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LOAN NUMBER 999 PNG

# Loan Agreement

(Second Power Project)

BETWEEN

THE GOVERNMENT OF PAPUA NEW GUINEA

AND

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

DATED JUNE 12, 1974

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## LOAN AGREEMENT

AGREEMENT, dated June 12, 1974, between THE GOVERNMENT OF PAPUA NEW GUINEA (hereinafter called the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS (A) The Borrower has requested the Bank to assist in the financing of the Project described in Schedule 2 to this Agreement by making the Loan as hereinafter provided;

(B) The Project will be carried out by the Papua New Guinea Electricity Commission (hereinafter called ELCOM) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to ELCOM the proceeds of the Loan as hereinafter provided; and

(C) The Bank is willing to make the Loan available upon the terms and conditions set forth hereinafter and in a project agreement of even date herewith between the Bank and ELCOM and in a guarantee agreement (hereinafter called the Guarantee Agreement) of even date herewith between Australia (hereinafter called the Guarantor) and the Bank;

NOW THEREFORE the parties hereto hereby agree as follows:

### ARTICLE I

#### General Conditions; Definitions

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 31, 1969, with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Schedule 4 to this Agreement (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) "Australia" means the Commonwealth of Australia;
- (b) "Project Agreement" means the agreement between the Bank and ELCOM of even date herewith, as the same may be amended from time to time, and such term includes all schedules to the Project Agreement;
- (c) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and ELCOM pursuant to Section 3.01(b) of this Agreement, as the same may be amended from time to time;
- (d) "\$A" means dollars in the currency of the Guarantor;
- (e) "Prior Loan Agreement" means the Loan Agreement (Loan No. 737-PNG) dated May 26, 1971, between the Administration of the Territory of Papua and New Guinea and the Bank; and
- (f) "Training Center" means the training center established and operated by ELCOM, as the same may be reorganized from time to time and includes any successor thereto.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in the Loan Agreement set forth or referred to, an amount in various currencies equivalent to ten million eight hundred thousand dollars (\$10,800,000).

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed under the Loan Agreement; provided, however, that, except as the Bank shall otherwise agree, no withdrawal shall be made on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

Section 2.03. Except as the Bank shall otherwise agree, the goods and services required for the Project and to be financed out of the proceeds of the Loan shall be procured pursuant to the provisions set forth or referred to in Section 2.02 of the Project Agreement.

Section 2.04. The Closing Date shall be December 31, 1979 or such other date as shall be agreed between the Borrower and the Bank.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent ( $3/4$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06. The Borrower shall pay interest at the rate of seven and one-fourth of one per cent ( $7-1/4\%$ ) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.07. Interest and other charges shall be payable semi-annually on January 15 and July 15 in each year.

Section 2.08. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

### ARTICLE III

#### Execution of the Project

Section 3.01. (a) Without any limitation or restriction upon any of its other obligations under the Loan Agreement, the Borrower shall cause ELCOM to perform in accordance with the provisions of the Project Agreement and the Subsidiary Loan Agreement all the obligations therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable ELCOM to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend the proceeds of the Loan to ELCOM under a subsidiary loan agreement to be entered into between the Borrower and ELCOM, on terms and conditions which shall have been approved by the Bank.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and except as the Bank shall otherwise agree, the Borrower shall not assign, nor amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

## ARTICLE IV

### Other Covenants

Section 4.01. (a) It is the mutual intention of the Borrower and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on the assets of the Borrower.

(b) To that end the Borrower (i) represents that at the date of this Agreement no lien exists on any assets of the Borrower as security for any external debt except as otherwise disclosed in writing by the Borrower to the Bank, and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it will *ipso facto* equally and ratably, and at no cost to the Bank, secure the payment of the principal of, and interest and other charges on, the Loan and in the creation of any such lien express provision will be made to that effect. The Borrower shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(d) As used in this Section, the term "assets of the Borrower" means assets of the Borrower or of any of its political subdivisions or of any agency of the Borrower or of any such political subdivision, including any institution performing the functions of a central bank for the Borrower.

Section 4.02. The Borrower hereby undertakes to use its best efforts to arrange for the conversion of funds held by ELCOM in its insurance fund into currencies freely usable by ELCOM to replace or repair its assets in the event of their being lost or damaged.

Section 4.03. Without any limitation or restriction upon the obligations assumed by the Borrower in respect of the Prior Loan Agreement, the Borrower hereby undertakes to make funds available to ELCOM:

(a) in an amount of not less than \$A90,000 in each of its fiscal years up to the year ending June 30, 1978, to assist ELCOM in continuing to operate the Training Center; and

(b) in such amounts as shall be sufficient to cover the losses of any power systems transferred by the Borrower to ELCOM after the date of this Agreement, in accordance with formulae agreed upon by the Borrower and ELCOM prior to each such transfer.

Section 4.04. The Borrower undertakes to accept in payment for any power systems transferred by the Borrower to ELCOM after the date of this Agreement, a suitable form of equity in ELCOM corresponding to the agreed value of such power systems at the time of each such transfer.

## ARTICLE V

### Consultation, Information and Inspection

Section 5.01. The Borrower and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Borrower and the Bank shall from time to time, at the request of either party:

(a) exchange views through their representatives with regard to the performance of their respective obligations under the Loan Agreement, the performance by the Borrower and ELCOM of their respective obligations under the Subsidiary Loan Agreement, the performance by ELCOM of its obligations under the Project Agreement, the administration, operations and financial condition of ELCOM and, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out any part of the Project, and other matters relating to the purposes of the Loan; and

(b) furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.

Section 5.02. (a) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the administration, operations and financial condition of ELCOM and, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out any part of the Project.

(b) The Borrower and the Bank shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment

of the purposes of the Loan, the maintenance of the service thereof, the performance by either of them of their obligations under the Loan Agreement, or the performance by the Borrower or ELCOM of their obligations under the Subsidiary Loan Agreement or the performance by ELCOM of its obligations under the Project Agreement.

Section 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Bank to inspect all plants, installations, sites, works, buildings, property and equipment of ELCOM and any relevant records and documents and to visit any part of the territories of the Borrower for purposes related to the Loan.

## **ARTICLE VI**

### **Taxes and Restrictions**

Section 6.01. The principal of, and interest and other charges on, the Loan shall be paid without deduction for, and free from, any taxes imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.02. The Loan Agreement, the Project Agreement and the Subsidiary Loan Agreement shall be free from any taxes on or in connection with the execution, issue, delivery or registration thereof imposed under the laws of the Borrower or laws in effect in its territories and the Borrower shall bear the cost of any such taxes, if any, imposed under the laws of the country or countries in whose currency the Loan is payable or laws in effect in the territories of such country or countries.

Section 6.03. The payment of the principal of, and interest and other charges on, the Loan shall be free from all restrictions, regulations, controls and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

## **ARTICLE VII**

### **Remedies of the Bank**

Section 7.01. If any event specified in Section 7.01 of the General Conditions shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower declare the principal of the Loan then outstanding to



be due and payable immediately together with the interest and other charges thereon and upon any such declaration such principal, interest and charges shall become due and payable immediately, anything to the contrary in the Loan Agreement notwithstanding.

## ARTICLE VIII

### Effective Date; Termination

Section 8.01. The Loan Agreement and the Guarantee Agreement shall not become effective until evidence satisfactory to the Bank shall have been furnished to the Bank:

(a) that the execution and delivery of the Loan Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action, including action of the Guarantor;

(b) that the execution and delivery of the Guarantee Agreement on behalf of the Guarantor have been duly authorized or ratified by all necessary governmental action;

(c) that the execution and delivery of the Project Agreement on behalf of ELCOM have been duly authorized or ratified by all necessary corporate and governmental action;

(d) that the Subsidiary Loan Agreement in form and substance satisfactory to the Bank has been duly executed and authorized by all necessary governmental and corporate action and is in full force and effect, subject only to the effectiveness of the Loan Agreement; and

(e) if the Bank shall so request, that the condition of ELCOM, as represented or warranted to the Bank as of the date of the Loan Agreement, has undergone no material adverse change between such date and the date agreed upon between the Borrower and the Bank for the purposes of this Section.

Section 8.02. The following are specified as additional matters, within the meaning of Section 11.02(c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank:

(a) that the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, ELCOM and constitutes a valid and binding obligation of ELCOM in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly executed and authorized by all necessary governmental and corporate action, constitutes valid and binding obligations of the parties thereto in accordance with its terms and is in full force and effect, subject only to the effectiveness of the Loan Agreement.

Section 8.03. The date August 12, 1974, is hereby specified for the purposes of Section 11.04 of the General Conditions.

## ARTICLE IX

### Representative of the Borrower; Addresses

Section 9.01. The Secretary for Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Borrower:

Secretary for Finance  
Department of Finance  
Konedobu  
Papua New Guinea

Cable address:

ADSEC  
NE22109

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

INTBAFRAD  
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

THE GOVERNMENT OF PAPUA NEW GUINEA

By /s/ Edmund M.W. Visbord  
*Authorized Representative*

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Raymond J. Goodman  
*Director, East Asia and Pacific Department  
Asia Regional Office*

## SCHEDULE 1

### Withdrawal of the Proceeds of the Loan

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of eligible expenditures so to be financed in each Category:

<i>Category</i>	<i>Amount of the Loan Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be Financed</i>
I. Technical Assistance provided for in Part A of the Project	4,700,000	60% of gross salaries, paid to expatriate trainers (representing the estimated foreign exchange component)
II. Shortfall in off-shore financing requirement of Upper Ramu hydroelectric project attributable to exchange rate adjustments (Part B of the Project)	3,750,000	100% of foreign expenditures
III. Electrical distribution equipment and materials	1,850,000	100% of foreign expenditures
IV. Unallocated	500,000	
TOTAL	<hr style="border: 0.5px solid black;"/> 10,800,000 <hr style="border: 0.5px solid black;"/>	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures for goods produced in, or services supplied from, the territories, and in the currency, of any country other than the Borrower; provided, however, that if the currency of the Borrower is also that of another country in the territories of which goods

are produced or from the territories of which services are supplied, expenditures in such currency for such goods or services shall be deemed to be "foreign expenditures"; and

(b) the term "total expenditures" means the aggregate of foreign expenditures and of expenditures for goods produced in, or services supplied from, the territories of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) expenditures prior to the date of this Agreement, except that withdrawals may be made in respect of Category 1 on account of expenditures incurred after January 1, 1974 in an aggregate amount not exceeding the equivalent of \$300,000; and

(b) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof. To the extent that the amount represented by the percentage set forth in the third column of the table in paragraph 1 above in respect of any Category would exceed the amount payable net of all such taxes, such percentage shall be reduced to ensure that no proceeds of the Loan will be withdrawn on account of payments for such taxes.

4. Notwithstanding the allocation of an amount of the Loan set forth in the second column of the table in paragraph 1 above:

(a) if the estimate of the expenditures under any Category shall decrease, the amount of the Loan then allocated to such Category and no longer required therefor will be reallocated by the Bank by increasing correspondingly the unallocated amount of the Loan;

(b) if the estimate of the expenditures under any Category shall increase, the percentage set forth in the third column of the table in paragraph 1 above in respect of such expenditures shall be applied to the amount of such increase, and a corresponding amount will be allocated by the Bank, at the request of the Borrower, to such Category from the unallocated amount of the Loan, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of any other expenditures; and

(c) if the Bank shall have reasonably determined that the procurement of any item in any Category is inconsistent with the procedures set forth or referred

to in Section 2.02 of the Project Agreement, no expenditures for such item shall be financed out of the proceeds of the Loan and the Bank may, without in any way restricting or limiting any other right, power or remedy of the Bank under the Loan Agreement, by notice to the Borrower, cancel such amount of the Loan as in the Bank's reasonable opinion, represents the amount of such expenditures which would otherwise have been eligible for financing out of the proceeds of the Loan.

5. Notwithstanding the percentages set forth in the third column of the table in paragraph 1 above, if the estimate of total expenditures under Category I shall increase and no proceeds of the Loan are available for reallocation to such Category, the Bank may, by notice to the Borrower, adjust the percentage then applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made.

**SCHEDULE 2****Description of the Project**

The Project consists of:

- Part A.* Technical assistance for ELCOM's in service training program during the period 1974 through 1979, which provides for 385 trainer man-years and 1,038 trainee man-years.
- Part B.* Financing to cover the shortfall in funds available to cover the off-shore element of expenditures for the Upper Ramu hydroelectric project attributable to exchange rate adjustments.
- Part C.* Distribution expansion consisting of about 150 distribution transformers, about 47 km of 11 Kv and 22 Kv primary distribution lines, and about 119 km of secondary distribution lines together with service connections, street lights and meters.

The Project is expected to be completed by December 31, 1979.

### SCHEDULE 3

#### Amortization Schedule

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>
January 15, 1980	205,000
July 15, 1980	210,000
January 15, 1981	220,000
July 15, 1981	230,000
January 15, 1982	235,000
July 15, 1982	245,000
January 15, 1983	255,000
July 15, 1983	265,000
January 15, 1984	270,000
July 15, 1984	280,000
January 15, 1985	295,000
July 15, 1985	305,000
January 15, 1986	315,000
July 15, 1986	325,000
January 15, 1987	335,000
July 15, 1987	350,000
January 15, 1988	360,000
July 15, 1988	375,000
January 15, 1989	390,000
July 15, 1989	405,000
January 15, 1990	420,000
July 15, 1990	435,000
January 15, 1991	450,000
July 15, 1991	465,000
January 15, 1992	480,000
July 15, 1992	500,000
January 15, 1993	515,000
July 15, 1993	535,000
January 15, 1994	555,000
July 15, 1994	575,000

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\* To the extent that any portion of the Loan is repayable in a currency other than dollars (see General Conditions, Section 4.02), the figures in this column represent dollar equivalents determined as for purposes of withdrawal.



**Premiums on Prepayment and Redemption**

The following percentages are specified as the premiums payable on repayment in advance of maturity of any portion of the principal amount of the Loan pursuant to Section 3.05(b) of the General Conditions:

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than three years before maturity	1-1/4%
More than three years but not more than six years before maturity	2%
More than six years but not more than eleven years before maturity	3-1/2%
More than eleven years but not more than sixteen years before maturity	5-1/4%
More than sixteen years but not more than eighteen years before maturity	6-1/4%
More than eighteen years before maturity	7-1/4%

**SCHEDULE 4****Modifications of General Conditions**

For the purpose of this Agreement, the provisions of the General Conditions are modified as follows:

- A. Paragraph 13 of Section 2.01 is deleted and the following paragraph is substituted therefor:

"13. The term external debt means any debt payable in any medium other than the currency of the Guarantor or the Borrower, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium; provided, however, that if the Guarantor and the Borrower shall cease to have a currency common to them, a debt incurred by one of them in the currency of the other shall be deemed to be the external debt of the former."

- B. Paragraph 10 of Section 2.01, Article VIII, subparagraphs (ii) of paragraphs (a) and (b) of Section 11.02, Schedules 1 and 2, as well as any other references to Bonds are deleted.

- C. The last sentence of Section 4.01 is deleted and the following sentence is substituted therefor:

"Withdrawals from the Loan Account shall be made either in the respective currencies in which the cost of goods and services has been paid or is payable or in dollars, as the Bank may from time to time elect, except that where withdrawals may be made in respect of expenditures in the currency of the Guarantor or of the Borrower, such withdrawals shall be made in such currency or currencies as the Bank shall from time to time reasonably select."

- D. Section 5.01 is deleted.

- E. Paragraph (e) of Section 6.02 is deleted and the following paragraph is substituted therefor:

"(e) The Guarantor: (i) shall have been suspended from membership in or ceased to be a member of the Bank, or (ii) shall have ceased to be a member of the International Monetary Fund or shall have become, or shall have been declared, ineligible to use the resources of said Fund."

- F. Paragraph (g) of Section 6.02 is deleted and the following paragraph is substituted therefor:

"(g) Prior to the Effective Date, any material adverse change in the condition of ELCOM, as represented by the Borrower and ELCOM, shall have occurred."

- G. Paragraphs (i) and (j) of Section 6.02 are deleted and the following new paragraphs (i), (j), (k), (l) and (m) are added to the Section:

"(i) There shall occur any such change in the nature and constitution of the Borrower as shall make it improbable that the Borrower will be able to carry out its obligations under the Loan Agreement or the Subsidiary Loan Agreement.

(j) The Borrower or ELCOM shall have failed to perform any covenant, agreement or obligation under the Subsidiary Loan Agreement.

(k) ELCOM shall have failed to perform any covenant, agreement or obligation of ELCOM under the Project Agreement.

(l) An extraordinary situation shall have arisen which shall make it improbable that ELCOM will be able to perform its obligations under the Project Agreement.

(m) The Borrower shall have taken any action for the dissolution or disestablishment of ELCOM or for the suspension of its operations, or shall have enacted legislation materially and adversely affecting the establishment, powers, organization, responsibilities or financial structure of ELCOM."

- H. Paragraphs (e), (f) and (g) of Section 7.01 are deleted and the following new paragraph (e) is added to the Section:

"(e) Any event specified in paragraph (m) of Section 6.02 shall have occurred."

- I. Section 9.02 is deleted and the following Section is substituted therefor:

"Section 9.02. *Obligations of the Guarantor.* The obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, demand upon or

action against the Borrower or ELCOM or to any prior notice to or demand upon the Guarantor with regard to any default by the Borrower or ELCOM, and shall not be impaired by any of the following: any extension of time, forbearance or concession given to the Borrower or ELCOM; any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or ELCOM or in respect of any security for the Loan; any modification or amplification of the provisions of the Loan Agreement or the Project Agreement contemplated by the terms thereof; any failure of the Borrower or ELCOM to comply with any requirement of any law, regulation or order of the Guarantor or of any political subdivision or agency of the Guarantor."

- J. The last sentence of paragraph (k) of Section 9.04 is deleted and the following sentence is substituted therefor:

"Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against the Borrower or the Guarantor (as the case may be) except as such procedure may be available against the Borrower or the Guarantor (as the case may be) otherwise than by reason of the provisions of this Section."

- K. The first and second sentences of Section 10.03 are deleted and the following sentences are substituted therefor:

"Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Loan Agreement, or the Guarantee Agreement, on behalf of the Borrower or the Guarantor may be taken or executed by the representative of the Borrower or the Guarantor designated in the Loan Agreement or the Guarantee Agreement for the purposes of this Section or any person thereunto authorized in writing by him. Any modification or amplification of the provisions of the Loan Agreement or the Guarantee Agreement, may be agreed to on behalf of the Borrower or the Guarantor by written instrument executed on behalf of the Borrower or the Guarantor by the representative so designated or any person thereunto authorized in writing by him; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Loan Agreement or of the Guarantor under the Guarantee Agreement."

- L. Section 11.01 is deleted and the following Section is substituted therefor:

"Section 11.01. *Conditions Precedent to Effectiveness of Loan Agreement and Guarantee Agreement.* The Loan Agreement and the Guarantee Agreement shall not become effective until the conditions specified in Section 8.01 of the Loan Agreement shall have been fulfilled."