I. Definitions

A. Accumulated Funding Deficiency

“Accumulated Funding Deficiency” means, with respect to any ERISA Plan at any time, the plan’s accumulated funding deficiency as defined in Section 412(a) of the Code [and Section 302(a) of ERISA].

B. Aggregate Unpaid Minimum Required Contributions

“ Aggregate Unpaid Minimum Required Contributions” means, with respect to any Single-Employer Plan or Multiple Employer Plan at any time, the plan’s aggregate “unpaid minimum required contributions” as defined in Section 4971 of the Code.

C. At Risk

“At Risk” means, with respect to any Single-Employer Plan or Multiple Employer Plan at any time, that the plan is “in at-risk status” as defined in Section 430(i) of the Code [or Section 303(i) of ERISA].

D. COBRA

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

E. Endangered or Critical Status

In “Endangered or Critical Status” means, with respect to any Multiemployer Plan at any time, that the plan is in “endangered status” or “critical status” as defined in Section 432(b)(1) and (2) of the Code [or Section 305(b)(1) and (2) of ERISA], respectively.
F. ERISA

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time [, and the regulations promulgated and the rulings issued thereunder from time to time].

G. ERISA Affiliate

“ERISA Affiliate” means (i) any corporation that is part of the same controlled group of corporations with Borrower within the meaning of Section 414(b) of the Code, and any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Section 414(c) of the Code, and (ii) solely for purposes of the minimum funding requirements of Section 302 of ERISA and Sections 412 and 4971 of the Code and liability for PBGC premiums under Section 4007 of ERISA, any other entity treated as a single employer together with Borrower under Section 414(m) or (o) of the Code.

H. ERISA Event

“ERISA Event” means:

(i) a Reportable Event with respect to an ERISA Plan;

(ii) a withdrawal subject to Section 4063 of ERISA by Borrower or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer, or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;

(iii) a complete or partial withdrawal subject to Section 4201 of ERISA by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization within the meaning of Section 4241 of ERISA;

(iv) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate, an ERISA Plan;

(v) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan; or

(vi) the imposition of any other liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate.

I. ERISA Plan

“ERISA Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA sponsored or maintained by Borrower or, with respect to any such plan
that is subject to the minimum funding requirements of Section 302 of ERISA and Sections 412 and 4971 of the Code or to Title IV of ERISA, any ERISA Affiliate.

J. **Funding Shortfall**

“Funding Shortfall” means, with respect to any ERISA Plan at any time, the plan’s “funding shortfall” as defined in Section 430(c) of the Code [or Section 303(c) of ERISA].

K. **Funding Target**

“Funding Target” means, with respect to any ERISA Plan at any time, the plan’s “funding target” as defined in Section 430(d) of the Code [or Section 303(d) of ERISA].

L. **Multiemployer Plan**

“Multiemployer Plan” means an ERISA plan that is a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA and Section 4001.2 of Title 29 of the Code of Federal Regulations, to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

M. **Multiple Employer Plan**

“Multiple Employer Plan” means an ERISA plan that is a “multiple employer plan” as defined in and Section 4001.2 of Title 29 of the Code of Federal Regulations and that is sponsored or maintained by Borrower or any ERISA Affiliate, or to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or has made contributions at any time during the immediately preceding five plan years.

N. **OPEB Obligation**

“OPEB Obligation” means, with respect to an employer, the employer’s obligation for postretirement benefits other than pensions based upon the actuarial assumptions used for accounting purposes (i.e., used in preparing the employer’s financial statements in accordance with FASB Statement No. 106), other than for benefits required under COBRA or applicable state law.

O. **Reportable Event**

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

P. **Single-Employer Plan**

“Single-Employer Plan” means an ERISA plan (other than a Multiple-Employer Plan) that is a “single-employer plan” as defined in Section 4001(a)(15) of ERISA.
and Section 4001.2 of Title 29 of the Code of Federal Regulations [or Section 3(41) of ERISA] and that is sponsored or maintained by Borrower or any ERISA Affiliate, or to which Borrower or any ERISA Affiliate makes or is obligated to make contributions.

Q. Unfunded Benefit Liability

1. Current or terminal liability using PBGC assumptions

“Unfunded Benefit Liabilities” means, with respect to any ERISA Plan at any time, the “amount of unfunded benefit liabilities” defined in Section 4001(a)(18) of ERISA.

2. Current or terminal liability using funding assumptions

“Unfunded Benefit Liabilities” means, with respect to any ERISA Plan at any time, the excess (if any) of (i) the amount of benefit liabilities under Section 4001(a)(16) of ERISA based upon the actuarial assumptions used for funding purposes (i.e., used in to calculate minimum funding obligations in accordance with Section 302 of ERISA and Section 412 of the Code), over (ii) the value of plan assets for the applicable plan year.

3. Current or terminal liability using financial accounting assumptions

“Unfunded Benefit Liabilities” means, with respect to any ERISA Plan at any time, the excess (if any) of (i) the present value of all accrued benefits calculated on an accumulated benefit obligation (ABO) basis and based upon the actuarial assumptions used for accounting purposes (i.e., used in preparing the ERISA Plan’s financial statements in accordance with FASB Statement No. 35), over (ii) the fair market value of all ERISA Plan assets.

4. Projected liability using financial accounting assumptions

“Unfunded Benefit Liabilities” means, with respect to any ERISA Plan at any time, the excess (if any) of (i) the present value of projected benefit obligations (PBO) based upon the actuarial assumptions used for accounting purposes (i.e., used in preparing the plan sponsor’s financial statements in accordance with FASB Statement No. 87), over (ii) the fair market value of all ERISA Plan assets.

II. Borrower Representations

A. No Plan Assets

Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes [or will constitute] “plan assets” of one or more such plans within the meaning of Section 3(42) of ERISA and Section 2510.3-101 of Title 29 of the Code of Federal Regulations. In addition, (i) Borrower is not a “govern-
mental plan” within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this loan agreement.

B. Compliance with Code and ERISA Generally

Each ERISA Plan is in compliance in all [Material] respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each ERISA Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and[, to the best knowledge of Borrower,] nothing has occurred which would prevent, or cause the loss of, such qualification. There has been no [Material] prohibited transaction or violation of the fiduciary responsibility rules with respect to any ERISA Plan.

C. Compliance with Funding Obligations

[Except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect,] (i) Borrower and each ERISA Affiliate have made all required contributions to each ERISA Plan subject to Section 412 of the Code [by the 30th day after their due dates] and have made no application for a funding waiver or an extension of any amortization period with respect to any such plans, (ii) neither Borrower nor any ERISA Affiliate has, or reasonably expects to have, any liability under Title IV of ERISA with respect to any Single-Employer Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) neither Borrower nor any ERISA Affiliate has, or reasonably expects to have, any liability (and [to the knowledge of Borrower and any ERISA Affiliate] no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) neither Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

D. No Funding Shortfall

[Except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect,] no ERISA Plan [has an Accumulated Funding Deficiency] [has Aggregate Unpaid Minimum Required Contributions] [is At Risk] [has a Funding Shortfall] [has an Unfunded Benefit Liability] [in excess of $____________ in the case of any single ERISA Plan or $____________ in the aggregate for all ERISA Plans].

E. No OPEB Obligations

[Except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect,] neither Borrower nor any ERISA Affiliate [provides or has pro-
vided post-retirement medical or insurance benefits with respect to employees or former employees other than benefits required under COBRA or applicable state law] [has any OPEB Obligation].

F. Not a Prohibited Transaction

The execution and delivery of this Loan agreement and the issuance and sale of the notes hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975 of the Code. The representation by Borrower to Lender in the preceding sentence is made in reliance upon and subject to the accuracy of Lender’s representation in Section [__] as to the sources of the funds used to pay the purchase price of the notes to be purchased by Lender.

III. Lender Representation

Lender represents that at least one of the following statements is an accurate representation as to each source of funds (a “Source”) to be used by Lender under this loan agreement:

(a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“PTE”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “NAIC Annual Statement”)) for the general account contract(s) held by or on behalf of any ERISA Plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other ERISA Plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with Lender’s state of domicile;

(b) the Source is a separate account that is maintained solely in connection with Lender’s fixed contractual obligations under which the amounts payable, or credited, to any ERISA Plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account;

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 91-38 and, except as disclosed by Lender to Borrower in writing pursuant to this clause (c), no ERISA Plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund;

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part V of PTE 84-14, as amended (the “QPAM Exemption”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part V of the QPAM Exemption), no ERISA Plan’s assets that are included in such investment fund, when combined with the
assets of all other ERISA Plans sponsored or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of “control” in Section V(e) of the QPAM Exemption) owns a 5% or more interest in Borrower and (i) the identity of such QPAM and (ii) the names of all ERISA Plans whose assets are included in such investment fund have been disclosed to Borrower in writing pursuant to this clause (d);

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Section IV of PTE 96-23 (the “INHAM Exemption”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Section IV(d) of the INHAM Exemption) owns a 5% or more interest in Borrower and (i) the identity of such INHAM and (ii) the name(s) of the ERISA Plan(s) whose assets constitute the Source have been disclosed to Borrower in writing pursuant to this clause (e);

(f) the Source is a governmental plan;

(g) the Source is one or more ERISA Plans, or a separate account or trust fund comprised of one or more ERISA Plans, each of which has been identified to Borrower in writing pursuant to this clause (g);

(h) the Source does not include assets of any ERISA Plan.

IV. **Borrower Covenants**

A. **No Plan Assets**

Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that [Borrower’s “No Plan Assets” rep. above] continues to be true.

B. **Compliance with Funding Obligations**

Throughout the term of the Loan, Borrower shall notify Lender of the occurrence of any ERISA Events [if such ERISA Event or ERISA Events individually or in aggregate could reasonably be expected to result in a Material Adverse Effect]. [Such notice shall be provided as soon as possible, and in any event within 30 days after Borrower knows or has reason to know that any such ERISA Event has occurred.]

C. **No New Obligations**

[Except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect,] neither Borrower nor any ERISA Affiliate will (i) adopt, create,
assume or become a party to any ERISA Plan, (ii) incur any obligation to contribute to any Multiemployer Plan, (iii) incur any OPEB Obligation, or (iv) amend any ERISA Plan except as required by law.

V. Events of Default

A. Risk of Non-Compliance with Funding Obligations

An ERISA Event occurs with respect to an ERISA Plan [and such event, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect] [that has resulted or could reasonably be expected to result in liability of Borrower or any ERISA Affiliate to the ERISA Plan, the Internal Revenue Service or the PBGC in an aggregate amount in excess of $__________].

B. Funding Shortfall

The aggregate amount of [Accumulated Funding Deficiencies] [Aggregate Unpaid Minimum Required Contributions] [Funding Shortfalls] [Unfunded Benefit Liabilities] with respect to ERISA Plans exceeds [$__________].

C. New Funding Obligations

Borrower or any ERISA Affiliate (i) adopts, creates, assumes or become a party to any ERISA Plan, (ii) incurs any obligation to contribute to any Multiemployer Plan, (iii) incurs any OPEB Obligation, or (iv) amends any ERISA Plan except as required by law [and such event, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect].