

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NO MORE THAN \$6,400,000 ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2018A and SERIES 2018B (NORTHERN INDIANA ANODIZE PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, FOR THE PURPOSE OF FINANCING THE ACQUISITION OF REAL ESTATE AND THE CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN ECONOMIC DEVELOPMENT FACILITY LOCATED IN ALLEN COUNTY, INDIANA; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AND LOAN AGREEMENT AND SUCH OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "*Issuer*") is a municipality and political subdivision of the State of Indiana, and by virtue of the constitution and laws of the State, including Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (the "*Act*"), is authorized and empowered, among other things, to (a) provide funds for the acquisition, construction, installation and equipping of economic development facilities; (b) issue its revenue bonds for the purpose set forth herein; (c) secure such revenue bonds by a pledge and assignment of revenues and other documents as provided for herein; and (d) enact this Ordinance (the "*Bond Ordinance*"), execute the Bond Purchase and Loan Agreement and all other documents to be executed by it, upon the terms and conditions provided therein; and

WHEREAS, the Common Council of the Issuer (the "*Common Council*") has found and determined, and does hereby confirm, that the property to be acquired with the proceeds of the Bonds herein authorized will increase business opportunities within and near the City of Fort Wayne, Indiana, and will be to the benefit of the health and general welfare of the citizens of the City of Fort Wayne, Indiana, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount not to exceed \$6,400,000 will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, as a result of negotiations between the Issuer and SAC Properties, LLC, an Indiana limited liability company ("*SAC*") and NIA LLC, an Indiana limited liability company ("*NIA*" and together with SAC, the "*Borrowers*"), contracts have been or will be entered into by the Borrowers for the purpose of financing (a) the acquisition by SAC of approximately 8 acres of land located at 13026 Bluffton Road, in Allen County, Indiana, and the construction, installation and equipping of an approximately 47,000 square foot manufacturing facility (the "*SAC Project*") and the leasing of same to NIA, and (b) the purchase and installation of machinery and equipment by NIA to provide aluminum anodizing services to NIA's customers in the automotive, construction, boating and industrial markets (the "*NIA Project*" and collectively with the SAC Project, the "*Project*"); and

1 WHEREAS, pursuant to a Bond Purchase and Loan Agreement (the "*Loan Agreement*"), dated
2 the date of closing, among the Issuer, the Borrowers and Lake City Bank, a state-chartered financial
3 institution validly existing under the laws of the State of Indiana, as original purchaser of the Bonds (the
4 "*Holder*"), the Issuer proposes to issue its (a) Economic Development Revenue Bonds, Series 2018A in an
5 aggregate principal amount not to exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000) (the
6 "*Series 2018A Bonds*"), and (b) Economic Development Revenue Bonds, Series 2018B in an aggregate
7 principal amount not to exceed Three Million Seven Hundred Thousand Dollars (\$3,700,000) (the "*Series*
8 "*2018B Bonds*" and collectively with the Series 2018A Bonds, the "*Bonds*"); and

9 WHEREAS, the Issuer further proposes to loan the proceeds from the Series 2018A Bonds to
10 SAC and the proceeds of the Series 2018B Bonds to NIA for the purpose of financing the SAC Project and
11 the NIA Project, respectively, pursuant to the terms of the Loan Agreement which prescribes the terms and
12 conditions under which the Borrowers shall repay such loans and pursuant to which SAC will execute and
13 deliver to the Issuer the Series 2018A Note and NIA will execute and deliver to the Issuer the Series 2018B
14 Note, respectively, in the principal amounts equal to the principal amounts of the Series 2018A Bonds and
15 the Series 2018B Bonds, respectively; and

16 WHEREAS, it is estimated that the costs of the Project, including costs relating to the preparation
17 and issuance of the Bonds, will be approximately \$8,000,000 of which an amount not to exceed \$6,400,000
18 will be funded with the proceeds of the Bonds; and

19 WHEREAS, after giving notice in accordance with the provisions of Section 36-7-12-24(a) of the
20 Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "*Code*"), the economic
21 development commission of the Issuer (the "*Commission*") conducted a public hearing on October 18,
22 2018 with regard to the proposed financing, and upon finding the proposed financing will be of benefit to
23 the health, safety, morals, and general welfare of the area where the Project is located, and complies with
24 the purposes and provisions of the Act, then adopted a resolution approving the proposed financing; and

25 WHEREAS, the Commission has heretofore approved and recommended the adoption of this
26 form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has
27 approved the forms of and has transmitted for approval by the Common Council the Loan Agreement and
28 the Series 2018A Note of SAC and the Series 2018B Note of NIA; and

29 WHEREAS, the Project is located outside the corporate boundaries of the City of Fort Wayne in
30 the unincorporated area of Allen County, and the County Council of Allen County, Indiana, has, by
Resolution adopted on October 18, 2018 pursuant to IC 36-7-12-22(b), consented to the issuance by the
City of Fort Wayne of the Bonds for the purpose of financing the Project; now therefor

BE IT ORDAINED BY THE CITY OF FORT WAYNE COMMON COUNCIL THAT:

Section 1. Definitions. In addition to the words and terms defined in this Ordinance, the

1 words and terms used in this Ordinance shall have the meanings set and in the form of the Bonds unless the
2 context or use indicates another or different meaning or intent.

3 Section 2. Determination of Issuer. Pursuant to the Act, and based solely upon the
4 application submitted by the Borrowers and other representations made, information presented and
5 testimony given by representatives of the Borrowers, without independent verification, the Issuer hereby
6 finds and determines that (a) the Project is an "economic development facility" as defined in the Act and is
7 consistent with the provisions of the Act, (b) the Project will not have an adverse competitive effect on
8 similar industrial projects already constructed or operating in or near Fort Wayne, Indiana, and (c) to
9 promote opportunities for gainful employment and business opportunities in or near Fort Wayne, Indiana,
and to benefit the health and general welfare of the citizens of Fort Wayne, Indiana, the Project shall be and
is hereby approved and authorized to be financed through the issuance of the Bonds as described herein.

10 The Issuer further determines that the action of the Commission in causing notice of said public
11 hearing to be published as required by Section 36-7-12-24 of the Act and Section 147(f) of the Code, and
12 in causing a report to be provided to the Executive Director of the Allen County Plan Commission, is in all
13 respects hereby ratified, confirmed and approved, and the holding of said public hearing by the
14 Commission and the delivery of such report are hereby acknowledged and approved. The Mayor, as the
15 "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, has
16 concurrently herewith approved the issuance of the Bonds in the aggregate principal amount not to exceed
\$6,400,000 to assist in the acquisition, construction, installation and equipping of the Project as
hereinbefore provided.

17 Section 3. Small Issue Election of Issuer. The Issuer hereby elects to have the provisions
18 as to the \$10,000,000 limitation contained in Section 144(a)(4)(A) of the Code apply to the Bonds.

19 Section 4. Authorization of Bonds. There are hereby authorized to be issued, sold and
20 delivered the Bonds designated as follows:

21 (a) "City of Fort Wayne, Indiana, Economic Development Revenue Bonds, Series
22 2018A (Northern Indiana Anodize Project)" in an aggregate principal amount not to exceed Two
23 Million Seven Hundred Thousand Dollars (\$2,700,000) for the purpose of paying a portion of the
cost of acquisition, construction, installation and equipping of the SAC Project; and

24 (b) "City of Fort Wayne, Indiana, Economic Development Revenue Bonds, Series
25 2018B (Northern Indiana Anodize Project)" in an aggregate principal amount not to exceed Three
26 Million Seven Hundred Thousand Dollars (\$3,700,000) for the purpose of paying a portion of the
cost of acquisition, installation and equipping of the NIA Project.

27 Section 5. Terms and Execution of the Bonds. The Bonds shall be issued as fully
28 registered Bonds, without coupons, in the form and denominations set forth in the Loan Agreement; shall
29

1 bear such date as provided in the Loan Agreement; shall mature on such date as provided in the Loan
2 Agreement; shall bear interest at such rate as provided in the Loan Agreement; shall be subject to tender or
3 redemption prior to maturity upon the terms and conditions set forth in the Loan Agreement; shall be
4 payable at such place or places and in such medium as provided in the Loan Agreement; and shall contain
5 such other terms and provisions as are set forth in the Loan Agreement.

6 The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the
7 Mayor of the Issuer and the City Clerk of the Issuer, and the seal of the Issuer shall be impressed thereon or
8 a facsimile of such seal placed thereon. If the Bonds are issued without a trust indenture or trustee, at least
9 one of the authorized signatures on the Bonds shall be manual. In case any officer whose signature or a
10 facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of
11 the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the
12 same as if he had remained in office until after that time.

13 The Bonds are special, limited obligations of the Issuer payable solely from payments of principal
14 of, premium, if any, and interest on the Bonds made by the Borrowers under the Series 2018A Note and the
15 Series 2018B Note, respectively, and the Loan Agreement except to the extent that the principal of,
16 premium, if any, and interest on the Bonds may be paid out of money attributable to Bond proceeds or
17 from temporary investments or from other moneys, if any, accruing to the Holder.

18 Pursuant to the Loan Agreement, the Issuer will assign to the Holder the Issuer's rights under the
19 Loan Agreement and the Series 2018A Note and the Series 2018B Note (except for the Unassigned Issuer
20 Rights, as defined in the Loan Agreement), as security for the payment of the Bonds. As a result of the
21 Issuer's assignment as hereinbefore provided, the Issuer will have no ownership interest in the Project.

22 The Bonds and the obligation to pay interest thereon do not now and shall never constitute a debt,
23 a liability, a general obligation or a pledge of the faith and credit of the Issuer, the State of Indiana or any
24 political subdivision thereof, or a charge against the general faith and credit or taxing powers, if any, of any
25 of them, within the meaning of any constitutional or statutory provision, but shall be secured as aforesaid,
26 and are payable solely from the revenues and receipts derived from the Loan Agreement and the
27 Series 2018A Note and the Series 2018B Note. No Holder of the Bonds shall have the right to compel the
28 taxing powers, if any, of the Issuer, the State of Indiana or any political subdivision thereof to pay any
29 principal of, premium, if any, or interest on the Bonds. Neither the members of the Issuer nor any person
30 executing the Bonds shall be subject to personal liability or accountability by reason of the issuance of the
Bonds.

The Borrowers will indemnify and hold the Issuer, its members, the Commission, its members and
the State of Indiana, including its attorneys, employees and agents, free and harmless from any loss, claim,
damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses or court
costs arising out of, or in any way relating to, the execution or performance of the Loan Agreement, the

1 Series 2018A Note and the Series 2018B Note or any other documents in connection therewith, including
2 the issuance or sale of the Bonds, actions taken under the Loan Agreement, the Series 2018A Note and the
3 Series 2018B Note or any other cause whatsoever pertaining to the Project or the Bonds.

4 Section 6. Authorization of the Loan Agreement, the Series 2018A Note, the Series 2018B
5 Note and All Other Documents to be Executed by the Issuer. In order to secure the payment of the
6 principal of, premium, if any, and interest on the Bonds, the Mayor of the Issuer and the City Clerk of the
7 Issuer, shall execute, acknowledge and deliver in the name of and on behalf of the Issuer, the Loan
8 Agreement, with such changes therein as such officials, with the advice of counsel, may approve and
9 determine, as conclusively evidenced by their execution thereof, to be advisable and in the best interests of
10 the Issuer and in conformance with this Ordinance. The documents before this meeting, including the
11 Loan Agreement, have been approved in the forms submitted. The City Clerk of the Issuer is hereby
12 directed to keep such Loan Agreement on file.

13 Section 7. General. The Mayor of the Issuer and the City Clerk of the Issuer are hereby
14 authorized and directed, in the name of and on behalf of the Issuer, to execute any and all instruments,
15 documents and certificates, perform any and all acts, approve any and all matters, and do any and all things
16 deemed by them to be necessary or desirable in order to carry out the purposes of this Ordinance (including
17 the preambles hereto), the acquisition and installation of the Project by the Borrowers, the issuance and
18 sale of the Bonds pursuant to the Loan Agreement and the securing of the Bonds under the Loan
19 Agreement.

20 Section 8. Invalidity. If any section, paragraph, clause or provision of this Ordinance shall
21 be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph,
22 clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions.

23 Section 9. Conflicts. All ordinances, resolutions and orders, or parts thereof, in conflict
24 with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

25 Section 10. Public Inspection. Two copies of the Loan Agreement are on file in the office
26 of the City Clerk of the Issuer for public inspection in compliance with Indiana Code 36-1-5-4.
27
28
29
30

1 Section 11. Effective Date. This Ordinance shall be in full force and effect from and after
2 its passage and execution by the Mayor.

3
4 COMMON COUNCIL OF THE CITY OF
5 FORT WAYNE, INDIANA

6 _____
7 Member of the Common Council

8 APPROVED AS TO FORM
9 AND LEGALITY:

10 _____
11 Carol Helton, City Attorney

BOND PURCHASE AND LOAN AGREEMENT

By and Among

THE CITY OF FORT WAYNE, INDIANA,

**SAC PROPERTIES, LLC,
NIA LLC,
MMAR, LLC,
MELBROS, LLC,
M. LEE MELCHI,
MARK RUPP,
WAYNE SHIVE,
JEFF SMITH,
ANDREW SMITH,
ALAN EHLER,**

and

LAKE CITY BANK

Relating to:

[\$6,400,000]

**CITY OF FORT WAYNE, INDIANA
ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2018A
and SERIES 2018B (NORTHERN INDIANA ANODIZE PROJECT)**

Dated as of ____, 2018

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BOND PURCHASE AND LOAN AGREEMENT

THIS BOND PURCHASE AND LOAN AGREEMENT is dated as of _____, 2018, by and among the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and existing under the laws of the State of Indiana (the "**Issuer**"), SAC PROPERTIES, LLC, an Indiana limited liability company ("**SAC**"), NIA LLC, an Indiana limited liability company ("**NIA**" and collectively with SAC the "**Borrowers**"), MMAR, LLC, an Indiana limited liability company ("**MMAR**"), MELBROS, LLC, an Indiana limited liability company ("**Melbros**"), M. LEE MELCHI, a resident of Allen County, Indiana ("**Melchi**"), MARK RUPP, a resident of Allen County, Indiana ("**Rupp**"), WAYNE SHIVE, a resident of Allen County, Indiana ("**Shive**"), JEFF SMITH, an Indiana limited liability company ("**J. Smith**"), ANDREW SMITH, a resident of Allen County, Indiana ("**A. Smith**"), ALAN EHLE, a resident of Allen County, Indiana ("**Ehler**" and collectively with MMAR, Melbros, Melchi, Rupp, Shive, J. Smith, and A. Smith the "**Guarantors**"), and LAKE CITY BANK, a state-chartered financial institution validly existing under the laws of the State of Indiana (the "**Bank**"). All capitalized terms used herein and not otherwise defined shall have the meanings assigned in Section 1.01 or as otherwise provided in Section 1.02.

WITNESSETH:

WHEREAS, the Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended, authorizes and empowers the Issuer to issue revenue bonds and loan the proceeds therefrom to an individual or entity for the purpose of the acquisition, construction, installation and equipping of economic development facilities and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, the Act declares that the financing of economic development facilities constitutes a public purpose; and

WHEREAS, the Borrowers have requested that the Issuer now issue its (a) Economic Development Revenue Bonds, Series 2018A in an aggregate principal amount not to exceed [Two Million Seven Hundred Thousand Dollars (\$2,700,000)] (the "**Series 2018A Bonds**"), and (b) Economic Development Revenue Bonds, Series 2018B in an aggregate principal amount not to exceed [Three Million Seven Hundred Thousand Dollars (\$3,700,000)] (the "**Series 2018B Bonds**" and collectively with the Series 2018A Bonds, the "**Bonds**") and to loan the proceeds therefrom to SAC and NIA, respectively, for the purpose of financing (y) the acquisition of approximately 8 acres of land located at 13026 Bluffton Road, in Allen County, Indiana, and the construction, installation and equipping of an approximately 47,000 square foot manufacturing facility by SAC (the "**SAC Project**") and the leasing of same to NIA, and (z) the purchase and installation of machinery and equipment by NIA to provide aluminum anodizing services to NIA's customers in the automotive, construction, boating and industrial markets (the "**NIA Project**" and collectively with the SAC Project, the "**Project**"); and

WHEREAS, after giving notice in accordance with the Act and Section 147(f) of the Code, the economic development commission of the Issuer held a public hearing with regard to the proposed financing, and upon finding the proposed financing will be of benefit to the health, safety, morals, and general welfare of the area where the Project is located, and complies with

the purposes and provisions of the Act, then adopted a resolution approving the proposed financing; and

WHEREAS, the economic development commission of the Issuer adopted a report in accordance with the Act and submitted such report to the executive director or the chairman of the plan commission where the Project is located and, if applicable, the superintendent of the school corporation where the Project is located, and no written comments were received within five (5) days after receipt of the report of the economic development commission of the Issuer; and

WHEREAS, the Issuer is willing to issue the Bonds under this Agreement and loan the proceeds of the Series 2018A Bonds to SAC and the proceeds of the Series 2018B Bonds to NIA; and SAC and NIA desire to borrow the proceeds of the Series 2018A Bonds and the Series 2018B Bonds, respectively, upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Bank has agreed to purchase the Series 2018A Bonds and the Series 2018B Bonds from the Issuer.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained, and to induce the Issuer to make the Loans (as hereinafter defined) and the Bank to purchase the Bonds, the Issuer, the Borrowers and the Bank agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** As used herein, the following terms have the following meanings:

“Accounts” shall have that meaning ascribed to such term in the UCC.

“Act” means Indiana Code 36-7-11.9 and 12, as supplemented and amended.

“Affidavit” means any mortgagor’s, owner’s, vendor’s, or other affidavit required by the Title Company on or about the Closing Date and/or the SAC Conversion Date.

“Affiliate” means a corporation, partnership, association, joint venture, business trust or similar entity organized under the Laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the Borrowers or the Bank, as may be applicable. Affiliate includes, but is not limited to, each Subsidiary.

“Agreement” means this Bond Purchase and Loan Agreement, together with all Schedules, Exhibits and attachments hereto, and any and all amendments or modifications in effect from time to time.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, rulings, judgments and decrees of all Governmental Authorities and arbitrators.

“Architect” means _____, or such other architect employed by SAC to complete the Plans and Specifications for the SAC Project and to provide architectural and engineering services in connection with the SAC Project.

“Architect’s Contract” means that certain agreement by and between SAC and Architect dated _____, 20____, along with any other present and future agreements, oral, written or otherwise, between SAC and Architect for completion of the Plans and Specifications and to provide architectural and engineering services in connection with the SAC Project.

“A. Smith” means Andrew Smith, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

“A. Smith Assignment of Life Insurance Policy” means that certain Assignment of Life Insurance Policy as Collateral executed by A. Smith, of even date herewith, wherein A. Smith pledged all proceeds from the A. Smith Life Insurance Policy to secure the repayment of NIA’s Obligations to Bank.

“A. Smith Guaranty” means that certain unconditional, limited, continuing Commercial Guaranty executed by A. Smith in favor of Bank, of even date herewith.

“A. Smith Life Insurance Policy” means that certain Life Insurance Policy issued by _____ Insurance Company under Policy No. _____, insuring the life of A. Smith in the amount of \$ _____.

“Assignment of Architect’s Contract” means that certain Assignment of Contract for Architectural Services, of even date herewith, by which SAC assigns, as security for repayment of the SAC Loan, SAC’s interest in Architect’s Contract for the SAC Project.

“Assignment of Construction Contract” means that certain Assignment of Construction Contract, of even date herewith, by which SAC assigns, as security for repayment of the SAC Loan, SAC’s interest in the Construction Contract for the SAC Project.

“Assignments of Life Insurance Policy” means, collectively, the A. Smith Assignment of Life Insurance Policy and the J. Smith Assignment of Life Insurance Policy.

“Assignment of Plans and Specifications” means that certain Assignment of Plans and Specifications, of even date herewith, by which SAC assigns, as security for repayment of the SAC Loan, any interest SAC has or maintains in the Plans and Specifications.

“Assignment of Rents” means a certain Assignment of Rents and Leases executed by SAC in favor of Bank, of even date herewith, encumbering the SAC Project as security for repayment of the SAC Loan.

“Assignments” means, collectively, the Assignment of Architect’s Contract, the Assignment of Construction Contract, and the Assignment of Plans and Specifications.

“Authorized Borrower Representative” means the Person or Persons designated by each Borrower to act on its behalf with respect to the matters described herein.

“Authorized Issuer Representative” means the Mayor of the Issuer.

“Bank” means, initially, Lake City Bank, a state-chartered financial institution, validly existing under the laws of the State of Indiana, and its successors and assigns, and upon the receipt from time to time by the Borrowers of a notice described in Section 12.15 from time to time means the Person designated in such notice as the Bank, as more fully provided in Section 12.15 hereof.

“Bond Counsel” means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds.

“Bond Interest is Taxable” means that interest paid or to be paid on the Series 2018A Bonds and/or the Series 2018B Bonds is or will be includable for federal income tax purposes in the gross income of the Registered Owner, but excluding the inclusion of interest on the Series 2018A Bonds and/or the Series 2018B Bonds as an item of tax preference for purposes of the calculation of an alternative minimum tax.

“Bonds” means collectively the Series 2018A Bonds and the Series 2018B Bonds issued pursuant to this Agreement and the Bond Ordinance.

“Bond Ordinance” means the ordinance authorizing the issuance of the Bonds, adopted by the Issuer on _____, 2018.

“Borrowers” shall have the meaning specified in the initial paragraph of this Agreement, in each case together with its permitted successors and assigns.

“Borrowing Date” means the Business Day on which a Construction Disbursement and/or Equipment Disbursement is made hereunder.

“Business Day” means any day other than (a) a day on which banks located in the city in which the designated office of the Bank is located is required or authorized by law to remain closed, (b) a day on which the New York Stock Exchange is closed, or (c) a day on which the payment system of the Federal Reserve System is not operational. For purposes of this definition, the Bank’s designated office shall be that office of the Bank in the city of Fort Wayne, Indiana.

“Certificate of Completion” means that certain certificate of completion from Contractor and Architect certifying that (i) work on the Project has been completed in accordance with the Plans and Specifications and all labor, services, materials and supplies used in such work have been paid for and (ii) the completed Project conforms with all applicable zoning, land use, planning, building and environmental laws and regulations of the governmental authorities having jurisdiction over the Project.

“Certificate of Occupancy” means that certain certificate of occupancy for the Project issued at or near the completion of construction of the Project by the proper municipal and/or local governmental authorities.

“Chattel Paper” means “chattel paper” as defined in the UCC.

“Closing Date” means November ____, 2018, provided that the conditions precedent set forth in Section 5.01 hereof are satisfied on or before such date.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“Collateral” means that certain Real Property and Personal Property of Borrowers, along with any other property or rights of Borrowers, Guarantors, or any other person or entity in any manner assigned, pledged, mortgaged, conveyed, encumbered or otherwise hypothecated to secure payment of the Obligations, including, without limitation, the real and personal property encumbered by the Assignments, the Mortgage, the Security Agreement, and the Assignments of Life Insurance Policy.

“Commitment Fee” means, collectively, the NIA Commitment Fee and SAC Commitment Fee.

“Construction Contract” means that certain _____ executed by SAC and Contractor dated _____, 2018, along with any other present and future agreements, oral, written or otherwise, between SAC and Contractor for construction of the SAC Project.

“Construction Disbursement” means a disbursement by Bank from the SAC Project Funds to or for the account of SAC to pay or to refinance expenses of the SAC Project as set forth in ARTICLE IX.

“Construction Commitment” means eighty percent (80%) of the appraised value of the SAC Project, as completed, as determined by Bank in its commercially reasonable discretion, but in no event shall the Construction Commitment exceed the maximum principal amount of \$2,700,000.00.

“Construction Period” means the period of time beginning on the Closing Date and ending on the SAC Completion Date.

“Contract” means any indenture, contract, agreement (other than this Agreement), other contractual restriction, lease, mortgage, instrument, certificate of incorporation, charter or by-law.

“Contractor” means _____, the contracting company engaged by SAC pursuant to the Construction Contract to construct and complete the SAC Project in accordance with the applicable Plans and Specifications.

“Control” or any variant thereof means the ownership of, or power to vote (i) 51% of the outstanding capital stock of a corporation, the membership interests of a limited liability company, or the partnership interests of a partnership; or (ii) 100% of the membership interests of the managing members of a limited liability company or of the partnership interests of the general partners of a partnership.

“Corporate Guarantors” means, collectively, MMAR and Melbros.

“CPLTD” means the applicable Borrower’s Current Portion of Long Term Debt.

“Debt to Net Worth Ratio” means the applicable Borrower’s total liabilities divided by the applicable Borrower’s total net worth.

“Default” or, in the alternative, ***“Event of Default”*** means an event described in Article X hereof.

“Default Rate” means a variable per annum rate of interest equal at all times to the applicable interest rate in effect, from time to time, with respect to a Construction Disbursement or Equipment Disbursement, plus 200 basis points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

“Deposit Account” means a “deposit account” as defined in the UCC.

“Determination of Taxability” means (a) the receipt by the Bank of a notice of deficiency issued by the Internal Revenue Service to the effect that Bond Interest is Taxable, or (b) the delivery to the Bank of a written opinion of nationally recognized bond counsel to the effect that Bond Interest is Taxable.

“Disbursement Request” means a written notice, in form and substance the same as Exhibit “C-1” attached hereto and made a part hereof for all purposes, or in such other commercially reasonable form and substance as Bank hereafter may require, delivered to Bank by an Authorized Borrower Representative.

“Documents” means “documents” as defined in the UCC.

“Draw Request Form” means AIA Forms G702 and G703 or other forms acceptable to Bank, to be submitted to Bank when a Construction Disbursement is requested in the form of Exhibit “C-2” attached hereto.

"EBITDA" means the applicable Borrower's and its Subsidiaries' earnings before interest, taxes, depreciation and amortization, as reflected in the Financial Statements for the applicable Borrower and its Subsidiaries for the relevant period(s).

"Ehler" means Alan Ehler, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

"Ehler Guaranty" means that certain unconditional, limited, continuing Commercial Guaranty executed by Ehler in favor of Bank, of even date herewith.

"Eligible Investments" means:

- (a) Government Obligations or any money market funds which are invested solely in such obligations;
- (b) Federal Home Loan Mortgage Corporation (FHLMC) participation certificates and senior debt obligations;
- (c) Federal National Mortgage Association's (FNMA) mortgage backed securities and senior debt obligations;
- (d) Student Loan Marketing Association (Sallie Mae) letter of credit backed issues and senior debt obligations;
- (e) Government National Mortgage Association (GNMA) guaranteed mortgage-backed bonds and guaranteed pass-through obligations;
- (f) Certificates of deposit issued by, or time deposits or other banking arrangements with any bank, trust company or national banking association whose commercial paper is rated "Prime-1" or "Aa3" or better by Moody's Investors Service, Inc. or "A-1" or "A" or better by Standard & Poor's Rating Group;
- (g) commercial or finance paper (having remaining maturities of not more than ninety (90) days) rated "Prime-1" or better by Moody's Investors Service, Inc. or "A-1" or better by Standard & Poor's Rating Group;
- (h) obligations rated "Aa3" or better by Moody's Investors Service, Inc. and "A" or better by Standard & Poor's Rating Group;
- (i) contracts for the purchase and sale of obligations of the type specified in (a) above with any institution rated "AA" or its equivalent by either Rating Agency;
- (j) repurchase agreements with any institution the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated "AA" or its equivalent by either Rating Service; and

(k) obligations of any state of the United States of America or any political subdivision or other instrumentality of any such state or any money market funds which are invested solely in such obligations, to the extent the interest on such obligations is excluded from the gross income of the owners thereof under Section 103 of the Code; provided, that such obligations are (i) rated in one of the three highest categories by either Rating Agency, or (ii) fully secured by securities guaranteed as to principal and interest by the United States of America.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) the protection of the environment, (b) the effect of the environment on human health, (c) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, groundwater or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

“Equipment” means “equipment” as defined in the UCC.

“Equipment Disbursement” means a disbursement by Bank from the NIA Project Fund to or for the account of NIA to pay expenses of the NIA Project as set forth in ARTICLE IX.

“Equipment Disbursement Period” means the period of time that NIA may obtain Equipment Disbursements, which shall commence on the Closing Date and end on the NIA Completion Date.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

“Excess Interest Amount” shall have the meaning assigned to such term in Section 3.08(b) hereof.

“FHLB Rate” means the five-year Federal Home Loan Bank (“FHLB”) Rate, as published to members by FHLB Indianapolis on a periodic basis (unless such rate is no longer available or published, in which case such rate shall be a comparable index rate selected by Bank in its reasonable discretion).

“Financial Statements” means financial statements of Borrowers and/or Guarantors in the form(s) described in Section 8.01 hereof.

“Full Funding Date” means, with respect to each of the SAC Project and the NIA Project, the earlier of (i) the SAC Completion Date or the NIA Completion Date, as the case may be, or (ii) [December 1, 2019].

“General Intangibles” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money and oil, gas or other minerals before extraction, all as defined in the UCC.

“Generally Accepted Accounting Principles” or ***“GAAP”*** means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Borrowers.

“Government Obligations” means non-callable direct obligations of, or obligations the payment of principal of and interest on which is unconditionally guaranteed by the United States of America.

“Governmental Approvals” means any authorization, consent, approval, license or exemption of, registration or filing with, or report to, any governmental or regulatory unit.

“Governmental Authority” means any governmental or quasi-governmental entity, including any regulatory body, court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Guaranties” means, collectively, the NIA Guaranties and SAC Guaranties.

“Guarantors” means, collectively, the NIA Guarantors and SAC Guarantors.

“Hazardous Materials” means any substance, material or waste which is or becomes regulated by any governmental authority, including, but not limited to: (i) petroleum and petroleum-related products, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) those substances, materials or wastes designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to those statutes, (v) those substances, materials or wastes defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute or any state equivalent, (vi) those substances, materials or wastes defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act or any amendments or replacements to that statute, or (vii) any “hazardous waste,” “hazardous material,” “hazardous substance” or “chemical substance or mixture” or similarly regulated substances or materials as such phrases are defined in or regulated pursuant to any applicable state or local law, regulation or ordinance governing the generation, storage, discharge, transportation or disposal of the same.

“Holder” or ***“Holder of a Bond”*** or ***“Bondholder”*** means a Person in whose name Bonds are registered on the Register and with respect to the Series 2018A Bonds and the Series 2018B Bonds, means the Bank or its registered assigns.

“Improvements” means the buildings, structures, facilities, fixtures, additions, site improvements, and other work to be performed on the Real Estate pursuant to the Plans and Specifications, and all existing buildings, structures, facilities, fixtures and site improvements located on the Real Estate.

“Indebtedness” means, collectively, the NIA Indebtedness and the SAC Indebtedness.

“Individual Guarantors” means, collectively, Melchi, Rupp, Shive, J. Smith, A. Smith, and Ehler.

“Initial Purchaser” means, with respect to the Bonds, the Bank and its successors and assigns.

“Initial Purchaser Period” means with respect to the Series 2018A Bonds, that period from the dated date of the Series 2018A Bonds to and including [November __, 2029].

“Inspecting Engineer” means that engineer contracted by Bank to provide on-site inspection of the work-in-progress of the Project and to provide periodic reports of the progress of the Project to Bank.

“Instruments” means “instruments” as defined in the UCC.

“Interest Payment Date” means the first day of each month commencing [December __, 2018], the Series 2018A Bond Maturity Date or Series 2018B Bond Maturity Date, as the case may be, and on such earlier date on which the amounts owed hereunder are repaid in full; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

“Interest Rate Adjustment Date” means (1) for the Initial Purchaser Period, November __, 2023, and November __, 2028, respectively, subject to adjustment in accordance with the Modified Following Business Day Convention, and (2) for each Purchase Period thereafter, the Interest Rate Adjustment Date set forth in connection with the remarketing of the Series 2018A Bonds.

“Interest Rate Period” means, as the case may be, that period of time from (1) the Closing Date to the day immediately preceding the next subsequent Interest Rate Adjustment Date and (2) the Interest Rate Adjustment Date to the day immediately preceding the next subsequent Interest Rate Adjustment Date (or the Purchaser Tender Date as the case may be).

“Inventory” means “inventory” as defined in the UCC.

“Invested Revenues” means certain “temporarily restricted” funds of the Borrowers specifically pledged to the repayment of the Loans.

“Investment Property” means “investment property” as defined in the UCC.

"Issuance Cost" means all costs and expenses of issuance of the Bonds, including, but not limited to, (a) application and Commitment fees; (b) counsel fees, including bond counsel, underwriter's counsel, issuer's counsel, and special tax counsel fees, as well as any other specialized counsel fees; (c) financial advisor fees; (d) trustee fees and trustee counsel fees; (e) paying agent and certifying and authenticating agent fees relating to issuance of the Bonds; (f) accountants' fees; (g) printing costs of the Bonds and of any disclosure document; (h) publication costs associated with the financing proceedings; and (i) costs of engineering and feasibility studies necessary for the issuance of the Bonds. Issuance Costs paid with proceeds of the Bonds shall not exceed the lesser of two percent (2%) of the aggregate face amount or the proceeds of the Bonds.

"Issuer" means the City of Fort Wayne, Indiana, a municipality and a political subdivision duly organized and validly existing under the laws and the constitution of the State, and its successors and assigns permitted hereunder.

"J. Smith" means Jeff Smith, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

"J. Smith Assignment of Life Insurance Policy" means that certain Assignment of Life Insurance Policy as Collateral executed by J. Smith, of even date herewith, wherein J. Smith pledged all proceeds from the J. Smith Life Insurance Policy to secure the repayment of NIA's Obligations to Bank.

"J. Smith Guaranty" means that certain unconditional, limited, continuing Commercial Guaranty executed by J. Smith in favor of Bank, of even date herewith.

"J. Smith Life Insurance Policy" means that certain Life Insurance Policy issued by _____ Insurance Company under Policy No. _____, insuring the life of J. Smith in the amount of \$ _____.

"Labor Hard Costs" means all hard construction costs for labor with respect to the SAC Project. "Labor Hard Costs" specifically excludes costs of materials, "general conditions," and other similar items for which retainage is not customarily required.

"Law" or ***"Laws"*** means federal, regional, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

"Lease" means a lease of the Real Estate or any part thereof by and between SAC, as Landlord, and a tenant.

"Letter-of-Credit Rights" means "letter-of-credit rights" as defined in the UCC.

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

without limitation, any conditional sale or other title retention agreement or lease in the nature thereof, any sale of receivables with recourse against the seller, any filing or agreement to file a financing statement as debtor under the UCC or any similar statute other than to reflect ownership by a third party of property leased to a lessee under a lease which is not in the nature of a conditional sale or title retention agreement, and any subordination arrangement in favor of another Person and any easement, right of way or other encumbrance on title to real property.

“Loan Documents” means, collectively, the NIA Loan Documents and the SAC Loan Documents.

“Loan Term” means, with respect to the SAC Loan, the period commencing on the Closing Date and ending on the Series 2018A Bond Termination Date, and with respect to the NIA Loan, the period commencing on the Closing Date and ending on the Series 2018B Bond Termination Date.

“Loans” means collectively, the indebtedness evidenced by the SAC Loan and the NIA Loan.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the Borrowers or the Issuer, (b) the ability of the Borrowers or the Issuer to carry out their respective businesses as of the date of this Agreement or as proposed herein to be conducted or to meet or perform their respective obligations under this Agreement on a timely basis, (c) the validity or enforceability of this Agreement, or (d) the rights or remedies of the Bank under this Agreement.

“Maximum Lawful Rate” means the maximum rate of interest on the relevant obligation permitted by applicable law without regard to any filing made by a lender with respect to notice of rates in excess of any statutory or regulatory threshold interest rate.

“Melbros” means Melbros, LLC, an Indiana limited liability company, and its successors and assigns.

“Melbros Guaranty” means that certain unconditional, unlimited, continuing Commercial Guaranty executed by Melbros in favor of Bank, of even date herewith.

“Melchi” means M. Lee Melchi, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

“Melchi SAC Guaranty” means that certain unconditional, limited, continuing Commercial Guaranty executed by Melchi in favor of Bank, of even date herewith, under which Melchi guaranties the obligations of SAC under the SAC Loan Documents.

“Melchi NIA Guaranty” means that certain unconditional, unlimited, continuing Commercial Guaranty executed by Melchi in favor of Bank, of even date herewith, under which Melchi guaranties the obligations of NIA under the NIA Loan Documents.

“MMAR” means MMAR, LLC, an Indiana limited liability company, and its successors and assigns.

“MMAR Guaranty” means that certain unconditional, unlimited, continuing Commercial Guaranty executed by MMAR in favor of Bank, of even date herewith.

“Modified Following Business Day Convention” means a business day convention whereby payment days that fall on a holiday or a Saturday or a Sunday roll forward to the next target Business Day; provided, however, that if such target Business Day falls in the next calendar month, the payment day rolls backward to the immediately preceding Target Business Day.

“Mortgage” means that certain Mortgage dated of even date herewith, executed by SAC in favor of the Bank, encumbering the SAC Project as security for repayment of the SAC Loan, including any amendment, restatement or modification thereof.

“NIA Commitment Fee” means the commitment fee payable to Bank from NIA pursuant to Section 5.01(b)(i) hereof, in an amount equal to \$10,000.00.

“NIA Completion Date” means the date NIA files with the Registered Owner a certificate signed by NIA stating that the NIA Project has been completed, which NIA shall use its reasonable best efforts to cause to occur no later than November ____, 2019.

“NIA Debt Service Coverage Ratio” means the ratio of (a) for a fiscal year, NIA’s and its Subsidiaries’ (i) net income, (ii) plus depreciation, (iii) plus amortization, (iv) plus interest expense, (iv) less distributions, (v) plus capital contributions to (b) the sum of NIA’s and its Subsidiaries’ (i) CPLTD plus (ii) interest expense paid by NIA and its Subsidiaries during said fiscal year.

“NIA Guaranties” means, collectively, the Melchi NIA Guaranty, the Rupp NIA Guaranty, the Shive Guaranty, the J. Smith Guaranty, the A. Smith Guaranty, the MMAR Guaranty, and the Melbros Guaranty, each a “NIA Guaranty.”

“NIA Guarantors” means, collectively, Melchi, Rupp, Shive, J. Smith, A. Smith, MMAR, and Melbros, each a “NIA Guarantor.”

“NIA Indebtedness” means the indebtedness evidenced by the Series 2018B Note, and any other NIA Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which NIA is responsible under this Agreement or any of the NIA Loan Documents.

“NIA Loan” means the loan by the Issuer to NIA of the proceeds from the sale of the Series 2018B Bonds pursuant to this Agreement.

“NIA Loan Documents” means the Bond Legislation, this Agreement, the Series 2018B Note, the Series 2018B Bonds, the Security Agreement, the Assignments of Life Insurance Policy, the NIA Guaranties, the SNDA, the Tax Compliance Certificate, and all other promissory

notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the NIA Loan, together with all renewals, extensions, modifications, amendments, refinancings, replacements, and consolidations thereof and substitutions for any of the same.

“NIA Project” means the purchase of machinery and equipment to be utilized by NIA in the manufacturing facility leased by NIA from SAC, in providing aluminum anodizing services to customers in automotive, construction, boating and industrial markets.

“NIA Project Costs” means those costs incurred in connection with the NIA Project which are eligible to be financed with the proceeds of the Series 2018B Bonds, as set forth in the Act, including, but not limited to:

(a) obligations of NIA incurred for labor and materials (including obligations payable to NIA) in connection with the NIA Project;

(b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the NIA Project;

(c) all costs and expenses of site preparation, engineering services, including the costs of NIA for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising installation, as well as for the performance of all other duties required by or consequential to the NIA Project;

(d) all Issuance Costs incurred in connection with the issuance of the Series 2018B Bonds, provided that Issuance Costs paid with the proceeds of the Series 2018B Bonds shall not exceed two percent (2%) of the proceeds of the Series 2018B Bonds;

(e) all costs and expenses which NIA shall be required to pay, under the terms of any contract or contracts, for the NIA Project;

(f) any sums required to reimburse NIA for advances made for any of the above items or for any other costs incurred and for work done subsequent to the Series 2018B Bonds Official Action Date, or otherwise eligible to be reimbursed under the Code, which are properly chargeable to the NIA Project; and

(g) interest on the Series 2018B Bonds during the period of the construction of the NIA Project.

“NIA Project Fund” means the fund to be established by NIA pursuant to Section 3.05 hereof.

“Notes” means, collectively, the Series 2018A Note and the Series 2018B Note, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for said promissory note or notes, each a “Note.”

“Obligations” means the present and future obligations and liabilities of Borrowers to Bank under this Agreement or any other Loan Document, including, without limitation, (a) the Indebtedness, including, without limitation, the outstanding principal and accrued interest (including interest accruing after a petition for relief under the federal bankruptcy laws has been filed, whether or not allowed as a claim) in respect of the Loans, (b) all fees owing to Bank under this Agreement and the other Loan Documents, (c) any costs and expenses reimbursable to Bank pursuant to this Agreement; (d) taxes, compensation, indemnification obligations or other amounts owing by Borrower to Bank under this Agreement, the Notes, or any other Loan Document; (e) any hedge agreement obligations; and (f) any letter of credit obligations.

“Official Action Date” means (a) with respect to the Series 2018A Bonds, September 11, 2018, and (b) with respect to the Series 2018B Bonds, October 9, 2018.

“Operating Account” means each Borrower’s primary operating depository account.

“Outstanding” or ***“Bonds outstanding”*** or ***“Bonds then outstanding”*** means as of the time in question, the Bonds which have been executed and delivered by the Issuer under this Agreement, except (i) a Bond previously cancelled by the Issuer or delivered to the Issuer for cancellation, (ii) a Bond in lieu of which another Bond has been authenticated and delivered pursuant to Section 2.04 hereof, and (iii) that portion of principal of the Bond which has previously been repaid or redeemed.

“Participant(s)” means any bank(s) or other financial institution(s) which may purchase a participation interest from the Bank in the Bonds or this Agreement pursuant to a participation agreement between the Bank and the Participant(s).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Permitted Encumbrances” means the following described liens and encumbrances:

(a) Liens for taxes, assessments or governmental charges or levies on its property if the same shall not at the time be delinquent or thereafter can be paid without penalty or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on the applicable Borrower’s books;

(b) Liens imposed by law, such as carrier, warehouseman and mechanic liens, and other similar liens arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside on the applicable Borrower’s books;

(c) Liens arising out of pledges or deposits in the ordinary course of business, e.g., workers’ compensation, insurance, leases, taxes, health, welfare and retirement benefits;

(d) Utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to

properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of Borrower;

(e) Liens existing on the date hereof and described in Schedule 1.01 hereto;

(f) Liens consisting of purchase money security interests in capital equipment; or

(g) Liens in favor of Bank or for the benefit of Bank granted pursuant to any Loan Document.

“Permitted Prepayment” shall have the meaning specified in Section 3.04(c) hereof.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, trust, unincorporated association, joint venture, governmental unit or other entity.

“Personal Property” shall include all personal property of NIA as more specifically described in the Security Agreement, including, without limitation, the following: Accounts, Inventory, Equipment, General Intangibles, Instruments, Goods, Chattel Paper, Deposit Accounts, Documents, Investment Property, Letter-of-Credit Rights, all cash and cash equivalents, and all supporting obligations of all of the foregoing property, now existing and hereafter arising and wherever located, together with all proceeds thereof and all substitutions and replacements therefor and products thereof.

“Plan” means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code as to which any Borrower may have any liability.

“Plans and Specifications” means any and all architectural, engineering and construction drawings and specifications, including, without limitation, all blueprints, drafts, calculations, measurements and models, whether produced in hard copy or created by and/or stored on a computer, network or hard drive, created, developed or resulting from the contracts for construction of the SAC Project, including a description of materials to be used and the manner in which they are to be applied.

“Project” means collectively the SAC Project and the NIA Project, as described in the third recital clause of this Agreement.

“Project Costs” means collectively the SAC Project Costs and the NIA Project Costs.

“Project Cost Statement” shall mean that certain statement incorporating the construction costs as shown on the Sworn Construction Statement, as defined herein, for the SAC Project and setting forth all costs and expenses of any kind incurred or to be incurred in completion of the SAC Project, sworn by SAC to be a true, complete and accurate account of all costs actually incurred and a reasonably accurate estimate of all costs to be incurred in the future for the Project.

“Project Funds” means collectively the SAC Project Fund and the NIA Project Fund, as described in Section 3.05 hereof.

“Property” means, collectively, the Real Estate and Personal Property.

“Purchase Period” means that period of time from which a Registered Owner or Registered Owners of the Series 2018A Bonds agree to hold the Series 2018A Bonds as set forth in a closing or purchase certificate of such Registered Owner or Registered Owners which period shall commence on the date of the purchase of the Series 2018A Bonds and conclude on a day immediately preceding a subsequent Purchase Period or the Series 2018A Bond Maturity Date. The first Purchase Period shall be the Initial Purchase Period.

“Purchaser Tender Date” means the first day subsequent to the end of a Purchase Period. The first Purchaser Tender Date shall be November __, 2029.

“Real Estate” means the real property of SAC described on Exhibit “E” attached hereto, upon which the Improvements will be constructed and in which Bank is granted the Mortgage under Section 2.10 hereof to secure repayment of SAC’s Obligations, subject only to the Permitted Encumbrances.

“Rebate Fund” means the fund by that name created pursuant to Section 3.0 hereof.

“Registered Owner” means initially, Lake City Bank, a state-chartered financial institution, validly existing under the laws of the State of Indiana, as the registered owner of the Bonds, and any subsequent registered owner or owners of the Bonds.

“Remarketing Agent” means any Person designated from time to time to act as the Remarketing Agent under Section 8.43 hereof.

“Reportable Event” means a reportable event as defined in Section 4043 of ERISA and the regulations issued thereunder.

“Responsible Officer” means such person at the time and from time to time designated to act on behalf of each of the Borrowers by written certificate furnished to the Issuer and the Bank, containing the specimen signature of such person, signed on behalf of such Borrower by the chief executive officer, the vice chairman, any vice president, the treasurer, any assistant treasurer, the secretary or any assistant secretary of such Borrower. Such certificate may designate an alternate or alternates.

“Revenues” means Invested Revenues, if any, and all other legally available revenues of the Borrower available for payment of debt service on the Bonds.

“Rupp” means Mark Rupp, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

“Rupp SAC Guaranty” means that certain unconditional, limited, continuing Commercial Guaranty executed by Rupp in favor of Bank, of even date herewith, under which Rupp guarantees the obligations of SAC under the SAC Loan Documents.

“Rupp NIA Guaranty” means that certain unconditional, unlimited, continuing Commercial Guaranty executed by Rupp in favor of Bank, of even date herewith, under which Rupp guarantees the obligations of NIA under the NIA Loan Documents.

“SAC Commitment Fee” means the commitment fee payable to Bank from SAC pursuant to Section 5.01(b)(i) hereof, in an amount equal to \$3,000.00.

“SAC Completion Date” means the date upon which SAC has fulfilled all requirements under Subsection 9.01(a)(ix) hereof, including, without limitation, providing the Registered Owner with a copy of the Certificate of Occupancy pursuant to Subsection 9.01(a)(ix)(C) hereof, which SAC shall use its reasonable best efforts to cause to occur no later than November __, 2019.

“SAC Debt Service Coverage Ratio” means the ratio of (a) for a fiscal year, SAC’s and its Subsidiaries’ (i) net income, (ii) plus depreciation, (iii) plus amortization, (iv) plus interest expense to (b) the sum of SAC’s and its Subsidiaries’ (i) CPLTD plus (ii) interest expense paid by SAC and its Subsidiaries during said fiscal year.

“SAC Guaranties” means, collectively, the Melchi SAC Guaranty, the Rupp SAC Guaranty, and the Ehler Guaranty, each a “SAC Guaranty.”

“SAC Guarantors” means, collectively, Melchi, Rupp, and Ehler, each a “SAC Guarantor.”

“SAC Indebtedness” means the indebtedness evidenced by the Series 2018A Note, and any other SAC Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which SAC is responsible under this Agreement or any of the SAC Loan Documents.

“SAC Loan” means the loan by the Issuer to SAC of the proceeds from the sale of the Series 2018A Bonds pursuant to this Agreement.

“SAC Loan Documents” means the Bond Legislation, this Agreement, the Series 2018A Note, the Series 2018A Bonds, the Mortgage, the Assignments, the SAC Guaranties, the Tax Compliance Certificate, and all other promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the SAC Loan, together with all renewals, extensions, modifications, amendments, refinancings, replacements, and consolidations thereof and substitutions for any of the same.

“SAC Project” means the acquisition of approximately 8 acres of land located at 13026 Bluffton Road, in Allen County, Indiana, and the construction, installation and equipping of an approximately 47,000 square foot manufacturing facility by SAC to be leased to NIA.

“SAC Project Costs” means those costs incurred in connection with the SAC Project which are eligible to be financed with the proceeds of the Series 2018A Bonds, as set forth in the Act, including, but not limited to:

(a) obligations of SAC incurred for labor and materials (including obligations payable to SAC) in connection with the SAC Project;

(b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the SAC Project;

(c) all costs and expenses of site preparation, engineering services, including the costs of SAC for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising installation, as well as for the performance of all other duties required by or consequential to the SAC Project;

(d) all Issuance Costs incurred in connection with the issuance of the Series 2018A Bonds, provided that Issuance Costs paid with the proceeds of the Series 2018A Bonds shall not exceed two percent (2%) of the proceeds of the Series 2018A Bonds;

(e) all costs and expenses which SAC shall be required to pay, under the terms of any contract or contracts, for the SAC Project;

(f) any sums required to reimburse SAC for advances made for any of the above items or for any other costs incurred and for work done subsequent to the Series 2018A Bonds Official Action Date, or otherwise eligible to be reimbursed under the Code, which are properly chargeable to the SAC Project; and

(g) interest on the Series 2018A Bonds during the period of the construction of the SAC Project.

“SAC Project Fund” means the fund to be established by SAC pursuant to Section 3.05 hereof.

“Security Agreement” means the Security Agreement or Agreements executed or given by NIA to Bank granting to Bank a security interest in and to the Personal Property and any other property of NIA from time to time.

“Series 2018A Bonds” means the City of Fort Wayne, Indiana Economic Development Revenue Bonds, Series 2018A (SAC Project), in an aggregate principal amount not to exceed [Two Million Seven Hundred Thousand Dollars (\$2,700,000)].

“Series 2018A Bond Maturity Date” means November ___, 2034.

“Series 2018A Bond Termination Date” means the earlier to occur of (i) the Series 2018A Bond Maturity Date and (ii) the date on which no amounts are outstanding under this Agreement with respect to the Series 2018A Bonds.

“Series 2018A Net Proceeds” means the sum of the authorized face amount of the Series 2018A Bonds, less original issue discount (if any), plus the investment earnings thereon.

“Series 2018A Note” means the promissory note dated of even date herewith from SAC to the Bank, evidencing SAC’s obligation to repay the SAC Loan in the amount of [Two Million Seven Hundred Thousand Dollars (\$2,700,000)], the form of which is attached hereto as Exhibit D-1.

“Series 2018B Bonds” means the City of Fort Wayne, Indiana Economic Development Revenue Bonds, Series 2018B (NIA Project), in an aggregate principal amount not to exceed [Three Million Seven Hundred Thousand Dollars (\$3,700,000)].

“Series 2018B Bond Maturity Date” means November ____, 2029.

“Series 2018B Bond Termination Date” means the earlier to occur of (i) the Series 2018B Bond Maturity Date and (ii) the date on which no amounts are outstanding under this Agreement with respect to the Series 2018B Bonds.

“Series 2018B Net Proceeds” means the sum of the authorized face amount of the Series 2018B Bonds, less original issue discount (if any), plus the investment earnings thereon.

“Series 2018B Note” means the promissory note dated of even date herewith from NIA to the Bank, evidencing NIA’s obligation to repay the NIA Loan in the amount of [Three Million Seven Hundred Thousand Dollars (\$3,700,000)], the form of which is attached hereto as Exhibit D-2.

“Shive” means Wayne Shive, an individual over the age of eighteen (18) years and a resident of Allen County, Indiana, and his heirs, successors, and assigns.

“Shive Guaranty” means that certain unconditional, limited, continuing Commercial Guaranty executed by Shive in favor of Bank, of even date herewith.

“SNDA” means that certain Subordination, Non-Disturbance and Attornment Agreement executed by and between SAC, NIA, and Lender, containing certain agreements among the parties relative to the SAC/NIA Lease.

“State” means the State of Indiana.

“Subcontractor” means any person who agrees with Contractor to perform any work or supply any of the materials or equipment necessary to complete the Project.

“Survey” means an ALTA/NSPS Minimum Standards detail survey, as more particularly set forth in Subsection 5.01(b)(xiii) hereof.

"Sworn Construction Statement" shall mean that certain statement showing each party having contracts or subcontracts in excess of \$50,000.00 for specific portions of the work on the Project and the amounts due or to become due to each such Contractor and Subcontractor, including all costs and expenses of any kind incurred and to be incurred in constructing the Project.

"Taxable Rate of Interest" means an annual rate of interest equal to the FHLB Rate plus two hundred sixty (260) basis points.

"Tax Compliance Certificate" means the Tax Compliance Certificate, dated of even date herewith, executed and delivered by each of the Borrowers for the benefit of the Issuer and the Registered Owner(s) of the Bonds.

"Tax-Exempt Rate" means, (1) during the Initial Purchaser Period, that rate of interest determined by the Registered Owner on each Interest Rate Adjustment Date as a fixed rate of interest per annum equal to, as of the Closing Date and each Interest Rate Adjustment Date, 79.75% of the Taxable Rate of Interest, and (2) for each Purchase Period thereafter, that rate of interest set forth in a certificate of the Remarketing Agent as the interest rate necessary to remarket the Bond pursuant to the provisions of Section 8.43 hereof. The Tax-Exempt Rate shall be adjusted on each Interest Rate Adjustment Date.

"Title Commitment" shall mean a commitment for title insurance issued by the Title Company, evidencing the Title Company's commitment to issue the Title Insurance Policy.

"Title Company" shall mean _____, located at _____, or such other title insurance agent or company designated by Bank in its discretion, in the event that said company is unable to perform.

"Title Insurance Policy" means the ALTA Lender's extended coverage policy of title insurance issued by the Title Company with such endorsements as Bank may require, in a form, amount, and content satisfactory to Bank excluding all standard exceptions, including the standard exception for mechanic's liens and insuring or agreeing to insure that Bank's Mortgage on the SAC Project is or will be upon recordation a valid first lien on the SAC Project free and clear of all defects, liens, encumbrances, and exceptions, except Permitted Encumbrances, if any, together with a foundation endorsement upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion of the SAC Project an endorsement which insures the lien-free completion of the Improvements.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of Indiana; provided, however, that, if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Bank's security interest in any of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Indiana, the term "UCC" means the Uniform Commercial Code as from time to time in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for the purposes of definitions related to such provisions; provided, further, that, if the UCC is amended after the date hereof, such amendment will not be given

effect for the purposes of this Agreement to the extent such amendment would limit or eliminate any property or asset of a debtor from being Collateral.

“Unmatured Default” means an event which, but for the lapse of time or the giving of notice, or both, would constitute a Default.

“Written” or ***“in writing”*** means any form of written communication or a communication by means of a facsimile device.

Section 1.02. **Incorporation of Certain Definitions by Reference.** Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Bonds unless the context otherwise requires.

Section 1.03. **Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles. In the event of changes to Generally Accepted Accounting Principles which become effective after the Closing Date, the Borrower and the Bank agree to negotiate in good faith appropriate revisions of this Agreement so as to perpetuate the meaning and effect of such provisions as originally negotiated and agreed upon.

Section 1.04. **Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

Section 1.05. **Fort Wayne, Indiana Time Presumption.** All references herein to times of the day shall be presumed to refer to Fort Wayne, Indiana time unless otherwise specified.

Section 1.06. **Interpretation.** All words used herein shall be construed to be of such gender or number as the circumstances require. Reference to any document means such document as amended, amended and restated, modified or supplemented from time to time as permitted under its respective terms and the terms hereof. Reference herein to an Article, Exhibit or Section shall constitute a reference to such Article, Exhibit or Section of or to this Agreement unless otherwise specified. The recitals contained on the first page of this Agreement are incorporated herein by this reference and made a part of this Agreement. The Borrowers and Guarantors represent and warrant that the statements in such recitals are true and correct.

Section 1.07. **Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless

otherwise specified. Each exhibit, schedule and annex attached hereto is incorporated by reference herein and is a constituent part of this Agreement.

ARTICLE II

THE BONDS

Section 2.01. **Authorization of Bonds; Form of Bonds.** There is hereby authorized by the Issuer to be issued hereunder and under the Bond Ordinance and issued and secured hereby the Bonds in the original aggregate principal amount of \$[6,400,000] designated as the “City of Fort Wayne, Indiana Economic Development Revenue Bonds, Series 2018A (SAC Project)” in the original principal amount of \$[2,700,000] and the “City of Fort Wayne, Indiana Economic Development Revenue Bonds, Series 2018B (NIA Project)” in the original principal amount of \$[3,700,000]. The Bonds, which shall be delivered in substantially the form of Exhibit A-1 and Exhibit A-2 to this Agreement shall be issued as a fully registered bonds numbered “RA-1” and “RB-1,” respectively, shall be dated the Closing Date and shall mature on the Series 2018A Bond Maturity Date and the Series 2018B Bond Maturity Date, respectively.

Section 2.02. **Repayment of Bonds.**

(a) Interest shall accrue on the Outstanding principal amount of the Bonds at the Tax-Exempt Rate or Default Rate, as applicable, in effect from time to time, calculated on a 360-day year for the actual number of days elapsed and shall be payable in arrears on each Interest Payment Date.

(b) The Issuer shall pay or cause to be paid, out of amounts paid by the Borrowers pursuant to Sections 3.03 and 3.04 and other security for the Bonds on the dates of such payments, the principal of, the premium, if any, purchase price and the interest on the Bonds to the Registered Owner thereof in immediately available funds at its address as it last appears on the registration book kept by the Registered Owner as provided in Section 2.03. Each payment shall be applied first to interest due and the balance to repayment of principal. All principal and interest shall be paid in full on or before the Series 2018A Bond Maturity Date and the Series 2018B Bond Maturity Date, respectively. All such payments shall be made in lawful money of the United States of America. Upon the final payment of principal of, any redemption premium and interest on the Series 2018A Bonds, such Series 2018A Bonds shall be cancelled by the Registered Owner thereof. Similarly, upon final payment of principal of, any redemption premium and interest on the Series 2018B Bonds, such Series 2018B Bonds shall be cancelled by the Registered Owner thereof.

(c) The Bonds and the interest thereon shall be a special, limited obligation of the Issuer payable solely out of the amounts paid by the Borrowers and other security pledged to the payment, and shall not constitute a debt or liability of the State and shall not create or constitute any indebtedness, liability or obligation of the State. The Bonds shall not give rise to a pecuniary liability of the Issuer.

Section 2.03. Registration and Transfer. The Registered Owner, on behalf of the Issuer, shall keep a registration book showing the name and address of the Registered Owner of the Bonds. The Bonds may be transferred by an assignment duly executed by the Registered Owner thereof or its attorney duly authorized in writing, and filed with the Bank, and the Registered Owner thereof may, to the extent permitted by law, sell participations in the Bonds; provided that the Bonds shall always be registered in the name of one owner and; provided, further, that the Bonds may only be transferred to an entity which is an "accredited investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended, and which transferee has executed and delivered an "investor letter" in the form attached as Exhibit B hereto. In case of any transfer, the Registered Owner shall give the Borrowers written notice of the name and address of the transferee.

The Person or Persons in whose name the Bonds shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Bonds shall be made by the Borrowers on behalf of the Issuer only to or upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bonds to the extent of the sum or sums so paid.

In each case the transferring Registered Owner shall require the payment by the Registered Owner requesting transfer of any tax or other governmental charge required to be paid with respect to such transfer, as well as printing, typing or copying costs and any other expenses incurred by the Bank or the Issuer, if any.

Section 2.04. Replacement of Lost or Damaged Bonds. In the event of loss of or damage to the Bonds, the Issuer, at the expense of the Registered Owner thereof, may issue replacement Bonds identical to those lost or damaged, upon receipt of an affidavit of the Registered Owner thereof that such Bond(s) has/have been lost or, if damaged, upon receipt of the damaged Bond(s). Such expense, which the Issuer may require to be paid in advance, may include the costs of investigation, printing, typing, insurance or indemnity premiums, attorney fees, travel and communications.

Section 2.05. Execution of the Bonds. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Authorized Issuer Representative and its corporate seal shall be thereunto manually or by facsimile affixed and attested by the manual or facsimile signature of the Authorized Issuer Representative. In case any officer who shall have signed the Bonds shall cease to be such officer of the Issuer before the Bonds have been delivered by the Issuer, the Bonds, with the signature thereto affixed may, nevertheless, be delivered by the Issuer as though the Person or Persons who signed the Bonds had remained in office.

Section 2.06. Non-Bank Qualified. The Issuer, the Borrowers and the Bank acknowledge that the Bonds are not a "Qualified Tax-Exempt Obligation" for purposes of Section 265(b)(3) of the Code.

Section 2.07. Sale and Purchase of Bonds. The Issuer hereby agrees to sell to the Bank (sometimes referred to herein as the "*Initial Purchaser*"), and the Bank, subject to the

satisfaction of the conditions set forth in Section 5.01, hereby agrees to purchase from the Issuer, the Bonds, subject to the terms hereof. The purchase price of the Bonds will be 100% of the original principal amount thereof and shall be payable by the Bank or its designee to the Issuer in immediately available funds.

Section 2.08. Mandatory Redemption Upon a Determination of Taxability. In case of a Determination of Taxability, the Borrowers will prepay the Bonds within 60 days with a premium so that the total amount of premium plus interest paid from the date of taxability through the date of prepayment would be calculated at the Taxable Rate of Interest.

Section 2.09. Mandatory Tender. The Series 2018A Bonds are subject to mandatory tender by the Registered Owner for purchase, in whole, on each Purchaser Tender Date at a purchase price of 100% of the outstanding principal amount thereof plus accrued interest (if any) to such Purchaser Tender Date unless the Registered Owner gives notice to SAC not later than ninety (90) days prior to the Purchaser Tender Date of its determination to retain the Series 2018A Bonds for an additional period as set forth in such certificate. Upon receipt of the outstanding principal balance of the Series 2018A Bonds and the accrued interest thereon to the Purchaser Tender Date, the Registered Owner shall transfer the Series 2018A Bonds and assign all of its rights in this Agreement to SAC or its order.

Notwithstanding any provision set forth in this Agreement or the other Loan Documents, there is no obligation of the Bank to retain the Series 2018A Bonds beyond the Purchaser Tender Date.

Section 2.10. Security for Bonds. The Series 2018A Bonds shall be secured by the Mortgage, the Assignments, the SAC Guaranties, and any and all other documents executed and delivered to secure SAC's Obligations under the Series 2018A Bonds and this Agreement. The Series 2018B Bonds shall be secured by the Security Agreement, the Assignments of Life Insurance Policy, the NIA Guaranties, and any and all other documents executed and delivered to secure NIA's Obligations under the Series 2018B Bonds and this Agreement.

ARTICLE III

THE LOANS

Section 3.01. Loan of Proceeds of Series 2018A Bond.

(a) **Issuer Financing.** Subject to the terms and conditions set forth in this Agreement, the Issuer agrees to finance the cost of the SAC Project by making the SAC Loan in installments to SAC from the Series 2018A Net Proceeds in accordance with the terms of this Agreement. In order to provide the funds to make the SAC Loan, the Issuer has agreed to sell and deliver the Series 2018A Bonds to the Initial Purchaser and will cause the Series 2018A Net Proceeds thereof to be deposited to the SAC Project Fund from time to time during the Construction Period in accordance with the terms hereof commencing on the Closing Date.

(b) Construction Disbursements. Subject to the terms, conditions, and limitations of this Agreement, including, without limitation, the conditions set forth in Article IX hereof, during the Construction Period only, Bank agrees to make Construction Disbursements from the SAC Project Fund to or for the account of SAC from time to time in amounts not in excess of the undisbursed portion of the Series 2018A Net Proceeds.

(c) Limitation on Disbursements. The combined amount of any and all Construction Disbursements may not exceed the undisbursed portion of the Series 2018A Net Proceeds held in the SAC Project Fund.

(d) Use of Proceeds. Series 2018A Net Proceeds shall be made by Bank and used by SAC solely for SAC Project Costs.

(e) Interest. Interest shall only accrue on the proceeds of the Series 2018A Bonds loaned to SAC that represent a Construction Disbursement made by the Bank to SAC.

(f) Full Deposit of Series 2018A Net Proceeds. In the event that all of the Series 2018A Net Proceeds have not been deposited to the SAC Project Fund by December 31, 2018, and in the further event that SAC determines that failure to fully advance all of the Series 2018A Net Proceeds into the SAC Project Fund established under the Loan Agreement before January 1, 2019, could adversely affect the exclusion from gross income for federal tax purposes of the interest on the Series 2018A Bonds under the Code, then SAC will have the Initial Purchaser (y) advance all of the Series 2018A Net Proceeds into the SAC Project Fund and (z) distribute such proceeds to SAC pursuant to the provisions set forth in Article IX hereof. SAC shall direct the Initial Purchaser to make any advance of all of the Series 2018A Net Proceeds into the SAC Project Fund under this Section 3.01(f) no later than 12:00 p.m. (Fort Wayne, Indiana time) on December 28, 2018, and interest at the Tax-Exempt Rate shall accrue as of December 28, 2018 on the full amount of Series 2018A Net Proceeds and shall be due and payable by SAC on each Interest Payment Date thereafter.

Section 3.02. Loan of Proceeds of Series 2018B Bond.

(a) Issuer Financing. Subject to the terms and conditions set forth in this Agreement, the Issuer agrees to finance the cost of the NIA Project by making the NIA Loan in installments to NIA from the Series 2018B Net Proceeds in accordance with the terms of this Agreement. In order to provide the funds to make the NIA Loan, the Issuer has agreed to sell and deliver the Series 2018B Bonds to the Initial Purchaser and will cause the Series 2018B Net Proceeds thereof to be deposited to the NIA Project Fund from time to time during the Equipment Disbursement Period in accordance with the terms hereof commencing on the Closing Date.

(b) Equipment Disbursements. Subject to the terms, conditions, and limitations of this Agreement, including, without limitation, the conditions set forth in Article IX hereof, during the Equipment Disbursement Period only, Bank agrees to make

Equipment Disbursements from the NIA Project Fund to or for the account of NIA from time to time in amounts not in excess of the undisbursed portion of the Series 2018B Net Proceeds.

(c) Limitation on Disbursements. The combined amount of any and all Equipment Disbursements may not exceed the undisbursed portion of the Series 2018B Net Proceeds held in the NIA Project Fund.

(d) Use of Proceeds. Series 2018B Net Proceeds shall be made by Bank and used by NIA solely for NIA Project Costs.

(e) Interest. Interest shall only accrue on the proceeds of the Series 2018B Bonds loaned to NIA that represent a disbursement made by the Bank to NIA.

(f) Full Deposit of Series 2018B Net Proceeds. In the event that all of the Series 2018B Net Proceeds have not been deposited to the NIA Project Fund by December 31, 2018, and in the further event that NIA determines that failure to fully advance all of the Series 2018B Net Proceeds into the NIA Project Fund established under this Agreement before January 1, 2019, could adversely affect the exclusion from gross income for federal tax purposes of the interest on the Series 2018B Bonds under the Code, then NIA will have the Initial Purchaser (y) advance all of the Series 2018B Net Proceeds into the NIA Project Fund and (z) distribute such proceeds to NIA pursuant to the provisions set forth in Article IX hereof. NIA shall direct the Initial Purchaser to make any advance of all of the Series 2018B Net Proceeds into the NIA Project Fund under this Section 3.02(f) no later than 12:00 p.m. (Fort Wayne, Indiana time) on December 28, 2018, and interest at the Tax-Exempt Rate shall accrue as of December 28, 2018 on the full amount of Series 2018B Net Proceeds and shall be due and payable by NIA on each Interest Payment Date thereafter.

Section 3.03. Evidence of Loans and Details of Loan Payments.

(a) The Borrowers hereby covenant and agree to repay the Loans by making payments on behalf of the Issuer to the Registered Owner of the Bonds in amounts totaling the initial aggregate principal amount of the Bonds under this Agreement, together with any premium due thereon, and with interest on the unpaid principal balance of the Bonds at the Tax-Exempt Rate. The Borrowers will pay any other amounts payable by the Issuer hereunder and all amounts to be due and on the dates such amounts are due and payable by the Issuer. The Borrowers' obligations to make these payments shall be evidenced by the Series 2018A Note and the Series 2018B Note in the forms set forth hereto as Exhibit D-1 and Exhibit D-2.

(b) Interest only on the Loans shall be payable monthly on each Interest Payment Date until the Full Funding Date; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

(c) Principal and interest on the Loans shall be payable monthly commencing on the first Interest Payment Date following the Full Funding Date and continuing on

each Interest Payment Date thereafter until payment in full of each of the Loans; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

- (i) Payment of the Series 2018A Note. Payment of principal and interest on the Series 2018A Note shall be in an amount that will pay the unpaid principal balance of the SAC Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 180 months. If not earlier paid on a Purchaser Tender Date in accordance with the Mandatory Tender provisions of Section 2.09 hereof, or as otherwise provided in this Agreement, the principal of, and all accrued and unpaid interest on, the SAC Loan shall be payable in full on the Series 2018A Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018A Bond to which interest has been paid unless such Series 2018A Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.
- (ii) Payment of the Series 2018B Note. Payment of principal and interest on the Series 2018B Note shall be in an amount that will pay the unpaid principal balance of the NIA Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 120 months. If not earlier paid as otherwise provided in this Agreement, the principal of, and all accrued and unpaid interest on, the NIA Loan shall be payable in full on the Series 2018B Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018B Bond to which interest has been paid unless such Series 2018B Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.
- (d) SAC hereby covenants and agrees to pay a purchase price with respect to the SAC Loan on each Purchaser Tender Date in an amount equal to the purchase price set forth with respect to the Series 2018A Bonds as set forth in Section 2.09 hereto.
- (e) It is understood and agreed that all payments payable to the Issuer under this Section 3.03 by the Borrowers (herein the "**Revenues**") are hereby pledged and assigned by the Issuer to the Registered Owner, as its interest may appear. The Borrowers hereby consent to such pledge and assignment. The Issuer hereby directs the Borrowers, and the Borrowers hereby agree, to pay directly to the Registered Owner as its interest may appear, in immediately available funds, all such Revenues. The Issuer covenants that it will not pledge the Revenues other than to secure the Bonds.
- (f) The Borrowers will also promptly pay all of the reasonable and necessary expenses incurred by the Issuer pursuant to this Agreement, including, without limitation, all costs, expenses and fees, including attorneys' fees, incurred in connection with the transactions contemplated by this Agreement if, as and when due.

(g) So long as there exists any uncured Default, each Loan shall bear interest at a per annum rate equal to the Default Rate. However, in no event will the interest rate applicable to any Loan exceed the maximum rate allowed by applicable law.

(h) Interest shall be due and payable for the exact number of days principal is outstanding and shall be calculated on a 365/360 basis; that is, by applying the ratio of the applicable interest rate over a year of 360 days, multiplied by the outstanding principal balance under the applicable loan, multiplied by the actual number of days the principal balance is outstanding. All interest payable under each Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated herein.

(i) If any installment of principal and/or interest or purchase price provided herein becomes due and payable on a date other than a Business Day, such payment shall be extended to the next succeeding Business Day.

Section 3.04. Prepayment of the Loans and Redemption of Bonds; Notice.

(a) Prepayment Generally. Prepayment of the Series 2018A Note and Series 2018B Note and redemption of the corresponding Series 2018A Bonds and Series 2018B Bonds may be made to the extent and in the manner expressly permitted by this Section 3.04.

(b) Correspondence of Notes and Bonds. The Series 2018A Note and Series 2018B Note are both subject to prepayment, in whole or in part, at the option of SAC and NIA, respectively, on any Interest Payment Date during the term thereof to the extent that redemption would be permitted under the provisions of any corresponding Series 2018A Bonds or Series 2018B Bonds. Such prepayment and redemption shall be applied to installments of principal on the Series 2018A Note and the Series 2018B Note and the corresponding Series 2018A Bonds and Series 2018B Bonds, respectively, in the inverse order of their maturity and shall not affect the amount of principal and interest otherwise due on each Interest Payment Date. In the event SAC and/or NIA make a prepayment under the Series 2018A Note and the Series 2018B Note, respectively, the Issuer shall make a like prepayment under the corresponding Series 2018A Bonds and Series 2018B Bonds; and in the event SAC and/or NIA become obligated to pay an increased rate of interest, an increased amount of interest or any other amount under the Series 2018A Note and the Series 2018B Note, respectively, the Issuer shall become obligated to pay an increased rate of interest, an increased amount of interest or such other amount under the Series 2018A Bonds and/or Series 2018B Bonds and vice versa, but solely from moneys provided by the SAC and/or NIA hereunder and under the Series 2018A Note and the Series 2018B Note, respectively.

(c) Optional Redemption of Bonds. The Series 2018A Bonds and Series 2018B Bonds are subject to optional redemption by the Issuer, at the election of SAC and NIA, respectively, as a whole or in part, on any Interest Payment Date in an amount equal to the principal amount thereof to be redeemed, together with the accrued interest thereon

to the date fixed for redemption, together with a prepayment premium calculated in accordance with the following table:

<u>Redemption Date</u>	<u>Prepayment Premium (as a percentage of the principal amount to be redeemed)</u>
From December [1], 2018 through November [30], 2024	5.0%
From December [1], 2024 through November [30], 2025	4.0%
From December [1], 2025 through November [30], 2026	3.0%
From December [1], 2026 through November [30], 2027	2.0%
From December [1], 2027 and thereafter	1.0%

Notwithstanding the foregoing, no prepayment premium will be due with respect to the following described redemptions by the Borrowers (each a ***“Permitted Prepayment”***): (1) full or partial prepayment of the Series 2018A Note and/or the Series 2018B Note made from the application of any insurance proceeds as a result of any casualty loss to collateral securing the Series 2018A Note and/or the Series 2018B Note, as the case may be; (2) prior to a Default, payment in full of the Series 2018A Note and/or the Series 2018B Note resulting from the sale of substantially all of the assets of SAC and/or NIA, respectively, to an unaffiliated third party; or (3) any other prepayment of the Series 2018A Note and/or the Series 2018B Note which is refinanced by the Registered Owner or as to which the Registered Owner has agreed in writing that it will not assess a prepayment premium.

(d) **Redemption Notice.** The Series 2018A Bonds and the Series 2018B Bonds, or any portion thereof, shall be redeemed only upon fifteen (15) days’ prior written notice from SAC and NIA, respectively, to the Issuer and the Registered Owner. That notice shall specify the redemption date and the principal amount of the Series 2018A Bonds and/or the Series 2018B Bonds to be redeemed, which amount shall be Five Thousand Dollars (\$5,000) or any integral multiple in excess thereof and together with the amount of prepayment premium due, if any. Notice from SAC and/or NIA to the Registered Owner that the SAC Loan and/or the NIA Loan, as the case may be, is to be prepaid in whole or in part pursuant to this Section 3.04 shall also constitute the call by the Issuer of a portion or all, as the case may be, of the principal amount of the Series 2018A Bonds and/or the Series 2018B Bonds then outstanding, and no separate notice from the Issuer to the Registered Owner shall be required. In addition, acceleration of all payments of the Loans pursuant to Section 10.02(a) of this Agreement shall constitute an acceleration of the principal amount of the Series 2018A Bonds and the Series 2018B Bonds then outstanding, and no notice of such acceleration from the Registered Owner to the Issuer shall be required.

(e) If the Series 2018A Bonds and/or the Series 2018B Bonds or any portion thereof are duly called for redemption as herein provided, and if on the redemption date moneys for the payment of the applicable redemption price shall have been provided to the Registered Owner so as to be available for the payment thereof, then from and after such redemption date the Series 2018A Bonds and/or the Series 2018B Bonds or such portion thereof shall cease to bear interest.

Section 3.05. **Project Fund.** The Bank shall establish two (2) separate funds designated as (i) "City of Fort Wayne, Indiana Revenue Bond, Series 2018A (SAC Project) Project Fund" (the "**SAC Project Fund**"), and (ii) "City of Fort Wayne, Indiana Revenue Bond, Series 2018B (NIA Project) Project Fund" (the "**NIA Project Fund**") and shall deposit therein an amount not less than \$50,000 of the proceeds of the Series 2018A Bonds and Series 2018B Bonds, respectively, on the Closing Date and the Bank shall deposit the remaining proceeds as agreed to by the Bank and the Borrowers in writing, but in no event later than the time specified in **Section 2.10 of the Tax Compliance Certificate**. Moneys on deposit in the SAC Project Fund and the NIA Project Fund shall be disbursed by the Bank to SAC and NIA, respectively, to pay the Project Costs as detailed in Article IX herein. The Bank shall maintain adequate records pertaining to the SAC Project Fund and the NIA Project Fund and all payments therefrom.

Section 3.06. **Rebate Fund.** There is hereby created and each of SAC and NIA covenant to maintain with the Bank a special fund designated as the "City of Fort Wayne, Indiana Revenue Bond, Series 2018A (SAC Project) Rebate Fund" (the "**SAC Rebate Fund**"), and the "City of Fort Wayne, Indiana Revenue Bond, Series 2018B (NIA Project) Rebate Fund" (the "**NIA Rebate Fund**" and collectively with the SAC Rebate Fund the "**Rebate Funds**"). SAC and NIA shall deposit earnings from the investment of the proceeds of the Series 2018A Bonds and Series 2018B Bonds or other legally available moneys in the Rebate Funds, as appropriate, in the amounts and at the times provided in the Tax Compliance Certificate. Earnings from the investment of moneys on deposit in the Rebate Funds shall be retained in the Rebate Funds. Moneys on deposit in the Rebate Funds shall be used as provided in the Tax Compliance Certificate.

Section 3.07. **Investment of Moneys.** Moneys held as a part of the SAC Project Fund, the NIA Project Fund and Rebate Funds shall be invested by the Bank at the written direction of the SAC and NIA in Eligible Investments.

Section 3.08. **Maximum Lawful Rate.**

(a) If the amount of interest payable for any period in accordance with the terms hereof exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Lawful Rate, then interest for such period shall be payable in an amount calculated at the Maximum Lawful Rate for such period.

(b) Any interest that would have been due and payable for any period but for the operation of Section 3.08(a) shall accrue and be payable as provided in this Section 3.08(b) and shall, less interest actually paid to the Bank for such period, constitute the "**Excess Interest Amount.**" If there is any accrued and unpaid Excess

Interest Amount as of any date then the principal amount with respect to which interest is payable shall bear interest at the Maximum Lawful Rate, until payment to the Bank of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount hereunder remains unpaid, the Borrowers shall pay to the Bank a fee equal to any accrued and unpaid Excess Interest Amount.

Section 3.09. Issuer Fees and Expenses. Each Borrower agrees that it will pay or cause to be paid all fees, costs and expenses incurred by the Issuer, its directors and officers, its legal counsel and any other Person engaged to represent or advise the Issuer in connection with the proceedings related to the issuance and sale of the Bonds, and in connection with all matters and proceedings related to the Bonds arising subsequent to its issuance and sale.

Section 3.10. Borrowers' Other Payment Obligations.

(a) In addition to the payments on the SAC Loan and the NIA Loan referenced in Section 3.03 above, the Borrowers hereby each unconditionally, irrevocably and absolutely agree to make prompt and full payment of all other Obligations owing by it to the Bank whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided under such Obligations.

(b) Each of the Borrowers shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Bank in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment of this Agreement, consent by the Registered Owner or waiver by the Registered Owner under this Agreement, in each case in a minimum amount of \$500;

(iii) the reasonable fees and out of pocket expenses for counsel or other reasonably required consultants to the Registered Owner in connection with advising the Registered Owner as to its rights and responsibilities under this Agreement or in connection with responding to requests from such Borrower for approvals, consents, amendments and waivers;

(iv) any amounts advanced by or on behalf of the Registered Owner to the extent required to cure any Default, Event of Default or event of nonperformance hereunder, together with interest at the Default Rate; and

(v) all reasonable fees, costs and expenses of any consultants providing services to such Borrower or the Registered Owner in accordance with this Agreement.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement, then, if the Borrowers lawfully may pay for such stamps, taxes or fees, the Borrowers shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the Borrowers agree to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay or omission of the Borrowers in paying, such stamps, taxes and fees hereunder.

Section 3.11. Increased Payments.

(a) If the Registered Owner shall determine that any Law or governmental guideline or governmental interpretation or application thereof by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request or directive of any Governmental Authority now existing or hereafter adopted:

(i) subjects the Registered Owner to taxation (except for taxes on the overall net income or share capital of the Registered Owner) with respect to this Agreement, the Bonds or payment by the Borrowers of principal, interest and fees or other amounts due from the Borrowers hereunder and thereunder,

(ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds by the Registered Owner,

(iii) imposes, modifies or deems applicable any capital adequacy or similar requirement (1) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, the Registered Owner, or (2) otherwise applicable to the obligations of the under this Agreement, or

(iv) imposes upon the Registered Owner any other condition or expense with respect to this Agreement, the Bonds or its making, maintenance or funding of any loan or any security therefor; and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon the Registered Owner with respect to this Agreement, the Bonds, or the making, maintenance or funding of any loan (or in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on the Registered Owner's capital, taking into consideration the policies with respect to capital adequacy) by an amount which the deems to be material to it (except for taxes on the overall net income or share capital of the Registered Owner),

then the Registered Owner shall from time to time notify, or cause to be notified, the Borrowers of the amount determined in good faith (using any reasonable averaging and attribution methods) by the Registered Owner (which determination shall be conclusive absent manifest error) to be necessary to compensate the Registered Owner, for such

increase, reduction or imposition. Such amount shall be due and payable by SAC and/or NIA, as the case may be, to the Registered Owner on the thirtieth (30th) day after demand. A certificate by the Registered Owner as to the amount due and payable under this Section 3.11 from time to time and the method of calculating such amount shall be conclusive absent manifest error and shall be provided to SAC and/or NIA, as the case may be, with the notice described above. In determining any such amount, the Registered Owner may use any reasonable averaging and attribution methods. Notwithstanding the foregoing, no additional charge to the Borrowers shall be made by the Registered Owner under this Section 3.11 solely by reason of the fact that the Bonds are not a "qualified tax-exempt obligation" as that term is defined under Section 265(b)(3)(B) of the Code.

(b) Borrowers' Right to Contest.

(i) Subject to the provisions of clauses (ii) and (iii) below, the Registered Owner shall afford the Borrowers the opportunity, at the Borrowers' sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the Bonds to be includable in the gross income of the Registered Owner or (2) any challenge to the validity of the tax exemption with respect to the interest on the Bonds, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(ii) The following shall constitute conditions precedent to the exercise by the Borrowers of their right to contest set forth in clause (i) above: the Borrowers shall, on demand, immediately reimburse the Registered Owner for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Registered Owner in its sole discretion) that may be incurred by the Registered Owner in connection with any such contest, and shall, on demand, immediately reimburse the Registered Owner for any and all penalties or other charges payable by the Registered Owner for failure to include such interest in its gross income.

(iii) The obligations of the Borrowers under this Section 3.11(b) shall survive the termination of this Agreement and the redemption or other payment in full of the Bonds.

Section 3.12. Obligations Absolute. The payment obligations of the Borrowers under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement or any provision hereof or the Bonds;

(b) any amendment or waiver of or any consent to departure from this Agreement;

(c) the existence of any claim, set off, defense or other right which the Borrowers may have at any time against the Registered Owner or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Registered Owner acknowledges the Borrowers may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The Borrowers' payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

ARTICLE IV

THE PROJECT

Section 4.01. Agreement to Finance the Project; Tax Covenants. The Borrowers agree that they will finance the Project and all other facilities and Property and equipment necessary for the operation of their business and properties comprising the Project with all reasonable dispatch, subject only to delays beyond the reasonable control of the Borrowers. SAC and NIA each covenants, represents and warrants to the Issuer and the Registered Owner that it will not cause the Series 2018A Bonds and the Series 2018B Bonds, respectively, or any subsequent obligations of the Issuer to be an "arbitrage bond" within the meaning of Section 148 of the Code. Nothing contained in this Section shall relieve the Borrowers from making the payments required to be made under this Agreement.

Section 4.02. Completion of Project if Project Funds are Insufficient.

(a) In the event the moneys in the SAC Project Fund available for payment of the SAC Project Costs should not be sufficient to pay such costs in full, SAC shall pay that portion of the SAC Project Costs in excess of the moneys available therefor in the SAC Project Fund. If SAC pays any portion of the cost of the SAC Project pursuant to this Section, it shall not be entitled to any reimbursement therefor from the Issuer, the Bank or any Registered Owner, nor shall it be entitled to any diminution in or postponement of the payments required to be paid under this Agreement.

(b) In the event the moneys in the NIA Project Fund available for payment of the NIA Project Costs should not be sufficient to pay such costs in full, NIA shall pay that portion of the NIA Project Costs in excess of the moneys available therefor in the NIA Project Fund. If NIA pays any portion of the cost of the NIA Project pursuant to this Section, it shall not be entitled to any reimbursement therefor from the Issuer, the Bank or any Registered Owner, nor shall it be entitled to any diminution in or postponement of the payments required to be paid under this Agreement.

Section 4.03. Ownership of Project; Assignment, Sale and Leasing. The Issuer agrees that (i) title to the SAC Project shall be in and remain in SAC and that the SAC Project shall be the sole Property of SAC, subject to such Liens, if any, created by this Agreement, the other Loan Documents and Permitted Encumbrances, in which the Issuer shall have no interest; and (ii) title to the NIA Project shall be in and remain in NIA and that the NIA Project shall be the sole Property of NIA, subject to such Liens, if any, created by this Agreement, the other Loan Documents and Permitted Encumbrances, in which the Issuer shall have no interest. The Issuer covenants it will not take any action to interfere with SAC's and NIA's ownership of the SAC Project and the NIA Project, respectively, or to prevent SAC or NIA from leasing the SAC Project and the NIA Project, respectively, or otherwise having possession and enjoyment of the SAC Project and the NIA Project during the term of this Agreement. However, the Issuer retains the right and the Borrowers grant the Issuer the right to inspect the Project upon reasonable notice. Nothing herein, however, shall limit the Issuer's powers with respect to the exercise of any regulatory authority. This Agreement may be assigned and the Project sold or leased, as a whole or in part, by the Borrowers, or either of them, but only with the written consent of the Issuer and the Registered Owner, which consent shall not be unreasonably withheld, subject, however, to each of the following conditions:

(a) No assignment, sale or lease shall relieve either of the Borrowers from primary liability for any obligations hereunder, and in the event of any such assignment, sale or lease, the Borrowers shall continue to remain primarily liable for payment of the amounts specified in Article III hereof and for performance and observance of the other agreements on its part provided herein to be performed and observed by the Borrowers to the same extent as though no assignment, sale or lease had been made.

(b) The assignee, vendee or lessee shall assume the obligations of the Borrowers hereunder to the extent of the interest assigned or leased.

(c) The Borrowers shall, at least thirty (30) days prior to the proposed execution and delivery thereof, furnish or cause to be furnished to the Issuer and the Registered Owner a true and complete copy of each proposed assignment, assumption of obligation, sale or lease, as the case may be.

(d) The Borrowers shall, at least thirty (30) days prior to the proposed sale, assignment or lease, furnish or cause to be furnished to the Issuer and the Registered Owner an opinion of nationally recognized bond counsel addressed to the Issuer and the Bank opining that such sale, assignment or lease will not cause interest on the Bonds to be subject to federal income taxation.

Section 4.04. No Warranty of Condition or Suitability by the Issuer. Neither the Issuer nor the Bank makes any warranty, either express or implied, as to the Project or that it is or will be suitable for the Borrowers' purposes or needs.

Section 4.05. Use of Project; Maintenance and Modification.

(a) Compliance with Laws. The Borrowers each represent to the best of their actual knowledge without any independent investigation that (i) as of the date hereof the

Project is not in violation of any Applicable Law, including any applicable subdivision, zoning, building, environmental protection, sanitary, safety or other land use laws, rules or regulations and (ii) no activity the Borrowers, or either of them, are conducting in the Project is a nuisance under applicable law. The Borrowers covenant that they will comply with all Applicable Laws in their use of the Project after the date hereof.

(b) Maintenance and Modification of Project by Borrowers. Subject to the Bank's rights and the Borrowers' obligations under the Loan Documents, which Loan Documents will control in the event of any discrepancy between any Loan Document and this Agreement, the Borrowers each agree that at all times during the term of this Agreement, the Borrowers will, at the Borrowers' own expense, maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that the Borrowers will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals deemed proper and necessary by them.

In addition, subject to and in accordance with the terms of this Agreement and with the terms of the other Loan Documents, the Borrowers shall have the privilege of remodeling the Project, if applicable, or making substitutions, additions, modifications and improvements to the Project from time to time, as the Borrowers, in their discretion, may deem to be desirable for the Borrowers' use for such purposes and, with respect to the Project, as shall be permitted by the Act, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by the Borrowers, and the same shall be the Property of the Borrowers and, with respect to such substitutions, additions, modifications and improvements to the Project, be included under the terms of this Agreement as part of the Project.

ARTICLE V

CONDITIONS PRECEDENT

Section 5.01. **Conditions Precedent to the Bank's Purchase of the Bonds.**

(a) It shall be an additional condition precedent to the delivery of the Bonds to the Bank on the Closing Date and to the funding of the Project that all corporate, limited liability company and other proceedings taken in connection with the transactions contemplated hereby and all documents incident thereto shall be in form and substance satisfactory to the Bank and that there shall have been, in the sole opinion of the Bank, no Material Adverse Effect. The Issuer and the Borrowers represent to and agree with the Bank (and it will be a condition of the obligation of the Bank to purchase and accept delivery of the Bonds that each will so represent and agree as of the Closing Date) that all conditions precedent have been satisfied and remain satisfied.

(b) In addition, the Bank shall have received, in form and substance satisfactory to the Bank and its counsel, on or prior to the Closing Date the following unless otherwise agreed to by the Bank:

- (i) Payment of all fees and expenses as set forth in this Agreement, including, without limitation, the Commitment Fees, or any unpaid portion thereof.
- (ii) The Mortgage shall be duly executed, constituting a valid and perfected first lien on good and marketable fee simple title to the Real Estate and Improvements, and the fixtures thereon which will be recorded prior to any Construction Disbursement.
- (iii) The Assignment of Rents shall be duly executed and recorded prior to any Construction Disbursement.
- (iv) Any Affidavit required by the Title Company and/or Bank, duly executed and delivered by the appropriate Borrower.
- (v) A financing statement or statements sufficient when filed to perfect the security interests granted under the Security Agreement and the Assignments, to the extent such security interests are capable of being perfected by filing.
- (vi) Current searches of appropriate filing offices showing that (i) no state or federal tax liens have been filed and remain in effect against any Borrower and (ii) no financing statements have been filed and remain in effect against any Borrower except financing statements perfecting only security interests in property in which Bank has not been granted a security interest.
- (vii) A fully executed copy of the lease dated on or before the Closing Date, by and between SAC, as Landlord, and NIA, as Tenant, and any renewals, extensions, modifications or amendments thereto (the "*SAC/NIA Lease*").
- (viii) The original letter executed by SAC as Landlord under the SAC/NIA Lease to which NIA is a party as Tenant, in a form substantially similar to the letter attached hereto as Exhibit F.
- (ix) Fully executed copies of the Construction Contract and Architect's Contract
- (x) A copy of the Plans and Specifications, certified by Architect and SAC.
- (xi) A Sworn Construction Statement, duly executed in a form acceptable to Bank.
- (xii) A Project Cost Statement for the SAC Project.

- (xiii) A Survey of the Real Estate made by a land surveyor licensed in the State of Indiana, which survey must be satisfactory to Bank and showing:

(A) The location (and recording numbers, to the extent recorded) of all visible or recorded easements (including appurtenant easements), water courses, drains, sewers, public and private roads (including the names and widths thereof and recording numbers for the dedications thereof), other rights of way, and curb cuts, if any, within, adjacent to, or serving the Real Estate or to which the Real Estate is subject, and the proposed location of any such easements to be granted; that the same are, and after construction of the SAC Project and granting of easements will be, unobstructed; and that all portions of the SAC Project will have direct access to dedicated public roads;

(B) If applicable, the location of the servient estate of any easements, if the Real Estate is the dominant estate thereunder;

(C) The common street address of the Real Estate and the dimensions, boundaries, and acreage or square footage of the Real Estate;

(D) That there are no encroachments onto the Real Estate from improvements located on adjoining property.

(E) The location and course of all utility lines;

(F) If the Real Estate comprises more than one parcel, interior lines and other data sufficient to insure contiguity; and

(G) Such additional information which may be reasonably required by Bank or the Title Company.

The Survey shall be made in accordance with (i) the current survey standards of the American Land Title Association / National Society of Professional Surveyors including, at a minimum, items _____ (in the amount of \$1,000,000.00) of Table A thereof and (ii) the laws of the State of Indiana. To the extent that there is any conflict or inconsistency among the Survey standards described above, the more restrictive standard shall apply. The Survey shall be dated not earlier than the Closing Date, and shall bear a proper certificate by the surveyor, which certificate shall recite compliance with the laws and standards enumerated above, shall include the legal description of the Real Estate, and shall run in favor of SAC, Bank, and the Title Company.

- (xiv) The Title Commitment, reviewed by Bank and to Bank's satisfaction.

- (xv) A Phase I Environmental Assessment of the SAC Project, in form and content satisfactory to Bank.

- (xvi) An appraisal of the SAC Project performed by an appraiser who is licensed by the State of Indiana and acceptable to Bank which shows the as-completed value of the SAC Project acceptable to Bank.
- (xvii) A pre-construction review of the SAC Project, including, without limitation, the Plans and Specifications, the Project Cost Statement, the Construction Contract, the Architect's Contract, and any other documents related to the SAC Project, performed by the Inspecting Engineer or other third party engaged by Bank, satisfactory to Bank.
- (xviii) Financial Statements of Borrowers, in form and substance satisfactory to Bank.
- (xix) Borrowers shall have established all depository accounts with Bank required by the terms of this Agreement, including, without limitation, the Project Funds and Operating Accounts.
- (xx) If requested by Bank, a soil report for the Real Estate in form and substance acceptable to Bank, prepared by a registered engineer satisfactory to Bank, stating that the Real Estate is free from soil or other geological conditions that would preclude its use for the SAC Project as contemplated without extra expense for precautionary, corrective, or remedial measures.
- (xxi) Copies of all building permits and such other licenses and permits as may be required to construct and operate the Projects, a letter or letters from the appropriate city or county authority or authorities having jurisdiction over the Projects stating that the SAC Project, as constructed or when constructed in accordance with the Plans and Specifications, will comply in all respects with all applicable ordinances, zoning, subdivision, platting, environmental and land use requirements, without special variance or exception, and such other evidence as Bank shall request to establish that the Projects, and the use or contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, environmental laws and regulations, water shed district regulations and all other applicable laws or regulations, and governmental authorities having jurisdiction over the Projects and that all required permits for construction have been obtained.
- (xxii) Letters from utility companies, establishing that SAC has the right to connect to and use all utilities, including without limitation, water, sewer, electricity, gas and telephone to the extent required by the Projects.
- (xxiii) Copies of the policy of property/casualty insurance and comprehensive general liability insurance and a certificate of the worker's compensation

insurance required under Section 8.19 hereof, if necessary, with all such insurance in full force and effect and approved by Bank, and containing clauses and appropriate endorsements in favor of Bank.

(xxiv) The Borrowers' organizational documents, including:

(A) Copies of the written consent to resolutions of the members of both SAC and NIA, approving the execution and delivery of this Agreement, approving the form of any related documents to which it is not a party and the other matters contemplated hereby and thereby, certified by an officer or member of each of the Borrowers as being true and complete and in full force and effect on the Closing Date;

(B) The organizational documents of SAC and NIA, including, but not limited to, the Articles of Organization and Operating Agreements, certified by an officer or member of each of SAC and NIA to be in full force and effect on the Closing Date;

(C) Certificates issued by an appropriate official of the State, issued no more than thirty (30) days preceding the Closing Date, stating that each of SAC and NIA is in existence and has filed its most recent report required by Indiana law with the Secretary of State, and that no notice of withdrawal, dissolution or expiration has been filed or taken place; and

(D) An incumbency certificate by an officer or member of each of the Borrowers certifying the names and signatures of the Authorized Borrower Representatives authorized to sign, on behalf of each of the Borrowers, this Agreement and the other documents to be delivered by it hereunder or thereunder.

(xxv) The following opinions, addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(A) From counsel to the Borrowers, as to the due authorization, execution and delivery of this Agreement, the other Loan Documents, and any related documents, their validity, binding effect and enforceability, and such other customary matters as the Bank may reasonably request, including without limitation the validity of the Lien on the Collateral;

(B) From Bond Counsel to the Issuer, in customary form, as to the validity of the Bonds and the exemption of interest from federal and State income taxation and such other customary matters as the Bank may reasonably request; and

(C) From counsel to the Issuer, as to the due authorization, execution and delivery of this Agreement and any related documents, their

validity, binding effect and enforceability, and such other customary matters as the Bank may reasonably request.

- (xxvi) A signature and incumbency certificate, dated the Closing Date, of each of the signatories of Issuer executing this Agreement, the Bonds, and other related documents to which it is a party and the other documents to be delivered by it hereunder.
- (xxvii) Copies of all documents evidencing the transfer of assets and equipment from A. Smith and J. Smith, collectively, to NIA, the value of which shall constitute their collective equity contribution to NIA.
- (xxviii) This Agreement, the Loan Documents, and all related documents shall have been executed and delivered by the parties thereto, shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been approved in writing by the Bank, and (b) the Issuer, the Borrowers, and the Guarantors shall have duly adopted and there shall be in full force and effect such resolutions as, in the opinion of Bond Counsel and counsel to the Bank shall be necessary in connection with the transactions contemplated hereby.
- (xxix) The Issuer shall deliver the Bonds to the Bank contemporaneously with the delivery by the Bank of the purchase price of the Bonds.
- (xxx) A certificate of the Issuer, dated the Closing Date, stating that: (i) the representations and warranties of the Issuer contained in Article VII hereof and in any other related document to which it is a party are correct on and as of the Closing Date as though made on and as of such date; (ii) no petition by or against the Issuer has at any time been filed under the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.*, as amended, or under any similar law; (iii) no Default or Event of Default has occurred and is continuing, or would result from the Issuer's execution and performance of this Agreement or any other related document to which it is a party; (iv) all conditions precedent to the issuance of the Bonds have been satisfied and the Issuer has duly executed and delivered the Bonds to the Bank.
- (xxxi) The Bank shall have received the closing certificate of each of the Borrowers dated the Closing Date, signed by a member or other authorized officer in form and substance satisfactory to the Bank and the Issuer.
- (xxxii) The Bank shall have received the certificate of the Issuer, dated the Closing Date, signed by an authorized officer of the Issuer, in form and substance satisfactory to the Bank.

- (xxxiii) The Bank shall have received a no-arbitrage certificate with respect to the Bonds in compliance with the Code, signed by an Authorized Issuer Representative, together with an accompanying certificate executed by the Borrowers as to matters solely within their knowledge.
- (xxxiv) The Bank shall have received a duly certified copy of the Bond Ordinance with respect to the Bonds as adopted by the Issuer.
- (xxxv) The Bank shall have received a properly completed and executed IRS Form 8038 as to the Bonds.
- (xxxvi) The Bank shall have received satisfactory evidence that the public notice requirements of Section 147(f) of the Code have been satisfied.
- (xxxvii) Such other documents, instruments, approvals and, if reasonably requested by the Bank, certified duplicates of executed originals thereof, and opinions as the Bank may reasonably request.

(c) The Bank has entered into this Agreement in reliance upon the accuracy of the representations and agreements of the Issuer, the Borrowers, and the Guarantors contained herein and in the other Loan Documents and to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the Issuer, the Borrowers, and the Guarantors of their respective obligations hereunder and in the other Loan Documents at or prior to the Closing Date. Accordingly, the Bank's obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds will be subject to the performance by the Issuer, the Borrowers, and the Guarantors of their respective obligations to be performed hereunder and under such documents and instruments, including the other Loan Documents, at or prior to the Closing Date, and will also be subject to the following conditions:

(i) The representations and agreements of the Issuer, the Borrowers, and the Guarantors contained herein will be true, complete and correct on the Closing Date with the same effect as if made on the Closing Date;

(ii) On the Closing Date, the resolutions required hereby will be in full force and effect and will not have been amended, modified or supplemented, and this Agreement will be in full force and effect and will not have been amended, modified or supplemented, except as may have been agreed to by the Bank;

(iii) On the Closing Date, all necessary action of the Issuer and the Borrowers relating to the issuance and sale of the Bonds will be in full force and effect and will not have been amended, modified or supplemented, except as may have been agreed to by the Bank, and there will have been taken all such actions as are necessary or appropriate in connection with the issuance of the Bonds and with the transactions contemplated hereby, including the adoption of any other resolutions by the Issuer;

(iv) The Bank will have the right to terminate its obligation under this Agreement to purchase, to accept delivery of and to pay for the Bonds on the Closing Date by notifying the Issuer of its election to do so if, after the acceptance hereof by the Issuer and prior to the Closing Date (i) any action or event shall have occurred which has the purpose or effect, directly or indirectly, of adversely affecting the federal income tax consequences of owning the Bonds; or (ii) legislation shall have been enacted, or a decision by a court of the United States shall have been rendered, the effect of which is that the Bonds, including any underlying obligations, are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect.

(v) If the Issuer, the Borrowers, or the Guarantors are unable to satisfy the conditions to the obligations of the Bank to purchase, to accept delivery of and to pay for the Bonds contained in this Agreement, including, without limitation Sections 3.01 and 3.02 hereof, or if the obligations of the Bank to purchase, to accept delivery of and to pay for the Bonds are terminated for any reason permitted by this Agreement, the Bank will not be under further obligation hereunder to fund the purchase of the Bonds.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BORROWERS

To the extent that such representations and warranties relate exclusively to their own organizations, each of SAC and NIA represents and warrants as of the Closing Date that:

Section 6.01. Organization; Power; Qualification.

(a) SAC is a limited liability company duly organized, validly existing and in good standing under the laws of the State and has the power and authority to own its Properties and to carry on its business as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the Property owned or leased by it or in which the transaction of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary. Specifically, SAC is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a Material Adverse Effect on its business or financial condition. SAC maintains its principal office at 6935 Lincoln Parkway, Fort Wayne, Indiana 46804. Unless SAC has designated otherwise in writing, the principal office is the office at which SAC keeps its books and records, including its records concerning the Collateral. SAC will notify Bank prior to any change in the location of SAC's principal office address or any change in SAC's name. SAC shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and

decrees of any governmental or quasi-governmental authority or court applicable to SAC and its business activities.

(b) NIA is a limited liability company duly organized, validly existing and in good standing under the laws of the State and has the power and authority to own its Properties and to carry on its business as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the Property owned or leased by it or in which the transaction of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary. Specifically, NIA is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a Material Adverse Effect on its business or financial condition. NIA maintains its principal office at 6935 Lincoln Parkway, Fort Wayne, Indiana 46804. Unless NIA has designated otherwise in writing, the principal office is the office at which NIA keeps its books and records, including its records concerning the Collateral. NIA will notify Bank prior to any change in the location of NIA's principal office address or any change in NIA's name. NIA shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to NIA and its business activities.

Section 6.02. Authorization; Enforceability.

(a) The transactions contemplated by this Agreement are within limited liability company powers of SAC, and have been duly authorized by all necessary company action, and if required, member action. This Agreement has been duly executed and delivered by it and constitute its legal, valid and binding obligations, enforceable against SAC in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by SAC of this Agreement.

(b) The transactions contemplated by this Agreement are within limited liability company powers of NIA, and have been duly authorized by all necessary company action, and if required, member action. This Agreement has been duly executed and delivered by it and constitute its legal, valid and binding obligations, enforceable against NIA in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by NIA of this Agreement.

Section 6.03. Binding Obligations. This Agreement, when issued for value, will constitute a legal, valid and binding obligation of the Borrowers enforceable against the Borrowers in accordance with its terms, except as the same may be limited by reorganization, bankruptcy, insolvency, moratorium or other laws affecting generally the enforcement of creditors' rights.

Section 6.04. Noncontravention; Compliance with Law.

(a) The execution, delivery and performance of this Agreement in accordance with its terms does not and will not (a) contravene SAC's or NIA's articles of organization or operating agreement, (b) require any consent or approval of any creditor, (c) violate any Applicable Law (including, without limitation, Regulations G, T, U or X of the Board of Governors of the Federal Reserve System, or any successor regulations), (d) conflict with, result in a breach of or constitute a default under any contract to which SAC or NIA, as the case may be, is a party or by which SAC or NIA or any of their respective Property may be bound or (e) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by SAC or NIA or by any SAC or NIA Affiliate.

(b) Each of the Borrowers is in compliance with all Governmental Approvals, except for noncompliance that, singly or in the aggregate, has not caused and shall not reasonably be expected to cause a Material Adverse Effect or an adverse effect on such Borrower's ability to perform its obligations hereunder.

Section 6.05. Title to Properties.

(a) SAC has good, marketable title to all of its Property which is a part of the SAC Project. None of such Property of SAC is subject to any Lien, except such Liens, if any, created by this Agreement, the other Loan Documents and Permitted Encumbrances.

(b) NIA has good, marketable title to all of its Property which is a part of the NIA Project. None of such Property of NIA is subject to any Lien, except such Liens, if any, created by this Agreement, the other Loan Documents and Permitted Encumbrances.

Section 6.06. Construction of the SAC Project. The Improvements will be constructed materially in accordance with the applicable Plans and Specifications; will be completed prior to the SAC Completion Date, will be constructed entirely on the Real Estate; will not encroach upon any easement or right-of-way on land not constituting part of the Real Estate; and, will not be constructed, in whole or in part, in the special flood hazard zones in accordance with Section 8.29 hereof. The SAC Project, both during construction and at the time of completion, and the contemplated use thereof, will not violate any applicable zoning use or other law, statute, ordinance, building code, rule or regulation, or any covenant or agreement of record. The use or anticipated use of the SAC Project does or will comply with all applicable statutes, ordinances, and regulations including, but not limited to, zoning, environmental, ecological, and landmark and all restrictions, covenants, leases and easements affecting the SAC Project. SAC agrees that it will furnish from time to time such satisfactory evidence as may be required by Bank to enable Bank to confirm SAC's compliance with the requirements of this Section.

Section 6.07. **Hazardous Materials.** Except for Hazardous Materials used in the ordinary course of business on the Real Estate and handled, maintained, and disposed of in accordance with Environmental Law, SAC shall not, nor shall it permit others to, use the SAC Project for the business of generating, transporting, storing, treating, or disposing of any pollutant, toxic, or Hazardous Materials, nor shall any Borrower either take or fail to take any action which may result in a Release of any Hazardous Materials from or onto the SAC Project.

Section 6.08. **Availability of Utilities.** All utility services necessary for the SAC Project and the occupancy and operation thereof are available (in size, capacity, and quantity sufficient to serve the needs of the SAC Project) through public or private easements or rights-of-way (which would inure to the benefit of Bank in the event of the foreclosure of, or sale under the powers contained in, the Mortgage) at the boundaries of the Real Estate, including but not limited to, water supply, storm and sanitary sewer, gas, electric, and telephone facilities. Borrower has no knowledge that any suspension, interruption, or moratorium of any such utility is planned or threatened.

Section 6.09. **Access.** Access to the Real Estate is provided by way of public rights of way which abut the Real Estate, or by way of private roads built upon easements which would inure to the benefit of Bank upon foreclosure. All curb cut permits and other licenses, permits, and approvals for the driveways, roadways, and other means of pedestrian and vehicular traffic to and from the Real Estate have been lawfully obtained, are in effect, and are irrevocable.

Section 6.10. **Quality of Work and Materials.** The Improvements, as built, shall conform to the Plans and Specifications, shall be free of defects, shall be performed in a good and workmanlike manner, shall make use of materials of quality typical for projects similar in location, intended use, size, and type to the SAC Project, and shall be performed in accordance with the Plans and Specifications and in compliance with all governmental requirements. The work to be performed by Contractor under the Construction Contract is the work called for by the Plans and Specifications.

Section 6.11. **Non-Commencement of Work.** Except for such site preparation and other construction that has been previously completed and disclosed to Bank, there has been no commencement of work or delivery of materials or services (including, without limitation, architectural, engineering, surveying, or other planning or design services) on or before the date hereof that would or might give rise to any statutory or common law lien against the SAC Project or any part thereof, except as disclosed to Bank on Schedule 6.11 attached hereto.

Section 6.12. **Architect's Contract.** Both SAC and Architect are in compliance, in all material respects, with their respective obligations under the Architect's Contract and all other agreements between SAC and Architect. SAC shall, from time to time, in addition to any reports submitted with any and all draw requests, upon written request by Bank, cause Architect to provide Bank with reports relative to the status of construction of the Improvements.

Section 6.13. **Construction Contract.** Both SAC and Contractor are in compliance, in all material respects, with their respective obligations under the Construction Contract and all other agreements between SAC and Contractor. SAC shall, from time to time, in addition to any

reports submitted with any and all draw requests, upon written request by Bank, cause Contractor to provide Bank with reports relative to the status of construction of the Improvements.

Section 6.14. **Ownership of Collateral.** Each Borrower shall remain the sole owner of its respective Collateral, free of all tax and other liens, security interests, encumbrances and claims of any kind except for the Permitted Encumbrances. Without Bank waiving the Default occurring as a result thereof, each Borrower shall take and cause to be taken any action and execute any document needed to discharge any unauthorized liens, security interests, encumbrances or claims affecting its respective Collateral.

Section 6.15. **Nuisance, Waste.** Borrowers shall not cause, conduct or permit any nuisance nor commit, permit or suffer any stripping of or waste on or to the Real Estate or any portion of the Real Estate. Without limiting the generality of the foregoing, Borrowers will not remove or grant to any other party the right to remove any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel, or rock products without Bank's prior written consent.

Section 6.16. **Enforceability of Certain Collateral.** All Personal Property, including, without limitation, NIA's Accounts, Contract Rights, Chattel Paper, Documents, General Intangibles, Instruments, and other rights and agreements do and shall belong to NIA, and are and shall be valid, genuine obligations and rights, legally enforceable against one or more third parties, and are not and, to the best of NIA's knowledge, shall not be subject to any claim, defense, setoff, or counterclaim of any kind.

Section 6.17. **Absence of Defaults and Events of Default.**

(a) No Default or Event of Default has occurred and is continuing.

(b) No defaults by the Borrowers or any of their Affiliates exist under any contracts or judgments, decrees or orders, except for defaults that, singly or in the aggregate, have not had and will not have a Material Adverse Effect on the Borrowers or the Borrowers' ability to perform their obligations under this Agreement.

Section 6.18. **Litigation.** Except as disclosed in writing by the Borrowers, or either of them, to the Bank, there are no actions, suits or proceedings pending, or to the knowledge of the Borrowers threatened, against or affecting any Borrower before any court or before any Governmental Authority which might result in any material adverse change in the operations, business, property, assets or condition (financial or otherwise) of the Borrowers; and to the best of their knowledge, neither of the Borrowers is in default with respect to or under any applicable statute, rule, writ, injunction, decree, order or regulation of any Governmental Authority which might have consequences that would have a Material Adverse Effect on the operations, business, property or assets of such Borrower.

Section 6.19. **Full Disclosure.** No information, exhibit, memorandum, or report (excluding estimated future operating results) furnished by the Borrowers to the Bank in connection with the Bonds contains any material misstatement of fact, or omits to state any fact necessary to make the statements contained therein not materially misleading, and all estimated future operating results, if furnished, were prepared on the basis of assumptions, data,

information, tests or other conditions believed to be valid or accurate or to exist at the time such estimates were prepared and furnished. To the Borrowers' knowledge, there presently exists no fact or circumstance relative to any Borrower, whether or not disclosed, which is presently anticipated to have a Material Adverse Effect upon the business, operations, financial condition, properties or prospects of the Borrowers or the ability of the Borrowers to fully perform their obligations hereunder.

Section 6.20. **Approvals.** No authorization, consent, approval or any form of exemption of any Governmental Authority is required in connection with the execution and delivery of this Agreement, the borrowings and performance hereunder.

Section 6.21. **Insolvency.** Neither of the Borrowers is "insolvent" within the meaning of that term as defined in the Federal Bankruptcy Code and the Borrowers are able to pay their debts as they mature.

Section 6.22. **Zoning and Permits.** The Project will comply with all applicable zoning, planning, building, health, Environmental Laws and other laws and regulations of the Governmental Authorities having jurisdiction of the Project. SAC's real property used in connection with the Project and NIA's business is properly zoned for its intended purpose and the Borrowers have obtained all necessary permits and licenses or, to the knowledge of the Borrowers, such permits and licenses can be obtained without unreasonable delay or burden, from federal, state and local governments related to the construction and use of the Project.

Section 6.23. **Conformance with Act.** To the best of Borrowers' knowledge, the acquisition, construction, installation and equipping of the Project as well as its intended use and operation are in complete conformance with the purposes and provisions of the Act.

Section 6.24. **Disposal of Project.** Except as otherwise provided herein, or as may be otherwise permitted under the Loan Documents, it is not anticipated by the Borrowers that the Project will be sold or otherwise disposed of, in whole or in part, prior to payment in full of the Bonds, and any such sale or other disposition of the Project in whole or in part shall be subject to the terms and conditions set forth in the Loan Documents.

Section 6.25. **No Usury.** The terms of the Bonds, the SAC Loan, the NIA Loan and this Agreement regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 6.26. **The Project.** The Project is suitable for or used in connection with the business of both SAC and NIA.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ISSUER

The Issuer represents and warrants as of the Closing Date that:

Section 7.01. **Organization; Power; Qualification.** The Issuer is a municipality and a political subdivision duly organized and validly existing under the laws of the State.

Section 7.02. **Authorization of Agreement and Borrowing.** Under the provisions of the Act, the Issuer has the power, and has taken all necessary action to authorize it, to issue and sell the Bonds hereunder and to execute, deliver and perform its obligations under this Agreement and the Bonds in accordance with their respective terms. This Agreement has been duly executed and delivered by one or more duly authorized officers of the Issuer and is, and each of the other related documents to which the Issuer is a party, when executed and delivered by the Issuer will be, legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 7.03. **Noncontravention.** The execution, delivery and performance of this Agreement, the Bonds and each of the other related documents in accordance with their respective terms do not and will not (a) contravene the Act, (b) require any consent or approval of any creditor of the Issuer, (c) violate any Applicable Law (including, without limitation, Regulations G, T, U or X of the Board of Governors of the Federal Reserve System, or any successor regulations) or (d) conflict with, result in a breach of or constitute a default under any Contract to which the Issuer is a party or by which it may be bound.

Section 7.04. **Compliance with Law.** The Issuer is in compliance with all Applicable Law, including all Governmental Approvals, except for noncompliance that, singly or in the aggregate, has not had and will not have a Material Adverse Effect on the Issuer's ability to perform its obligations hereunder or under the Bonds.

Section 7.05. **Litigation.** There are no actions, suits or proceedings pending nor, to the knowledge of the Issuer, are there any actions, suits or proceedings threatened against or which seek to restrain the Issuer or any Property of the Issuer in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body, which, in any case, may have a Material Adverse Effect.

Section 7.06. **Pending Legislation and Decisions.** There is no amendment, or to the knowledge of the Issuer, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, that would have a Material Adverse Effect on the issuance of the Bonds, the security for the Bonds or the Issuer's obligations hereunder, or the Issuer's ability to repay when due its obligations under this Agreement and the Bond.

Section 7.07. **Tax Covenants of the Issuer.**

(a) The Issuer covenants, represents, warrants and agrees as follows: (i) the Issuer will not knowingly take or permit any action to be taken that would have a Material Adverse Effect on the exclusion from gross income for federal income tax

purposes of the interest on the Bonds and, if it should take or permit any such action, the Issuer shall take all lawful actions within its power and control to rescind such action promptly upon having knowledge thereof; and (ii) the Issuer will, at the request of Bond Counsel, take such action or actions, including amending this Agreement, as may be reasonably necessary in the opinion of Bond Counsel to comply fully with all Applicable Laws, policies, procedures or other official statements promulgated or, to the extent necessary in the opinion of Bond Counsel, proposed, by the United States Treasury or the Internal Revenue Service pertaining to obligations described in Section 103 of the Code.

(b) The Issuer covenants and agrees that it has not taken or permitted to be taken any action which will cause the interest on the Bonds to become includable in gross income for federal income tax purposes; provided that none of the covenants and agreements contained in this Section 7.07 will require the Issuer to enter an appearance or intervene in any administrative, legislative or judicial proceeding in connection with any changes in Applicable Laws or in connection with any generally applicable decisions of any Governmental Authority affecting the exclusion from gross income for federal income tax purposes of interest on the Bonds; and provided further that the Issuer's responsibilities, if any, pursuant to this paragraph shall be limited to actions within its control.

Section 7.08. **Further Transfer.** Except for the assignments referenced above, the Issuer shall not attempt to further assign, transfer or convey its interest in the Project or this Agreement or create any pledge or lien of any form or nature with respect to the Project or the payments hereunder.

Section 7.09. **Form 8038.** The Issuer will, upon preparation by and at the request of the Borrowers, duly execute and return to the Borrowers for filing with the Internal Revenue Service, Form 8038, which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

ARTICLE VIII

COVENANTS OF THE BORROWERS

Section 8.01. **Financial Reporting.** Until payment and full performance of all of Borrowers' Obligations under this Agreement and the Loan Documents, Borrowers shall maintain a system of accounting established and administered in accordance with GAAP and furnish to Bank:

(a) NIA Financial Reporting.

(i) Annual Financial Statements. Within one hundred twenty (120) days of NIA's fiscal year end, commencing with the fiscal year ending December 31, 2018, annual consolidated financial statements for NIA and all of its Subsidiaries, reviewed by a certified public accountant approved by Bank, including balance sheet and income statement using the accrual basis of

accounting, as defined by GAAP, in a form acceptable to Bank, and certified as true and accurate by an Authorized Borrower Representative of NIA.

(ii) Monthly Financial Statements. Within thirty (30) days of month's end for each calendar month during its fiscal year, commencing with the calendar month ending December 31, 2018, internally-prepared, consolidated financial statements for NIA and all of its Subsidiaries, including balance sheet and income statement, in a form acceptable to Bank, and certified as true and accurate by an Authorized Borrower Representative of NIA.

(iii) Annual Tax Returns. Within fifteen (15) days after filing, but no later than April 30 of each calendar year (to commence with taxable year 2018), NIA's federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any). Should NIA file an application for extension to file NIA's federal income tax return with the United States Internal Revenue Service, NIA shall deliver a copy of the same to Bank simultaneously with the filing thereof and NIA's deadline to provide a copy of the federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any) shall be similarly extended.

(b) Corporate Guarantors' Reporting.

(i) Annual Financial Statements. Within one hundred twenty (120) days of each Corporate Guarantor's fiscal year end, commencing with the fiscal year ending December 31, 2018, annual consolidated financial statements for each Corporate Guarantor and all of its Subsidiaries, reviewed by a certified public accountant approved by Bank, including balance sheet and income statement using the accrual basis of accounting, as defined by GAAP, in a form acceptable to Bank, and certified as true and accurate by an Authorized Borrower Representative of said Corporate Guarantor.

(ii) Annual Tax Returns. Within fifteen (15) days after filing, but no later than April 30 of each calendar year (to commence with taxable year 2018), each Corporate Guarantor's federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any). Should any Corporate Guarantor file an application for extension to file said Corporate Guarantor's federal income tax return with the United States Internal Revenue Service, such Corporate Guarantor shall deliver a copy of the same to Bank simultaneously with the filing thereof and such Corporate Guarantor's deadline to provide a copy of the federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any) shall be similarly extended.

(c) Individual Guarantors' Reporting.

(i) Annual Financial Statements. Within one hundred twenty (120) days of the end of each calendar year (to commence with the calendar year ending December 31, 2018), each Individual Guarantor's personal Financial Statement,

executed and certified as true and accurate by such Individual Guarantor, in form and detail satisfactory to Bank.

(ii) Federal Income Tax Returns. Within fifteen (15) days after filing, but no later than April 30 of each calendar year (to commence with taxable year 2018), each Individual Guarantor's federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any). Should any Individual Guarantor file an application for extension to file said Individual Guarantor's federal income tax return with the United States Internal Revenue Service, such Individual Guarantor shall deliver a copy of the same to Bank simultaneously with the filing thereof and such Individual Guarantor's deadline to provide a copy of the federal income tax return, together with all schedules, attachments, exhibits, and K-1 schedules (if any) shall be similarly extended.

(d) Other Information. Such other information (financial or non-financial information) as Bank may from time to time reasonably request from any Borrower and/or Guarantor.

Section 8.02. **Financial Covenants**. Borrowers shall have and maintain the following financial covenants and ratios which Borrowers shall report to Bank no less often than quarterly, except as otherwise herein provided, with the first such report due as herein provided:

(a) NIA Minimum EBITDA. For each calendar quarter, EBITDA for NIA and its Subsidiaries shall meet or exceed \$_____.

(b) NIA Debt Service Coverage Ratio. NIA and its Subsidiaries shall not permit the NIA Debt Service Coverage Ratio to be less than 1.20 to 1.0 at the end of any calendar year, which shall be tested on an annual basis commencing with the calendar year ending December 31, 2020.

(c) NIA Debt to Net Worth Ratio. NIA and its Subsidiaries shall not permit their Debt to Net Worth Ratio exceed:

(i) 7.00 to 1.0 at the calendar year ending December 31, 2019;

(ii) 3.00 to 1.0 at the calendar year ending December 31, 2020; and

(iii) 1.50 to 1.0 at the calendar year ending December 31, 2021, and at the end of each calendar year thereafter.

(d) SAC Debt Service Coverage Ratio. SAC and its Subsidiaries shall not permit the SAC Debt Service Coverage Ratio to be less than 1.15 to 1.0 at the end of any calendar year, which shall be tested on an annual basis commencing with the calendar year ending December 31, 2020.

(e) Except as provided otherwise herein, the Financial Covenants shall be tested on a quarterly basis commencing with the quarter ending June 30, 2019.

Section 8.03. **Existence.** Each Borrower and Corporate Guarantor will maintain their existence and comply with all laws and regulations applicable to their respective business and status.

Section 8.04. **Commencement and Completion of Construction.** SAC will commence construction of the SAC Project within forty-five (45) days of the Closing Date and will diligently pursue the construction of the Improvements to completion within the Construction Period and without material deviation from the Plans and Specifications unless approved in writing by Bank. SAC will provide satisfactory evidence of full compliance with this Agreement, including, but not limited to, all releases of mechanic's and materialman's liens for all of the work related to the Plans and Specifications and a final Certificate of Occupancy, with all of the above matters upon request from Bank.

Section 8.05. **Right of Bank to Inspect Premises.** SAC will permit Bank and its representatives and agents and the Inspecting Engineer to enter upon the SAC Project and to inspect the Improvements and all materials to be used in connection therewith or in the construction or installation thereof, and will cooperate with Bank, its representatives and agents and the Inspecting Engineer during such inspections (including making available to Bank working copies of the Plans and Specifications, together with all related supplementary materials); provided, however, that this provision shall not be deemed to impose upon Bank any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. Such inspections shall be done during regular business hours and in such a manner as shall not be disruptive to the ongoing construction or operation of the SAC Project.

Section 8.06. **Correction of Defects.** Unless SAC demonstrates to Bank that such corrective work is inappropriate or inconsistent with the Plans and Specifications, SAC will promptly correct all material defects in the Improvements or any material departure from the Plans and Specifications not previously approved in writing by Bank. SAC agrees that any Construction Disbursement whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of Bank, shall not constitute a waiver of Bank's right to require compliance with this covenant.

Section 8.07. **Security.** Borrowers shall cause the Project and all equipment and materials stored or located thereon to be secured and protected against damage, vandalism and unauthorized use and possession.

Section 8.08. **Soil Tests.** SAC shall provide to Bank at SACs expense such soil tests of the Real Estate as Bank may reasonably request.

Section 8.09. **Additional Documents.** Borrowers shall:

(a) Regarding Construction. Furnish to Bank all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other

document and instrument required to be furnished by the terms of the Loan Documents, all at SAC's expense;

(b) Regarding Preservation of Security. Execute and deliver to Bank such documents, instruments, assignments and other writings, and do such other acts necessary or desirable, to preserve and protect the Collateral at any time securing or intended to secure the Loans as Bank may reasonably require; and

(c) Regarding This Agreement. Do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents as Bank shall reasonably require from time to time.

Section 8.10. Easements and Restrictions. All proposed easements, permits, licenses, and other instruments, which would or might affect the title to the SAC Project, shall be submitted to Bank for Bank's approval prior to the execution and proper recording thereof by SAC, accompanied by a Survey showing the exact proposed location thereof and such other information as Bank shall reasonably require. Such approval shall not be unreasonably withheld, delayed, or denied. SAC shall not subject the Real Estate or any part thereof to any restrictive covenant, declaration, or use restriction including, without limitation, any restriction or exclusive use provision in any lease or other occupancy agreements, without the prior written consent of Bank.

Section 8.11. Bills of Sale. Borrowers shall deliver to Bank, on demand, copies of any contracts, bills of sale, statements, receipted vouchers, or agreements, under which any Borrower claims title to any materials, fixtures or articles of personal property incorporated in the Improvements or subject to the lien of the Loan Documents.

Section 8.12. Leases. SAC has not granted any Lease affecting the Premises or any portion thereof except for the SAC/NIA Lease. Borrower shall not substantially or materially alter the SAC/NIA Lease without the prior written consent and approval of Bank, which consent shall not be unreasonably withheld, delayed, or denied. Upon request from Bank, SAC shall deliver to Bank copies of all Leases and any other leases and occupancy agreements affecting the SAC Project, whether executed before or after the date of this Agreement.

Section 8.13. Compliance with Restrictive Covenants and Easements. Borrower shall comply with all restrictive covenants and easements now or hereafter affecting the Real Estate; provided, that this Section 8.13. shall not supersede or lessen the effect of Section 8.10. hereof.

Section 8.14. Mechanics and Materialmen. SAC will furnish to Bank, upon request at any time, and from time to time, affidavits listing all materialmen, laborers, subcontractors, and any other parties, to the best of SAC's knowledge, who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the SAC Project or any portion thereof, together with affidavits, or other evidence reasonably satisfactory to Bank, showing that such parties have been paid all amounts then due for labor and materials furnished to the SAC Project. In addition, SAC will notify Bank immediately, and in writing, if SAC receives any notice, written or oral, from any laborer, subcontractor or materialman to the effect

that said laborer, subcontractor, or materialman has not been paid when due for any labor or materials furnished in connection with the Improvements; and SAC will furnish to Bank, at any time and from time to time within fifteen (15) days of a demand by Bank, lien waivers bearing a then-current date and prepared on Bank's standard form from Contractor and such Subcontractors or materialmen as Bank may designate.

Section 8.15. Survey Requirements. SAC shall, in all respects, comply with the provisions set forth in Subsection 9.01(a)(ix)(E) hereof and, if any additional Improvements are constructed on, at, or as part of the SAC Project, SAC shall furnish to Bank an updated as-built Survey showing, without limitation, the location of such Improvements.

Section 8.16. Contracts. SAC shall furnish Bank copies of any and all executed contracts which are material to the SAC Project, including but not limited to the Construction Contract, the Architect's Contract, and any subcontracts between Contractor and a Subcontractor for the furnishing of materials and/or services in the amount of \$250,000.00 or more, for the planning and construction of the Improvements, all of which shall be in form and with parties reasonably satisfactory to Bank.

Section 8.17. Construction Contract. SAC will not (i) permit any default under the terms of the Construction Contract, (ii) waive any of the obligations of Contractor thereunder, (iii) engage in any act which would relieve Contractor from its obligations to construct the Improvements according to the Plans and Specifications, or (iv) make any amendments to the Construction Contract or enter into any agreement other than the Construction Contract for the performance of work on or the furnishing of materials or services to or in connection with the Project that would cause an increase in the Project Cost Statement over \$50,000.00 individually or \$250,000.00 in the aggregate for each and all related cause for such amendment, without the prior written consent of Bank.

Section 8.18. Compliance. SAC will use its best efforts to require Contractor and each Subcontractor to comply with all rules, regulations, ordinances and laws bearing on its conduct of work on the SAC Project.

Section 8.19. Insurance. Each Borrower, at its sole cost, for the mutual benefit of Borrower and Bank, shall obtain and maintain throughout the Loan Term (or, as applicable, cause Contractor to obtain and maintain until all of the requirements of Subsection 9.01(a)(ix) are satisfied) the following policies of insurance:

(a) During the Construction Period and during any period of repair or restoration to the SAC Project, Builders "all risk" insurance in an amount equal to not less than the full insurable value of the SAC Project, against all risk (including fire and extended coverage and collapse of the Improvements) as Bank may request, in form and substance acceptable to Bank, including coverage to compensate for the cost of demolition and the increased costs of construction, in an amount satisfactory to Bank;

(b) Property insurance insuring the Project and each Borrower's Personal Property against loss or damage customarily included under so-called "all risk or special form policies," including fire, extended coverage, lightning, flood, earthquake,

vandalism, and malicious mischief, boiler and machinery, and such other insurable hazards as, under good insurance practices, from time to time, are insured against for other properties and buildings similar to the Project in nature, use, location, height, and type of construction. Such insurance policies shall be in an amount equal to one hundred percent (100%) of the full replacement costs of the Improvements and Personal Property, without deduction for physical depreciation;

(c) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, complete operations, and contractual liability insurance) with limits acceptable to the Bank, but not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 general aggregate for the Project, with \$5,000,000.00 excess liability umbrella coverage;

(d) Worker's compensation insurance, with statutory coverage, if necessary;

(e) Upon completion of construction of the Project, business interruption insurance and comprehensive general liability insurance for each Borrower with limits acceptable to Bank, but not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 general aggregate; and

(f) Comprehensive general liability insurance (including premises and operations, contractors protective, contractual, completed operations) for Contractor, with the exclusion for explosion, collapse, and underground property removed, in amounts and coverage of at least \$1,000,000.00 bodily injury/\$1,000,000.00 property damage and with \$5,000,000.00 excess liability umbrella coverage.

The above-described policies of insurance shall be in form and content satisfactory to Bank and shall be placed with financially sound and reputable insurers and (a) shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to Bank in the event of cancellation of such policy or change affecting the coverage thereunder; (b) permit Bank to pay the premiums on such policy in the event of any Borrower's failure to do so, to keep said policy in full force and effect; and (c) contain (in the case of general liability and property insurance) a standard clause and Bank's loss payable endorsement, or their equivalents, naming Bank as the person to which all payments made by such insurance company shall be paid. Acceptance of the insurance policies referred to above shall not bar Bank from requiring additional insurance which it reasonably deems necessary.

Section 8.20. Certificate of Occupancy. SAC shall cause a Certificate of Occupancy for the SAC Project to be issued by the appropriate governmental authorities within sixty (60) days after the SAC Project is substantially completed.

Section 8.21. Operating Account. Each Borrower shall establish and maintain its Operating Account with Bank.

Section 8.22. Buildings and Properties. Each Borrower shall maintain, preserve, and keep its buildings and properties and every part thereof in good repair, working order, and

condition, and, from time to time, make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements thereto.

Section 8.23. **Taxes and Assessments.** Each Borrower shall duly pay and discharge or cause to be paid and discharged all taxes, assessments, and governmental charges imposed upon it and its properties, or any part thereof, or upon the income or profits therefrom, as well as all claims for labor, materials, or supplies, which, if unpaid, could become a lien or charge upon its property.

Section 8.24. **Business.** Each Borrower shall carry on and conduct its business in substantially the same manner and in substantially the same areas of such business as is now and has previously been carried on, and comply with all valid and applicable statutes, rules, and regulations with respect thereto.

Section 8.25. **Laws.** Each Borrower shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.

Section 8.26. **Employment Laws.** Each Borrower shall comply with all federal, state, and local laws, ordinances, rules, and regulations concerning the payment of wages, minimum wages, overtime laws, and payment of withholding taxes, and deliver to Bank such reports and information in a form satisfactory to Bank as Bank may request from time to time, showing Borrower's compliance with such laws.

Section 8.27. **Indebtedness.** Borrowers shall not create, incur or suffer to exist any Indebtedness, except:

- (a) the Obligations to Lender;
- (b) Indebtedness existing on the date hereof and described in Schedule 8.27 hereto; or
- (c) Indebtedness arising in connection with transactions permitted by Section 8.28.

Section 8.28. **Security Interest.** Except for any tenant leases, vehicle leases connected to the operation of the Project, or purchase money security interests in the ordinary course of business (each to be considered a Permitted Encumbrance), the Borrowers shall not grant a security interest in the Collateral or any part thereof or create or permit to be created or allow to exist any deeds of trust, mortgages, encumbrances, or other liens upon the Collateral, or any part thereof, except for the Loan Documents and Permitted Encumbrances.

Section 8.29. **Changes to Plans and Specifications.** At any time before or during the Construction Period, subject to the provisions of Section 8.17., SAC shall not agree or consent to any material changes in the Plans and Specifications or to any material change orders or to any material changes in the terms and provisions of the Construction Contract, the Architect's Contract, or any of the material contracts identified in the Project Cost Statement, without the prior written consent of Bank.

Section 8.30. **Construction in Flood Areas.** SAC shall not construct, in whole or in part, any of the Improvements in the special flood hazard areas located on the Real Estate, unless SAC obtains flood insurance in such amounts as may be required by Bank, in its sole discretion.

Section 8.31. **Project Materials.** The Borrowers shall not incorporate in the Project any materials, fixtures, or property which are subject to the claims of any other person, whether pursuant to conditional sales contract(s), security agreement(s), lease(s), mortgage(s), or otherwise.

Section 8.32. **Transfer of Collateral.** Except in the ordinary course of Borrowers' respective businesses, the Borrowers shall not lease, sell, transfer, convey, assign, or otherwise transfer all or any part of the Collateral.

Section 8.33. **Ownership and Management.** No Borrower shall change the legal ownership or management of said Borrower, or change the management of the Project, without the prior written consent of Bank.

Section 8.34. **Distributions.** NIA shall not make distributions to the holders of NIA's equity units in respect of such holdings, except distributions in the amounts reasonably determined by NIA as necessary to pay any federal, state, or local tax and withholding liabilities arising out of the ownership of NIA's equity units.

Section 8.35. **Change in Control.** There shall be no Change in Control of any Borrower.

Section 8.36. **No Change in Business.** No Borrower shall make or permit to be made any material change in the business operations of said Borrower in its business as conducted on the Closing Date.

Section 8.37. **Benefit Plans.** No Borrower shall permit any Reportable Event under, or any partial or complete withdrawal from, or any other condition to exist in connection with any Plan which might constitute grounds for the PBGC to institute proceedings to have the Plan terminated or a trustee appointed to administer the Plan; or engage in, or permit to exist or occur any other condition, event or transaction with respect to any Plan which could result in said Borrower incurring any liability, fine or penalty.

Section 8.38. **Modification or Amendment to Formative Documents.** No Borrower or Corporate Guarantor shall modify or amend the Operating Agreement or Articles of Organization of said Borrower or Corporate Guarantor without the prior written consent of Bank, and except as may be expressly permitted by Bank in writing. No Borrower shall change its name, identity (including its trade name or names), jurisdiction of organization, or membership structure without notifying Bank at least thirty (30) days prior to the effective date of such change and, in the case of a change in any Borrower's structure, without first obtaining the prior written consent of Bank.

Section 8.39. **No Zoning Change.** Without first obtaining the written consent and approval of Bank, SAC shall not apply for, join in, permit, or pursue any change in the

classification under which the SAC Project is zoned or any condition related thereto or any use permitted or prohibited thereunder.

Section 8.40. **Proceeds of Bonds.** The Borrowers shall use the proceeds of the Bonds solely for the purposes described in this Agreement and specifically Sections 3.01(d) and 3.02(d) hereof. None of the proceeds of the Bonds will be used to provide inventories, raw materials or working capital for either of the Borrowers.

Section 8.41. **Compliance with Other Agreements.** The Borrowers shall comply in all material respects with the terms and conditions of this Agreement and all other instruments, agreements and other documents delivered by or on behalf of the Borrowers in connection with issuance of the Bonds.

Section 8.42. **Tax Exemption.** The Borrowers shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Bonds from the gross income of the Holders thereof for purposes of federal income taxation under the Code.

Section 8.43. **Concerning the Remarketing Agent.** Ninety (90) days prior to each Purchaser Tender Date, SAC covenants that it shall appoint a financial advisor generally familiar with municipal and tax-exempt financing (the "**Remarketing Agent**"). By written acceptance, the Remarketing Agent will agree particularly to use its best efforts to remarket the Series 2018A Bonds tendered by the Registered Owner on a Purchaser Tender Date to one or more subsequent Registered Owners; provided, that the Series 2018A Bonds shall not be remarketed at a price less than one hundred percent (100%) of the then outstanding principal amount thereof plus accrued interest (if any). The Remarketing Agent shall have the right to purchase any Series 2018A Bonds tendered or deemed tendered at one hundred percent (100%) of the outstanding principal amount thereof plus accrued interest (if any), and to thereafter sell such Series 2018A Bonds. Any such purchase shall constitute a remarketing hereunder.

Upon a remarketing of the Series 2018A Bonds to a subsequent Registered Owner, the Remarketing Agent shall give written notice to SAC prior to the transfer of the Series 2018A Bonds to the subsequent Registered Owner, but any failure to give such notice shall not affect the validity of such transfer. Upon such request of the transferor, the Issuer, at the sole cost and expense of SAC, shall execute in the name of the transferee and shall deliver, a new fully registered Series 2018A Bond in the aggregate principal amount equal to the unamortized and unredeemed principal amount of the Series 2018A Bonds so surrendered and bearing interest at the same rate or rates and maturing on the same date or dates. Absent manifest error, the unamortized and unredeemed principal amount of the Series 2018A Bonds shall be determined from the records of the Registered Owner. Prior to such transfer, the Registered Owner shall give notice to SAC of the name and address of the transferee of the Series 2018A Bonds. Such new fully registered Series 2018A Bonds shall be dated as of the Interest Payment Date next preceding the date of its registration, unless registered upon an Interest Payment Date in which case it shall be dated as of the date of registration; provided, however, that if at the time of registration interest on the Series 2018A Bonds is in default, such new fully registered Series 2018A Bonds shall be dated as of the date to which interest has been paid. Any Series 2018A Bonds issued in accordance with the

provisions of this Section 8.43 shall be numbered consecutively from RA-2 upwards in order of issuance.

Additionally, upon a remarketing of the Series 2018A Bonds, the subsequent Registered Owner must execute an investor letter substantially similar to the investor letter executed by the Original Purchaser on the date of initial delivery of the Series 2018A Bonds.

The person in whose name the Series 2018A Bonds shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of such Series 2018A Bonds and the interest and any premium thereon shall be made only to or upon the order of the Registered Owner thereof or its duly authorized attorney, and the Issuer shall not be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2018A Bonds including the interest and premiums thereon, to the extent of the sum or sums so paid.

ARTICLE IX

DISBURSEMENT OF LOAN PROCEEDS

Section 9.01 Disbursements to the Borrowers.

(a) Procedure for Construction Disbursements. The commitment of Bank to make Construction Disbursements to SAC is subject to, *inter alia*, the following terms, conditions and requirements:

(i) Prior to the any Construction Disbursement, including, without limitation, the initial Construction Disbursement, Bank shall, at its option, inspect and certify that the construction of the SAC Project for which the Construction Disbursement has been requested has been, in all respects, completed pursuant to the Plans and Specifications, and, in addition, that all work usually done at the stage of construction for which the Construction Disbursement is requested has been completed in a good and workmanlike manner, and that all materials and fixtures usually furnished and installed at that stage of construction have been furnished and installed, all in compliance with the Plans and Specifications.

(ii) SAC's submission of a Disbursement Request to Bank.

(iii) SAC submission of a Draw Request Form or other form approved by Bank, executed by SAC, and supported by such evidence as Bank shall reasonably require. SAC shall apply for a Construction Disbursement only with respect to work actually done and for materials and equipment actually incorporated into the SAC Project or to be purchased with such funds. Each Construction Disbursement shall be deemed a certification by SAC that as of the date of such Construction Disbursement all representations and warranties contained in this Agreement are true and correct in all material respects, that there is no Default under this Agreement, and that SAC is otherwise in compliance with

the provisions of this Agreement. SAC shall apply for a Construction Disbursement no more frequently than one time per month during the Construction Period. Subject to compliance with the requirements of this Agreement, Bank shall disburse the amount requested in the Draw Request Form, subject to reduction based upon Bank's inspection, either directly to SAC or to the Title Company for disbursement to SAC within ten (10) Business Days of Bank's receipt of all of SAC's required submissions under this Section 9.01(a), unless Bank otherwise notifies SAC that additional time will be necessary to process Borrower's request for such Construction Disbursement.

(iv) Bank shall retain ten percent (10%) of each Construction Disbursement, to the extent such Construction Disbursement is made for Labor Hard Costs, which amount shall be held by Bank as a retainage, unless waived by Bank in writing (all retainage withheld by Bank pursuant to this Subsection is referred to herein as "***Retainage***"). Any Retainage held by Bank from Construction Disbursements will be released to or on account of Borrower upon fulfillment of the conditions set forth in Subsection 9.01(a)(ix).

(v) At the time of each Construction Disbursement, SAC shall deliver to Bank a date down endorsement of the Title Insurance Policy, indicating that there has been no change in the state of the title of the SAC Project and containing no survey exceptions which have not been approved by Bank, which endorsement shall expressly and by virtue of a proper "pending disbursements" clause increase the amount of coverage of the Title Insurance Policy to the total amount of Construction Disbursements theretofore disbursed.

(vi) SAC shall have obtained and attached to each Draw Request Form executed acknowledgments of payments of all sums due (except amounts to be paid from such draw) and releases of mechanic's and materialman's liens satisfactory to Bank and the Title Company, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, or materials done, supplied, performed, or furnished prior to the application for such Construction Disbursement (except amounts to be paid from such draw). The acknowledgments required herein shall be in a form substantially similar to the Lien Waiver form attached hereto as Exhibit F.

(vii) SAC shall have fulfilled all survey requirements contained in Subsection 8.15 hereof.

(viii) Upon the occurrence of a Default and until such Default is cured to Bank's satisfaction, Construction Disbursements may be paid in the joint names of SAC and any Contractors, Subcontractors, or suppliers in payment of sums due under a Construction Contract. At any time thereafter and at Bank's sole option, Bank may directly pay any Contractors, Subcontractors, or other parties the sums due under a Construction Contract. SAC appoints Bank as its attorney-in-fact to make such payments. This power shall be deemed coupled with an interest, shall be irrevocable, and shall survive a Default under this Agreement.

(ix) Upon completion of the SAC Project, and fulfillment of the Construction Contract to the reasonable satisfaction of Bank, and provided sufficient undisbursed amounts are available in the SAC Project Fund, Bank shall make a Construction Disbursement to cover the final payment due the Contractor upon delivery to Bank of endorsements to the Title Insurance Policy following the posting of the completion notice as provided under applicable law. Any Retainage withheld by Bank pursuant to Subsection 9.01(a)(iv) hereof shall be disbursed by Bank with the final payment to the Contractor, to the extent not previously released and/or waived by Bank. Construction shall not be deemed complete for purposes of the final Construction Disbursement unless and until Bank shall have received all of the following:

(A) Evidence reasonably satisfactory to Bank that the SAC Project, including all landscaping, has been completed in accordance with the Plans and Specifications and Bank shall have received a Certificate of Completion;

(B) A lien waiver (conditioned upon payment) from each Subcontractor and the Contractor for all work done and for all materials furnished by it for the SAC Project for invoices exceeding \$25,000.00 individually or \$100,000.00 in the aggregate from the same party;

(C) Satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, corporation, or office having jurisdiction, and that all requisite approvals have been issued, including, without limitation, Certificates of Occupancy for all portions of the SAC Project; and

(D) Acceptance by Bank and SAC that the SAC Project has been completed in substantial compliance with the Plans and Specifications with modifications as approved by Bank.

(E) Bank shall have obtained, at SAC's expense, an updated Survey by a registered surveyor, reasonably satisfactory to Bank in all respects, which such Survey shall be updated to a current date and shall show the location of the Improvements (upon completion of the foundation) at the SAC Project, the absence of any encroachment of such over any building, zoning, right-of-way or property boundaries.

(F) No license or permit necessary for operating the SAC Project shall have been revoked or the issuance thereof subjected to challenge before any court or other governmental authority having or asserting jurisdiction thereover.

(G) No event has occurred and is continuing which constitutes an Unmatured Default or a Default.

(H) Bank shall have been provided with such documentation, reports, certifications and submissions, as required by this Agreement.

(x) The making of any Construction Disbursement prior to fulfillment of any condition thereto shall not be construed as a waiver of such condition and Bank reserves the right to require fulfillment of any and all such conditions prior to making any subsequent Construction Disbursements.

(xi) All Construction Disbursements by Bank, as well as payments by SAC, shall be recorded by Bank on its books and records, and the principal amount outstanding from time to time, plus interest payable thereon, shall be determined from such books and records. The books and records of Bank as to such matters shall be presumed correct absent manifest error. All Construction Disbursements shall be funded by the Initial Purchaser from the SAC Project Fund and not by any subsequent beneficial owner of an interest in the Series 2018A Bonds, unless the Initial Purchaser so designates in writing a designee.

(b) Procedure for Equipment Disbursements. In order to obtain each Equipment Disbursement hereunder, NIA shall submit a Disbursement Request or other form approved by Bank, executed by NIA, and supported by such invoices and other evidence as Bank shall reasonably require. NIA shall apply for an Equipment Disbursement only with respect to Equipment actually purchased. Each Equipment Disbursement shall be deemed a certification by NIA that as of the date of such Equipment Disbursement all representations and warranties contained in this Agreement are true and correct in all material respects, that there is no Default under this Agreement, and that NIA is otherwise in compliance with the provisions of this Agreement. NIA shall apply for an Equipment Disbursement no more frequently than one (1) time per month during the Equipment Disbursement Period. Subject to compliance with the requirements of this Agreement, Bank shall advance the amount requested in the Equipment Draw Request Form directly to NIA within five (5) Business Days of Bank's receipt of all of NIA's required submissions under this Subsection 9.01(b), unless Bank otherwise notifies NIA that additional time will be necessary to process NIA's request for such Equipment Disbursement. All Equipment Disbursements shall be funded by the Initial Purchaser from the NIA Project Fund and not by any subsequent beneficial owner of an interest in the Series 2018B Bonds, unless the Initial Purchaser so designates in writing a designee.

(c) Item Not Described in Detailed Cost Budget. Any Construction Disbursement or Equipment Disbursement for any item not described in, or the cost for which item is other than as described in the detailed cost budget (and the Form 8038 filed by the Issuer in connection with the issuance of the Bonds), shall be accompanied by evidence satisfactory to the Bank that the average reasonably expected economic life of the facilities being financed by the Bonds is not less than 5/6ths of the average maturity of the Bonds and the expenditure is consistent with the "manufacturing" designation of the Project under the Code or, if such evidence is not presented with the disbursement or

at the request of the Bank, by an opinion of Bond Counsel to the effect that such disbursement will not result in the interest on the Bonds becoming subject to federal income taxation.

(d) Deficiency in Cost Category Amounts. If any amount allocated for SAC Project Costs or NIA Project Costs in any category in either of such Project's detailed cost budget is at any time not sufficient in the reasonable judgment of SAC or NIA, as the case may be, to pay in full such Project Costs in such category, the Bank shall not be obligated to grant further disbursement requests and SAC or NIA, as the case may be, shall promptly furnish satisfactory evidence to the Bank that it has invested in the SAC Project or the NIA Project an amount for such category that is sufficient to pay such Project Costs in full, except that the Borrowers shall first be entitled to apply any previously achieved savings (as determined by the Bank) in any category in reduction of such deficiency. Such satisfactory evidence may be in the form of cash or evidence of payment of the Project Costs evidenced by paid invoices, canceled checks or receipts and accompanied by appropriate lien waivers. Accordingly, the Bank shall not be required to grant disbursement requests out of contingency categories of the detailed cost budget to cover any such deficiencies, unless in the Bank's reasonable judgment the Bank determines that the balance remaining in such contingency accounts after any such disbursement request provides adequate contingency reserves.

(e) Deficiency in Total Cost Amounts. At all times the sum of the unadvanced portions of the SAC Loan and the NIA Loan shall be sufficient in the reasonable judgment of the Bank or the Inspecting Engineer, inspecting architect, or other inspecting professional retained by the Bank for such purpose, to pay all SAC Project Costs and NIA Project Costs remaining unpaid. If at any time such sum is not sufficient in the reasonable judgment of the Bank to pay all such unpaid Project Costs, SAC and/or NIA, as the case may be, shall immediately upon request by the Bank deposit with the Bank cash in an amount equal to such deficiency.

(d) Event of Default. Upon receipt of written notice from the Bank that an Event of Default has occurred under this Agreement, the Bank may, in its discretion:

(i) apply any moneys remaining in the SAC Project Fund to the prepayment of the SAC Loan on the next succeeding Interest Payment Date in accordance with Section 3.04 hereof if such Event of Default arose as the result of an act or omission of SAC; and

(ii) apply any moneys remaining in the NIA Project Fund to the prepayment of the NIA Loan on the next succeeding Interest Payment Date in accordance with Section 3.04 hereof if such Event of Default arose as the result of an act or omission of NIA.

Section 9.02. Income Tax Allocation and Reporting.

(a) The Parties agree that, for tax reporting purposes, all interest and other income from investment of the SAC Project Fund and the NIA Project Fund shall, as of

the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by SAC and NIA, respectively, whether or not such income was disbursed during such calendar year.

(b) Prior to closing, the Borrowers shall provide the Bank with a certified tax identification number by furnishing appropriate form W-9 or W-8 and such other forms and documents that the Bank may request. The Borrowers understand that if such tax reporting documentation is not provided and certified to the Bank, the Bank may be required by the Code and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of their respective Project Funds.

(c) To the extent that the Bank becomes liable for the payment of any taxes in respect of income derived from the investment of the SAC Project Fund or the NIA Project Fund, the Bank shall satisfy such liability to the extent possible from such Project Funds. SAC and NIA shall indemnify, defend and hold the Bank harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Bank on or with respect to the SAC Project Fund or the NIA Project Fund, respectively, and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Bank. The indemnification provided by this Section 9.02(c) is in addition to the indemnification provided under Article XI hereof and shall survive the termination of this Agreement.

Section 9.03. Termination.

(a) The SAC Project Fund shall be closed on the earlier of (a) the SAC Completion Date or (b) repayment of the Series 2018A Bonds in full at which time the Bank shall apply any moneys remaining in the SAC Project Fund to the prepayment of the SAC Loan on the next succeeding Interest Payment Date in accordance with Section 3.04 hereof; provided, however, that in the event clause (b) of this Section 9.03 shall apply, any moneys remaining in the SAC Project Fund following payment in full of the SAC Loan and amounts owing to the Bank in connection therewith, shall be distributed to SAC.

(b) The NIA Project Fund shall be closed on the earlier of (a) the NIA Completion Date or (b) repayment of the Series 2018B Bonds in full at which time the Bank shall apply any moneys remaining in the NIA Project Fund to the prepayment of the NIA Loan on the next succeeding Interest Payment Date in accordance with Section 3.04 hereof; provided, however, that in the event clause (b) of this Section 9.03 shall apply, any moneys remaining in the SAC Project Fund following payment in full of the SAC Loan and amounts owing to the Bank in connection therewith, shall be distributed to SAC.

(c) Upon termination of the Project Funds, the provisions of Article IX shall be of no further force and effect.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01. **Events of Default.** The occurrence of any of the following events (including the expiration of any specified time) shall constitute an *“Event of Default,”* unless waived by the Bank in writing:

(a) Nonpayment. The principal of, premium, if any, purchase price or interest on any of the Bonds is not paid when and as the same shall become due and payable which has not been remedied or fully cured within five (5) Business Days of the date such payment is due (a “Payment Default”).

(b) Other Bond Obligations. Either of the Borrowers shall fail to pay any amount payable by such Borrower under this Agreement, as and when the same becomes due and payable, or fail to timely cause any redemption of the Series 2018A Bonds in the case of SAC or the Series 22018B Bonds in the case of NIA, as and when the same becomes due and payable, as required by this Agreement;

(c) Breach of Covenants. Default in the performance, or breach, of any covenant or agreement of any Borrower in this Agreement (other than a Payment Default or any other covenant or agreement a default in whose performance or whose breach is elsewhere in this Section specifically addressed), and the continuance of such default or breach for a period of fifteen (15) days after such Borrower has received from Bank a written notice specifying such default or breach; provided, however, that if the cure requires more than fifteen (15) days to complete, it shall not be a default hereunder if such Borrower immediately initiates steps which Bank deems in Bank’s sole reasonable discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

(d) Other Indebtedness. Failure of any Borrower to pay when due (subject to any applicable grace or cure period) any Indebtedness, or the default by any Borrower in the performance of any term, provision or condition contained in any agreement under which any such Indebtedness was created or is governed and such default is not waived or cured within any applicable grace or cure period provided therein, or any other event shall occur or condition exist, the effect of which is to cause the holder or holders of such Indebtedness to cause such Indebtedness to become due prior to its stated maturity, or any Indebtedness of any Borrower shall be declared due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof, or any Borrower shall not pay, or admit in writing its inability to pay, its debts generally as they become due.

(e) Loan Documents. Subject to any applicable cure period, the breach by any Borrower of any provisions set forth in the Loan Documents.

(f) Transfer of Project or Improvements. Except for easements approved by Bank or otherwise allowed under Section 8.10. hereof, the transfer of any Project, the Improvements, or any material portion thereof or material interest therein by any Borrower without the prior written consent of Bank.

(g) Survey. A Survey shows that the Improvements, or any part of the SAC Project, being constructed on the Real Estate or any part thereof encroaches upon any unvacated street, building line, easement or right-of-way or upon any adjoining property to an extent deemed material by Bank and such encroachment cannot be remedied by SAC to the reasonable satisfaction of Bank by reconstruction, obtaining title insurance coverage reasonably acceptable to Bank or obtaining a variance allowing for such encroachment within a reasonable time after discovery thereof.

(h) Damage or Destruction of Project. Any Project, or any part of any Project, is materially damaged or destroyed and the loss, in the reasonable judgment of Bank, is not adequately covered by insurance actually collected or in the process of collection.

(i) Execution. Execution shall have been levied against any Project or any part of any Project or any lien creditor's suit to enforce a judgment against such property or such other property of any Borrower shall have been brought and (in either case) shall continue unstayed and in effect for a period of more than thirty (30) consecutive calendar days.

(j) Abandonment of Project. The construction of the SAC Project or any part thereof is abandoned or shall be unreasonably delayed or be discontinued for a period of thirty (30) consecutive calendar days which shall result in the SAC Project being unable to be completed prior to the SAC Completion Date, in each instance for reasons other than acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment or labor, governmental restrictions or any similar cause over which SAC is unable to exercise control.

(k) Delay. SAC at any time prior to the completion of the SAC Project shall unreasonably delay construction or suffer construction to be delayed for any unreasonable period of time, for any reason whatsoever, so that the completion of the SAC Project cannot be accomplished, in the reasonable judgment of Bank, by the SAC Completion Date, subject to any applicable notice, grace or cure period or, if there is no such applicable notice, grace or cure period, then subject to a cure period of thirty (30) days, and in each instance for reasons other than acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment or labor, governmental restrictions, or any similar cause over which SAC is unable to exercise control.

(l) Insolvency. Any Borrower shall dissolve or be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or shall apply for, or consent to the appointment of, any receiver, trustee, or similar officer for it or for any Project or any part of any Project or for all or any substantial part of its respective property; or such receiver, trustee or similar officer

shall be appointed without the application or consent of such Borrower and such appointment shall continue undischarged for a period of sixty (60) days; or any Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against such Borrower; or any judgment, writ, warrant of attachment or execution of similar process shall be issued or levied against a substantial part of the property of any Borrower and such judgment, writ, or similar process shall not be released, vacated or fully bonded within sixty (60) days after its issue or levy.

(m) Bankruptcy. A petition shall be filed by or against any Borrower under Title 11 of the U.S. Code naming such Borrower as debtor, provided, however, such Borrower shall have a period of sixty (60) days to contest such insolvency filing, or an order or decree approving or ordering the foregoing shall be entered.

(n) False Representation or Warranty. Any representation or warranty made or deemed made by or on behalf of any Borrower to Bank under or in connection with this Agreement, or in any certificate, instrument, Disbursement Request, Draw Request Form, or statement contemplated by or made or delivered pursuant to or in connection with this Agreement or any other Loan Document shall prove to have been knowingly incorrect in any material respect when made.

(o) Garnishment. A garnishment, summons, or a writ of attachment shall be issued against or served upon Bank for the attachment of any money or other property of any Borrower, provided however, such Borrower shall have a period of thirty (30) days to contest such garnishment, summons, or writ of attachment.

(p) Receiver. A receiver, trustee, examiner, liquidator, or similar official shall be appointed for any Borrower or any substantial portion of its Property, or a proceeding described in Subsection 10.01(l) shall be instituted against any Borrower and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.

(q) Unstayed Judgments. Any Borrower shall fail, within thirty (30) days, to pay, bond or otherwise discharge any judgments or orders for the payment of money at any time which, in the aggregate, exceed \$50,000.00, which judgments or orders are not stayed on appeal or otherwise being appropriately contested in good faith.

(r) ERISA Liabilities. The unfunded liabilities of all Single Employer Plans shall exceed \$50,000.00, in the aggregate, or any Reportable Event shall occur in connection with any Plan.

(s) Environmental Investigation. Any Borrower shall be the subject of any proceeding or investigation pertaining to the Release by such Borrower, which results from any action or inaction of any Borrower or any Person subsequent to SAC's acquisition of the Real Estate, of any toxic waste or Hazardous Substance on or from the

Real Estate, or any violation by any Borrower or any Person, which, in either case, could reasonably be expected to have a Material Adverse Effect.

(t) Change in Control. Except as set forth herein, there occurs any Change in Control without the prior written consent of Bank.

(u) Events Affecting Guarantors. Any of the preceding events occurs with respect to any Guarantor, or any Guarantor dies, revokes, purports to revoke, fails to perform any of its obligations under its Guaranty, or disputes the validity of, or liability under, its Guaranty.

(v) Illegal Agreement. Any material provision of this Agreement shall at any time for any reason cease to be the legal, valid and binding obligation of the Borrowers or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by any Borrower, or any Borrower shall renounce the same or deny that it has any further liability hereunder or thereunder.

Section 10.02. **Rights and Remedies.**

(a) Immediately upon the occurrence of a Payment Default, or upon the occurrence of any other Default and the expiration of any applicable cure period, and at any time thereafter, the Bank may cease making any further Construction Disbursements and/or Equipment Disbursements hereunder (but Bank may make Construction Disbursements and/or Equipment Disbursements after the occurrence of such a Default without thereby waiving its rights and remedies hereunder), and upon the occurrence of a Default or at any time thereafter, the Registered Owner may exercise any or all of the following rights and remedies:

(i) may by notice to the Issuer, any Borrower, or any Guarantor, declare the obligations of the Issuer under the Bonds and the obligations of the defaulting Borrower(s) and Guarantor(s) hereunder and under the SAC Loan and/or the NIA Loan, as the case may be, to be immediately due and payable, and the same shall thereupon become immediately due and payable (provided that, the obligations of the Issuer, the defaulting Borrower(s), or the defaulting Guarantor(s) shall be and become automatically and immediately due and payable without such notice upon the occurrence of an Event of Default described in Section 10.01(l) above), without demand, presentment, protest or further notice of any kind, all of which are hereby expressly waived by the Issuer, the Borrowers, and the Guarantors;

(ii) Bank may, without notice to the Issuer, any Borrower, or any Guarantor and without further action, apply any and all money owing by Bank to Borrower(s) to the payment of the Series 2018A Note and/or the Series 2018B Note, as the case may be, including interest accrued thereon, and all other sums then owing by Borrower(s) hereunder, whether or not then due;

(iii) Bank may enter upon the Project or any part of the Project and take possession thereof, together with the Project or any part of the Project then in the course of construction, and proceed either in its own name or in the name of any Borrower, as the attorney-in-fact of such Borrower (which authority is coupled with an interest and is irrevocable by Borrowers) to complete or cause to be completed the Project or any part or phase of the Project, at the cost and expense of Borrowers. If Bank elects to complete or cause to be completed the Project or any part or phase thereof, it may do so according to the applicable Plans and Specifications for the part or phase of the Project to be completed or according to such changes, alterations or modifications in and to the applicable Plans and Specifications as Bank may deem reasonable and appropriate; and Bank may enforce or cancel all contracts let by any Borrower relating to construction of the Project or any part or phase of the Project, and/or let other contracts which in Bank's commercially reasonable judgment may seem advisable; and Borrowers shall forthwith turn over and duly assign to Bank, as Bank may from time to time require, contracts not already assigned to Bank relating to construction of the Project or any part or phase of the Project, blueprints, shop drawings, bonds, building permits, bills and statements of accounts pertaining to the Project, whether paid or not, and any other instruments or records in the possession of any Borrower pertaining to the Project or any part or phase of the Project. Borrowers shall be liable under this Agreement to pay to Bank, on demand, any amount or amounts expended by Bank in so completing the Project or any part or phase of the Project, together with any actual costs, charges, or expenses incident thereto or resulting therefrom, all of which shall be secured by the Loan Documents. In the event that a proceeding is instituted against any Borrower for recovery and reimbursement of any moneys expended by Bank in connection with the completion of the Project or any part or phase of the Project, a statement of such expenditures, verified by the affidavit of an officer of Bank, shall be prima facie evidence of the amounts so expended and of the propriety of the necessity for such expenditures; and the burden of proving to the contrary shall be upon Borrowers. Bank shall have the right to apply any funds which it agrees to disburse hereunder and any funds which any Borrower has then on deposit with Bank to bring about the completion of the Project or any part or phase of the Project and to pay the costs thereof; and if such moneys so agreed to be disbursed and funds of any Borrower then on deposit with Bank are insufficient, in the commercially reasonable judgment of Bank, to complete the Project or any part or phase of the Project, Borrowers agree to promptly deliver and pay to Bank such sum or sums of money as Bank may from time-to-time demand for the purpose of completing the Project or any part or phase of the Project or of paying any liability, charge or expense which may have been incurred or assumed by Bank under or in performance of this Agreement, or for the purpose of completing the Project or any part or phase of the Project. It is expressly understood and agreed that in no event shall Bank be obligated or liable in any way to complete the Project or any part or phase thereof or to pay for the costs of construction thereof beyond the amount of the Loan; and

(vi) Bank may exercise any other rights or remedies available under this Agreement, the Loan Documents, any other agreement, or at law or in equity. The rights and remedies of the Registered Owner specified herein are for the sole and exclusive benefit, use and protection of the Registered Owner, and the Registered Owner is entitled, but shall have no duty or obligation to the Issuer, the Borrowers or otherwise, (A) to exercise or to refrain from exercising any right or remedy reserved to the Registered Owner, or (B) to cause any other party to exercise or to refrain from exercising any right or remedy available to it under this Agreement or any related document.

(b) From and after the occurrence of an Event of Default, all amounts owing to the Registered Owner hereunder and under the Bonds then in default shall accrue interest daily at the Default Rate. Interest accruing at the Default Rate shall be due and payable on demand.

(c) If the Registered Owner shall have elected in its sole discretion the remedy set forth in Section 10.02(a)(i), the Issuer and the defaulting Borrower(s) shall immediately pay all amounts outstanding hereunder, under the Bonds then in default and under this Agreement.

Section 10.03. Application of Moneys. All of the moneys realized through the exercise of the remedies provided in Section 10.02 hereof shall be used to pay principal of and interest on the Bonds then due or overdue and costs incurred in the collection thereof (including reasonable attorneys' fees). If the available moneys are not sufficient on any payment date to pay principal of and interest on the Bonds then due or overdue and costs incurred in the collection thereof (including reasonable attorneys' fees), they shall be applied first to the payment of costs incurred in the collection thereof (including reasonable attorneys' fees), second to interest then due on the Bonds, in the order of maturity of the installments of such interest, third to the payment of the unpaid principal of the Bonds which shall have become due, by reason of maturity, redemption, acceleration or otherwise and, fourth to the payment of any other amounts owed by the Borrowers to the Registered Owner pursuant to this Agreement.

Section 10.04. No Waiver; Remedies. No failure on the part of the Registered Owner to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or which the Registered Owner would otherwise have.

ARTICLE XI

NATURE OF OBLIGATIONS; INDEMNIFICATION

Section 11.01. Obligations Absolute. The obligations of the Issuer, the Borrowers, and the Guarantors under this Agreement shall be absolute, unconditional and irrevocable, and shall not be subject to any right of setoff or counterclaim against the Registered Owner or any

Participant and shall be paid and performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances:

- (a) any lack of validity or enforceability of the Bonds, this Agreement, the Loans or any other agreement or instrument delivered in connection herewith or therewith;
- (b) any amendment or waiver of any provision of this Agreement;
- (c) the existence of any claim, setoff, defense or other rights which such Person may have at any time against the Issuer, the Borrowers, the Guarantors, the Registered Owner (other than the defense of payment in accordance with the terms of this Agreement), any Participant or any other Person, whether in connection with this Agreement or any transaction contemplated hereby or thereby or any unrelated transaction;
- (d) any certificate or any other document presented under this Agreement or any related document proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; and
- (e) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Section 11.02. Continuing Obligation. This Agreement is a continuing obligation, shall survive the maturity of the Loans and the Bonds and shall (a) be binding upon the Issuer, the Borrowers, the Guarantors, and their successors and assigns, and (b) inure to the benefit of and be enforceable by the Registered Owner and its successors, transferees and assigns; provided that the Issuer, the Borrowers, and the Guarantors may not, except as otherwise expressly provided herein, assign all or any part of this Agreement without the prior written consent of the Registered Owner.

Section 11.03. Liability of the Registered Owner. Neither the Registered Owner nor any of the officers, directors, employees or agents thereof shall be liable or responsible for any of the following: (i) the use that may be made of the proceeds of the Bonds, the Loans or any amounts made available by the Registered Owner thereunder or for any acts or omissions of the Issuer, the Borrowers, or the Guarantors in connection therewith; or (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Registered Owner may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

Section 11.04. Indemnification; Taxes, Etc. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Borrowers hereby agree to indemnify and hold harmless the Issuer and its officers,

directors, employees, affiliates and agents (each an ***"Indemnified Party"***) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees) that an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person whatsoever) that arises out of the transactions contemplated by this Agreement; provided that the Borrowers shall not be required to indemnify an Indemnified Party for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnified Party. The provisions of this Section 11.04 shall survive the termination of this Agreement and the repayment in full of the Loans and the Bonds and the obligations of the Borrowers thereunder and hereunder.

Section 11.05. **Waiver of Defenses.** Borrowers and Guarantors waive (a) all defenses based on suretyship or impairment of Collateral, and (b) any defenses which Borrowers or Guarantors may assert on the underlying debt, including but not limited to failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction, and usury.

Section 11.06. **Preservation of Rights.** No delay or omission of Bank to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Construction Disbursement and/or Equipment Disbursement notwithstanding the existence of a Default or the inability of Borrowers or Guarantors to satisfy the conditions precedent to such Construction Disbursement and/or Equipment Disbursement shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by Bank, Borrowers, and Guarantors, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative, and all shall be available to Bank until the Obligations have been paid in full.

ARTICLE XII

MISCELLANEOUS

Section 12.01. **Inspection.** SAC and Architect shall be responsible for making inspections of the SAC Project during the course of construction and shall determine to their own satisfaction that the work done or materials supplied by any Contractor or Subcontractor to whom payment is to be made out of each Construction Disbursement has been properly done or supplied in accordance with the Construction Contract. If any work done or materials supplied by any Contractor or Subcontractor are not satisfactory to SAC and/or Architect and the same is not remedied within fifteen (15) days of the discovery thereof, SAC will immediately notify Bank in writing of such fact. It is expressly understood and agreed that Bank and any party designated by Bank may conduct such inspections of the SAC Project as Bank may deem necessary for the protection of Bank's interest, and that any inspections which may be made of the SAC Project by Bank will be made, solely for the benefit and protection of Bank, and that SAC will not rely thereon.

Section 12.02. **Additional Security Interest.** In the event any Construction Disbursement is to be made for materials then being fabricated or stored, or both, for later use in the completion of the SAC Project but which are not then stored upon the Real Estate or any part thereof or installed or incorporated into the SAC Project, then such Construction Disbursement shall be made only after SAC has given to Bank such security instruments and insurance on such materials as Bank may reasonably request.

Section 12.03. **SAC Fees and Expenses.** Whether or not any Construction Disbursement shall be made hereunder, SAC agrees to pay actual costs of any appraisal, Survey, Inspecting Engineer, any recording fees, costs of licenses and permits and title insurance and other insurance premiums, and agrees to reimburse Bank upon fifteen (15) days' notice for all reasonable out-of-pocket expenses actually incurred by Bank in connection with this Agreement or in connection with the transactions contemplated by this Agreement, including, but not limited to, costs of arbitration, if any, costs and expenses of the arbitrator and any and all reasonable legal expenses and reasonable attorneys' fees sustained by Bank in the exercise of any right or remedy available to it under this Agreement, the Loan Documents or otherwise by law or equity and all reasonable fees and disbursements of counsel for Bank for the services performed by such counsel in connection with the transactions contemplated herein, the preparation of this Agreement, the Loan Documents, and the other documents and instruments contemplated hereby.

Section 12.04. **NIA Fees and Expenses.** Whether or not any Equipment Disbursement shall be made hereunder, SAC agrees to pay actual costs of any appraisal, recording fees, costs of licenses and permits, and insurance premiums, and agrees to reimburse Bank upon fifteen (15) days' notice for all reasonable out-of-pocket expenses actually incurred by Bank in connection with this Agreement or in connection with the transactions contemplated by this Agreement, including, but not limited to, costs of arbitration, if any, costs and expenses of the arbitrator and any and all reasonable legal expenses and reasonable attorneys' fees sustained by Bank in the exercise of any right or remedy available to it under this Agreement, the Loan Documents or otherwise by law or equity and all reasonable fees and disbursements of counsel for Bank for the services performed by such counsel in connection with the transactions contemplated herein, the preparation of this Agreement, the Loan Documents, and the other documents and instruments contemplated hereby.

Section 12.05. **Setoff.** In addition to all liens upon and rights of setoff against the Borrowers' money, securities or other property given to the Bank by law, the Bank shall have, with respect to the Borrowers' obligations to the Bank under this Agreement and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and each Borrower hereby grants the Bank a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to the Bank, all of said Borrower's right, title, and interest in and to, all of said Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Bank or any other direct or indirect subsidiary of Bank, whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to any Borrower. Every such right of setoff shall be deemed to have been exercised

immediately upon the occurrence of a Default hereunder without any action of the Bank, although the Bank may enter such setoff on its books and records at a later time.

Section 12.06. Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement nor consent to any departure by the Borrowers, the Guarantors, or the Issuer from any such provision shall in any event be effective unless the same shall be in writing and signed by the Registered Owner. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any agreement contained in this Agreement should be breached by the Borrowers, the Guarantors, or the Issuer and thereafter waived by the Registered Owner, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder.

(b) Notwithstanding anything contained in this Agreement to the contrary, no amendment, supplement or other change to any of the provisions contained in Articles VIII or IX of this Agreement will require the agreement or consent of the Issuer. Articles VIII and IX hereof may be amended, supplemented or otherwise changed by written agreement solely of the Borrowers, the Guarantors, and the Registered Owner.

Section 12.07. Counterparts. This Agreement may be signed in any number of counterpart copies (and by different parties on different counterparts), each of which shall constitute an original but all such copies shall constitute one and the same instrument.

Section 12.08. Signs. Bank, at its expense, may erect one (1) sign on the Real Estate, subject to compliance with applicable government requirements, indicating that financing for the Project has been provided by Bank. The design and location of such sign shall be subject to Borrower's prior reasonable approval. Bank, at its expense, shall also have the right to engage in reasonable publicity and public relations pertaining to the financing provided by Bank at times convenient to Borrowers if it they are involved.

Section 12.09. Notices. Unless specifically indicated otherwise herein, all notices and other communications provided for hereunder shall be in writing and if to the Borrowers, addressed as follows:

SAC Properties, LLC
6642 Saint Joe Road, Suite 500
Fort Wayne, IN 46835
Attention: _____
Telephone: (260) ____ - ____
Facsimile: (260) ____ - ____

NIA LLC
6935 Lincoln Parkway
Fort Wayne, IN 46804

Attention: _____
Telephone: (260) ____ - ____
Facsimile: (260) ____ - ____

or if to the Guarantors:

MMAR, LLC
5029 Exeter Drive
Fort Wayne, IN 46815

Attention: _____
Telephone: (260) ____ - ____
Facsimile: (260) ____ - ____

Melbros, LLC
1710 North Main Street, Suite D
Auburn, IN 46706

Attention: _____
Telephone: (260) ____ - ____
Facsimile: (260) ____ - ____

M. Lee Melchi

Telephone: (260) ____ - ____

Mark Rupp

Telephone: (260) ____ - ____

Wayne Shive

Telephone: (260) ____ - ____

Jeff Smith

Telephone: (260) ____ - ____

Andrew Smith

Telephone: (260) ____ - ____

Alan Ehler

Telephone: (260) ____ - ____

or if to the Registered Owner:

Lake City Bank
10411 Maysville Road
Fort Wayne, Indiana 46835
Attention: David E. Davis, Vice President
Telephone: (260) 486-3944
Facsimile: (260) 461-6203

or if to the Issuer:

City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street
Fort Wayne, Indiana 46802
Attention: Office of the Mayor
Telephone: (260) ____ - ____
Facsimile: (260) ____ - ____

or as to each party at such other address as shall be designated by such party in a written notice to the other parties.

Any notice or other communication shall be sufficiently given and shall be deemed given when delivered to the addressee in writing or when given by telephone immediately confirmed in writing by tested telecopier or other telecommunication device.

Section 12.10. **Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 12.11. **GOVERNING LAW.** THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA AND APPLICABLE FEDERAL LAW, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

Section 12.12. **Consent to Jurisdiction.** The Issuer, the Borrowers, the Guarantors, and Registered Owner irrevocably and unconditionally (a) agree that any suit, action or other legal proceeding arising out of this Agreement or any of the Loan Documents may be brought in any state court situated in Allen County, Indiana, (b) consent to the jurisdiction of any such court in

any such suit, action or proceeding, and (c) waive any objection which such party may have to the laying of venue of any such suit, action or proceeding in such court.

Section 12.13. **Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Agreement.

Section 12.14. **Participations.** The Issuer, the Borrowers, and the Guarantors acknowledge and agree that the Registered Owner may participate portions of the obligations of the Borrowers under the Bonds, the Loans and this Agreement (collectively, the ***“Participated Obligations”***) to affiliates, other financial institutions or third Persons and waives any notice of such participations. The Issuer and the Borrowers further acknowledge and agree that upon any such participation the Participants will become owners of a pro rata portion of the Participated Obligations and the Issuer and the Borrowers waive any right of setoff they it may at any time have against the Registered Owner or any Participant with regard to the Participated Obligations.

Section 12.15. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Issuer, the Borrowers, the Registered Owner(s) and their respective successors, endorsees and assigns (but no other Person shall have any benefit, right or interest under or because of this Agreement), except that neither the Issuer nor the Borrowers may assign or transfer their respective rights or obligations hereunder without the prior written consent of the Registered Owner. This Agreement is a continuing obligation and shall survive the last to occur of the Series 2018A Bond Termination Date and the Series 2018B Bond Termination Date. The Registered Owner may grant interests in its rights hereunder as provided in Section 12.14 and transfer the Bonds in accordance with the provisions hereof.

Notwithstanding any other provision of this Agreement, the Registered Owner may at any time pledge or grant a security interest in all or any portion of its rights hereunder (including, without limitation, rights to payment under this Agreement) under the Bonds or the rights thereunder to secure obligations of the Registered Owner to a Federal Reserve Bank, without notice to or consent of the Issuer or the Borrowers; provided that no such pledge or grant of a security interest shall release the Registered Owner from any of its obligations hereunder, as the case may be, or substitute any such pledge or grantee for the Registered Owner as a party hereto, as the case may be.

Section 12.16. **Complete and Controlling Agreement.** This Agreement completely sets forth the agreements between the Issuer, the Registered Owner, the Borrowers, and the Guarantors and fully supersede all prior agreements, both written and oral, between the Issuer, the Registered Owner, the Borrowers, and the Guarantors relating to the issuance and purchase of the Bonds and the Loans.

Section 12.17. **Power of Attorney.** While there exists a Default, each Borrower hereby appoints Bank as its attorney-in-fact to endorse said Borrower's name on all instruments and other documents payable to said Borrower. In addition, while there exists a Default after any Borrower's failure to do so after Bank's written request, Bank shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by any Borrower under this Agreement or the Loan Documents to perfect its security interests. Bank's

performance of such action or execution of such documents shall not relieve Borrowers from any obligation to cure any default under this Agreement or the Loan Documents. The powers of attorney described in this paragraph are coupled with an interest and are irrevocable.

Section 12.18. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE BORROWERS, THE GUARANTORS, AND THE REGISTERED OWNER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AS A CLAIM, COUNTER-CLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE BORROWERS, THE GUARANTORS, THE ISSUER OR THE REGISTERED OWNER. THE BORROWERS ACKNOWLEDGE AND AGREE THAT THEY HAVE RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND RECOGNIZE AND AGREE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE REGISTERED OWNER ENTERING INTO THIS AGREEMENT AND PURCHASING THE BONDS. EACH BORROWER AND GUARANTOR REPRESENTS AND ACKNOWLEDGES THAT IT HAS REVIEWED THIS PROVISION WITH ITS LEGAL COUNSEL AND THAT IT HAS KNOWINGLY AND VOLUNTARILY WAIVED ANY JURY TRIAL RIGHTS IT MAY HAVE FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

Section 12.19. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "*electronic signature*" means a manually-signed original signature that is then transmitted by electronic means; "*transmitted by electronic means*" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "*electronically signed document*" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

Section 12.20. Third Party Beneficiaries. Any subsequent Registered Owners shall be third party beneficiaries of this Agreement, and as such also agree and contract with the parties hereto to carry out all of their obligations hereunder.

Section 12.21. **Municipal Advisor Disclosures and Disclaimers.** Each of the Borrowers, the Guarantors, and the Issuer acknowledges and agrees that (i) the transaction contemplated herein is an arm's length commercial transaction among the Borrowers, the Guarantors, the Issuer, and the Bank, (ii) in connection with such transaction, the Bank is acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "*Municipal Advisor Rules*"), agent or a fiduciary of the Borrowers, the Guarantors, or the Issuer, (iii) the Bank is relying on the Bank exemption in the Municipal Advisor Rules, (iv) the Bank has not provided any advice or assumed any advisory or fiduciary responsibility in favor of the Borrowers, the Guarantors, or the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Bank, or any affiliate of the Bank, has provided other services or advised, or is currently providing other services or advising the Borrowers, the Guarantors, or the Issuer on other matters), (v) the Bank has financial and other interests that differ from those of the Borrowers, the Guarantors, and the Issuer, and (vi) each of the Borrowers, the Guarantors, and the Issuer has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Bond Purchase and Loan Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Balance of page intentionally left blank; signature pages follow]

“BORROWERS”

SAC PROPERTIES, LLC

By: _____
Its _____

NIA LLC

By: _____
Its _____

“GUARANTORS”

MMAR, LLC

By: _____
Its _____

MELBROS, LLC

By: _____
Its _____

M. LEE MELCHI

MARK RUPP

WAYNE SHIVE

JEFF SMITH

ANDREW SMITH

ALAN EHLER

“ISSUER”

CITY OF FORT WAYNE, INDIANA

(Seal)
Attest:

By: _____
Thomas C. Henry, Mayor

Lana R. Keesling, City Clerk

[ISSUER SIGNATURE PAGE TO BOND PURCHASE AND LOAN AGREEMENT]

“BANK”

LAKE CITY BANK

By: _____
David E. Davis, Vice President

[BANK SIGNATURE PAGE TO BOND PURCHASE AND LOAN AGREEMENT]

**EXHIBIT A-1
FORM OF SERIES 2018A BOND**

No. RA-1

[\$2,700,000]

**UNITED STATES OF AMERICA
STATE OF INDIANA**

**CITY OF FORT WAYNE, INDIANA ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 2018A (SAC PROJECT)**

THIS BOND IS SUBJECT TO TRANSFER RESTRICTIONS AS PROVIDED BY THE FURTHER PROVISIONS HEREOF.

THIS BOND IS SUBJECT TO MANDATORY TENDER IN WHOLE AND EARLY REDEMPTION IN WHOLE OR IN PART, ON THE DATES, UNDER THE TERMS AND CONDITIONS AND AT THE PURCHASE PRICE AND REDEMPTION PRICES SET FORTH IN THE AGREEMENT, ALL OF THE PROVISIONS OF WHICH ARE INCORPORATED INTO THIS BOND.

THIS BOND AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE AMOUNTS PAID BY THE BORROWER AND OTHER SECURITY PLEDGED TO SUCH PAYMENT, AND SHALL NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF THE CONSTITUTION OR STATUTES OF THE STATE OF INDIANA AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

DATE OF ORIGINAL ISSUE:

FINAL MATURITY DATE:

December __, 2018

December __, 2034

REGISTERED OWNER: LAKE CITY BANK

PRINCIPAL AMOUNT: \$[2,700,000]

The City of Fort Wayne, Indiana (the "*Issuer*"), for value received, hereby promises to pay to the Registered Owner specified above, or registered assigns, on the Series 2018A Bond Maturity Date, the Principal Amount set forth above less the aggregate amount of all payments or prepayments of the redemption price duly made or provided for by SAC Properties, LLC (the "*Borrower*") with respect hereto, plus premium, if any, and interest on said Principal Amount, from the Closing Date until paid at the Tax-Exempt Rate in effect from time to time, payable in arrears on the first Business Day of each month following the Closing Date, on the 2018A Bond Maturity Date and on such earlier date on which the amounts owed under the Agreement are repaid in full (each, an "*Interest Payment Date*"). Interest shall be calculated on a 365/360 basis; that is, by applying the ratio of the applicable interest rate over a year of 360 days,

multiplied by the outstanding principal balance under the applicable loan, multiplied by the actual number of days the principal balance is outstanding. All interest payable under each Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated herein.

Interest only on this bond (this ***"Bond"***) shall be payable monthly on each Interest Payment Date until the Full Funding Date; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

Principal and interest on this Bond shall be payable monthly commencing on the first Interest Payment Date following the Full Funding Date and continuing on each Interest Payment Date thereafter until payment in full of each of the SAC Loan; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

Payment of principal and interest on this Bond shall be in an amount that will pay the unpaid principal balance of the SAC Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 180 months. If not earlier paid on a Purchaser Tender Date in accordance with the Mandatory Tender provisions of Section 2.9 of the Agreement, or as otherwise provided in the Agreement, the principal of, and all accrued and unpaid interest on this Bond shall be payable in full on the 2018A Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018A Bond to which interest has been paid unless such Series 2018A Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.

Installments of principal on this Bond, are payable at the designated office of Lake City Bank, Fort Wayne, Indiana (together with its successors or assigns, the ***"Bond Registrar"***) on the dates and in the amounts specified above. All payments on this Bond shall be made in lawful money of the United States of America. For so long as Lake City Bank is the Registered Owner, interest shall be payable by wire transfer. Otherwise, interest shall be payable by check or draft mailed to the Registered Owner at the registered address shown on the registration books of the Issuer kept by the Bond Register as of the close of business on the day next preceding any Interest Payment Date. If the Registered Owner so elects, any payment due to such Registered Owner shall be made by electronic transfer of federal reserve funds to any account in the United States of America designated by such Registered Owner if such Registered Owner, at its expense, (a) so directs by written notice delivered to the Bond Registrar at least ten (10) Business Days before the date upon which such electronic transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Bond Registrar.

All capitalized terms not otherwise defined in this Bond shall have the meaning ascribed thereto in the Bond Purchase and Loan Agreement (the ***"Agreement"***) dated as of December __, 2018 by and among the Issuer, SAC Properties, LLC, an Indiana limited liability company (***"SAC"***), NIA LLC, an Indiana limited liability company (***"NIA"***) and together with SAC and their respective successors and assigns permitted under the Agreement, the ***"Borrowers"***), MMAR, LLC (***"MMAR"***), Melbros, LLC (***"Melbros"***), M. Lee Melchi (***"Melchi"***), Mark Rupp (***"Rupp"***), Wayne Shive (***"Shive"***), Jeff Smith (***"J. Smith"***), Andrew

Smith ("**A. Smith**"), Alan Ehler ("**Ehler**" and collectively with MMAR, Melbros, Melchi, Rupp, Shive, J. Smith, A. Smith, and their respective successors and assigns permitted under the Agreement, the "**Guarantors**") and Lake City Bank.

Reference is hereby made to the Agreement and to the ordinance adopted by the Issuer on November __, 2018 (the "**Bond Ordinance**") and to all amendments and supplements thereto for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Borrowers, the terms on which this Bond is issued and secured, the manner in which interest is computed on this Bond, redemption rights, acceleration and the rights of the Registered Owner. Modifications or alterations of the Agreement or of any supplement thereto may be made only to the extent and in the circumstances permitted by the Agreement.

This Bond is being issued as a single instrument in the principal amount of [Two Million Seven Hundred Dollars (\$2,700,000)] under and pursuant to the provisions of the Act, the Bond Ordinance and the Agreement. This Bond is issued for the purpose of financing the costs of the SAC Project.

This Bond and the interest thereon are special, limited obligations of the Issuer payable solely out of the amounts paid by SAC and other security pledged to such payment, and shall not constitute a debt or indebtedness of the Issuer within the meaning of the constitution or statutes of the State of Indiana (the "**State**"), and shall not constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing power.

This Bond is registered as to principal and interest and may be exchanged, and its transfer may be effected, only upon the books of the Issuer kept for that purpose by the Bond Registrar, by the Registered Owner hereof upon the surrender of this Bond together with an assignment duly executed by the Registered Owner or by its attorney duly authorized in writing (together with payment by the Registered Owner to the Bond Registrar of all charges or taxes, if any, required to be paid with respect to such transfer), and the Registered Owner may, to the extent permitted by law, sell participations in this Bond; provided, however, that this Bond shall always be registered in the name of one owner and may be transferred only in the manner and subject to the limitations provided in the Agreement, including, without limitation, the delivery of an "investor letter" to the extent required under the Agreement. The Issuer may deem and treat the person in whose name this Bond shall be registered on the Bond Register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Agreement have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk of Fort Wayne, Indiana, and its seal affixed hereto or imprinted hereon, all as of the Date of Original Issue above.

CITY OF FORT WAYNE, INDIANA

By _____
Thomas C. Henry, Mayor

[SEAL]

Lana R. Keesling, City Clerk

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is the Series 2018A Bond referred to in the within mentioned Agreement.

Date of Authentication: _____

LAKE CITY BANK

By: _____
Authorized Signatory

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

Date:

Signature Guaranteed:

Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner of the within Bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

EXHIBIT A-2
FORM OF SERIES 2018B BOND

No. RB-1

\$[3,700,000]

UNITED STATES OF AMERICA
STATE OF INDIANA

CITY OF FORT WAYNE, INDIANA ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 2018B (NIA PROJECT)

THIS BOND IS SUBJECT TO TRANSFER RESTRICTIONS AS PROVIDED BY THE FURTHER PROVISIONS HEREOF.

THIS BOND AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE AMOUNTS PAID BY THE BORROWER AND OTHER SECURITY PLEDGED TO SUCH PAYMENT, AND SHALL NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF THE CONSTITUTION OR STATUTES OF THE STATE OF INDIANA AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

DATE OF ORIGINAL ISSUE:

FINAL MATURITY DATE:

December __, 2018

December __, 2029

REGISTERED OWNER: LAKE CITY BANK

PRINCIPAL AMOUNT: \$[3,700,000]

The City of Fort Wayne, Indiana (the "*Issuer*"), for value received, hereby promises to pay to the Registered Owner specified above, or registered assigns, on the Series 2018B Bond Maturity Date, the Principal Amount set forth above less the aggregate amount of all payments or prepayments of the redemption price duly made or provided for by NIA LLC (the "*Borrower*") with respect hereto, plus premium, if any, and interest on said Principal Amount, from the Closing Date until paid at the Tax-Exempt Rate in effect from time to time, payable in arrears on the first Business Day of each month following the Closing Date, on the Series 2018B Bond Maturity Date and on such earlier date on which the amounts owed under the Agreement are repaid in full (each, an "*Interest Payment Date*"). Interest shall be calculated on a 365/360 basis; that is, by applying the ratio of the applicable interest rate over a year of 360 days, multiplied by the outstanding principal balance under the applicable loan, multiplied by the actual number of days the principal balance is outstanding. All interest payable under each Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated herein.

Interest only on this bond (this ***"Bond"***) shall be payable monthly on each Interest Payment Date until the Full Funding Date; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

Principal and interest on this Bond shall be payable monthly commencing on the first Interest Payment Date following the Full Funding Date and continuing on each Interest Payment Date thereafter until payment in full of each of the NIA Loan; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day.

Payment of principal and interest on this Bond shall be in an amount that will pay the unpaid principal balance of the NIA Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 120 months. If not earlier paid as otherwise provided in the Agreement, the principal of, and all accrued and unpaid interest on this Bond shall be payable in full on the Series 2018B Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018A Bond to which interest has been paid unless such Series 2018A Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.

Installments of principal on this Bond, are payable at the designated office of Lake City Bank, Fort Wayne, Indiana (together with its successors or assigns, the ***"Bond Registrar"***) on the dates and in the amounts specified above. All payments on this Bond shall be made in lawful money of the United States of America. For so long as Lake City Bank is the Registered Owner, interest shall be payable by wire transfer. Otherwise, interest shall be payable by check or draft mailed to the Registered Owner at the registered address shown on the registration books of the Issuer kept by the Bond Register as of the close of business on the day next preceding any Interest Payment Date. If the Registered Owner so elects, any payment due to such Registered Owner shall be made by electronic transfer of federal reserve funds to any account in the United States of America designated by such Registered Owner if such Registered Owner, at its expense, (a) so directs by written notice delivered to the Bond Registrar at least ten (10) Business Days before the date upon which such electronic transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Bond Registrar.

All capitalized terms not otherwise defined in this Bond shall have the meaning ascribed thereto in the Bond Purchase and Loan Agreement (the ***"Agreement"***) dated as of December __, 2018 by and among the Issuer, SAC Properties, LLC, an Indiana limited liability company (***"SAC"***), NIA LLC, an Indiana limited liability company (***"NIA"***) and together with SAC and their respective successors and assigns permitted under the Agreement, the ***"Borrowers"***), MMAR, LLC (***"MMAR"***), Melbros, LLC (***"Melbros"***), M. Lee Melchi (***"Melchi"***), Mark Rupp (***"Rupp"***), Wayne Shive (***"Shive"***), Jeff Smith (***"J. Smith"***), Andrew Smith (***"A. Smith"***), Alan Ehler (***"Ehler"***) and collectively with MMAR, Melbros, Melchi, Rupp, Shive, J. Smith, A. Smith, and their respective successors and assigns permitted under the Agreement, the ***"Guarantors"***) and Lake City Bank.

Reference is hereby made to the Agreement and to the ordinance adopted by the Issuer on November __, 2018 (the ***"Bond Ordinance"***) and to all amendments and supplements thereto

for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Borrowers, the terms on which this Bond is issued and secured, the manner in which interest is computed on this Bond, redemption rights, acceleration and the rights of the Registered Owner. Modifications or alterations of the Agreement or of any supplement thereto may be made only to the extent and in the circumstances permitted by the Agreement.

This Bond is being issued as a single instrument in the principal amount of [Three Million Seven Hundred Dollars (\$3,700,000)] under and pursuant to the provisions of the Act, the Bond Ordinance and the Agreement. This Bond is issued for the purpose of financing the costs of the NIA Project.

This Bond and the interest thereon are special, limited obligations of the Issuer payable solely out of the amounts paid by NIA and other security pledged to such payment, and shall not constitute a debt or indebtedness of the Issuer within the meaning of the constitution or statutes of the State of Indiana (the "*State*"), and shall not constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing power.

This Bond is registered as to principal and interest and may be exchanged, and its transfer may be effected, only upon the books of the Issuer kept for that purpose by the Bond Registrar, by the Registered Owner hereof upon the surrender of this Bond together with an assignment duly executed by the Registered Owner or by its attorney duly authorized in writing (together with payment by the Registered Owner to the Bond Registrar of all charges or taxes, if any, required to be paid with respect to such transfer), and the Registered Owner may, to the extent permitted by law, sell participations in this Bond; provided, however, that this Bond shall always be registered in the name of one owner and may be transferred only in the manner and subject to the limitations provided in the Agreement, including, without limitation, the delivery of an "investor letter" to the extent required under the Agreement. The Issuer may deem and treat the person in whose name this Bond shall be registered on the Bond Register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Agreement have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk of Fort Wayne, Indiana, and its seal affixed hereto or imprinted hereon, all as of the Date of Original Issue above.

CITY OF FORT WAYNE, INDIANA

By _____
Thomas C. Henry, Mayor

[SEAL]

Lana R. Keesling, City Clerk

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is the Series 2018B Bond referred to in the within mentioned Agreement.

Date of Authentication: _____

LAKE CITY BANK

By: _____
Authorized Signatory

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

Date:

Signature Guaranteed:

Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner of the within Bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

EXHIBIT B

FORM OF INVESTOR LETTER

____, 2018

City of Fort Wayne, Indiana
One Citizens Square
200 E. Berry Street
Fort Wayne, IN 46802

[\$6,400,000]

CITY OF FORT WAYNE, INDIANA ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 2018A AND SERIES 2018B
(NORTHERN INDIANA ANODIZE PROJECT)

Gentlemen:

The duly authorized representative of the undersigned (the "Investor") hereby acknowledges receipt of the above-referenced Bonds (the "**Bonds**"), dated December __, 2018, Series 2018A maturing on a date not to exceed December __, 2033 and Series 2018B maturing on a date not to exceed December __, 2029, in fully registered form, in the aggregate principal amount of \$[6,400,000], bearing interest at the Tax-Exempt Rate, as defined in the Bond Purchase and Loan Agreement dated as of December __, 2018 (the "**Agreement**") by and among the City of Fort Wayne, Indiana (the "**Issuer**"), SAC Properties, LLC, an Indiana limited liability company ("**SAC**"), NIA LLC, an Indiana limited liability company ("**NIA**" and together with SAC the "**Borrowers**"), MMAR, LLC, an Indiana limited liability company ("**MMAR**"), MELBROS, LLC, an Indiana limited liability company ("**Melbros**"), M. LEE MELCHI, a resident of Allen County, Indiana ("**Melchi**"), MARK RUPP, a resident of Allen County, Indiana ("**Rupp**"), WAYNE SHIVE, a resident of Allen County, Indiana ("**Shive**"), JEFF SMITH, an Indiana limited liability company ("**J. Smith**"), ANDREW SMITH, a resident of Allen County, Indiana ("**A. Smith**"), ALAN EHLE, a resident of Allen County, Indiana ("**Ehler**" and together with MMAR, Melbros, Melchi, Rupp, Shive, J. Smith, and A. Smith the "**Guarantors**"), and Lake City Bank, a state-chartered financial institution validly existing under the laws of the State of Indiana (the "**Bank**"). The Bonds have been checked, inspected and approved by the Investor.

The Investor acknowledges that (i) the Bonds have been issued pursuant to the Agreement, (ii) the proceeds of the Bonds have been loaned to the Borrower, (iii) the Bonds are

payable from amounts paid by the Borrowers under the Agreement, and (iv) the Borrowers' obligations under the Agreement are secured as described therein.

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Agreement.

In connection with the sale of the Bonds to the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor is a state-chartered financial institution validly existing under the laws of the State of Indiana and has duly authorized, by all necessary action, the purchase of the Bonds and the execution and delivery of this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.

2. The Investor is an "accredited investor" as that term is defined in paragraph (a) of Rule 501 under the Securities Act of 1933, as amended (the "Act").

3. The Investor has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligation and tax credits or other tax advantaged investments, to be able to evaluate the risks and merits of the investment represented by the purchase and evidenced by the Bonds.

4. The Bonds are being acquired by the Investor for investment and not with a present view to, or for resale in connection with, any distribution of the Bonds, and the Investor presently intends to hold the Bonds for its own account and for an indefinite period of time, and does not intend at this time to dispose of all or any part of the Bonds. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale may not be possible.

5. The Investor understands that the Bonds (i) have not been registered under the Act, and (ii) have not been registered or qualified under any state securities or "Blue Sky" laws, and that the Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Investor understands that it may not sell, transfer, or otherwise dispose of the Bonds without registration or qualification under the Act or without qualifying for an exemption therefrom. The Investor will take full responsibility for any registration, qualification or disclosure with respect to selling the Bonds or any portion thereof.

6. The Investor acknowledges that it has been supplied with access to information, including financial statements and other financial information, to which it, as a reasonable investor, attaches significance in making investment decisions. The Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals, and has made its own inquiry and analysis concerning the Issuer, the Borrowers, the Guarantors, the Project, the Bonds and the security therefor and payment thereof, and other material factors affecting the investment, so that, as a reasonable investor, the Investor has been able to make its decision to purchase the Bonds.

7. The Investor has been furnished with and has examined the Agreement and the other documents, certificates and the legal opinions delivered in connection with the issuance of the Bonds.

8. The Investor acknowledges that it has the right to sell and transfer the Bonds, subject to limitations set forth in the Bonds and the Agreement.

9. The Investor understands that the Issuer, the Borrowers, the Guarantors, their respective counsel and Bond Counsel will rely upon the accuracy and truthfulness of the representations and warranties contained herein and hereby consents to such reliance.

10. The signatory of this Investor's letter is a duly authorized officer of the Investor with the authority to sign this Investor's letter on behalf of the Investor, and this Investor's letter has been duly authorized, executed and delivered.

Very truly yours,

LAKE CITY BANK

By: _____
Name of Officer: _____
Title of Officer: _____

EXHIBIT C-1

DISBURSEMENT REQUEST

TO: Lake City Bank (the "**Bank**")

FROM: [SAC Properties, LLC / NIA LLC]

Ladies and Gentlemen:

You are hereby requested to advance an amount equal to \$_____ from the [SAC Project Fund / NIA Project Fund] established under Article III of the Bond Purchase and Loan Agreement, dated as of December __, 2018, among SAC Properties, LLC ("**SAC**"), NIA LLC ("**NIA**") and together with SAC the "**Borrowers**" and each a "**Borrower**", MMAR, LLC ("**MMAR**"), Melbros, LLC ("**Melbros**"), M. Lee Melchi ("**Melchi**"), Mark Rupp ("**Rupp**"), Wayne Shive ("**Shive**"), Jeff Smith ("**J. Smith**"), Andrew Smith ("**A. Smith**"), Alan Ehler ("**Ehler**" and together with MMAR, Melbros, Rupp, Melchi, Rupp, Shive, J. Smith, A. Smith, the "**Guarantors**" and each a "**Guarantor**", the City of Fort Wayne, Indiana ("**Issuer**") and yourself (the "**Agreement**") and to pay such amount by wire transfer to the undersigned Borrower as follows:

[PLEASE PROVIDE WIRE TRANSFER INSTRUCTIONS]

All capitalized terms used in this Request for Disbursement and not otherwise defined herein shall have the meanings given such terms in the Agreement.

I hereby certify that:

- (A) I am a Responsible Officer of the undersigned Borrower;
- (B) the undersigned Borrower hereby requests a [Construction Disbursement/Equipment Disbursement] in the amount of \$_____;
- (C) The aggregate amount requested by the undersigned Borrower pursuant hereto is not greater than 80% of the amount of the invoice(s) relating to such costs, as set forth in Schedule A;
- (D) each item of cost set forth on Schedule A has been properly paid or incurred by the undersigned Borrower as a cost of the [SAC / NAI] Project in accordance with the provision of Article IX of the Agreement;
- (E) none of the items of cost set forth on Schedule A has formed the basis for any [Construction Disbursement/Equipment Disbursement] heretofore made from the [SAC Project Fund / NIA Project Fund];
- (F) each item of cost set forth on Schedule A (together with supporting bills, invoices and other documents with respect to each being annexed thereto) is a proper

charge against the [SAC Project Fund / NIA Project Fund] in accordance with the provision of Article IX of the Agreement; and

- (G) no Event of Default has occurred and is continuing under the Agreement.
- (H) Each item for which the [Construction Disbursement/Equipment Disbursement] is requested hereunder, and the cost for each such item, is as described in the information statements filed by the Issuer in connection with the issuance of the Bonds (as defined in the Agreement), as required by Section 149(e) of the Code (as defined in the Agreement); provided that if any such item is not as described in such information statements, attached hereto is a computation evidencing that the average reasonably expected economic life of the facilities which have been and will be paid for with moneys in the [SAC Project Fund / NIA Project Fund] is not less than 5/6ths of the average maturity of the [Series 2018A Bonds / Series 2018B Bonds].
- (I) This statement and all exhibits hereto, including Schedule A, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Bank for its actions taken pursuant hereto.
- (J) This statement constitutes the approval of the undersigned Borrower of each [Construction Disbursement/Equipment Disbursement] hereby requested and authorized.

Dated: _____, 20__

[SAC PROPERTIES, LLC / NIA LLC]

By _____
Name:
Title:

Approved by:

LAKE CITY BANK

By _____
Name: _____
Title: _____

SCHEDULE A TO DISBURSEMENT REQUEST

<u>\$</u>	<u>Amount</u>	<u>Payee (with address)</u>	<u>Purpose</u>
-----------	---------------	-----------------------------	----------------

\$	Total		
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Please see the attached invoices.

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702 (Instructions on reverse side) PAGE ONE OF PAGES

TO OWNER: PROJECT: APPLICATION NO.: Distribution to:
 PERIOD TO: ☐ OWNER
 PROJECT NOS.: ☐ ARCHITECT
 CONTRACT DATE: ☐ CONTRACTOR
☐

FROM CONTRACTOR: VIA ARCHITECT

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM\$
2. Net change by Change Orders\$
3. CONTRACT SUM TO DATE (Line 1 + 2).....\$
4. TOTAL COMPLETED & STORED TO DATE\$
(Column G on G703)
5. RETAINAGE:
 - a. % of Completed Work\$
(Columns D + E on G703)
 - b. % of Stored Material\$
(Column F on G703)
 - Total Retainage (Line 5a + 5b or
Total in Column I of G703).....\$
6. TOTAL EARNED LESS RETAINAGE\$
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate)\$
8. CURRENT PAYMENT DUE\$
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6)\$

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of _____
 County of _____
 Subscribed and sworn to before
 me this _____ day of _____

Notary Public:
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED\$
 (Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



DRAW REQUEST FORM

EXHIBIT C-2

PAGE OF PROCESS

APPLICATION NO. 27786-10-0001-70-0000

APPLICATION DATE:

ARCHITECT'S PROJECT NO.:

[illegible]

ALL DOCUMENTS: CONFERENCE SHEET FOR GALT - 1992 EDITION - JAR - ©1992 - THE AMERICAN INSTITUTE OF JACOBIANS, 175 NEW YORK AVENUE, NEW YORK, NEW YORK 10005-5292 - WARNING: Unlicensed photocopying without the copyright owner's consent is illegal and will subject the violator to legal prosecution.

6703-1592

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EXHIBIT D-1

Form of Series 2018A Note

SERIES 2018A PROMISSORY NOTE

Principal Amount: \$[2,700,000]

Maturity Date: December __, 2033

FOR VALUE RECEIVED, SAC PROPERTIES, LLC, an Indiana limited liability company (the ***"Borrower"***), promises to pay to the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and existing under the laws of the State of Indiana, its successors and assigns (the ***"Issuer"***), in lawful money of the United States of America, the principal sum of [Two Million Seven Hundred Thousand and 00/100ths DOLLARS (\$2,700,000)], and to pay interest on the unpaid principal amount hereof, in like money, at such office at the rates and in the amounts hereinafter specified and as specified in Section 3.03 of that certain Bond Purchase and Loan Agreement (the ***"Loan Agreement"***), dated as of December __, 2018, among the Issuer, the Borrower, NIA LLC, an Indiana limited liability company (***"NIA"***), MMAR, LLC, an Indiana limited liability company (***"MMAR"***), MELBROS, LLC, an Indiana limited liability company (***"Melbros"***), M. LEE MELCHI, a resident of Allen County, Indiana (***"Melchi"***), MARK RUPP, a resident of Allen County, Indiana (***"Rupp"***), WAYNE SHIVE, a resident of Allen County, Indiana (***"Shive"***), JEFF SMITH, an Indiana limited liability company (***"J. Smith"***), ANDREW SMITH, a resident of Allen County, Indiana (***"A. Smith"***), ALAN EHLER, a resident of Allen County, Indiana, and Lake City Bank, as original purchaser (the ***"Holder"***) of the Issuer's \$2,700,000 aggregate principal amount Economic Development Revenue Bonds, Series 2018A (Northern Indiana Anodize Project) (the ***"Series 2018A Bonds"***).

This Note has been executed and delivered by the Borrower to the Issuer pursuant to the Loan Agreement. Under the Loan Agreement, the Issuer will loan to the Borrower the proceeds received from the sale of the Series 2018A Bonds issued (i) to finance the acquisition of approximately 8 acres of land located at 13026 Bluffton Road, in Allen County, Indiana, and the construction, installation and equipping of an approximately 47,000 square foot manufacturing facility by Borrower to be leased to NIA, and (ii) to pay the Issuance Costs for the Series 2018A Bonds (limited to 2% of the original principal amount of the Series 2018A Bonds), and the Borrower has agreed to repay such loan by making payments of principal, premium, if any, and interest (a ***"Loan Payment"***) at the times and in the amounts set forth in this Series 2018A Note for application to the payment of the principal of, premium, if any, and interest on the Series 2018A Bonds as and when due, or as otherwise provided in the Loan Agreement. The Series 2018A Bonds have been issued, concurrently with the execution and delivery of this Series 2018A Note, pursuant to, and is secured by, and as provided in, the Loan Agreement. The Series 2018A Bonds mature on the date specified in Section 2.01 of the Loan Agreement.

Terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement.

Concurrently with the execution and delivery of this Series 2018A Note by the Borrower to the Issuer, the Issuer is endorsing this Series 2018A Note to the Holder, and is assigning and pledging to the Holder all of the Loan Payments pursuant to the terms of the Loan Agreement. Such assignment is made as security for the payment of the Series 2018A Bonds.

To provide funds to pay the principal of, premium, if any, and interest on the Series 2018A Bonds as and when due as specified in the Loan Agreement, the Borrower hereby agrees to and shall (i) make interest only payments payable monthly on the first day of each month commencing [January __, 2018] until the Full Funding Date (each a "***Interest Payment Date***"); provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day with interest accruing to the date of payment, and (ii) make principal and interest payments on this Series 2018A Note monthly commencing on the first Interest Payment Date following the Full Funding Date and continuing on each Interest Payment Date thereafter until payment in full of this Series 2018A Note; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day. Payment of principal and interest on this Series 2018A Note shall be in an amount that will pay the unpaid principal balance of the SAC Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 180 months. If not earlier paid on a Purchaser Tender Date in accordance with the Mandatory Tender provisions of Section 2.09 of the Loan Agreement, or as otherwise provided in the Loan Agreement, the principal of, and all accrued and unpaid interest on, the SAC Loan shall be payable in full on the Series 2018A Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018A Bond to which interest has been paid unless such Series 2018A Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.

Series 2018A Bonds are subject to mandatory tender by the Holder or Holders thereof for purchase, in whole, by the Borrower on each Purchaser Tender Date at a purchase price of 100% of the outstanding principal amount thereof plus accrued interest (if any) to such Purchaser Tender Date unless the Holder or Holders give notice to the Borrower not later than ninety (90) days prior to the Purchaser Tender Date of its/their determination to retain the Series 2018A Bonds for an additional period as set forth in such certificate, provided, however, that such determination to retain the Series 2018A Bonds for an additional period shall first require that an opinion of Bond Counsel be furnished to the Holder or Holders thereof stating that such retention upon terms and conditions mutually acceptable to the Holder or Holders and the Borrower, will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 2018A Bonds. Upon receipt of the outstanding principal balance of the Series 2018A Bonds and the accrued interest thereon to the Purchaser Tender Date, the Holder or Holders thereof shall transfer the Series 2018A Bonds and assign all of its/their rights in this Series 2018A Note and the Loan Agreement to the Borrower or its order.

This Series 2018A Note is subject to mandatory prepayment, in whole, on each Purchaser Tender Date during the term hereof to the extent that the Holder or Holders tender the Series 2018A Bonds for redemption under the provisions of Section 2.09 of the Loan Agreement.

Notwithstanding anything herein to the contrary, in the event of (a) a Determination of Taxability, the Borrower will prepay this Series 2018A Note within 60 days with a premium so

that the total amount of premium plus interest paid from the date of taxability through the date of prepayment would be calculated at the Taxable Rate of Interest and (b) an Event of Default, interest on the unpaid principal balance hereof shall be at the Default Rate, commencing on the date of occurrence of the Event of Default.

Installments of principal, premium, if any, and interest required hereunder shall be made by the Borrower to the Holder for the account of the Issuer, in lawful money of the United States of America in immediately available funds at the principal office of the Holder in Fort Wayne, Indiana. Notwithstanding any other provision of this Series 2018A Note to the contrary, all installments of principal and interest hereunder shall at all times be sufficient to pay the installments of principal and interest required on the Series 2018A Bonds.

The payments by the Borrower to the Holder shall be deemed made by the Borrower on account of this Series 2018A Note and receipt of such payments by the Holder shall be deemed satisfaction of the payment obligations of the Issuer under the Series 2018A Bonds.

Time is of the essence with respect to the terms of this Series 2018A Note.

This Series 2018A Note is the Series 2018A Note referred to in the Loan Agreement, and is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. This Series 2018A Note may be prepaid and is subject to prepayment as specified in the Loan Agreement, and all of the terms, conditions and provisions of the Loan Agreement are by this reference incorporated herein and made a part of this Series 2018A Note. Payment of this Series 2018A Note is secured by a pledge of the Revenues as provided in the Loan Agreement.

In case of an Event of Default, the principal of and interest on this Series 2018A Note may be declared immediately due and payable as provided in the Loan Agreement, along with attorney's fees and costs of collection, and without relief from valuation or appraisal laws.

The Borrower and all endorsers, guarantors, sureties, accommodation parties and all other parties liable or becoming liable for all or any part of the indebtedness evidenced hereby, severally waive presentment, demand, notice, notice of dishonor, protest, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Series 2018A Note, and assent to the addition or release of any other party or person primarily or secondarily liable under this Series 2018A Note.

Upon payment in full of this Series 2018A Note, the Holder shall mark hereon "Paid in Full" and return this Series 2018A Note to the Borrower. When this Series 2018A Note shall be deemed paid in full, the Series 2018A Bonds shall be paid in full.

IN WITNESS WHEREOF, the Borrower has executed this Series 2018A Note as of the
____ day of December, 2018.

SAC PROPERTIES, LLC, an Indiana limited
liability company

By: _____
Its _____

ENDORSEMENT

Pay, without recourse, to the order of LAKE CITY BANK, as Original Purchaser of the Series 2018A Bonds issued under and pursuant to the Bond Purchase and Loan Agreement dated as of December ___, 2018 from the undersigned.

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

(Seal)
Attest:

Lana R. Keesling, City Clerk

The above assignment is hereby accepted.

LAKE CITY BANK, as Original Purchaser

By: _____
Its _____

EXHIBIT D-2

Form of Series 2018B Note

SERIES 2018B PROMISSORY NOTE

Principal Amount: \$[3,700,000]

Maturity Date: December __, 2029

FOR VALUE RECEIVED, NIA LLC, an Indiana limited liability company (the "**Borrower**"), promises to pay to the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and existing under the laws of the State of Indiana, its successors and assigns (the "**Issuer**"), in lawful money of the United States of America, the principal sum of [Three Million Seven Hundred Thousand and 00/100ths DOLLARS (\$3,700,000)], and to pay interest on the unpaid principal amount hereof, in like money, at such office at the rates and in the amounts hereinafter specified and as specified in Section 3.03 of that certain Bond Purchase and Loan Agreement (the "**Loan Agreement**"), dated as of December __, 2018, among the Issuer, the Borrower, SAC Properties, LLC, an Indiana limited liability company ("**SAC**"), MMAR, LLC, an Indiana limited liability company ("**MMAR**"), MELBROS, LLC, an Indiana limited liability company ("**Melbros**"), M. LEE MELCHI, a resident of Allen County, Indiana ("**Melchi**"), MARK RUPP, a resident of Allen County, Indiana ("**Rupp**"), WAYNE SHIVE, a resident of Allen County, Indiana ("**Shive**"), JEFF SMITH, an Indiana limited liability company ("**J. Smith**"), ANDREW SMITH, a resident of Allen County, Indiana ("**A. Smith**"), ALAN EHLER, a resident of Allen County, Indiana, and Lake City Bank, as original purchaser (the "**Holder**") of the Issuer's \$[3,700,000] aggregate principal amount Economic Development Revenue Bonds, Series 2018B (Northern Indiana Anodize Project) (the "**Series 2018B Bonds**").

This Note has been executed and delivered by the Borrower to the Issuer pursuant to the Loan Agreement. Under the Loan Agreement, the Issuer will loan to the Borrower the proceeds received from the sale of the Series 2018B Bonds issued (i) to finance the purchase of machinery and equipment to be utilized by Borrower in the manufacturing facility leased by Borrower from SAC at 13026 Bluffton Road, in Allen County, Indiana, in providing aluminum anodizing services to customers in automotive, construction, boating and industrial markets, and (ii) to pay the Issuance Costs for the Series 2018B Bonds (limited to 2% of the original principal amount of the Series 2018B Bonds), and the Borrower has agreed to repay such loan by making payments of principal, premium, if any, and interest (a "**Loan Payment**") at the times and in the amounts set forth in this Series 2018B Note for application to the payment of the principal of, premium, if any, and interest on the Series 2018B Bonds as and when due, or as otherwise provided in the Loan Agreement. The Series 2018B Bonds have been issued, concurrently with the execution and delivery of this Series 2018B Note, pursuant to, and is secured by, and as provided in, the Loan Agreement. The Series 2018B Bonds mature on the date specified in Section 2.01 of the Loan Agreement.

Terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement.

Concurrently with the execution and delivery of this Series 2018B Note by the Borrower to the Issuer, the Issuer is endorsing this Series 2018B Note to the Holder, and is assigning and pledging to the Holder all of the Loan Payments pursuant to the terms of the Loan Agreement. Such assignment is made as security for the payment of the Series 2018B Bonds.

To provide funds to pay the principal of, premium, if any, and interest on the Series 2018B Bonds as and when due as specified in the Loan Agreement, the Borrower hereby agrees to and shall (i) make interest only payments payable monthly on the first day of each month commencing [January __, 2018] until the Full Funding Date (each a "*Interest Payment Date*"); provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day with interest accruing to the date of payment, and (ii) make principal and interest payments on this Series 2018B Note monthly commencing on the first Interest Payment Date following the Full Funding Date and continuing on each Interest Payment Date thereafter until payment in full of this Series 2018B Note; provided, however, that if any such day is not a Business Day, the Interest Payment Date shall be the next succeeding Business Day. Payment of principal and interest on this Series 2018B Note shall be in an amount that will pay the unpaid principal balance of the SAC Loan in full at the Tax-Exempt Rate in substantially equal monthly payments over a period of 120 months. If not earlier paid as otherwise provided in the Loan Agreement, the principal of, and all accrued and unpaid interest on, the NIA Loan shall be payable in full on the Series 2018B Bond Maturity Date. Interest shall be computed from the Interest Payment Date next preceding the authentication date of each Series 2018B Bond to which interest has been paid unless such Series 2018B Bond is authenticated after the Record Date and on or before such Interest Payment Date in which case it shall bear interest from such Interest Payment Date.

Notwithstanding anything herein to the contrary, in the event of (a) a Determination of Taxability, the Borrower will prepay this Series 2018B Note within 60 days with a premium so that the total amount of premium plus interest paid from the date of taxability through the date of prepayment would be calculated at the Taxable Rate of Interest and (b) an Event of Default, interest on the unpaid principal balance hereof shall be at the Default Rate, commencing on the date of occurrence of the Event of Default.

Installments of principal, premium, if any, and interest required hereunder shall be made by the Borrower to the Holder for the account of the Issuer, in lawful money of the United States of America in immediately available funds at the principal office of the Holder in Fort Wayne, Indiana. Notwithstanding any other provision of this Series 2018B Note to the contrary, all installments of principal and interest hereunder shall at all times be sufficient to pay the installments of principal and interest required on the Series 2018B Bonds.

The payments by the Borrower to the Holder shall be deemed made by the Borrower on account of this Series 2018B Note and receipt of such payments by the Holder shall be deemed satisfaction of the payment obligations of the Issuer under the Series 2018B Bonds.

Time is of the essence with respect to the terms of this Series 2018B Note.

This Series 2018B Note is the Series 2018B Note referred to in the Loan Agreement, and is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. This Series

2018B Note may be prepaid and is subject to prepayment as specified in the Loan Agreement, and all of the terms, conditions and provisions of the Loan Agreement are by this reference incorporated herein and made a part of this Series 2018B Note. Payment of this Series 2018B Note is secured by a pledge of the Revenues as provided in the Loan Agreement.

In case of an Event of Default, the principal of and interest on this Series 2018B Note may be declared immediately due and payable as provided in the Loan Agreement, along with attorney's fees and costs of collection, and without relief from valuation or appraisal laws.

The Borrower and all endorsers, guarantors, sureties, accommodation parties and all other parties liable or becoming liable for all or any part of the indebtedness evidenced hereby, severally waive presentment, demand, notice, notice of dishonor, protest, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Series 2018B Note, and assent to the addition or release of any other party or person primarily or secondarily liable under this Series 2018B Note.

Upon payment in full of this Series 2018B Note, the Holder shall mark hereon "Paid in Full" and return this Series 2018B Note to the Borrower. When this Series 2018B Note shall be deemed paid in full, the Series 2018B Bonds shall be paid in full.

IN WITNESS WHEREOF, the Borrower has executed this Series 2018B Note as of the
____ day of December, 2018.

NIA LLC, an Indiana limited liability company

By: _____
Its _____

ENDORSEMENT

Pay, without recourse, to the order of LAKE CITY BANK, as Original Purchaser of the Series 2018B Bonds issued under and pursuant to the Bond Purchase and Loan Agreement dated as of December ___, 2018 from the undersigned.

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

(Seal)
Attest:

Lana R. Keesling, City Clerk

The above assignment is hereby accepted.

LAKE CITY BANK, as Original Purchaser

By: _____
Its _____

EXHIBIT E

LEGAL DESCRIPTION

E-1

878208.1

EXHIBIT F

FORM OF LANDLORD WAIVER

November __, 2018

SAC, LLC.

Attn: _____
6935 Lincoln Parkway
Fort Wayne, IN 46835

Dear _____:

As you know, we currently lease or will lease from you certain real estate located at **13026 Bluffton Road, Fort Wayne, Indiana 46809** (the "Premises"), as more particularly described in the Real Estate Lease entered into by and between **SAC, LLC** and **NIA, LLC** (the "Company"), dated _____, 2018 (the "Lease"). The Company will have access to a secured credit facility from Lake City Bank (together with its successors and assigns in such capacity, the "Bank") pursuant to the Loan Agreement (as hereinafter defined). The loans from the Bank made pursuant to the Loan Agreement will be secured by, among other things, the Company's equipment, machinery, inventory, accounts receivable and other personal property located on the Premises that we lease from you. For the purposes of this agreement, the term "Loan Agreement" shall mean the Bond Purchase and Loan Agreement entered into by and between, among others, the Bank and the Company dated November __, 2018, as may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

In order for the Bank to be able to make loans to us based on the value of the Company's assets at the Premises, you agree that notwithstanding anything to the contrary contained in the Lease, but subject to the terms of this letter below, the Bank may enter and use the Premises for the limited purposes of removing, selling, or otherwise dealing with the collateral granted by the Company to the Bank following an event of default under the Loan Agreement. The use or occupancy of the Premises by the Bank will not constitute an assumption by the Bank of our lease agreement with you. Any physical damage to the Premises caused by the Bank in removing its collateral from the Premises will be repaired by the Bank to its condition which existed immediately before the removal. You also agree that you will not claim or assert any right to the Company's equipment, inventory and other personal property on the Premises and you release and waive any lien, right of distraint or levy, security or other interest in the Company's equipment, inventory and other personal property on or at the Premises.

If we were to default under the Lease, you hereby agree to send written notice of such a default to the Bank at 202 East Center Street, Warsaw, Indiana 46581-1387, Attn: Commercial Loan Operations. The Bank may then have the right and opportunity to cure such default (for our account), to your satisfaction, for up to fifteen (15) days after the Bank receives the notice from you, during which time you agree not to terminate the

lease agreement or enforce your other rights under it. The Bank has no obligation to cure such default. If the Bank were to cure our default under the Lease, it would not constitute an assumption of the Lease.

The Bank is relying on your agreements contained in this letter in making its loans to us. Such agreements by you are for the benefit of the Bank and its respective successors and assigns and will bind you and your successors and assigns and any successor owner or transferee of the Premises. Such agreements may not be changed or terminated orally or by course of conduct. Any change to the terms of this letter must be in writing and signed by the Bank.

Notwithstanding the above and foregoing, the Bank agrees that the Bank's rights granted herein by you shall not affect your rights and remedies to terminate the Lease and evict the Company from the Premises pursuant to the terms of the Lease or otherwise under Indiana law.

By executing below, the Company and you represent and warrant to the Bank that the Lease between the parties is in full force and effect and free from default as of the date hereof.

This letter may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. In making proof of this letter agreement, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the parties hereto. This letter may be executed and delivered by facsimile or other method of electronic transmission with the same force and effect as if it were a manually executed and delivered counterpart.

Please sign the enclosed copy of this letter in the space provided below.

Thank you for your cooperation and we look forward to our continued relationship with you.

NIA, LLC

By: _____

Its: _____

AGREED:

SAC, LLC.

By: _____

Its: _____

AGREED:

LAKE CITY BANK

By: _____
David Davis, Vice President

FORM OF LIEN WAIVER

The undersigned, Lienor, _____, for and in consideration of the payment in the amount of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services or material furnished through _____ on the project of SAC, LLC, to the following described property:

This release is conditioned upon receipt by Lienor of the sum described above and is not effective until such payment is received in cash or if by check upon credit to Lienor's account. Upon receipt of payment, this agreement shall constitute a Partial Waiver and Release of Lien and does not cover any retention or labor, service or materials furnished after the date specified.

Printed Name: _____

BEFORE ME, the undersigned officer, personally known to me, and who did not take an oath, and is known to be the person described in and who executed the foregoing instrument, and acknowledged to me and before me that he executed said instrument in the capacity and for the purposes therein expressed.

Notary Public

SCHEDULE 1.01
Permitted Liens and/or Encumbrances

SCHEDULE 6.11
Work Commenced Prior to Closing

SCHEDULE 8.27
Existing Indebtedness