

RUS Project Designation:

[RUS DESIGNATION]

LOAN AGREEMENT

dated as of [date]

between

[BORROWER'S NAME]

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement,") dated as of [date] is between [BORROWER'S NAME] ("Borrower,") a [corporation or limited liability company] existing under the laws of [STATE], and the UNITED STATES OF AMERICA, acting through the Administrator of the Rural Utilities Service ("RUS.")

The Borrower has applied for financial assistance ("Application") to RUS, requesting financial assistance from RUS to finance broadband services in rural areas.

RUS is willing to extend financial assistance, in the form of a loan to the Borrower, pursuant to Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) and all applicable federal regulations, on the terms and conditions stated herein.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

"Accounting Requirements" shall mean the system of accounting prescribed by RUS Bulletin 1770B-1, as supplemented by Attachment 3 hereto.

"Advance" or "Advances" shall mean an advance or advances made by RUS under the Note(s).

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

"Application" shall have the meaning as defined in the second paragraph hereof.

"Business Day" shall mean any day that RUS and the Department of Treasury are both open for business.

"Build-Out Schedule" shall mean the build-out schedule for the Project, attached hereto as Schedule 2, as amended by RUS consent to a subsequent amendment or Build-Out Plan.

"Build-Out Plan" shall mean the plan, as may be required by Section 4.1(i), submitted on a semi-annual basis and covering all projects contemplated during the same six-month period.

"Distribution" shall have the meaning as defined in Section 6.9.

"Event of Default" shall have the meaning as defined in Article VIII.

"Expiration Date" shall have the meaning as defined in Paragraph (c) of Section 3.1.

"Interest Expense" shall have the meaning as defined in Attachment 3.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Loans" shall mean the loans described in Section 3.1.

"Loan Documents" shall mean, collectively, this Agreement, Security Documents and the Note(s).

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Borrower or on the ability of the Borrower to perform its obligations under the Loan Documents as determined by RUS.

"Net Income" or "Net Margins" shall have the meaning as defined in Attachment 3.

"Net Worth" shall have the meaning as defined in Attachment 3.

"Note(s)" shall have the meaning as defined in Paragraph (a) of Section 3.2.

"Permitted Encumbrances" shall have the meaning as defined in the Security Documents.

"Pledged Deposit Account" shall have the meaning as defined in Section 5.4.

"Project" shall have the meaning as defined in Paragraph (a) of Section 3.4.

"RUS Regulations" shall mean the rules, regulations and bulletins of general applicability published by RUS from time to time, as such rules, regulations and bulletins exist at the date of applicability thereof, and shall also include any rule and regulations of other Federal entities which RUS is required by law to implement. Any reference to specific RUS Regulations shall mean the version of and cite to such regulation effective at the date of applicability thereof.

"Security Documents" shall mean, collectively, any mortgage, security agreement, financing statement, deposit account control agreement or other document providing collateral for the Loan.

"Service Rates" shall mean the rates charged for data, video, voice or any other service proposed in the Application.

"Subsidiaries" shall mean the subsidiaries listed in Schedule 1.

"TIER" shall mean the Borrower's total Net Income or Net Margins plus Interest Expense payable for any year divided by Interest Expense payable for such year, as determined in Schedule 1 hereto.

"TIER Commencement Date" shall have the meaning as defined in Section 5.12.

"Total Assets" shall have the meaning as defined in Attachment 3.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Recognizing that RUS is relying hereon, the Borrower represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc* The Borrower: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Loan Documents; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by the Agreement.
- (b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Borrower or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Borrower is a party or by which it may be bound. The Borrower has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Loan Documents, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each of the Loan Documents is, or when executed and delivered will be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Borrower is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.")
- (f) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Borrower and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Borrower.

- (h) *Location of Properties.* All real property and interests therein of the Borrower are located in the states and counties or parishes identified in the Security Documents.
- (i) *Principal Place of Business.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Schedule 1 hereto.
- (j) *Organization Number.* The Borrower's organization number is correctly identified in Schedule 1 hereto.
- (k) *Subsidiaries and Parent.* Any subsidiaries or parent of the Borrower are disclosed on the attached Schedule 1.
- (l) *Defaults Under Other Agreements.* No default by the Borrower has occurred under any agreement or instrument to which the Borrower is a party or to which any of its property is subject that could have a Material Adverse Effect.
- (m) *Title to Property.* Except as disclosed in writing in the opinion of counsel, the Borrower holds good and marketable title to all of the collateral securing the Loan, free and clear of any liens, security interests or other encumbrances except for Permitted Encumbrances.

ARTICLE III – THE LOANS

Section 3.1 Loan Amount, Interest Rate, and Expiration Date.

- (a) RUS agrees to make and the Borrower agrees to accept, on the terms and conditions stated in this Agreement, a loan in the amount specified in Schedule 1 hereto (the "Loan.")
- (b) The portion of the Loan specified in Schedule 1 hereto will bear interest at the comparable Treasury rate for comparable maturities, as determined by RUS, and the portion of the Loan specified in Schedule 1 hereto will bear interest at the rate of four percent (4%) per annum.
- (c) The obligation of RUS to advance the Loan or any portion of the Loan shall expire on a date ("Expiration Date") five years from the date of the Note(s). No portion of the Loan will be advanced by RUS to the Borrower after the Expiration Date. RUS, in its sole discretion, may approve an extension of the Expiration Date, provided that the Borrower notify RUS, in writing at least ten days prior to the Expiration Date, of the reasons and need for an extension, together with a suggested revised Expiration Date.

Section 3.2 Loan Documents

- (a) The debt created by the Loan will be evidenced by a note(s) ("Note(s)") executed by the Borrower and payable to the United States of America. The Borrower shall repay the Loan in accordance with the Note(s) which shall be payable and bear interest in accordance with its (their) terms.
- (b) The Borrower shall execute the Security Documents covering all of the Borrower's property, in form and substance satisfactory to RUS, and such other security instruments as required by RUS. If the Borrower does not presently have real property, it covenants that it will enter into a standard mortgage with the RUS upon acquisition of real property.

Section 3.3 Payment

Except as otherwise prescribed by RUS, the Borrower shall make all payments on the Note(s) utilizing electronic fund transfer procedures as specified by RUS.

Section 3.4 Project

- (a) *Loan Purpose.* The Loan has been made solely to finance the project specifically described in the Application ("Project.")
- (b) *Changes to Project.* The Borrower shall obtain the prior written approval of RUS for any material change to the system design, construction, build-out schedule, if any, delivery of services, and/or objective(s) of the Project.

ARTICLE IV – CONDITIONS OF LENDING**Section 4.1 Conditions Precedent to Loan Closing**

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Loan Documents.* RUS shall receive duly executed originals of the Loan Documents;
- (c) *Filed and Recorded Security Documents.* RUS shall have received the following documents securing the Loan: (i) executed, filed and indexed financing statements covering all of the personal property and fixtures of the Borrower and (ii) executed, filed and recorded counterparts of a mortgage covering all of the Borrower's real property;
- (d) *Compliance with Deposit Requirements.* RUS has received from the Borrower, evidence, satisfactory to RUS, that the Borrower has maintained on deposit in account, equity funds, in the amount specified in Schedule 1, to cover operating expenses, in accordance with 7 C.F.R. Section 1738.20(b), less amounts expended, as approved by RUS;
- (e) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Borrowers, RUS shall have received certified copies of the Borrower's most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Borrower's most recent organization documents containing provisions reflecting the obligations of the Borrower in paragraphs (c) and (d) of Section 6.3;
- (f) *Authorizations.* RUS shall have received satisfactory evidence that all Loan Documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of the Loan Documents have been obtained and are in full force and effect;
- (g) *Approvals.* RUS shall have received satisfactory evidence that the Borrower has duly registered when and where required by law with all state, Federal and other public

authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each of the Loan Documents;

(h) *Title Evidence.* RUS shall have received satisfactory evidence that the Borrower has good and marketable title to its property, including the Project, and holds such franchises, permits, leases, easements, rights, privileges, licenses, or right-of-way instruments, reasonably adequate in form and substance, as may be required by law for the continued maintenance and operation of the existing facilities and Project;

(i) *Build-Out Plan.* If required by RUS on Schedule 1 hereto, RUS shall have received a build-out plan for the Project (the "Build-Out Plan") that is in accordance with the Build-Out Schedule attached hereto as Schedule 2, which shall cover all projects proposed during the first six (6) month construction period, and which must include the following additional items:

(1) *For Wireless networks.*

- (A) list of tower sites that will be operational during the 6-month period along with the respective communities that will be served from each tower site;
- (B) network diagram showing all the tower sites and how they interconnect together and with the backbone service providers;
- (C) frequency analysis map of each tower site showing the location of the tower, the cell extenders (if any), the coverage area, and the number of households and businesses that are located within the coverage area;
- (D) detailed description of each project by tower site; its estimated cost; its respective commencement/completion time frames; and the proposed installation methodology (contract/in-house work-force). If in-house workforce will be utilized, then a detailed description of this workforce and how it will complete the project within the specified time frame is required; and
- (E) all executed agreements related to tower leases, bandwidth, rights-of-way, etc., and FCC licenses required to build and operate the network proposed in the plan;

(2) *For Fiber/Cable Networks.*

- (A) list of hub sites that will be in operation during the 6-month period along with the respective communities that will be served from each hub site;
- (B) network diagram showing all the hub sites and how they interconnect together and with the backbone service providers;
- (C) service area map of each hub site showing the location of the hub site, the coverage area, and the number of households and businesses located within the coverage area; and

- (D) detailed description of each project that will be constructed within the service area served by each hub site, including the estimated cost, the respective commencement/completion time frames, and the proposed construction methodology, whether by contract or in-house (note that if in-house workforce is utilized, then a detailed description of the workforce and how it will complete the project within the specified time frame is required), and all executed agreements related to building/tower leases, bandwidth, rights-of-way, etc., as well as any licenses and agreements specific to building and operating the network proposed in the plan.
- (3) *Additional Requirements.* For both Wireless and Fiber/Cable Networks, any additional requirements as may be listed on Schedule 1 hereto.
- (j) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS, which shall be in accordance with fees or rates presented in the *pro forma* financial statements submitted to RUS in the Application for the Loan;
- (k) *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Borrower (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Borrower operates; and
- (l) *Additional Conditions.* The Borrower has met all additional conditions specified in Schedule 1 hereto.

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificate and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Service Rate Evidence.* RUS shall have received satisfactory evidence that the Borrower has duly adopted Service Rates for all proposed services which are designed with a view to (i) paying and discharging all taxes, maintenance expenses, and operating expenses of the Borrower, (ii) making all payments in respect of principal and interest on the Note(s) when and as the same shall become due, (iii) providing and maintaining reasonable working capital of the Borrower, and (iv) producing and maintaining the TIER specified in Schedule 1 hereto;
- (b) *Fidelity Bond or Theft Insurance Coverage.* RUS has received copies of the fidelity bond or theft insurance policy from the Borrower, identifying RUS as a loss payee, from a surety doing business with the United States listed in 31 CFR Part 223, in the amount specified in Schedule 1, covering all officers, employees, or agents of the Borrower authorized to receive, disburse, or receive and disburse the Loan;
- (c) *Current Financial Information and Certificate of Authority.* RUS has received from the Borrower: (i) its updated balance sheet, statement of cash flow, and income statement and (ii) a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Borrower as the person or persons authorized to execute and submit, on behalf of the Borrower, REA Form 481, "Financial Requirement Statement."

- (d) *Additional Conditions.* The Borrower has met all additional conditions specified in Schedule 1 hereto.

Section 4.3 Conditions to Individual Advances

The obligations of RUS to approve any Advance of the Loan is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Borrower;
- (d) *Requisitions and Supporting Documentation.* That RUS shall have received a requisition, not more frequently than once a month, and supporting documentation from the Borrower in accordance with RUS Bulletin 1738-2, *Rural Broadband Access Loan and Loan Guarantee Advance and Construction Procedures Guide*, as amended and supplemented from time to time (hereinafter "RUS Bulletin 1738-2,") available at https://www.rd.usda.gov/files/UTP_rus-bulletin-1738-web2-6-03%202.pdf and attached hereto as Attachment 1.
- (e) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower shall have submitted evidence, in form and substance satisfactory to RUS or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations.;
- (f) *Current Financial Information.* That RUS has received from the Borrower its current balance sheet, statement of cash flow, and income statement;
- (g) *Compliance with Deposit Requirements.* RUS has received from the Borrower, evidence, satisfactory to RUS, that the Borrower has maintained on deposit in account, equity funds, in the amount specified in Schedule 1, less amounts expended as approved by RUS, to cover operating expenses, in accordance with 7 C.F.R. Section 1738.20(b);
- (h) *Compliance with Build-Out Schedule.* RUS has received from the Borrower evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Build-

Out Schedule, attached hereto as Schedule 2, as may be amended by the Build-Out Plan;

- (i) *Compliance with Loan Documents.* That the Borrower is in material compliance with the Loan Documents;
- (j) *Permits, Licenses and Franchises.* RUS shall have received satisfactory evidence that the Borrower has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (k) *Additional Documents.* The Borrower agrees to provide RUS with such additional documents as RUS may request; and
- (l) *Additional Conditions.* The Borrower has met all additional conditions specified in Schedule 1 hereto.

Section 4.4 First Advance to Pay Off Interim Financing; Restrictions on Subsequent Advances

Loan funds to pay off RUS-approved interim financing, if any, will be included in the first loan advance. Thereafter no further advances will be made unless and until the Borrower has furnished evidence, in form and content satisfactory to RUS, that such interim financing has been paid in full and any associated liens have been duly discharged of record.

ARTICLE V – AFFIRMATIVE COVENANTS

Section 5.1 Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Borrower shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2 Use of Advances

The Borrower shall apply the proceeds of Advances in accordance with its Application with such modifications as may be mutually agreed to in writing by RUS and the Borrower.

Section 5.3 Unused and Disallowed Advances

- (a) The Borrower shall return to RUS forthwith all or any advanced portion of the Loan not disbursed by the Borrower for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account or other account approved by RUS.
- (b) The Borrower shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by a RUS loan audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against requests for Advances or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Borrower a written demand for payment. Interest shall accrue at the lesser of the following: the interest rate of the disallowed Advance or the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Closeout of the Loan will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Borrower's obligation to return any disallowed expenditures.

Section 5.4 Deposit of Advances into Pledged Deposit Account

- (a) The Borrower shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the RUS name of the Borrower followed by the words "Pledge Deposit Account." The Borrower shall promptly deposit proceeds from all Advances of the Broadband Loan, including previously advanced funds whose original expenditure has been disallowed by a RUS loan audit, and other funds described on Schedule 1 hereto (hereinafter "Additional Funds") into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which the Advance was made, for the purposes as set forth in Schedule 1 hereto (hereinafter "Additional Purposes,") or for such other purposes as may be approved by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with Attachment 1 hereto, RUS Bulletin 1738-2, as amended and supplemented from time to time.
- (b) *First Lien on Pledged Deposit Account.* The Borrower shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in form acceptable to RUS.

Section 5.5 Use of Operating Funds

The Borrower shall expend the operating funds required by 7 C.F.R. Section 1738.20(b), as approved by RUS.

Section 5.6 Financial Books

The Borrower shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, and bills of sale, adequate to identify the purposes for which, and the manner in which Loan and other funds were expended on the Project. The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Borrower and its Subsidiaries, in accordance with any applicable Accounting Requirements unless RUS' prior written consent is obtained to utilize an alternate system of accounting. The Borrower shall maintain copies of all documents submitted to RUS in connection with the Loan until the Loan has been paid in full and all audits have been completed.

Section 5.7 Rights of Inspection

The Borrower shall afford RUS, the Office of the Inspector General of USDA, and the General Accounting Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payrolls, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 5.8 Annual and Special Financial Reports

- (a) One hundred twenty (120) days from the end of the Borrower's current fiscal year and, thereafter, one hundred twenty (120) days from the close of each fiscal year of the Borrower, the Borrower shall cause to be prepared and furnished to RUS a full and complete annual report of its financial condition and of its operations in form and

substance satisfactory to RUS, and as provided in 7 C.F.R. 1773, which is audited and certified by an independent certified public accountant satisfactory to RUS and accompanied by a report of such audit in form and substance satisfactory to RUS.

- (b) The Borrower shall also furnish to RUS thirty (30) calendar days after the end of each calendar year quarter, and on such additional dates as specified in Schedule 1 (hereinafter "Additional Reporting Dates,") or as otherwise requested in writing by RUS, balance sheets, income statements, statements of cash flow, or such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as RUS may request or RUS Regulations require.

Section 5.9 Annual Compliance Certificate

Within forty-five (45) days after the close of each calendar year, or more often if required in writing by RUS, the Borrower shall deliver to RUS a written statement signed by its general manager, managing member, or equivalent corporate official satisfactory to RUS, stating that, during such year the Borrower has fulfilled its obligations under the Loan Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to such official and the nature and status thereof.

Section 5.10 Miscellaneous Reports and Notices

The Borrower shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of: the occurrence of any default under the Loan Documents or the receipt of any notice given pursuant to the Loan Documents with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under the other Loan Documents.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Borrower or any Affiliate which, if adversely determined, could have a Material Adverse Effect on the Borrower.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect on the Borrower.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect on the Borrower.
- (e) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Borrower's Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements or other Organizational Documents.
- (f) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Borrower as RUS may, from time to time, reasonably request.

Section 5.11 Semiannual Reporting Requirements after Project Completion

Commencing six months after the completion of the Project, and every six months thereafter until and including the three year anniversary of the completion of the Project, the Borrower shall provide RUS with a written report that describes:

- (a) the use by the Borrower of the proceeds of the Loan, including the purchase of new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers (including the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure); and
- (b) the Borrower's progress towards fulfilling the objectives for which the Loan was made, including:
 - (1) the number and location of residences and businesses that have received or that will receive new broadband service at or greater than the broadband lending speed specified in the Application;
 - (2) the types of facilities constructed and installed;
 - (3) the upstream and downstream speeds of broadband service being offered by the Borrower;
 - (4) the average Service Rates being charged by the Borrower in the proposed service area;
 - (5) the broadband adoption rate for each proposed service territory, including the number of new subscribers generated from the facilities funded; and
 - (6) any additional metrics that RUS requests from the Borrower.

Section 5.12 Rates and Financial Performance Criteria

The Borrower shall design, charge and maintain rates in effect which (i) pay and discharge all taxes, maintenance expenses and operating expenses of its system (ii) make all payments in respect of principal of and interest on the Note(s) when and as the same shall become due, (iii) provide and maintain reasonable working capital for the Borrower, and (iv) maintain the TIER specified on Schedule 1 hereto commencing on the date specified on Schedule 1 hereto (the "TIER Commencement Date") and ending when the Loan is repaid in full.

Section 5.13 TIER

The Borrower will maintain the TIER specified in Schedule 1 beginning on the TIER Commencement Date until the Loan is paid in full.

Section 5.14 Corrective Action

Within thirty (30) days of (i) sending the financial reports required by Section 5.8 hereof that shows the TIER specified by Section 5.12 was not achieved for the reported fiscal period or (ii) being notified by RUS that the TIER specified in Section 5.12 was not achieved for the reported fiscal period, whichever is earlier, the Borrower, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified TIER on a timely basis and shall promptly implement said plan.

Section 5.15 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Borrower shall be responsible for managing the day to day operations of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Design Standards, Construction Standards and List of Material.* The Borrower shall use design standards, construction standards and list of acceptable materials in accordance with Attachment 1 hereto, RUS Bulletin 1738-2, as amended and supplemented from time to time.
- (c) *Construction in Accordance with System Design.* The Borrower shall cause the Project to be constructed and/or built-out, and completed in accordance with the system design submitted with the Application, as such design may be amended with prior RUS consent, and the build-out schedule attached hereto as Schedule 2.
- (d) *General Insurance Requirements.* The Borrower shall take out and maintain insurance on the Project and any other property acquired with the Loan in accordance with 7 CFR Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 4.2(b) hereof.
- (e) *Semi-annual Build-Out Plan.* Subject to Section 10.2, Borrowers which are required to provide RUS with a Build-Out Plan pursuant to Section 4.1(i) shall provide RUS with a semi-annual Build-Out Plan, satisfactory to RUS, covering the six-month period from the date the first Build-Out Plan is approved by RUS, and every six months thereafter until completion of the Project. Starting with the second Build-Out Plan, the Borrower shall include: (1) for wireless networks, a report for the preceding Build-Out Plan covering the list of tower sites that are in operation along with the respective communities that are located within the coverage area of each tower site, the total deployment cost of each site, and the number of households/businesses located within the coverage area of each tower site; or (2) for fiber/cable networks, a report for the preceding Build-Out Plan covering the list of hub sites that are in operation along with the respective communities that are located within each hub site's service area, total construction cost of each hub site and its respective service area, and the number of households/businesses that are located within the service area served by each hub site.
- (f) *Commencement of Construction and/or Installation.* Unless otherwise extended pursuant Section 10.2:
 - (1) Borrowers which are required to provide RUS with a Build-Out Plan pursuant to Section 4.1(i) shall commence construction and/or installation of the Project within three (3) months from the date the Build-Out Plan is approved by RUS or seven (7) months from the date hereof, pursuant to Section 4.1 hereof, whichever is later.
 - (2) Borrowers which are not required to provide RUS with a Build-Out Plan shall commence construction and/or installation of the Project within seven (7) months from the date hereof pursuant to Section 4.1.

Section 5.16 Preservation of Existence and Rights

The Borrower shall, until the Loan is repaid in full, take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect on the Borrower.

Section 5.17 Compliance with Laws

The Borrower shall operate and maintain the Project and its properties in compliance in all material respects with all applicable Laws.

Section 5.18 Nondiscrimination

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.
- (b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.
- (c) *Sanctions and Penalties.* The Borrower agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.19 Buy American

The Borrower shall use or caused to be used in connection with the expenditures of funds if such funds were obtained in whole or in part by a loan being made or guaranteed by RUS only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, material, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, material, and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that has with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that Country, as determined by the United States Trade Representative.

Section 5.20 Additional Affirmative Covenants

The Borrower shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – NEGATIVE COVENANTS

Section 6.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Borrower shall duly observe each of the negative covenants set forth in this Article VI.

Section 6.2 Merger, Consolidation, Transfer of Property, or Change in Control

The Borrower, or any affiliate which shall exert control over or manage the Borrower, shall not, without the prior written consent of RUS, take or suffer to be taken any steps to reorganize, consolidate with or merge into any other corporation, or to sell, lease or transfer (or make any agreement therefor) all or any part of its property, including, without limitation, the Project, nor take or suffer to be taken any steps which would result in a change of control.

Section 6.3 Covenants for Limited Liability Companies and Similar Borrowers

Borrowers which are limited liability or similar organizations agree that:

- (a) The death, retirement, resignation, expulsion, termination, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the Borrower to be dissolved or its affairs to be wound up;
- (b) Prior to the date on which any and all obligations owed to RUS, including the Note evidencing the Loan, are discharged in full, the Borrower shall not be dissolved or terminated;
- (c) The organizational documents of the Borrower shall contain provisions reflecting the obligations of the Borrower in paragraphs (a) and (b) immediately above and such provisions shall not be amended without the prior written consent of RUS;
- (d) No direct or indirect addition or issuance of any membership units (or any other ownership interest) in the Borrower may be made by the Borrower or its members without the prior written consent of RUS and no transfer, whether individually or in the aggregate, of any membership units (or any other ownership interest) in the Borrower which will result in the transfer of more than 49% of the equity interests (of whatever nature, including voting and non-voting) in the Borrower may be made by the Borrower or its members without the prior written consent of RUS.

Section 6.4 Additional Indebtedness

The Borrower shall not, without the prior written consent of RUS, incur additional secured or unsecured indebtedness other than (i) purchase money security interests, (ii) unsecured trade indebtedness and (iii) other debt arising in the ordinary course of business. Indebtedness under items (i), (ii), and (iii) in the aggregate shall not exceed five percent (5%) of the Borrower's consolidated total assets.

Section 6.5 Negative Pledge

The Borrower shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest on its property, other than Permitted Encumbrances.

Section 6.6 Contracts

The Borrower shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation, management, or maintenance of all or any part of the Borrower's system, including, without limitation, the Project and shall not enter into any contract for the use by others of all or any part of its system, including, without limitation, the Project.

Section 6.7 Salaries

Salaries, wages, and other compensation paid by the Borrower for services, and directors', members', managers' or trustees' fees, shall be reasonable and in conformity with the usual practice of entities of the size and nature of the Borrower.

Section 6.8 Extension of Credit

Except as specifically authorized in writing in advance by RUS, the Borrower will make no advance payments or loans, or in any manner extend its credit, either directly or indirectly, with or without interest, to any of its directors, trustees, officers, employees, stockholders, members, managers, Affiliates or Affiliated companies: provided, however, that the Borrower may make an investment for any purpose described in section 607(c)(2) of the Rural Development Act of 1972 (including any investment in, or extension of credit, guarantee, or advance made to an Affiliated Company that is used by such Affiliate for such purpose) to the extent that, immediately after such investment: (1) the aggregate of such investments does not exceed one-third of the Net Worth and (2) the Borrower's Net Worth is at least twenty (20) percent of its Total Assets.

Section 6.9 Distributions or Withdrawals

- (a) The Borrower shall not, without the prior written approval of RUS, make any membership withdrawal, unit redemptions, or other type of profit allocation to its members, if it is a limited liability company, nor make any dividend, stock, capital, capital credit or other distribution in the nature of an investment, guarantee, extension of credit, loan or advance payment on obligations, if it is a corporation or cooperative (all such distributions being hereinafter collectively called "Distributions"); provided, however, the Borrower may make a Distribution after 75% of the Loan funds have been expended as approved if after such Distribution, the Borrower's Net Worth is equal to at least twenty percent (20%) of its Total Assets and the amount of all such Distributions during the calendar year does not exceed twenty-five percent (25%) of the Borrower's Net Income or Net Margins for the prior calendar year.
- (b) *Additional Negative Restrictions.* The Borrower shall comply with the additional negative restrictions on Distributions and Withdrawals set forth in Schedule 1 hereto.

Section 6.10 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization

The Borrower shall not change its principal place of business, place of conducting business, or type of organization without the prior consent of RUS.

Section 6.11 Changing Name or Place of Incorporation or Organization

The Borrower shall not change its legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

Section 6.12 Changing Service Rates

Subject to Section 10.2 herein, the Borrower shall not change any of its Service Rates without prior written approval by RUS.

Section 6.13 Historic Preservation

The Borrower shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 6.14 Limitations on Using Non-FDIC Insured Depositories.

Without the prior written approval of RUS, the Borrower shall not place the proceeds of the Loans or any loan which has been made or guaranteed by RUS in the custody of any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS.

Section 6.15 Affiliated Transactions

The Borrower shall not enter into any transaction, contract, or dealing with an Affiliate of the Borrower or with the Borrower's or Affiliate's directors, trustees, officers, managers, members (if the Borrower is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance loan funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

Section 6.16 Preferred Stock

The Borrower shall not issue any new or additional preferred stock without the prior written approval of RUS, which approval shall not be unreasonably withheld if such stock issuance, in RUS' sole opinion, would not be considered a debt instrument under generally accepted accounting principles.

Section 6.17 Environmental Reports

The Borrower shall not commence any construction activities, including the clearing of land, until RUS has reviewed and approved site-specific Environmental Reports.

Section 6.18 Additional Negative Covenants

The Borrower shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VII - LENDER'S RIGHTS

Section 7.1 Termination of Loan Offer

RUS, in its sole discretion, may terminate the offer to make the Loan(s) if it does not receive the Loan Documents, duly executed on behalf of the Borrower and all conditions in Section 4.1 hereof are not satisfied within one hundred twenty (120) days from the date hereof.

Section 7.2 Audits and Compliance Reviews

After giving prior notification to the Borrower, RUS has the right to conduct compliance reviews and audits of the Borrower to assure compliance with the Loan Documents and RUS Regulations.

Section 7.3 Disallowed Expenditures

Upon a determination by RUS that the Borrower did not utilize the Loan in the manner and exclusively for the Project as approved by RUS, RUS may, in its sole discretion:

- (a) Disallow all or a part of the expenditures and disbursements of the Loan and require the Borrower to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes or to reimburse the Government, as provided in Section 5.3 hereof;
- (b) Suspend making Advances;
- (c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Loan Documents or law.

Section 7.4 Suspension of Advances

RUS may, in its absolute discretion, suspend making Advances hereunder, if:

- (a) RUS determines that an event has occurred that is likely to have a Material Adverse Effect on the Borrower;
- (b) The Borrower has not complied with the reporting requirements of Section 5.8 hereunder; or
- (c) The construction and/or installation of the Project has not materially conformed to the Build-Out Schedule.

Section 7.5 Payment Extensions

RUS may, at any time or times in succession without notice to or the consent of the Borrower and upon such terms as RUS may prescribe, grant to any person, firm or entity who shall have become obligated to pay all or any part of the principal of or interest on any note held by or indebtedness owed to RUS or who may be affected by the lien created by the Loan Documents, an extension of the time for the payment of such principal or interest, and after any such extension the Borrower will remain liable for the payment of such note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

ARTICLE VIII - EVENTS OF DEFAULT

Section 8.1 Events of Default

The following shall be events of default (each an "Event of Default") under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Borrower in Loan Documents or any certificate furnished to RUS under the Loan Documents, or in the Application shall prove to have been incorrect in any material respect at the time made;
- (b) Non-Payment. The nonpayment of any required and due installment of interest on, or principal of, any Note, whether by acceleration or otherwise, which continues for five (5) Business Days, as such term is herein defined;
- (c) Corrective Actions. Default by the Borrower in the observance or performance of Section 5.14;

- (d) Limited Liability Companies. Default by the Borrower or its members in the observance or performance of Section 6.3;
- (e) Other Covenants. Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Borrower by RUS;
- (f) Adverse Effects. The Borrower shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of its business or the Borrower files for or an event occurs which can reasonably be expected to result in its dissolution or termination;
- (g) Other Obligations. Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money in excess of ten thousand dollars (\$10,000.00) or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;
- (h) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Borrower in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
- (i) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or the filing of such by the Borrower;
- (j) Impaired Business. The failure by the Borrower to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days;
- (k) Payment of Final Judgment. A final judgment in an amount of ten thousand dollars (\$10,000.00) or more shall be entered against the Borrower and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days; and/or
- (l) Construction and/or Installation. The failure by the Borrower to materially comply with the Build-Out Schedule, as may be amended with RUS consent.

ARTICLE IX - REMEDIES

Section 9.1 Generally

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Loan Documents in the manner, upon the conditions, and with the effect

provided in the Loan Documents, including, but not limited to, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article VIII hereof. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 9.2 Remedies

In addition to the remedies referred to in Section 9.1 hereof, upon the occurrence of an Event of Default, RUS may:

- (a) Refuse to make any advance or further advance on account of the Loan, but any advance thereafter made by RUS shall not constitute a waiver of such default;
- (b) Declare all unpaid principal of and all interest accrued on the Note(s) to be immediately due and payable and upon such declaration all such principal and interest shall become due and payable immediately and/or
- (c) Terminate the obligation to further advance on account of the Loan.

ARTICLE X - MISCELLANEOUS

Section 10.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

<p><u>RUS</u> Rural Utilities Service United States Department of Agriculture 1400 Independence Avenue, S.W. Washington, D.C.20250-1500 Attention: Administrator Fax: (202) 720-1725</p>	<p><u>Borrower</u> See Schedule 1</p>
<p><u>With a copy to:</u></p>	<p><u>With a copy to:</u></p>
<p>Rural Utilities Service United States Department of Agriculture1 1400 Independence Avenue, S.W. Stop 1599, Room No. 2844 Washington, D.C. 20250-1599 Attention: Kenneth Kuchno Fax: (202) 690-4389</p>	<p>See Schedule 1</p>

Section 10.2 Notice to RUS; Objection of RUS

Before undertaking any transaction described in Sections 5.15(e)-(f) or 6.12, the Borrower shall give to the RUS: (i) notice in writing describing in reasonable detail the proposed transaction and clearly stating that this transaction is covered by this Section 10.2 and (ii) drafts of any documents to effect such transaction. If the RUS delivers to the Borrower written notice that it objects to the proposed transaction within sixty (60) days, the Borrower shall not complete the transaction without RUS approval. If the RUS does not deliver to the Borrower an objection within that time, the Borrower may proceed with the action as if RUS had approved the action.

Section 10.3 Expenses

To the extent allowed by law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 10.4 Late Payments

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Borrower within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the Notes, the Mortgage and this Agreement, any late payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

Section 10.5 Filing Fees

To the extent permitted by law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this section shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the Notes.

Section 10.6 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 10.7 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

Section 10.8 Consent to Jurisdiction

The Borrower hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Borrower irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Borrower's address set forth in Schedule 1. The Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrower in its own jurisdiction.

Section 10.9 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.10 Holiday Payments

If any payment to be made by the Borrower hereunder shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

Section 10.11 Rescission

The Borrower may elect not to borrow the Loan, in which event RUS shall release the Borrower from its obligations hereunder, provided the Borrower complies with such terms and conditions as RUS may impose for such release.

Section 10.12 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Borrower and RUS and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 10.13 Complete Agreement; Waivers and Amendments

Subject to RUS Regulations, this Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 10.14 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 10.15 Severability

If any term, provision, condition, or any part thereof, of this Agreement, Note(s) or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement, the Note(s), and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 10.16 Right of Setoff

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the Note(s). RUS agrees to notify the Borrower promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

Section 10.17 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 10.18 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 10.19 Amendment of Laws and RUS Regulations

Nothing contained herein shall restrict in any way RUS' right to amend, rescind or supplement any of the RUS Regulations or to seek such changes to existing laws.

Section 10.20 Term

This Agreement shall remain in effect until one of the following two events has occurred:

- (a) The Borrower and RUS replace this Agreement with another written agreement; or
- (b) All of the Borrower's obligations under this Agreement have been discharged and paid.

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

[BORROWER'S NAME]

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
[Position]
of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (i) Borrower's principal place of business:
2. Paragraph (j) Borrower's Organization Number:
3. Paragraph (k) Borrower's Subsidiaries:
4. Paragraph (k) Borrower's Parent:

Article III The Loans

1. Section 3.1(a) Loan amount:
2. Section 3.1(b) Loan portion at the cost-of-money interest rate:
3. Section 3.1(b) Loan portion at the four percent (4%) rate of interest:

Article IV Conditions Precedent to Loan Closing

1. Section 4.1(d) level of funds required on deposit in accordance with 7 C.F.R. 1738.20(b):
2. The Build-Out Plan of Section 4.1(i) **[IS or IS NOT]** required.
3. The additional Build-Out Plan requirements of Section 4.1(i)(3):
4. The additional conditions referred to in Section 4.1(l) are as follows:

Conditions Precedent to Release of Funds

5. Section 4.2(b) amount of fidelity bond coverage:
6. The additional conditions referred to in Section 4.2(d) are as follows:

Conditions Precedent to Individual Advances

7. Section 4.2(j) Required permits, licenses, franchise, and other approvals:
8. The additional conditions to advance referred to in Section 4.3(k) are as follow:

Article V Affirmative Covenants

1. Section 5.4 Additional Funds:
2. Section 5.4 Additional Purposes:
3. Section 5.8(b) Additional Reporting Dates:
4. Section 5.12 TIER:
5. Section 5.12 TIER Commencement Date:
6. The additional affirmative covenants referred to in Section 5.20 are as follows:

Article VI Negative Covenants

1. The additional negative restrictions on Distributions and Withdrawals referred to in Section 6.9(b) are as follows:
2. The additional negative covenants referred to in Section 6.18 are as follows:

Article X Miscellaneous

1. Section 10.1 Borrower's address for purposes of notification:
2. Section 10.1 Address for Borrower's notification copy:

SCHEDULE 2

BUILD-OUT SCHEDULE