnished to such Bank by or on behalf of the Company; provided, however, that prior to any such disclosure, each such assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any confidential information relating to the Company or the Subsidiaries received from such Bank.

(g) Nothing herein shall prohibit any Bank from pledging or assigning any Note to any Federal Reserve Bank in accordance with applicable law.

5. Expenses; Indemnity. (a) The Company agrees to pay all out-of-pocket expenses incurred by the Agent in connection with the preparation of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby contemplated shall be consummated) or incurred by the Agent or any Bank in connection with the enforcement or protection of their rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or the Notes issued hereunder, including the reasonable fees and disbursements of Simpson Thacher & Bartlett, counsel for the Agent, and, in connection with any such amendment, modification or waiver or any such enforcement or protection, the fees and disbursements of any other counsel for the Agent or any Bank. The Company further agrees that it shall indemnify the Agent and the Banks from and hold them harmless against any documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or any of the other Loan Documents.

(a) The Company agrees to indemnify each Agent, each Bank and its directors, officers, employees and agents (each such person being called an "indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees and expenses, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated thereby, including, without limitation, any of the foregoing losses relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Company or any of its Subsidiaries, (ii) the use of the proceeds of the Loans or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(b) The provisions of this Section 9.5 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document or any investigation made by or on behalf of the Agent or any Bank. All amounts due under this Section 9.5 shall be payable on written demand therefor.

6. Right of Setoff. If an Event of Default shall have occurred and be continuing and any Bank shall have requested the Agent to declare the Loans immediately due and payable pursuant to Article VII, each Bank, and each bank which is an Affiliate of such Bank, is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and

other indebtedness at any time owing by such Bank or Affiliate to or for the credit or the account of the Company against any of and all the obligations of the Company now or hereafter existing under this Agreement and other Loan Documents held by such Bank, irrespective of whether or not such Bank shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured. The rights of each Bank under this Section 9.6 are in addition to other rights and remedies (including other rights of setoff) which such Bank may have.

7. Applicable Law. THIS AGREEMENT, THE NOTES AND THE OTHER LOAN DOCUMENTS SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

8. Waivers; Amendments. (a) No failure or delay of the Agent or any Bank in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Banks hereunder and under the other Loan Documents are cumulative and exclusive of any rights or remedies which they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Company therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances. Each holder of any of the Notes shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not such Note shall have been marked to indicate such amendment, modification, waiver or consent.

(a) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Company and the Required Banks; provided, however, that no such agreement shall (i) change the principal amount of, or extend or advance the maturity of or any date for the payment of any principal of or interest on, any Loan, or waive or excuse any such payment or any part thereof, or change the rate of interest on any Loan, without the prior written consent of each holder of a Note affected thereby, (ii) change the Commitment of any Bank or the Facility Fees of any Bank without the prior written consent of such Bank, (iii) amend or modify the provisions of Section 2.16, the provisions of this Section 9.8 or the definition of the "Required Banks", or (iv) waive any of the conditions specified in Section 4.1 or 4.2, without the prior written consent of each Bank; provided further, however, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent. Each Bank and each holder of a Note shall be bound by any modification or amendment authorized by this Section 9.8 regardless of whether its Note shall have been marked to make reference thereto, and any consent by any Bank or holder of a Note pursuant to this Section 9.8 shall bind any person subsequently acquiring a Note from it, whether or not such Note shall have been so marked.

9. Waiver of Jury Trial, etc. (a) Except as prohibited by law, each party hereto hereby waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement, any document or agreement entered into in connection herewith and any of the transactions contemplated hereby or thereby.

(a) Except as prohibited by law, each party hereto hereby waives any right it may have to claim or recover in any litigation referred to in paragraph (a) of this Section 9.9 any special, indirect, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

(b) Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented to it, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waivers and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the other Loan Documents, as applicable, by, among other things, the mutual waivers and certifications in this Section 9.9.

10. Jurisdiction; Consent to Service of Process. (a) The Company hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court sitting in New York City or Federal court of the United States of

America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Agent or Bank may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Company or its properties in the courts of any jurisdiction.

(a) The Company hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

11. Confidentiality. Unless otherwise required by applicable law, rule or regulation, order of any court or administrative agency, or otherwise by any governmental or regulatory authority, each of the Banks and the Agent agrees to maintain the confidentiality, in its communications with third parties and otherwise, of any information regarding the Company or its Subsidiaries obtained in connection with this Agreement which has been identified by the Company to the Banks and the Agent as confidential in nature (the "Confidential Material"); provided, however, that the Confidential Material may be disclosed to third parties to the extent such disclosure is (i) to a rating agency, (ii) required in connection with the exercise of any remedy hereunder or under any related documents, instruments and agreements, or (iii) to any actual or proposed participant or assignee of all or part of its rights hereunder, in each case which has agreed in writing to be bound by the provisions of this Section; provided further, however, that the Agreement may be disclosed to each Bank's and the Agent's directors, officers, legal counsel and independent auditors; and provided further, however, that neither the Banks nor the Agent shall have any obligation of confidentiality in respect of any information which may be generally available to the public or becomes available to the public through no fault of such Bank or Agent. Notwithstanding the foregoing, without the prior written consent of the Company, no Bank may disclose to participants or potential participants information which has been designated in writing by the Company to such Bank as information which is (A) non-financial information which is not necessary for participants and potential participants to receive for purposes of initial and ongoing analysis of the creditworthiness of the Company and its subsidiaries and of the ability of the Company to perform its obligations under this Agreement and the Notes and (B) product, design, pricing, marketing, business strategy and similar information the disclosure of which to competitors of the Company could have a material adverse effect on the competitive position of the Company or its subsidiaries. The Company agrees to be reasonable in its consideration of requests of Banks to transmit to participants sensitive information covered by the preceding sentence and in determining what information to designate as sensitive information covered by the preceding sentence.

12. Entire Agreement. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

13. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to

that of the invalid, illegal or unenforceable provisions.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract, and shall become effective as provided in Section 9.3.

15. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

16. Purchase and Sale of Commitments on the Effective Date. (a) On the Effective Date, each Bank listed as a Purchasing Bank on Schedule 9.16 (each a "Purchasing Bank") shall purchase and assume the aggregate amount set forth for such Purchasing Bank on Schedule 9.16 of Commitments and related rights and obligations of the Existing Banks listed as Selling Banks on Schedule 9.16 (each a "Selling Bank") and each Selling Bank shall sell and assign the aggregate amount of Commitments and related rights and obligations of such Selling Bank set forth for such Selling Bank on Schedule 9.16 to the Purchasing Banks. All principal, interest, fees or other payments that would otherwise be payable from and after the Effective Date to or for the account of the Selling Banks pursuant to this Agreement and the Standby Notes shall, instead, be payable to or for the account of the Purchasing Banks and the Selling Banks, in accordance with their respective interests as reflected in Schedule I.

(b) Such purchase and sale shall be made by each Purchasing Bank paying to the Agent for the account of the Selling Banks an amount equal to the product of (A) the aggregate amount of outstanding Standby Loans on the Effective Date and (B) a fraction the numerator of which is the aggregate amount of Commitments of the Selling Banks being purchased by such Purchasing Bank and the denominator of which is \$300,000,000. On the Effective Date, the Agent shall pay to each Selling Bank from the amounts received from the Purchasing Banks pursuant to this paragraph (b) and in like funds as received by the Agent an amount equal to the outstanding Standby Loans of such Selling Bank being sold. In connection with such purchase and sale, the Company shall reimburse and indemnify and hold harmless each Bank for any expense or cost incurred or suffered by such Bank as a result of, in the case of a Selling Bank, redeploying any proceeds of such sale of LIBOR Loans, or, in the case of a Purchasing Bank, having to fund a LIBOR Loan at non current LIBO rates.

(c) By executing and delivering this Agreement, each Selling Bank and each Purchasing Bank confirm to and agree with each other and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned hereby free and clear of any adverse claim, such Selling Bank makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such Selling Bank makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Company or the performance or observance of its obligation under this Agreement or any other instrument or document furnished pursuant hereto or thereto; (iii) such Purchasing Bank confirms that it has received a copy of this Agreement together with copies of the financial statements delivered pursuant to Section 3.5 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement; (iv) such Purchasing Bank will, independently and without reliance upon the Agent, any Selling Bank or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Selling Bank agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Bank; and (vi) from and after the Effective Date, after giving effect to this Section 9.16, Bank of America Illinois, formerly known as Continental Bank, shall have no commitment or other obligations hereunder and shall cease to be a party hereto.

IN WITNESS WHEREOF, the Company, the Agent and the Banks have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CUMMINS ENGINE COMPANY, INC.

By:

Title:

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, individually and as  
Agent,

By:  
Title:

CHEMICAL BANK

By:  
Title:

THE CHASE MANHATTAN BANK, N.A.

By:  
Title:

THE BANK OF NOVA SCOTIA

By:  
Title:

THE NORTHERN TRUST COMPANY

By:  
Title:

THE BANK OF NEW YORK

By:  
Title:

NBD BANK, N.A.

By:  
Title:

CITICORP USA, INC.

By:  
Title:

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION

By:  
Title:

NATIONAL WESTMINSTER BANK PLC

By:  
Title:

BANK OF AMERICA ILLINOIS, formerly known  
as Continental Bank, in its capacity as  
a  
Selling Bank for purposes of Section  
9.16 hereof,

By:  
Title:



## SCHEDULE I

|  | Percentage<br>of Total<br>Commitment | Commitment |
|--|--------------------------------------|------------|
|--|--------------------------------------|------------|

|                                                                                                                                                                                                                                        |              |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------|
| Morgan Guaranty Trust Company<br>of New York*<br>60 Wall Street<br>New York, N.Y. 10260<br>Telecopy: (212) 648-5336<br>Confirm: (212) 648-7340<br><br>Attention of: Kit C. Wong<br>Associate                                           | \$45,000,000 | 15.00% |
| Chemical Bank*<br>270 Park Avenue<br>New York, N.Y. 10017<br>Telecopy: (212) 972-9854<br>Confirm: (212) 270-7853<br><br>Attention of: Rosemary Bradley<br>Vice President                                                               | \$35,000,000 | 11.67% |
| The Chase Manhattan Bank, N.A.*<br>1 Chase Manhattan Plaza, 3rd Floor<br>New York, N.Y. 10081<br>Telecopy: (212) 552-1457<br>Confirm: (212) 552-7674<br><br>Attention of: George Hansen<br>Vice President                              | \$35,000,000 | 11.67% |
| Citicorp USA, Inc.*<br>c/o Citicorp Securities, Inc.<br>399 Park Avenue<br>8th Floor, Zone 12<br>New York, New York 10043<br>Telecopy: (212)<br>Confirm: (212) 559-6482<br><br>Attention of: Robert J. Harritty, Jr.<br>Vice President | \$35,000,000 | 11.67% |
| The Bank of Nova Scotia*<br>Atlanta Agency<br>Suite 2700<br>600 Peachtree Street, N.E.<br>Atlanta, GA 30308<br>Telecopy: (404) 888-8998<br>Confirm: (404) 877-1558<br><br>Attention of: Ed Moussa,<br>Administrative Agent             | \$35,000,000 | 11.67% |
| Bank of America National<br>Trust and Savings Association*<br>200 West Adams Street<br>Chicago, IL 60606<br>Telecopy: (312) 641-2350<br>Confirm: (312) 269-4662<br><br>Attention of: Hector J. Cuellar,<br>Vice President              | \$35,000,000 | 11.67% |
| The Bank of New York*<br>One Wall Street<br>New York, N.Y. 10286<br>Telecopy: (212) 635-1208<br>Confirm: (212) 635-1166<br><br>Attention of: Bruce C. Miller,<br>Vice President                                                        | \$35,000,000 | 11.67% |
| The Northern Trust Company*<br>50 South LaSalle Street<br>Chicago, IL 60675<br>Telecopy: (312) 444-3508<br>Confirm: (312) 630-7946<br><br>Attention of: Biff Bowman,<br>Second Vice President                                          | \$15,000,000 | 5.00%  |

NBD Bank, N.A.\* \$15,000,000 5.00%  
 611 Woodward Avenue  
 Detroit, MI 48226  
 Telecopy: (313) 225-1671  
 Confirm: (313) 225-1314

Attention of: Scott C. Morrison,  
 Second Vice President

National Westminster Bank PLC \$15,000,000 5.00%  
 33 North Dearborn Street  
 Chicago, Illinois 60602-3105  
 Telecopy: (312)  
 Confirm: (312) 621-1760

Attention of: Peter Blythe,  
 Vice President

Bank of America Illinois,  
 formerly known as  
 Continental Bank\* \$ -0- 0.0%  
 231 South LaSalle Street  
 Chicago, IL 60697  
 Telecopy: (312) 828-3864  
 Confirm: (312) 828-8518

Attention of: James R. Dolphin,  
 Vice President

Total \$300,000,000 100%

Schedule 3.8  
 Page 1 of 3

CUMMINS ENGINE COMPANY, INC.

SUBSIDIARIES

Subsidiary/Joint Venture  
 Percentage of Ownership

|                                           |               |
|-------------------------------------------|---------------|
| All Components Engineering, Ltd.          | 100% by JLH   |
| Atlas Crankshaft Corporation              | 100% by 14-15 |
| Cadec Systems, Inc.                       | 100% by CECO  |
| Cal Disposition, Inc.                     | 100% by CECO  |
| C. E. Sonora S.A. de C.V.                 | 100% by CEL   |
| Combustion Technologies, Inc.             | 100% by CECO  |
| Cummins Americas, Inc.                    | 100% by CECO  |
| Cummins Australia Pty. Limited            | 100% by CECO  |
| Cummins Brasil S.A. Ltda.                 | 99% by CIFC   |
| Cummins Corporation                       | 100% by CECO  |
| Cummins de Colombia S.A.                  | 100% by CECO  |
| Cummins Diesel Deutschland GmbH           | 100% by CDSC  |
| Cummins Diesel Export Limited             | 100% by CECO  |
| Cummins Diesel of Canada Limited          | 100% by CECO  |
| Cummins Diesel International Limited      | 100% by CIFC  |
| Cummins Diesel Italia S.P.A.              | 100% by CDSC  |
| Cummins Diesel Japan Ltd.                 | 100% by CECO  |
| Cummins Diesel N.V.                       | 100% by CDSC  |
| Cummins Diesel Sales Corporation          | 100% by CECO  |
| Cummins Electronics Company, Inc.         | 100% by CECO  |
| Cummins Engine Company Limited            | 100% by CUKL  |
| Cummins Engine H.K. Limited               | 100% by CECO  |
| Cummins Engine Holding Company, Inc.      | 100% by CECO  |
| Cummins Engine Venture Corporation        | 100% by CECO  |
| Cummins Engine (Singapore) PTE Ltd.       | 100% by CDSC  |
| Cummins Financial, Inc.                   | 100% by CECO  |
| Cummins Great Lakes, Inc.                 | 100% by CECO  |
| Cummins International Finance Corporation | 100% by CECO  |
| Cummins KH-12, Inc.                       | 100% by CECO  |
| Cummins Komatsu Engine Company            | 100% by CEVC  |
| Cummins Korea, Ltd.                       | 100% by CIFC  |
| Cummins Mexicana, S.A. de C.V.            | 100% by CECO  |
| Cummins Natural Gas Engines, Inc.         | 100% by CECO  |
| Cummins Power Generation, Inc.            | 100% by CECO  |

Schedule 3.8  
 Page 2 of 3

Subsidiary/Joint Venture  
Percentage of Ownership

|                                                                 |               |
|-----------------------------------------------------------------|---------------|
| Cummins Professional Training Center, Inc.                      | 100% by CECO  |
| Cummins S.A. de C.V.                                            | 89% by CECO   |
| Cummins U.K. Limited                                            | 100% by CIFC  |
| Cummins Venture Corporation                                     | 100% by CECO  |
| CUMZIM Pvt Ltd                                                  | 51% by CECO   |
| Dampers Iberica, S.A.                                           | 100% by HECL  |
| Dampers, S.A.                                                   | 100% by HECL  |
| Diesel ReCon Industria e Comercio Ltda                          | 3.9% by CBLA  |
|                                                                 | 96.1% by ICCL |
| Diesel ReCon de Mexico, S.A. de C.V.                            | 100% by CECO  |
| Dunlite Power Generation Pty. Ltd.                              | 100% by OFHL  |
| Fleetguard GmbH                                                 | 1% by FIC     |
|                                                                 | 99% by CIFC   |
| Fleetguard, Inc.                                                | 100% by CECO  |
| Fleetguard International Corporation                            | 100% by FGI   |
| Fleetguard Mexico S.A. de C.V.                                  | 100% by FIC   |
| Holset Brasil Equipamentos Automotives Ltda                     | 99% by CBLA   |
| Holset Engineering Company, Inc.                                | 100% by CECO  |
| Holset Engineering Company Limited                              | 100% by CUKL  |
| Holset Korea Ltd                                                | 51% by HECL   |
| HPI Company                                                     | 100% by CECO  |
| Industria e Comercio Cummins Ltda.                              | 50% by CBLA   |
|                                                                 | 50% by CIFC   |
| J. L. Holdings Ltd.                                             | 100% by CUKL  |
| Kompressorenban Bannewitz GmbH                                  | 100% by HECL  |
| Kuss Corporation                                                | 100% by FGI   |
| Lubricant Consultants, Inc.                                     | 75% by FGI    |
| Markon Engineering Company Ltd.                                 | 100% by NIL   |
| MHTC Corporation<br>(formerly McCord Heat Transfer Corporation) | 92.6% by CECO |
| Motores Cummins Diesel do Brazil, Ltda.                         | 100% by CDIL  |
| Newage Engineers Ltd.                                           | 100% by NHL   |
| Newage Engineers Pty Ltd.                                       | 100% by NIL   |
| Newage Equipment Ltd.                                           | 100% by NIL   |
| Newage (Far East) Pte Ltd.                                      | 100% by NIL   |

Schedule 3.8  
Page 3 of 3

Subsidiary/Joint Venture  
Percentage of Ownership

|                                |              |
|--------------------------------|--------------|
| Newage GmbH                    | 100% by NIL  |
| Newage Holdings Ltd.           | 100% by NIL  |
| Newage International Limited   | 100% by CUKL |
| Newage Italia Sri              | 100% by NIL  |
| Newage Ltd. (U.K.)             | 100% by NIL  |
| Newage Ltd. (U.S.A)            | 100% by OFHL |
| Newage Machine Tools           | 100% by NIL  |
| Newage Norge                   | 100% by NIL  |
| NWMW, Inc.                     | 100% by CECO |
| Ona Corporation                | 100% by ONAN |
| Onan Canada Limited            | 100% by ONAN |
| Onan Corporation               | 100% by CECO |
| Onan Far East Limited          | 100% by ONAN |
| Onan Foreign Holdings, Ltd.    | 100% by ONAN |
| Onan FSC Ltd.                  | 100% by ONAN |
| Onan International B.V.        | 100% by ONAN |
| Onan International Limited     | 100% by ONAN |
| PT Newage Engineers Indonesia  | 77% by NIL   |
| Stamford Iberica               | 100% by NIL  |
| Techniparts S.A.               | 100% by HECL |
| Turbo Europa, B.V.             | 100% by JLH  |
| Williams Equine Products, Inc. | 60% by NWMW  |
| 124747 Canada Limited          | 100% by NWMW |
| 14-15 Corporation              | 100% by CECO |

Schedule 3.10

Certain Agreements

1. Medium-term Notes, Series A

Schedule 9.16

Purchase and Sale of Commitments

| Purchasing Banks:                                         | Aggregate Amount of<br>Commitments Purchased |
|-----------------------------------------------------------|----------------------------------------------|
| National Westminster Bank PLC                             | \$15,000,000                                 |
| The Bank of New York                                      | \$10,000,000                                 |
| Bank of America National Trust<br>and Savings Association | \$ 5,000,000                                 |
| The Bank of Nova Scotia                                   | \$ 5,000,000                                 |

| Selling Banks:                                                     | Aggregate Amount of<br>Commitments Sold |
|--------------------------------------------------------------------|-----------------------------------------|
| Bank of America Illinois,<br>formerly known as<br>Continental Bank | \$25,000,000                            |
| Chemical Bank                                                      | \$10,000,000                            |

EXHIBIT A-1

FORM OF COMPETITIVE BID REQUEST

Morgan Guaranty Trust Company of New York,  
as Agent for  
the Banks referred to below,  
60 Wall Street  
New York, N.Y. 10260

Attention: [Date]

Dear Sirs:

The undersigned, Cummins Engine Company, Inc. (the "Company"), refers to the Amended and Restated Credit Agreement dated as of \_\_\_\_\_, 1994 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Company, the Banks named therein and Morgan Guaranty Trust Company of New York, as Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Company hereby gives you notice pursuant to Section 2.2(a) of the Credit Agreement that it requests a Competitive Borrowing under the Credit Agreement, and, in that connection, sets forth below the terms on which such Competitive Borrowing is requested to be made:

- (A) Date of Competitive Borrowing  
(which is a Business Day) \_\_\_\_\_
- (B) Principal Amount of  
Competitive Borrowing /1 \_\_\_\_\_
- (C) Interest Period and the last  
day thereof /2 \_\_\_\_\_
- (D) Type of Borrowing /3 \_\_\_\_\_

Upon acceptance of any or all of the Loans offered by the Banks in response to this request, the Company shall be deemed to have represented and warranted that the conditions to lending specified in Section 4.2(b) and (c) of the Credit Agreement have been satisfied.

Very truly yours,

CUMMINS ENGINE COMPANY, INC.,

by

\_\_\_\_\_  
Title: [Responsible Officer]

EXHIBIT A-2

FORM OF STANDBY BORROWING REQUEST

Morgan Guaranty Trust Company of New York,  
as Agent for the Banks  
referred to below,  
60 Wall Street  
New York, N.Y. 10260

Attention: [Date]

Dear Sirs:

The undersigned, Cummins Engine Company, Inc. (the "Company"), refers to the Amended and Restated Credit Agreement dated as of \_\_\_\_ \_\_, 1994 (as amended, supplemented or otherwise modified from time to time the "Credit Agreement"), among the Company, the Banks named therein and Morgan Guaranty Trust Company of New York, as Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Company hereby gives you notice pursuant to Section 2.3 of the Credit Agreement that it requests a Standby Borrowing under the Credit Agreement, and, in that connection, sets forth below the terms on which such Standby Borrowing is requested to be made:

- (A) Date of Standby Borrowing (which is a Business Day) \_\_\_\_\_
- (B) Principal Amount of Standby Borrowing/4 \_\_\_\_\_
- (C) Interest rate basis/5 \_\_\_\_\_
- (D) Interest Period and the last day thereof/6 \_\_\_\_\_

Upon acceptance of any or all of the Standby Loans offered by the Banks in response to this request, the Company shall be deemed to have represented and warranted that the conditions to lending specified in Section 4.2(b) and (c) of the Credit Agreement have been satisfied.

Very truly yours,

CUMMINS ENGINE COMPANY, INC.,

by \_\_\_\_\_  
Title: [Responsible Officer]

EXHIBIT B

FORM OF NOTICE OF COMPETITIVE BID REQUEST

[Name of Bank]  
[Address]  
New York, New York  
Attention:

[Date]

Dear Sirs:

Reference is made to the Amended and Restated Credit Agreement dated as of \_\_\_\_ \_\_, 1994 (as amended, supplemented or otherwise modified from time to time the "Credit Agreement"), among Cummins Engine Company, Inc. (the "Company"), the Banks named therein and Morgan Guaranty Trust Company of New York, as Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Company made a Competitive Bid Request on \_\_\_\_\_, 19\_\_ pursuant to Section 2.2(a) of the Credit Agreement, and in that connection you are invited to submit a Competitive Bid by [Date]/[Time]./7 Your Competitive Bid must comply with Section 2.2(b) of the Credit Agreement and the terms set forth below on which the Competitive Bid Request was made:

- (A) Date of Competitive Borrowing \_\_\_\_\_
- (B) Principal amount of Competitive Borrowing \_\_\_\_\_
- (C) Interest Period and the last day thereof \_\_\_\_\_
- (D) Type of requested competitive Borrowing \_\_\_\_\_

Very truly yours,

MORGAN GUARANTY TRUST  
COMPANY OF NEW YORK

By \_\_\_\_\_  
Title:

EXHIBIT C

FORM OF COMPETITIVE BID

Morgan Guaranty Trust Company of New York,  
as Agent for the Banks  
referred to below,  
60 Wall Street  
New York, New York 10260

Attention: [Date]

Dear Sirs:

The undersigned, [Name of Bank], refers to the Amended and Restated Credit Agreement dated as of \_\_\_\_ \_\_, 1994 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Cummins Engine Company, Inc. (the "Company"), the Banks named therein and Morgan Guaranty Trust Company of New York, as Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The undersigned hereby makes a Competitive Bid pursuant to Section 2.2(b) of the Credit Agreement, in response to the Competitive Bid Request made by the Company on \_\_\_\_\_, 19\_\_, and in that connection sets forth below the terms on which such Competitive Bid is made:

- (A) Principal Amount /8 \_\_\_\_\_
- (B) Competitive Bid Rate /9 \_\_\_\_\_
- (C) Interest Period  
and last day thereof \_\_\_\_\_

The undersigned hereby confirms that it is prepared to extend credit to the Company upon acceptance by the Company of this bid in accordance with Section 2.2(d) of the Credit Agreement.

Very truly yours,

[NAME OF BANK],

by

\_\_\_\_\_  
Title:

EXHIBIT D-1

FORM OF COMPETITIVE NOTE

\$300,000,000

New York, New York  
[Effective Date]

FOR VALUE RECEIVED, the undersigned, CUMMINS ENGINE COMPANY, INC., an Indiana corporation (the "Company"), hereby promises to pay to the order of \_\_\_\_\_ (the "Bank"), at the office of Morgan Guaranty Trust Company of New York (the "Agent"), at 60 Wall Street, New York, New York 10260, on (i) the last day of each Interest Period as defined in the Amended and Restated Credit Agreement dated as of September 16, 1994, among the Company, the Banks named therein and Morgan Guaranty Trust Company of New York, as Agent (as the same may be further amended, modified, extended or restated from time to time, the "Credit Agreement"), the aggregate unpaid principal amount of all Competitive Loans made by the Bank to the Company pursuant to Sections 2.1 and 2.2 of the Credit Agreement to which such Interest Period applies and (ii) on the Maturity Date (as defined in the Credit Agreement), the lesser of the principal sum of Three Hundred Million Dollars (\$300,000,000) and the aggregate unpaid principal amount of all Competitive Loans made by the Bank to the Company pursuant to Sections 2.1 and 2.2 of the Credit Agreement, in lawful money of the United States of America in same day funds, and to pay interest from the date hereof on such principal amount from time to time outstanding, in like funds, at said office, at a rate or rates per annum and payable on such dates as determined pursuant to the Credit Agreement.

The Company promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates determined as set forth in the Credit Agreement.

The Company hereby waives diligence, presentment, demand, protest

and notice of any kind whatsoever. The non-exercise by the holder of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this Competitive Note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof, or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that any failure of the holder hereof to make such a notation or any error in such notation shall not in any manner affect the obligation of the Company to make payments of principal and interest in accordance with the terms of this Competitive Note and the Credit Agreement.

This Competitive Note is one of the Competitive Notes referred to in the Credit Agreement which, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional prepayment of the principal hereof prior to the maturity thereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

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

CUMMINS ENGINE COMPANY, INC.

by \_\_\_\_\_  
Title:

Loans and Payments

| Amount<br>and Type<br>of Loan | Maturity<br>Date | Payments  | Unpaid<br>Principal<br>Balance<br>of Note<br>Interest | Name of<br>Person<br>Making<br>Notation |
|-------------------------------|------------------|-----------|-------------------------------------------------------|-----------------------------------------|
|                               |                  | Principal |                                                       |                                         |

EXHIBIT D-2

FORM OF STANDBY NOTE

\$(Amount of Bank's Commitment) New York, New York  
{Effective Date}

FOR VALUE RECEIVED, the undersigned, CUMMINS ENGINE COMPANY, INC., an Indiana corporation (the "Company"), hereby promises to pay to the order of \_\_\_\_\_ (the "Bank"), at the office of Morgan Guaranty Trust Company of New York (the "Agent"), at 60 Wall Street, New York, New York 10260, on (i) the last day of each Interest Period as defined in the Amended and Restated Credit Agreement dated as of September 16, 1994, among the Company, the Banks named therein and Morgan Guaranty Trust Company of New York as Agent (as the same may be further modified, amended, extended or restated from time to time, the "Credit Agreement"), the aggregate unpaid principal amount of all Standby Loans made by the Bank to the Company pursuant to Sections 2.1 and 2.3 of the Credit Agreement to which such Interest Period applies and (ii) on the Maturity Date (as defined in the Credit Agreement), the lesser of the principal sum of [amount of Bank's Commitment] Dollars (\$ ) and the aggregate unpaid principal amount of all Standby Loans made by the Bank to the Company pursuant to Sections 2.1 and 2.3 of the Credit Agreement, in lawful money of the United States of America in same day funds, and to pay interest from the date hereof on such principal amount from time to time outstanding, in like funds, at said office, at a rate or rates per annum and payable on such dates as determined pursuant to the Credit Agreement.

The Company promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates determined as set forth in the Credit Agreement.

The Company hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The non-exercise by the holder of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this Standby Note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof, or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that any failure of the holder hereof to make such a notation or any error in such notation shall not in any manner affect the obligation of the Company to make payments of principal and interest in accordance with the terms of this Standby Note and the Credit Agreement.

This Standby Note is one of the Standby Notes referred to in the Credit Agreement which, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional prepayment of the principal hereof prior to the maturity thereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified.

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

CUMMINS ENGINE COMPANY, INC.

by \_\_\_\_\_  
Title:

Loans and Payments

| Amount and Type of Loan | Maturity Date | Payments Principal | Unpaid                             | Name of Person Making Notation |
|-------------------------|---------------|--------------------|------------------------------------|--------------------------------|
|                         |               |                    | Principal Balance of Note Interest |                                |

EXHIBIT E

CUMMINS ENGINE COMPANY, INC.

Secretary's Certificate

I, \_\_\_\_\_, Secretary of Cummins Engine Company, Inc., an Indiana corporation (the "Company"), hereby certify that:

17. Attached hereto as Exhibit A is a true and complete copy of the By-Laws of the Company, and there have been no changes in, or amendments to, such By-Laws since \_\_\_\_\_, 19\_\_.

18. Attached hereto as Exhibit B is a true and complete copy of a unanimous written consent duly adopted by the Executive Committee of the Board of Directors of the Company on \_\_\_\_\_, 19\_\_; such consent has not been amended, rescinded or modified and has been in full force and effect since its adoption to and including the date hereof and is now in full force and effect; and the resolutions included in such consent are the only resolutions adopted by this Company's Board of Directors or any Committee thereof or the shareholders of the Company, relating to the matters referred to therein.

19. There have been no changes in or amendments to the Restated Articles of Incorporation of the Company since \_\_\_\_\_, 19\_\_, and no other document relating to or affecting the Restated Articles of Incorporation of the Company has been filed in the office of the Secretary of State of the State of Indiana.

20. The following persons are now duly elected and qualified officers of the Company, holding the offices indicated next to their names below, and such officers have held such offices with the Company at all times since \_\_\_\_\_, 19\_\_, to and including the date hereof, and the signatures appearing opposite their names below are the true and genuine signatures of such officers:

| Name | Title | Signature |
|------|-------|-----------|
|------|-------|-----------|





Company of any of its obligations under the Credit Agreement or any other instrument or document furnished pursuant thereto and (iv) attaches the Standby Note [and the Competitive Note] held by it and requests that the Agent exchange such Note[s] for a new Standby Note [and a new Competitive Note] payable to the Assignee in a principal amount equal to \_\_\_\_\_ [and respectively] [, and a new Standby Note payable to the Assignor in a principal amount equal to \_\_\_\_\_].

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (ii) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 3.5 or 5.4 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (iii) agrees that it will, independently and without reliance upon the Agent, the Assignor or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) confirms that it is an Eligible Assignee; (v) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (vi) agrees that it will perform in accordance with their terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Bank; and (vii) agrees that it will keep confidential all information with respect to the Company furnished to it by the Company or the Assignor (other than information generally available to the public or otherwise available to the Assignor on a nonconfidential basis) [; and (viii) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Credit Agreement or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty]./10

4. The effective date for this Assignment and Acceptance shall be (the "Transfer Date")./11 Following the execution of this Assignment and Acceptance, it will be delivered to the Agent for acceptance by it and the Company and recording by the Agent pursuant to Section 9.4(c) of the Credit Agreement.

5. Upon such acceptance and recording, from and after the Transfer Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Bank thereunder and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement.

6.. Upon such acceptance and recording, from and after the Transfer Date, the Agent shall make all payments in respect of the interest assigned hereby (including payments of principal, interest, fees and other amounts) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the Transfer Date by the Agent or with respect to the making of this assignment directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

[NAME OF ASSIGNOR],

by \_\_\_\_\_  
Title:

[NAME OF ASSIGNEE],

by \_\_\_\_\_  
Title:

Accepted this \_\_\_\_\_ day  
of \_\_\_\_\_, 19 \_\_\_\_\_

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,  
as Agent,

by \_\_\_\_\_  
Title:

CONSENTED TO

by \_\_\_\_\_  
Title:

[Consent necessary if Assignee is  
not an Affiliate of Assignor]

EXHIBIT G

21. The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation; the Company is duly qualified as a foreign corporation and in good standing in every other jurisdiction in which the failure to qualify would adversely affect the businesses, assets, operations, prospects or conditions (financial or otherwise) of the Company or would impair the validity or enforceability of or the ability of the Company to perform its obligations under the Credit Agreement and the Notes.
22. Each of the Company and each Subsidiary has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, and in the case of the Company, to execute, deliver and perform the Credit Agreement and all transactions contemplated thereby, to execute and deliver the Notes and make the contemplated borrowings thereunder.
23. The making and performance by the Company of the Credit Agreement and the borrowings by the Company contemplated by the Notes, have been duly authorized by all necessary corporate action (including any necessary stockholder action) on the part of the Company and each Subsidiary and will not (a) violate any provision of any law, rule or regulation applicable to the Company or any Subsidiary, or (b) to the best of such counsel's knowledge, violate any order, writ, judgment, decree, determination or award having applicability to the Company or any Subsidiary, or (c) violate any provision of the Certificate or Articles of Incorporation or By-Laws of the Company or of any Subsidiary, or (d) to the best of such counsel's knowledge, constitute a default under any indenture or loan or credit agreement, or any other agreement or instrument, to which the Company or any Subsidiary is a party or by which any of them or their properties may be bound or affected, or (e) result in, or require, the creation or imposition of any Lien of any nature upon it with respect to any of the properties now owned or hereafter acquired by the Company or any Subsidiary. To the best of such counsel's knowledge, neither the Company nor any Subsidiary is in default under or in violation of its Certificate or Articles of Incorporation or other organizing document or its By-Laws or any such law, rule, or regulation, order, writ, judgment, decree, determination, award, indenture, agreement pertaining to borrowed money or similar instrument.
24. The Credit Agreement and the Notes each constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) general principles of equity.
25. No authorization, consent, approval, license or exemption from, nor any filing, declaration or registration with, any court, governmental agency or regulatory authority (Federal, state or local), including, without limitation, the Securities and Exchange Commission (other than routine disclosure) or any public utility regulatory agency, or with any securities exchange, is or will be required in connection with the making and performance by the Company of the Credit Agreement or the making of the Notes or the contemplated borrowings thereunder.
26. There are no actions, suits or proceedings pending or, to the best of such counsel's knowledge, threatened, against or affecting the Company or any Subsidiary or any of their respective assets in any court or before any arbitrator, commission, board, bureau or other administrative agency which if, in any such case, adversely determined, would be likely to have a material adverse effect on the businesses, assets, operations, prospects or condition (financial or otherwise) of the Company or of any Subsidiary or would impair the validity or enforceability of or the ability of the Company to perform its obligations under the Credit Agreement or any of the Notes.
27. Neither the Company nor any Subsidiary is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

28. The making of the Loans under the Credit Agreement and the use of the proceeds thereof as contemplated by the Credit Agreement will not violate or be inconsistent with any of the provisions of Regulation U, Regulation G or Regulation X of the Board.
29. The indebtedness of the Company under the Credit Agreement and the Notes constitutes "Senior Indebtedness" within the meaning of such terms or any similar term as used in subordination provisions of any subordinated Indebtedness of the Company.
- 30.

EXECUTION COPY

\$300,000,000

AMENDED AND RESTATED CREDIT AGREEMENT

among

CUMMINS ENGINE COMPANY, INC.,

THE BANKS NAMED HEREIN,

and

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,  
as Agent

Dated as of September 16, 1994

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\*Existing Bank

\*Existing Bank

1/Not less than \$10,000,000 or greater than the Total Commitment and in integral multiples of \$1,000,000.

2/Which shall end not later than the Maturity Date.

3/Indicate if Borrowing is to be of Competitive Fixed Rate Loans or Competitive LIBO Rate Loans.

4/Not less than \$10,000,000 and in integral multiples of \$1,000,000.

5/LIBOR Loan, Certificate of Deposit Loan or Alternate Base Loan.

6/Which shall be subject to Section 2.6(d) and end not later than the Maturity Date.

7/The Competitive Bid must be received by the Administrative Agent not later than 10:00 a.m., New York City time, three Business Days prior to a proposed Competitive LIBO Rate Borrowing or on the Business Day of a proposed Competitive Fixed Rate Borrowing, as the case may be.

8/Not less than \$5,000,000 or greater than the available Total Commitment and in integral multiples of \$1,000,000. Multiple bids will be accepted by the Administrative Agent.

9/To the nearest 1/10,000 of 1%.

10/If the Assignee is organized under the laws of a jurisdiction outside the United States.

11/See Section 9.4(c). Such date shall be at least five Business Days after the execution of this Assignment and Acceptance and delivery thereof to the Administrative Agent unless otherwise agreed to by the parties hereto.