



**SPECIAL BOARD MEETING AND PUBLIC HEARING ON PROPOSED
TAX INCREASE OF THE
BOARD OF TRUSTEES
REQUIRED BY TEXAS TAX CODE SECTION 26.06 WILL BE HELD**

**TUESDAY, SEPTEMBER 14, 2021
6:00 PM**

**Alamo Colleges District
Outdoors/Breezeway: Northside of Complex
2222 N. Alamo St.
San Antonio, TX 78215**

NOTICE IS HEREBY GIVEN THAT A SPECIAL BOARD MEETING AND PUBLIC HEARING OF THE BOARD OF TRUSTEES OF THE ALAMO COMMUNITY COLLEGE DISTRICT HELD AT THE PHYSICAL LOCATION REFERENCED ABOVE ON TUESDAY, SEPTEMBER 14, 2021, 6:00 PM. FEWER THAN A QUORUM OF TRUSTEES MAY ATTEND REMOTELY BY VIDEOCONFERENCE AS AUTHORIZED BY TEXAS GOVERNMENT CODE SECTION 551.127. BOARD OF TRUSTEES SPECIAL BOARD MEETING AND PUBLIC HEARING ON PROPOSED TAX INCREASE WILL CONVENE IN OPEN SESSION AT 6:00 PM.

This Public Hearing date is not a holiday. The Public Hearing will be held inside the boundaries of the Alamo Community College District in a publicly owned building. At the hearing, the Board of Trustees of the District will afford adequate opportunity for proponents and opponents of the tax increase to present their views. Notice of this public hearing has been advertised in accordance with the law.

This Special Meeting and Public Hearing of the Board of Trustees, being held for the reasons listed below, is authorized in accordance with the Texas Government Code, §§ 551.001 - 551.146. Verification of Notice of Meeting and Agenda are on file in the Office of the Chancellor. Executive Session, if required, is authorized by Chapter 551 and will be conducted prior to the conclusion of the meeting. If it is decided during the course of the meeting that discussion of any item listed on the agenda should be held in Executive Session, the Board will convene in Executive Session in accordance with Tex. Govt. Code §§ 551.071 - 551.087. In order to vote on items discussed in Executive Session, the Board of Trustees must take action in the open portion of the meeting on items discussed in the Executive Session. The Board will consider, discuss, and take appropriate action regarding the following items:

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**

3. **CERTIFICATION AND POSTING OF NOTICE**
4. **PLEDGE OF ALLEGIANCE**
5. **PUBLIC HEARING ON PROPOSED TAX INCREASE**
 - A. Citizens To Be Heard
 - 1) Registration: 5:00 PM until 5:55 PM
6. **VOTE TO ADOPT TAX RATE**
 - A. Discussion and Possible Action on Setting a Tax Rate for Fiscal Year 2021-2022
7. **SPECIAL BOARD MEETING**
 - A. Discussion and Possible Action on Approval of the Execution of a Parking Easement Agreement and a Related Agreement Between the District and a Purchaser of the Tobin Lofts Projects
8. **EXECUTIVE SESSION**
 - A. The Board may go into Executive Session to deliberate on any item referenced in this agenda for open session or executive session based on the following potential exceptions under the Act.
 - B. Pursuant to §551.071, Texas Government Code, the Board may consult with its attorney(s) to seek their advice on any matter(s) in which the duty of the attorney(s) to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
 - C. Pursuant to § 551.071, Texas Government Code, the Board may consult with its attorneys about pending and threatened litigations.
 - D. Pursuant to § 551.071, Texas Government Code, the Board may consult with its attorneys about pending EEOC charges.
 - E. Pursuant to §551.072, Texas Government Code, the Board may deliberate the purchase, exchange, lease or value of real property, including without limitation the value and possible sale of realty owned by the College District, and the transfer of realty interests by affiliates.
 - F. Pursuant to §551.073, Texas Government Code, the Board may deliberate regarding a negotiated contract for a prospective gift or donation.
 - G. Pursuant to §551.074, Texas Government Code, the Board may deliberate the appointment, employment, evaluation, reassignment, duties, performance of duties, discipline, or dismissal of a public officer or employee(s).
 - H. Any action on these matters will be taken in Open Session.
9. **RECONVENE OPEN MEETING**
 - A. Discussion and Possible Action on Items Discussed in Executive Session.
10. **ADJOURNMENT**

This meeting site is wheelchair accessible. Auxiliary aids and services are available upon request (interpreters for the hearing impaired must be requested twenty-four hours prior to the meeting) by emailing Sandra Torres, Board Liaison at storres304@alamo.edu.

POSTED AT THE
ALAMO COMMUNITY COLLEGE DISTRICT WEBSITE
<https://www.alamo.edu/about-us/leadership/board-of-trustees/board-meetings/>

5:45 PM ON THIS 10TH DAY OF SEPTEMBER 2021

This meeting will not be conducted at a physical location.

This meeting site is wheelchair accessible. Auxiliary aids and services are available upon request (interpreters for the hearing impaired must be requested twenty-four hours prior to the meeting) by emailing Sandra Torres, Board Liaison at storres304@alamo.edu.

“The following notices apply to this meeting.

“Pursuant to Section 30.06, Penal Code, a person may not enter this property with a concealed handgun, whether or not that person is licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law).”

Pursuant to Section 30.07, Penal Code, a person may not enter this property with a handgun that is carried openly, whether or not that person is licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law).”

Dr. Mike Flores
Chancellor

Discussion and Possible Action on Setting a Tax Rate for Fiscal Year 2021-2022

Presented at the Public Hearing Special Board Meeting on September 14, 2021.

MINUTE ORDER

“The Board of Trustees hereby approves, orders and adopts a Maintenance and Operations (M&O) tax rate of \$0.107760/\$100 of assessed valuation for FY 2021/22. The Board of Trustees hereby approves, orders and adopts a Debt levy tax rate of \$0.041390/\$100 of assessed valuation for FY 2021/22. These two actions result in a Combined tax rate of \$0.149150/\$100 of assessed valuation for FY 2021/22 which is greater than the No-New-Revenue tax rate of \$0.147897/\$100 of assessed valuation but less than the Voter-Approval tax rate of \$0.161187/\$100 of assessed valuation. THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 0.57 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$0.61. The referenced tax rate to be effectively raised by 0.57 percent is the maintenance and operations component of the Combined No-New-Revenue tax rate. The adopted Combined tax rate will exceed the No New Revenue tax rate by 0.85 percent and will raise combined taxes on a \$100,000 home by approximately \$1.25.”

PURPOSE

The Alamo Colleges District strives to make higher education readily affordable to its citizens, with a goal to make every effort to keep its tax rates as low as possible.

In accordance with the Debt Management Plan approved by the Board in May 2021, there is no recommended change to the property tax rate- the Combined rate will remain at \$0.149150/\$100 of assessed valuation. Because of the increase in taxable assessed value, this proposed Combined tax rate, although constant from last year, is higher than the calculated No-New-Revenue tax rate, and there is a resultant requirement for public notices and a public hearing prior to final approval of the tax rate.

BACKGROUND

The Combined tax rate is unchanged at \$0.149150/\$100 of assessed valuation. Even though the Combined tax rate is stable, because of the increase in property values, the calculated No-New-Revenue rate is now lower than current rate, requiring a public notice and hearing. The recommended M&O tax rate of \$0.107760/\$100 of assessed valuation is higher than the current year calculated No-New-Revenue tax rate of \$0.147897/\$100 of assessed valuation, but lower than the Voter-Approval rate of \$0.161187/\$100 of assessed valuation. The Debt rate of \$0.041390/\$100 of assessed valuation will raise the revenue needed for FY 2022 debt service payments and other actions per the approved FY 2022 Debt Management Plan. The Combined tax rate of \$0.149150/\$100 is higher than the No-New-Revenue tax rate of \$0.147897/\$100 of assessed valuation, but lower than the Voter-Approval rate of \$0.161187/\$100 of assessed valuation. Public notices and a public hearing are required prior to final approval of the tax rate when the proposed tax rate is greater than either the No-New-Revenue tax rate or the Voter-Approval tax rate (whichever is lower).

The requisite notices have been published, and this Public Hearing was convened as required by the Texas Tax Code.

IMPLICATIONS

Financial:	Provide tax revenues required to support Alamo Colleges District operations and fund annual payments on bond debt
Strategic Objective:	Goal III Performance Excellence
Human Resources:	N/A
Attachments:	Exhibit A: Notice of Tax Rates Exhibit B: Language for Motion

Shayne West Date
Interim Assoc. Vice Chancellor of Finance
and Fiscal Services

Diane E. Snyder, CPA, Ph.D. Date
Vice Chancellor for Finance and Administration

Dr. Mike Flores Date
Chancellor



ALAMO
COLLEGES
DISTRICT

EXHIBIT A

Notice About 2021 Tax Rates

Property Tax Rates in ALAMO COMMUNITY COLLEGE DISTRICT

This notice concerns the 2021 property tax rates for ALAMO COMMUNITY COLLEGE DISTRICT. This notice provides information about two tax rates used in adopting the current tax year's tax rate. The no-new-revenue tax rate would impose the same amount of taxes as last year if you compare properties taxed in both years. In most cases, the voter-approval tax rate is the highest tax rate a taxing unit can adopt without holding an election. In each case, these rates are calculated by dividing the total amount of taxes by the current taxable value with adjustments as required by state law. The rates are given per \$100 of property value.

This year's no-new-revenue tax rate: \$0.147897/\$100

This year's voter-approval tax rate: \$0.161187/\$100

To see the full calculations, please visit 233 N. Pecos-La Trinidad, San Antonio, TX 78207 for a copy of the Tax Rate Calculation Worksheet.

Unencumbered Fund Balance

The following estimated balances will be left in the unit's accounts at the end of the fiscal year. These balances are not encumbered by a corresponding debt obligation.

Type of Fund	Balance
I&S	13,295,000

Current Year Debt Service

The following amounts are for long-term debts that are secured by property taxes. These amounts will be paid from upcoming property tax revenues (or additional sales tax revenues, if applicable).

Description of Debt	Principal or Contract Payment to be Paid from Property Taxes	Interest to be Paid from Property Taxes	Other Amounts to be Paid	Total Payment
Limited Tax Series	27,675,000	23,785,926	0	51,460,926
Maintenance Tax Notes	22,350,000	1,831,888	0	24,181,888
Total required for 2021 debt service				\$75,642,814
- Amount (if any) paid from funds listed in unencumbered funds				\$0
- Amount (if any) paid from other resources				\$0
- Excess collections last year				\$0
= Total to be paid from taxes in 2021				\$75,642,814
+ Amount added in anticipation that the unit will collect only 99.05% of its taxes in 2021				\$725,498
= Total debt levy				\$76,368,312

This notice contains a summary of actual no-new-revenue and voter-approval calculations as certified on 7/29/2021 by The Office of the Bexar County Tax Assessor-Collector Albert Uresti, MPA, PCAC
Carlos Gutierrez, PCC
Property Tax Division Director
233 N. Pecos-La Trinidad, San Antonio, TX 78207
210-335-6600
taxoffice@bexar.org
home.bexar.org/tax

Exhibit B

Motion to adopt Minute Order Setting Tax Rate

A motion to adopt must be made in the following form:

“I move that the property tax rate be increased by the adoption of a tax rate of \$0.149150 per \$100 of taxable value which is effectively a 0.85 percent increase in the tax rate, adopting the minute order to that effect.”

A roll call vote must be taken. Trustees will be noted as For, Against, Present and Not Voting, or Absent.

Section 26.05 Texas Tax Code

Discussion and Possible Action on Approval of the Execution of a Parking Easement Agreement and a Related Agreement Between the District and a Purchaser of the Tobin Lofts Project

Presented to the Board for approval on September 14, 2021.

MINUTE ORDER

"The Board of Trustees hereby adopts the attached Resolutions reaffirming (i) its declaration of the property interests owned by the College District in and under the Tobin Lofts project surplus, (ii) its finding that the property is of no future use to the College District, (iii) its finding that the property's future use as a mixed-use multi-family project not restricted to student housing will in no way interfere with the operations of San Antonio College, and (iv) its finding of a public purpose in leasing the project to a purchaser and continuing an apartment project adjoining San Antonio College available to students and staff which qualifies as an affordable housing project for exemption from property tax; and approving the execution of a compensated parking agreement between the District and a purchaser of the Tobin Lofts Project, on substantially the terms attached, and substantially in the form attached as may be adjusted as approved by District counsel."

PURPOSE

To reaffirm the declaration of the property interests of the College District in and under the Tobin Lofts project as surplus, and to approve the execution of a compensated parking agreement between the District and a purchaser on terms negotiated and attached.

BACKGROUND

The Tobin Lofts student housing and commercial mixed-use project at San Antonio College ("SAC") was approved by the Board in August, 2012 as a public-private partnership with a limited financial commitment and exposure by the District. The ACCD Public Facility Corporation ("PFC") was formed under Chapter 303 of the Texas Local Government Code with the District as sponsor, and the PFC formed Tobin Lofts, LLC ("LLC") as its wholly owned subsidiary. PFC purchased the land upon which the project is situated from the College District by promissory note and executed a deed of trust in favor of the College District as security. Pursuant to a development agreement with private apartment developer NRP Group, PFC ground leased land adjoining SAC to LLC and NRP constructed the project for LLC as its owner using debt financing. COVID exacerbated occupancy problems with the student housing as presently configured. NRP has advised that the cash flow deficits of the property are no longer sustainable and recommends, in lieu of returning the project to its lender, that it be sold to private ownership willing to invest to reconfigure the dwelling units with a requirement to qualify as affordable housing under the tax code. NRP has identified a buyer, which has executed a purchase agreement with LLC containing contingencies, including the negotiation of mutually satisfactory ground lease amendments and restrictive covenants, and of a long-term parking agreement with the College District itself. The Board by minute order adopted May 18, 2021 consented to the commitments of LLC and PFC and approved an agreement to share SAC parking with the project on a long-term basis, subject to certain approval parameters, and by minute order adopted July 27, 2021 reaffirmed the May 28 minute order and declared as surplus the interest of the College District. This Board action is to reaffirm the prior consents, approvals and declarations, and to approve the substantially negotiated terms reflected in the attached draft parking easement agreement and associated liquidated damages agreement.



**RESOLUTION OF THE BOARD OF TRUSTEES
OF THE ALAMO COMMUNITY COLLEGE DISTRICT**

Whereas, the Alamo Community College District, a Texas junior college district and local governmental unit (“College District”), is the sponsor of ACCD Public Facility Corporation, a nonprofit Texas public facility corporation organized under Chapter 303 of the Texas Local Government Code (“PFC”); and

Whereas, PFC purchased from the College District certain realty consisting of land adjoining the College District’s San Antonio College, giving as consideration PFC’s promissory note secured by a Deed of Trust in favor of the College District seller; and

Whereas, Tobin Lofts, LLC, a Texas limited liability company (“LLC”) of which PFC is the sole member, is the lessee from PFC of the Tobin Lofts mixed use commercial and multifamily residential project (“Project”); and

Whereas, PFC, LLC and the College district have determined that it is no longer in their respective interests for LLC to continue to own the leasehold interest in the Project:

Be it now therefore resolved that the property interests (“Property”) owned by the Alamo Community College District in and under the Project are hereby declared to be surplus property;

Resolved further, that the Board finds that the Property is of no future use to the College District;

Resolved further, that the Board finds that there is no ongoing intention to use the Project for District purposes and that the Project’s future use as a mixed-use, multi-family project not restricted to student housing will in no way interfere with the operations of San Antonio College;

Resolved further, that the Board finds that the Project was subject to being lost due to a foreclosure that could cause the District adverse consequences and cause the District to lose all control over the Project, which could adversely affect San Antonio College, and that the proposed transaction would preserve PFC’s assets, cause the existing loan on the Project to be paid, preserve the District’s reversionary interest in the Project, offer an opportunity to repay the District on its outstanding promissory note and provide that 50% of the residential units would be more affordable to District employees and students; and

Resolved further, that the Board finds a public purpose in leasing the Project to a purchaser and continuing an apartment project adjoining San Antonio College available to students and staff which qualifies as an affordable housing project for exemption from property tax;

Resolved further, that the Board consents to the transfer for consideration of LLC’s interest in the Project to, and PFC’s execution of an amended and restated ground lease of the Project, to 1415 North Main, LLC, a Delaware limited liability company (“Purchaser”) by Tobin Lofts, LLC and PFC, and to their execution of such implementing documentation as may be required;

Resolved further, that the Board approves the execution of a compensated parking easement agreement between the College District and the Purchaser, as well as appropriate agreements and instruments ancillary thereto, including, without limitation, a liquidated damages agreement with the Purchaser, on substantially the terms attached, and substantially in the form attached as may be adjusted as approved by District counsel and finds that the exercise of the rights of the grantee



(Purchaser) under the Parking Easement Agreement will not interfere with the operation of San Antonio College;

Resolved further, that the Chancellor and Vice Chancellor for Finance and Administration of the College District are authorized and directed to modify, execute and deliver any of the documents to be signed by or consented to by the College District, and any and all certificates and other instruments necessary to carry out the intent thereof and hereof, in form approved by Corporation counsel;

Resolved further, that the Chancellor and Vice Chancellor for Finance and Administration of the College District are authorized and directed to negotiate and approve such changes in, or additions to, the terms of any of the documents, including future amendments, renewals, and extensions, as such officers shall deem necessary or appropriate upon the advice of counsel to the College District, and approval of the terms of any of the documents by such officers and this Board shall be conclusively evidenced by the execution and delivery of such documents;

Resolved further, that the officers of this Board, or any of them, are authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof.”

PASSED, ADOPTED AND APPROVED on this 14th day of September, 2021.

ALAMO COMMUNITY COLLEGE DISTRICT

Dr. Gene Sprague, Chairperson, Board of Trustees

ATTEST: _____
Clint Kingsbery, Secretary, Board of Trustees



ALAMO
COLLEGES
DISTRICT

PARKING EASEMENT AGREEMENT

This Parking Easement Agreement (this “**Easement**”) is entered into as of the ____ day of September, 2021 (the “**Effective Date**”), by and between the Alamo Community College District (hereafter referred to as “**Grantor**”), and 1415 North Main, LLC, a Delaware limited liability company (“**PFC Tenant**”).

RECITALS:

A. Grantor has developed a five story, nine hundred (900) parking space parking garage facility which includes the elevated covered walkways extending to the PFC Apartments (as defined below) (the “**Parking Garage**”) on property more particularly described on **Exhibit A**, attached hereto and made a part hereof for all purposes (the “**Property**”).

B. ACCD Public Facility Corporation, a Texas public facility corporation (the “**PFC**”) is the owner of that certain property more particularly described on **Exhibit B**, attached hereto and made apart hereof for all purposes (the “**Project Site**”).

C. The PFC is the owner of that certain 4 story multi-family residential project (the “**PFC Apartments**”) and a 13,100 square foot retail development (the “**PFC Retail Space**”, and together with the PFC Apartments, the “**Project**”) situated on the Project Site;

D. The PFC leases the Project to PFC Tenant pursuant to the terms of that certain Amended and Restated Lease Agreement dated as of the Effective Date (the “**PFC Lease**”).

E. Grantor has agreed and desires to grant an easement to the PFC Tenant covering the Residential Use Spaces (as defined herein) and the Retail Use Spaces (as defined herein) within the Parking Garage, together with a non-exclusive easement to use all Common Areas (as herein defined) within the Parking Garage and the Property necessary or desirable to make use of the Residential Use Spaces and the Retail Use Spaces, subject to the terms and conditions hereof.

The preceding Recitals are true and correct and form the basis for this Easement.

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Easement hereby covenant and agree as follows:

1. **Defined Terms.** When used in this Easement, unless the context shall prohibit or otherwise require, the following words, whenever used with an initial capital letter, shall have the following meanings:

“**Business Day**” shall mean any day other than a Saturday, a Sunday, a holiday on which national banks in the State of Texas are permitted to be closed or a holiday or Spring or Winter Break recognized by Grantor.

“**Condemnation**” shall mean a Taking resulting from (i) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor and (ii) a voluntary

sale or transfer by Grantor to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

“**Condemnor**” shall mean any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

“**Default Rate**” shall mean (i) the per annum interest rate which is publicly announced (whether or not actually charged in each instance) from time to time (adjusted daily) by JPMorgan Chase Bank, N.A. or such other bank as may be approved in writing by the Parties hereto for purposes of ascertaining the Prime Rate, as its “prime rate” plus (ii) five percent (5%). In the event that the bank providing the Prime Rate discontinues the quotation of such rate or in the event the same ceases to be readily ascertainable, the Parties shall approve as the Prime Rate, either another bank’s quotation of such rate or another rate of interest which is readily ascertainable; provided, however, that if the Parties are unable to agree upon another Prime Rate, the “**Prime Rate**” shall be the Prime Rate published in The Wall Street Journal from time to time (adjusted daily) as being the base rate on corporate loans at large U.S. money center commercial banks.

“**Disabled Use Spaces**” shall mean those spaces in the Parking Garage presently designated as being reserved for disabled persons.

“**Force Majeure**” shall mean any delay in the performance of any obligation under this Easement other than the payment of money resulting from any cause beyond the non-performing Party’s control, which includes, without limitation, all labor disputes, governmental acts, regulations or controls, fire or other casualty, inability to obtain materials or services or reasonable substitutes for said materials or services, acts of God or any other similar cause not within the reasonable control of the Party claiming such delay, other than financial obligations and abilities.

“**Governmental Authority**” shall mean the United States of America, the State of Texas, the County of Bexar, the City of San Antonio and any political or other subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court or instrumentality of any of them which now or hereafter has jurisdiction over the Parking Garage or the operation or management thereof.

“**Grantor Exclusive Spaces**” shall mean the vehicular parking spaces not included in the Residential Use Spaces or the Retail Use Spaces.

“**Hazardous Substances**” shall mean any and all pollutants, contaminants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized under any Legal Requirement (including, without limitation, lead paint, asbestos, urea formaldehyde foam insulation, petroleum (including by-products and fractions thereof) and polychlorinated biphenyls).

“**Legal Requirement**” shall mean any statute, law, ordinance, order, rule, regulation or judgment of any Governmental Authority, including, without limitation, any law,

ordinance, rule, regulation, order, judgment, injunction or decree now or hereafter enacted, promulgated or issued relating to pollution or Hazardous Substances, all amendments and supplements to any of the foregoing and all regulations now or hereafter promulgated or issued pursuant thereto, and any requirement, term or condition contained in any restriction or restrictive covenant affecting the Parking Garage, Grantor, the operation of the Parking Garage or the Parking Spaces.

“**Notice**” shall mean a written notice or notification required or permitted to be given by this Easement, as more particularly provided in Section 17 below.

“**Parking Spaces**” means, collectively, the Residential Use Spaces, the Grantor Exclusive Spaces and the Retail Use Spaces.

“**Party**” or “**Parties**” shall mean, in the singular, Grantor or PFC Tenant and, in the plural, Grantor and PFC Tenant and all the respective successors and assigns thereof as to, as the context requires or permits.

“**PFC Apartments**” shall mean that certain apartment building located on the Project Site and any replacement thereof.

“**PFC Elevator**” shall mean that certain elevator in the Parking Garage designated for the exclusive use of the PFC Tenant and its permittees, as same is shown on Exhibit C.

“**PFC Retail Space**” shall mean that certain 13,100 square foot retail space located on the Project Site and any replacement thereof.

“**PFC Tenant’s Easement Contribution**” shall mean an amount per annum, commencing on the first day of the twenty-fifty (25th) full calendar month during the term of this Easement, during the Term equal to the product of (x) Two Hundred Dollars (\$200.00) (the “**Per Space Contribution**”) multiplied by (y) the sum of the Residential Use Spaces and the Retail Use Spaces which PFC Tenant has elected, or been deemed to have elected for such year. The Per Space Contribution amount shall increase to Two Hundred Forty Dollars (\$240) in the sixty-fifth (65th) and following calendar years of the Term.

“**Project Mortgage**” shall mean any mortgage, deed to secure debt, deed of trust or other similar instrument encumbering all or any portion of the Property, the Project Site or PFC Tenant’s interest in the PFC Lease or this Easement, or any other collateral pledge or assignment of PFC Tenant’s rights in and to this Easement, whether now in existence or hereafter created.

“**Registered Holder**” shall mean the then current holder of a Project Mortgage granted by PFC Tenant who has been designated by PFC Tenant to Grantor in writing.

“**Residential Use Area**” shall mean the portion of the Parking Garage shown on the Parking Plan as the Residential Use Area, together with the elevated covered walkways extending to the PFC Apartments (“Walkways”), which will be for the exclusive use of the Residential Parties.

“**Residential Use Improvements**” shall mean a security gate at the West Park entrance,

signage and fencing segregating the Residential Use Area as shown on the plans attached hereto as **Exhibit D**.

“**Residential Use Spaces**” shall mean three hundred eighty-one (381) vehicular parking spaces in the Parking Garage in the locations shown on the Garage Plan attached hereto as **Exhibit C** (the “**Garage Plan**”), on an assigned and 24-hour, 7 day per week basis. Except as provided herein, PFC Tenant may only permit the Residential Use Spaces to be used by the tenants of the PFC Apartments and the employees, visitors, licensees and invitees of such tenants of the PFC Apartments (collectively, the “**Residential Parties**”).

“**Retail Use Spaces**” shall mean up to seventy (70) vehicular parking spaces in the Parking Garage at the Retail Use Area location shown on the Garage Plan, on an assigned and 24-hour, 7-day-per-week basis. Except as provided herein, PFC Tenant may only permit the Retail Use Spaces to be used by the tenants of the PFC Retail Space and the employees, visitors, licensees and invitees of such tenants of the PFC Retail Space (collectively, the “**Retail Parties**”). PFC Tenant shall have the right to make an annual election as to the number of Retail Use Spaces it wishes to use, but not to exceed a maximum of seventy such spaces (“**Maximum Retail Allocation**”). Such election shall be made by written notice, given to Grantor not later than thirty (30) days prior to each calendar year during the Term of this Easement, and specifying the number of Retail Use Spaces, not to exceed the Maximum Retail Allocation. The initial Retail Use Spaces for calendar year 2021 shall be 70. The allocation of Retail Use Spaces shall include the retail parking spaces provided prior to the Effective Date hereof to PFC Retail Space tenant Luther’s Café, Inc. pursuant to that Lease Agreement – Parking dated as of August 1, 2014. Any Retail Use Spaces not being utilized by PFC Tenant during any calendar year shall be treated as Grantor Exclusive Spaces for the applicable calendar year. If PFC Tenant fails to timely make an election of Retail Use Spaces for any calendar year, the allocation from the previous calendar year shall be utilized during such succeeding calendar year(s) until PFC Tenant timely makes a new election. Unless otherwise designated by PFC Tenant, the location of the Retail Use Spaces shall be allocated such that the first such spaces are the closest to ground floor elevation and precede up the ramp of the Parking Garage to the extent of the requested allocation by PFC Tenant.

“**Taking**” shall mean a permanent or temporary taking or voluntary conveyance during the term hereof of all or part of the Parking Garage or any interest therein or right accruing thereto or use thereof, as the result of or in settlement of, any Condemnation or other eminent domain proceeding affecting the Parking Garage.

“**Taxes**” shall mean all taxes, governmental assessments, governmental charges, or assessments by any owners’ association, whether federal, state, county, municipal, or owners’ association-assessed, and whether they are imposed by existing taxing districts or authorities, or by other taxing districts, governmental authorities, or other entity subsequently, imposed upon or attributable to the Parking Garage.

“**Term**” shall mean the period commencing on the Effective Date and expiring upon the last day of the seventy-fifth (75th) full calendar year thereafter. Notwithstanding the foregoing, PFC Tenant shall have the right, at any time during the Term, to terminate its rights to all or any portion of the Residential Use Spaces, the Retail Use Spaces and/or this

Easement. PFC Tenant and Grantor agree to enter into a written modification and/or termination of this Easement to reflect the terms of such modification.

“**Work**” shall mean, collectively, all restoration, repair, rebuilding, maintenance, alterations, additions or improvements required of either Party hereunder.

2. Parking Easement. Grantor hereby grants, sells, bargains and conveys to PFC Tenant (i) an exclusive easement to the Residential Use Spaces for parking of automobiles (the “**Residential Permitted Use**”) within the Residential Use Spaces for the benefit of PFC Tenant and the Residential Parties, together with an exclusive easement to utilize the PFC Elevator in connection therewith and (ii) an exclusive easement to the Retail Use Spaces for parking of automobiles (the “**Retail Permitted Use**” and collectively with the Residential Permitted Use, the “**Permitted Use**”) within the Retail Use Spaces for the benefit of PFC Tenant and the Retail Parties. Subject to the terms and conditions of this Easement, PFC Tenant may permit the Residential Parties to park automobiles in the Residential Use Spaces and the Retail Parties to park automobiles in the Retail Use Spaces. Subject to Section 20 below, this Easement and the easements herein granted shall terminate upon expiration of the Term hereof, except for provisions which expressly survive termination hereof.

3. Access Easement. Grantor hereby grants and conveys to PFC Tenant a non-exclusive easement for the purpose of ingress and egress to and from the Residential Use Spaces, the PFC Elevator, and the Retail Parking Spaces over and across the Common Areas as shown and depicted in the Garage Plan to the extent necessary for vehicular or pedestrian ingress and egress to and from such Parking Spaces (the “**Common Areas**”), subject to the terms and conditions of this Easement. PFC Tenant may permit the Residential Parties and the Retail Parties (collectively, the “**PFC Tenant Parties**”) to use the Common Areas in connection with the Permitted Use. In fulfilling its maintenance and repair obligations under this Easement, Grantor shall not unreasonably or materially interfere with the PFC Parties’ use of their applicable Parking Spaces and Common Areas, except as permitted under this Easement. Common Areas shall expressly exclude the elevator which serves the Grantor Exclusive Spaces.

4. Reservations of Grantor. Grantor reserves the right to (i) temporarily close all or any portion of the Parking Garage or Common Areas for the purpose of making repairs, alterations, additions or improvements thereto if approved in writing by the Parties or if required by Legal Requirements or to address conditions that Grantor reasonably believes pose life safety risks; and (ii) install one or more controlled access devices, including, but not limited to, gates utilizing card keys or tokens, provided the installation and operation of such devices is in compliance with all applicable Legal Requirements and does not interfere with PFC Tenant’s rights to access its applicable Parking Spaces.

5. Modification of Parking Garage. Grantor shall be permitted to make modifications, alterations, improvements and additions to the Parking Garage at any time throughout the Term; provided that Grantor must obtain the consent of PFC Tenant, to the extent any such modification, alteration, improvement or addition materially affects PFC Tenant's continuing ability to use the Residential Use Spaces, Retail Use Spaces, PFC Elevator, or any of the Common Areas. PFC Tenant shall not unreasonably withhold, condition, or delay, its consent to any modification, alteration, improvement, or addition desired by Grantor which requires such consent.

6. Management of Parking Garage. Subject to the PFC Tenant Maintenance Responsibilities (as defined herein), Grantor shall be responsible for the repair and maintenance of the Parking Garage. PFC Tenant shall be responsible for (i) installing fencing separating the Residential Use Spaces from the remainder of the Parking Garage, installing access gates to control access to the Residential Use Spaces, and signage to inform those using the garage of the exclusive rights of PFC Tenant and its permittees to use the Residential Use Spaces and the Retail Use Spaces, all within one (1) year of the Effective Date; (ii) the repair and maintenance of its signage, fencing, and access gates; and (iii) providing custodial services to the Retail Use Spaces, the Residential Use Spaces and the Walkways, stairwells and elevator lobbies serving same exclusively as well as sweeping the interior of the PFC Elevator, refuse pick up in, and sweeping of, such areas, emptying of the trash receptacles in such areas into the dumpsters serving the Parking Garage provided by Grantor on such schedule as PFC Tenant deems reasonably appropriate; and (iv) re-striping the Residential Use Spaces and Retail Use Spaces on such schedule as PFC Tenant deems reasonably appropriate (all of the foregoing being collectively called the “**PFC Tenant Maintenance Responsibilities**”). Grantor acknowledges and agrees that the provision of the services to be provided by PFC Tenant under this Easement constitutes a material benefit to Grantor and that this Easement constitutes a “contract for goods and services” under Chapter 272.151 of the Texas Local Government Code.

7. Parking Operation.

(a) Operation of Parking Garage. Subject to the Grantor’s maintenance, repair and replacement obligations under this Easement, PFC Tenant shall be responsible for the operation and management of the portions of the Parking Garage consisting of the Residential Use Spaces, the Retail Use Spaces, the Walkways, the PFC Tenant Elevators, and the stairwells serving same. Grantor shall be responsible for the operation and management of the remainder of the Parking Garage.

(b) Building Standard Services to be Furnished by Grantor.

(i) Grantor shall furnish, at Grantor's cost and expense (“**Building Standard Services**”), the following:

1. Excluding the PFC Tenant Maintenance Responsibilities, cleaning and maintenance, including all repairs and replacements as needed, of the Parking Garage and all parts of same and the systems and equipment contained therein or otherwise serving same in accordance with the general, overall standards of parking garage maintenance as established by Grantor from time to time in its sole discretion for its parking garages on the San Antonio College Campus (“**Comparable Parking Facilities Standards**”), including, without limitation, the PFC Elevator and all areas of the Parking Garage reserved for the exclusive use of the PFC Tenant.
2. Reasonably necessary lighting, including bulb replacement for all fixtures, ventilation, and to the extent required by Legal Requirements, fire sprinkler and fire alarm systems and services required for the Parking Garage.

3. Should PFC Tenant desire a higher level of maintenance, repair, or service to the Residential Use Spaces, Retail Use Spaces or any portion of the Parking Garage serving same, PFC Tenant May provide same at its sole cost and expense without any set off to the PFC tenant's Easement Contribution.
4. PFC Tenant agrees and acknowledges that Grantor shall NOT be obligated to provide security services at the Parking Garage. To this end, PFC Tenant shall notify its tenants and others utilizing the Parking Garage by, through or under PFC Tenant that they are responsible for locking all vehicles and taking other reasonable steps to secure all personal property and possessions in any vehicles parked in the Parking Garage. PFC TENANT ACKNOWLEDGES THAT (a) ANY SECURITY OR SAFETY MEASURES EMPLOYED BY GRANTOR ARE FOR THE PROTECTION OF GRANTOR'S OWN INTERESTS; (b) GRANTOR IS NOT A GUARANTOR OF THE SECURITY OR SAFETY OF PFC TENANT OR THE PFC TENANT PARTIES OR THEIR PROPERTY; (c) IN NO EVENT SHALL GRANTOR BE LIABLE TO PFC TENANT OR ANY OF THE PFC TENANT PARTIES FOR DAMAGES, LOSSES, CLAIMS, INJURY TO PERSONS OR PROPERTY, OR CAUSES OF ACTION ARISING OUT OF ANY THEFT, BURGLARY, TRESPASS, OR OTHER ENTRY INTO OR DAMAGE TO ANY VEHICLES IN THE PARKING GARAGE, AND PFC TENANT RELEASES AND AGREES TO INDEMNIFY AND DEFEND GRANTOR, ITS OWNER, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND CONTRACTORS (COLLECTIVELY, THE "**GRANTOR PARTIES**") FROM ALL LIABILITIES OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) FOR THESE LOSSES, DAMAGES, OR INJURIES SUFFERED BY PFC TENANT OR ANY OF THE PFC TENANT PARTIES, REGARDLESS OF THEIR CAUSE EVEN WHERE THE NEGLIGENCE OF ANY OF THE GRANTOR PARTIES IS THE WHOLE OR PARTIAL CAUSE OF THE LIABILITIES OR EXPENSES. IF ANY PART OF THIS EASEMENT CONFLICTS WITH THE PREVIOUS TWO (2) SENTENCES, THEN THE PREVIOUS TWO SENTENCES SHALL PREVAIL.

(c) Access. Grantor acknowledges that the Residential Improvements may include a "card-entry" system for access to the Residential Use Spaces within the Parking Garage. PFC Tenant, at its sole cost, may install and maintain the access control system for the Residential Use Spaces. If it elects, PFC Tenant shall provide the credential equipment necessary to access the Residential Use Spaces to the Residential Parties at its sole cost. PFC Tenant shall also be responsible, at its sole cost, for administration of the credential equipment given to the Residential Parties, including, without limitation, payment for lost equipment.

(d) Operating Hours. The Residential Use Spaces, Retail Use spaces, PFC

Elevator and all portions of the Parking Garage reasonably necessary to access and use same, including, without limitation, the Walkways, stair wells and elevator lobbies, shall be open for use, and users permitted hereunder shall have access and the right to use the Parking Garage, twenty-four hours (24) a day, every day of the year, except to the extent such access is restricted due to: (a) emergencies, casualty damage, condemnation, or other causes beyond Grantor's reasonable control, (b) Legal Requirements and/or (c) necessary maintenance and repairs to the Parking Garage (Grantor agreeing to minimize, to the extent reasonably practical, such restrictions for purposes of repairs and maintenance).

(e) Manner of Use. PFC Tenant shall clearly designate the Residential Use Spaces and the Retail Use Spaces by signs or other markings sufficient to notify users of the Parking Garage that the Residential Use Spaces are for the exclusive use of the Residential Parties and that the Retail Use Spaces are for the exclusive use of the Retail Parties. Each of the Parties shall conduct itself and will endeavor to direct each of its respective employees, agents, licensees and invitees to conduct itself in such a manner so as to comply with all Legal Requirements in connection with the use of the Parking Garage and not to create a nuisance. PFC Tenant shall be solely responsible to keep unauthorized persons from using the Retail Use Spaces and Residential Use Spaces, but shall have no liability for failing to do so. Grantor shall not be obligated to expend any sums or incur any costs to keep unauthorized persons from using the Retail Use Spaces or the Residential Use Spaces. PFC Tenant shall have the right to boot unauthorized vehicles utilizing Retail Use Spaces with a fee set at the lowest rate from a third party to remove any boot from a vehicle, but PFC Tenant shall have no right to tow unauthorized vehicles from Retail Use Space. Grantor shall have no obligation to provide security for the Residential Use Spaces or the Retail Use Spaces, and any security Grantor may choose to provide for the remainder of the Garage need not consider any potential benefit to the Residential Use Spaces or the Retail Use Spaces. PFC Tenant may (but will not be obligated to) employ persons to provide on-site security in the Residential Use Spaces and the Retail Use Spaces of the Parking Garage in the form of security attendants or personnel, such costs to be borne by the PFC Tenant unless otherwise agreed in writing by the Parties.

(f) Valet Services. Either Grantor or PFC Tenant shall have the right to offer valet services in its portion of the Parking Garage. Grantor or PFC Tenant shall have the right, but not the obligation, to contract with a third-party valet parking services operator (the "Valet") to provide valet parking services, at such contracting party's sole cost and expense, for its parking spaces in the Parking Garage, provided such operator has experience in operation of valet services in other mixed-use projects located in the San Antonio, Texas metropolitan area. The Valet shall operate the valet services so as to ensure that the Parties are permitted timely ingress and egress from the Parking Garage at all times and are not subject to unreasonable delay or inconvenience by virtue of the valet services.

(g) Parking Space Specifications. All parking spaces currently conform to the requirements of applicable Governmental Authorities and thereafter shall be the size as they exist on the date hereof; provided, however, that the Parties may change the size of the parking spaces from time to time provided such spaces remain in compliance with Legal Requirements and, to the extent required by Legal Requirements, the size and location of parking spaces may be modified by either party without the consent of the other party as necessary to accommodate handicapped accessible spaces as are required to satisfy applicable Legal Requirements.

(h) Compliance with Laws. Grantor agrees to comply with all Legal Requirements relating to the condition of the Parking Garage, including, without limitation, making any required change, modifications, repairs, replacements, additions or alterations to the structure of the Parking Garage or Parking Spaces, to the extent failure to so comply will materially and adversely affect PFC Tenant's use or occupancy of the Residential Use Spaces, Retail Use Spaces, Common Areas, or PFC Elevator for the purposes intended by this Easement (subject to Grantor's right, in good faith, to contest any Legal Requirements). Subject to the release and waiver found in Section 10(c) below, to the extent that any maintenance or repair is required or cost is incurred as the result of the negligence, gross negligence or willful misconduct of a Party or its respective permittees, the Party causing or whose permittees caused the need for such maintenance, repair or expenditure shall be responsible and obligated to pay the cost incurred to perform such maintenance or repair. The Residential Use Spaces and the Retail Use Spaces include the entire first (ground) floor of the Parking Garage. PFC Tenant agrees that the Parties shall continue to designate the first floor Disabled Use Spaces as presently marked and adjust same as may be required by law. The Parties agree that PFC Tenant shall within the Residential Use Spaces and the Retail Use Spaces, and that Grantor shall within the Grantor Exclusive Spaces, designate at least the minimum number of Disabled Use Spaces as are required by law for the number of their respectively allocated spaces and the uses which they serve.

(i) Covenants as to Hazardous Substances. PFC Tenant covenants and agrees not to use, authorize or permit the use of its applicable Parking Spaces by any of its permittees for use, disposal, treatment, generation, release or storage of any Hazardous Substances other than such Hazardous Substances customarily used in the parking of automobiles and used in compliance with Legal Requirements. PFC Tenant shall be solely responsible for and shall defend, and shall and hereby does indemnify and hold Grantor, any Mortgagees of Grantor and any successors-in-interest to Grantor, including, without limitation, any Mortgagee of Grantor, and their respective agents and employees, harmless from all claims, damages, liabilities, costs and expenses, including, without limitation, attorney's fees and costs, arising out of or in connection with PFC Tenant's breach of its obligations contained in this Section 7(i). PFC Tenant's obligations under this Section 7(i) shall survive expiration and termination of this Easement.

Grantor covenants and agrees not to use, authorize or permit the use of the Grantor Exclusive Parking Spaces or the Common Areas for use, disposal, treatment, generation, release, storage or sale of any Hazardous Substances not in compliance with Legal Requirements. Grantor's obligations under this Section 7(i) shall survive expiration and termination of this Easement.

In the event Grantor or PFC Tenant discovers any Hazardous Substances located within the Parking Garage or in, on, under or around the Parking Garage, which were not brought onto the Premises by PFC Tenant, its agents, employees or permittees, then Grantor shall promptly proceed to remove such Hazardous Substances, at Grantor's sole cost and expense, in accordance with all applicable governmental regulations. If any such removal interferes with PFC Tenant's use of the Spaces, Grantor will provide alternative parking reasonably acceptable to PFC Tenant until the removal is complete. Notwithstanding any provision of this Easement appearing to the contrary, PFC Tenant will not be obligated to remove or otherwise be responsible, or have any liability, for any Hazardous Substances introduced onto the Premises by Grantor or any third party, other than PFC Tenant, its agents, employees and permittees.

(j) No Further Encumbrances. The Parties covenant and agree to not encumber the Parking Garage or their interests under this Easement, or permit other users of the Parking Garage (except as allowed herein), except in connection with Section 20 hereof, and provided that such rights under such leases for the Project are expressly subject to this Easement.

8. PFC Tenant's Easement Contribution. Annually during the Term of this Easement, commencing on January 1, 2024 and annually thereafter PFC Tenant shall pay in advance to Grantor in one installment the PFC Tenant's Easement Contribution for the upcoming calendar year. No Easement Contribution shall be owed until such time.

9. Insurance. Grantor shall maintain or cause to be maintained, in full force and effect at all times during the term of this Agreement, property insurance on the Parking Garage consistent with how Grantor insures its other parking garages, but at a minimum covering such of those perils currently covered under an ISO Form CP 10 30 policy of property insurance together with wind and hail coverage, if separate, with a Total Insured Value of at least 50% of replacement cost, with commercially reasonable deductibles; and (ii) commercial general liability insurance with at least a \$1,000,000 per occurrence limit and so called umbrella liability/excess loss insurance with at least a \$5,000,000 per occurrence limit with commercially reasonable deductibles/self-insurance retentions. Any non-governmental successor to Grantor's rights in the Parking Garage shall throughout its period of ownership of the Parking Garage maintain "special form" property insurance covering, at a minimum, those perils covered by the current ISO Form CP 10 30 policy of property insurance on the entire Parking Garage. Said insurance shall be for the full replacement cost of the Parking Garage excluding footings and foundations. Should either Party hire a valet parking company or a garage management company to manage or park cars in any portion of the Parking Garage, such company shall be required to maintain Garagekeeper's Legal Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00). Such policy shall name both Parties as additional insured and shall in all other respects comply with the requirements relating to policies of insurance set forth in this Section 9 as if such company were a Party to this Easement. Grantor shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Property, or any portion thereof, or the requirements of any insurance policy affecting insurance coverage on the Property, if noncompliance by it with respect to the Property or any portion thereof would: (i) increase the premiums of any policy of insurance maintained by PFC Tenant; (ii) render the Property or the Project Site uninsurable; or (iii) create a valid defense to PFC Tenant's right to collect insurance proceeds under policies insuring the Project Site. Should Grantor ever sell its ownership of the Parking Garage to any entity that is not a governmental entity, such successor shall throughout the Term maintain a policy or policies of commercial general liability insurance or its equivalent, including contractual liability coverage with this Easement as a covered contract, with the premiums thereon fully paid in advance, issued by and binding upon an insurance company admitted to do business in the State of Texas, such insurance to afford minimum protection of not less than Five Million Dollars (\$5,000,000) personal injury or death in respect of any one occurrence and of not less than Five Million Dollars (\$5,000,000) for property damage in any one occurrence. The general liability coverage may be provided through the use of a primary liability policy or through a combination of primary liability and umbrella excess liability policies. If Grantor fails to obtain, maintain or cause to be maintained any insurance policy required to be obtained or maintained by Grantor as provided hereunder, then PFC Tenant may, without any obligation to send notice or provide an opportunity to cure, at its election, procure or pay such portion of the premiums for the same and Grantor shall, upon demand, reimburse PFC Tenant for all costs in connection therewith, together with interest thereon

at the Default Rate from the date of payment, and PFC Tenant shall have the rights and remedies provided under this Easement.

PFC Tenant shall maintain commercial general liability insurance covering the Residential Use Area, the PFC Elevator and the Retail Use Area, providing not less than One Million and No/100 Dollars (\$1,000,000.00) in coverage per occurrence (with an umbrella policy in the amount of Three Million and No/100 Dollars (\$3,000,000.00) per occurrence and in the aggregate), on an “occurrence” per Project basis, including contractual liability with this Easement as a covered contract, but such coverage will not limit such indemnifications), for the benefit of PFC Tenant; Grantor will be named as additional insured.

10. Indemnity.

(a) Subject to the release and waiver in Section 10(c) below, PFC Tenant shall reimburse Grantor and Grantor’s directors, officers, employees and agents and shall indemnify each of them, defend upon request and hold harmless from and against all costs, damages, claims, liabilities, expenses (including attorneys’ fees, disbursements and actual costs), loss and court costs suffered by or claimed against any of them, directly or indirectly, based on or arising out of, in whole or in part, (i) any negligence or willful misconduct of PFC Tenant or its permittees, employees, agents, or contractors in the use of the Parking Garage, and (ii) any breach of this Easement by PFC Tenant. If PFC Tenant ever converts its interest in the PFC Apartments into individually owned condominium units, the instruments establishing condominium ownership must contain effective provisions binding the condominium association as the indemnifying party as the successor of PFC Tenant hereunder.

(b) Subject to the release and waiver in Section 10(c) below, Grantor shall reimburse PFC Tenant, and PFC Tenant’s directors, officers, employees and agents and shall indemnify each of them, defend upon request and hold harmless from and against all costs, damages, claims, liabilities, expenses (including attorneys’ fees, disbursements and actual costs), loss and court costs suffered by or claimed against any of them, directly or indirectly, based on or arising out of, in whole or in part, (i) any negligence or willful misconduct of Grantor, and (ii) any breach of this Easement by Grantor; provided, however, for so long as the Grantor is the Alamo Community College District or another governmental entity, such obligations shall not apply.

(c) Waiver of Subrogation. **EACH PARTY HEREBY RELEASES AND WAIVES FOR ITSELF, AND TO THE EXTENT LEGALLY POSSIBLE FOR IT TO DO SO, ON BEHALF OF ITS INSURER, THE OTHER PARTY AND ITS OFFICERS, MORTGAGEES, DIRECTORS, AGENTS, PARTNERS, MEMBERS, SERVANTS AND EMPLOYEES FROM LIABILITY FOR ANY LOSS OR DAMAGE TO THE PARKING GARAGE OR ANY PART THEREOF OR TO TANGIBLE REAL OR PERSONAL PROPERTY OF THE OTHER PARTY, WHICH LOSS OR DAMAGE IS CAUSED BY A PERIL INSURABLE UNDER A CURRENT SPECIAL FORM (ALL RISK) POLICY OF PROPERTY INSURANCE [ISO FORM CP 10 30], IRRESPECTIVE OF ANY NEGLIGENCE ON THE PART OF THE RELEASED PARTY WHICH MAY HAVE CONTRIBUTED TO OR CAUSED SUCH LOSS OR DAMAGE. EACH SUCH PARTY COVENANTS THAT IT WILL, IF GENERALLY AVAILABLE IN THE INSURANCE INDUSTRY, OBTAIN FOR THE BENEFIT OF EACH OTHER SUCH PARTY A WAIVER OF ANY RIGHT OF SUBROGATION WHICH THE INSURER OF SUCH**

RELEASING PARTY MAY ACQUIRE AGAINST ANY SUCH PARTY BY VIRTUE OF THE PAYMENT OF ANY SUCH LOSS COVERED BY SUCH INSURANCE. IF DESPITE USING COMMERCIALY REASONABLE EFFORTS ANY SUCH PARTY IS UNABLE TO OBTAIN A WAIVER OF THE RIGHT OF SUBROGATION FROM ITS INSURER(S) FOR THE BENEFIT OF EACH SUCH PARTY, THEN SUCH PARTY SHALL PROMPTLY GIVE WRITTEN NOTICE TO THE OTHER PARTY OF SUCH FACT, AND DURING ANY PERIOD WHEN SUCH WAIVER IS UNOBTAINABLE, SAID PARTY SHALL NOT HAVE BEEN DEEMED TO HAVE RELEASED ANY SUBROGATED CLAIM OF ITS INSURANCE CARRIER AGAINST THE OTHER PARTY, AND DURING THE SAME PERIOD EACH SUCH PARTY SHALL BE DEEMED NOT TO HAVE RELEASED THE PARTY WHO HAS BEEN UNABLE TO OBTAIN SUCH WAIVER FROM ANY CLAIMS IT OR ITS INSURANCE CARRIER MAY ASSERT WHICH OTHERWISE WOULD HAVE BEEN RELEASED PURSUANT TO THIS SECTION 10(c).

11. [Intentionally Omitted]
12. Damage to Parking Garage.

(a) If a loss or damage caused by fire or other casualty (a “Casualty”) completely or partially damages or destroys the Parking Garage, or any part thereof, Grantor will diligently proceed to repair and restore fully, at its own cost, the portion of the Parking Garage constituting the Residential Use Spaces, the Retail Use Spaces, the stair wells serving same, the PFC Elevator, and all other portions of the Parking Garage and Common Areas to the extent same are used in connection with the operation and enjoyment of the Residential Use Spaces or the Retail Use Spaces (collectively, the “PFC Tenant Parking Facilities”), substantially to their condition before the Casualty. Due allowance, however, will be given for the time required to adjust and settle insurance claims, and for such other delays as may result from government restrictions, any controls on construction, and for strikes, emergencies, and other conditions beyond Grantor’s reasonable control. During the time of such repair and rebuilding, Grantor must provide PFC Tenant with replacement parking spaces in one or more locations on the San Antonio College campus, and Grantor shall use reasonable efforts to ensure the substitute parking is located as close to the Parking Garage as is reasonably practicable at the time, or if Grantor desires to provide the substitute parking off said campus, then in a location and proximity to the Parking Garage reasonably acceptable to PFC Tenant, to compensate for the loss of use of the damaged spaces.

(b) Failure To Restore Damaged Parking Facilities Not Substantially Destroyed; Restoration Rights of PFC Tenant. If for any reason Grantor does not, as required hereunder, restore, repair or rebuild any damaged portion of the PFC Tenant Parking Facilities, which damage does not amount to a destruction of more than 50% of the Parking Garage, or in lieu thereof provide the substitute parking required herein, PFC Tenant may, after giving the written notice and cure period required under Section 16(c) hereof, elect to undertake to repair the PFC Tenant Parking Facilities. If PFC Tenant undertakes to repair the PFC Tenant Parking Facilities pursuant to this subsection, (A) it shall be entitled to use all insurance or condemnation proceeds limited to the Total Insured Value of 50% of the replacement cost of the Parking Garage; and (B) if the insurance or condemnation proceeds are insufficient to pay the repair costs, Grantor shall pay the insufficiency (“Insufficiency”) to PFC Tenant within forty-five (45) days of the date

that PFC Tenant invoices Grantor for same, as expended by PFC Tenant. In addition to, and cumulative of its other remedies in such event, PFC Tenant shall be entitled to recoup any net Insufficiency by crediting all amounts owed to it against the PFC Tenant's Easement Contribution until such Insufficiency is satisfied or otherwise paid by Grantor.

(c) Failure To Restore Substantially Destroyed Parking Facilities; Restoration Rights of PFC Tenant. If for any reason Grantor does not restore, repair and rebuild the Parking Garage in the case of destruction of more than 50% of the PFC Tenant Parking Facilities as required hereunder, or in lieu thereof provide the substitute parking required herein, PFC Tenant may, after giving the written notice and cure period required under Section 16(c) hereof, elect to undertake to restore, repair or rebuild the PFC Tenant Parking Facilities. If PFC Tenant undertakes to restore, repair or rebuild the PFC Tenant Parking Facilities pursuant to this subsection, (A) it shall be entitled to use all insurance or condemnation proceeds limited to the Total Insured Value of 50% of the replacement cost of the Parking Garage ; (B) Grantor shall ground lease to PFC Tenant a portion of its land underlying the PFC Tenant Parking Facilities, which for the purposes of this subsection shall be considered to be the land underlying the side of the Parking Garage for which floors 2-4 are designated by this Agreement for PFC Tenant's exclusive use, and burden for PFC Tenant's use by lease or easement such sufficient additional land as may be required for access thereto, and (C) if the insurance or condemnation proceeds are insufficient to pay the reconstruction costs, Grantor shall pay the Insufficiency to PFC Tenant within forty-five (45) days of the date PFC Tenant invoices Grantor for same, as expended by PFC Tenant. In addition to, and cumulative of its other remedies in such event, PFC Tenant shall be entitled to recoup any net Insufficiency by crediting all amounts owed to it against the PFC Tenant's Easement Contribution until such Insufficiency is satisfied or otherwise paid by Grantor.

(d) Restoration Rights of PFC Tenant. The parties agree that the agreement of the parties allowing PFC Tenant to perform the restoration work for Grantor pursuant to this subsection shall be deemed a "contract for good and services" for purposes of Section 271 of the Texas Local Government Code relating to the liability of Grantor under certain contracts, with the time for PFC Tenant's performance being a reasonable period from the date it commences such work and with PFC Tenant being entitled to all rights under such section, including the accrual and collection of interest, should the amounts owed to PFC Tenant not be paid when due.

In addition to such remedies, PFC Tenant shall have the rights set forth in Section 16 hereof.

13. Condemnation. In the event that the Parking Garage as a whole is subject to a Condemnation, Grantor must provide substitute parking to PFC Tenant in one or more locations on the San Antonio College campus, and Grantor shall use reasonable efforts to ensure the substitute parking is located as close to the Parking Garage as is reasonably practicable at the time, or if Grantor desires to provide the substitute parking off said campus then in a location and proximity to the Parking Garage that is reasonably acceptable to PFC Tenant. In the event that the rights of any Party in and to the Parking Spaces are materially and adversely affected by Condemnation of less than the whole of the Parking Garage, the Parking Spaces shall be equitably adjusted by mutual agreement of the Parties, provided Grantor must at all times provide PFC Tenant with a number of parking spaces in such instance equal to the number of Residential Use Spaces and the maximum amount of Retail Use Spaces allocated to PFC Tenant hereunder or so much thereof as PFC Tenant elects to take from time to time. Any award attributable to the Parking

Garage shall be payable to Grantor and utilized by Grantor to the extent required for the replacement restoration and repair of the Parking Garage; provided, however, that PFC Tenant may file a collateral claim with the Condemnor based upon the value of its right, title and interest in and to Parking Spaces hereunder and PFC Tenant must make any award made pursuant to such collateral claim available to Grantor to the extent required for the replacement restoration and repair of the Parking Garage. Notwithstanding the foregoing of this Section 13, if PFC Tenant is not permitted to file such collateral claim for any reason, any compensation award received by Grantor as a result of such Taking shall be distributed as follows: (i) first to Grantor to the extent required for the replacement, restoration, and repair of the Parking Garage and (ii) the balance, if any, to the Parties in proportion to the respective values of their interests affected by such Taking, such values to be calculated on the assumption that this Easement is still in place at the time of the valuation.

14. Subordination. Any mortgage, deed of trust, ground lease, or other lease hereafter granted or entered into with respect to the Property or the Parking Garage will be subject, subordinate, and inferior to the easements, rights, benefits, and obligations created hereby, and the foreclosure under any such mortgage or deed of trust will not extinguish or impair the easements, rights, benefits, and obligations created by this Easement. No breach of any of the provisions of this Easement nor the enforcement thereof shall defeat or render invalid the lien of any mortgage, deed of trust, or other security interest entered into with respect to the Property, but all of the provisions of this Easement shall be binding upon and effective against any person or entity whose title to the Property is derived through foreclosure or otherwise.

15. Third Party Beneficiaries. There are no third-party beneficiaries to this Easement.

16. Defaults; Remedies

(a) PFC Tenant Events of Default. The occurrence of any of the events described in Sections 16(a)(i) or 16(a)(ii) shall constitute an “**PFC Tenant Event of Default**” under this Easement by PFC Tenant.

(i) Failure by PFC Tenant to pay any monetary obligation to Grantor within thirty (30) days after Notice; or

(ii) Default by PFC Tenant in the observance or performance of any of the terms, covenants, agreements or conditions contained in this Easement (other than as specified in Section 16(a)(i)) for a period of thirty (30) days after Notice thereof to PFC Tenant; provided, however, that if such default is not curable by the payment of money and cannot reasonably be cured within thirty (30) days (but is reasonably susceptible of cure), no PFC Tenant Event of Default shall occur hereunder so long as PFC Tenant commences such cure within the thirty (30) day period and thereafter diligently and continuously prosecutes same to completion and PFC Tenant continues to perform all of its other obligations hereunder during such period.

Notwithstanding any contrary provisions of this Easement, any Mortgagee of PFC Tenant shall have the right, but not the obligation, to cure any PFC Tenant Event of Default hereunder within the same time periods after its receipt of Notice of such PFC Tenant Event of Default as are set forth in this Section 16 and no PFC Tenant Event of Default shall be deemed to have occurred until the passage of such time periods.

(b) Remedies. Grantor shall have no right to terminate this Easement due to any PFC Tenant Event of Default unless any such Event of Default continues uncured for more than three hundred sixty-five (365) days; provided such limitations shall not affect any termination occurring under Section 20 below. Upon any PFC Tenant Event of Default, Grantor may, during the continuation of such PFC Tenant Event of Default without the requirement of any further notice to PFC Tenant, pursue any rights or remedies under this Easement and take whatever action at law or in equity as may appear necessary or desirable to collect any amounts due from time to time and thereafter to become due from, or enforce performance and observance of any obligation or covenant hereunder of, PFC Tenant, and in connection with either to recover any and all damages to Grantor, including interest at the Default Rate if applicable, for the violation or breach of this Easement by PFC Tenant; provided, however, that if any PFC Tenant Event of Default continues for one hundred eighty (180) days after notice thereof to PFC Tenant, then Grantor shall have the right, in addition to all such other rights provided under this Section 16, to bar PFC Tenant and the PFC Tenant Parties from accessing the Parking Garage until such time as PFC Tenant has cured such PFC Tenant Event of Default and during any period of time PFC Tenant's rights to use the Parking Garage are so suspended, Grantor shall have the right to use the Residential Use Spaces and Retail Use Spaces for its own use.

(c) Grantor Events of Default. Grantor's failure to perform any term or covenant under this Easement for a period of thirty (30) days after Notice thereof to Grantor shall constitute a "**Grantor Event of Default**"; provided, however, that if such failure is not curable by the payment of money and cannot reasonably be cured within thirty (30) days (but is reasonably susceptible of cure), no Grantor Event of Default shall occur hereunder so long as Grantor commences such cure within the thirty (30) day period and thereafter diligently and continuously prosecutes same to completion and Grantor continues to perform all of its other obligations hereunder during such period. Upon the occurrence of a Grantor Event of Default, PFC Tenant may, to the extent permitted by law, take whatever action at law or in equity as may appear necessary or desirable to collect any amounts due and thereafter to become due from, or enforce performance and observance of any obligation or covenant hereunder of, Grantor, and in connection with either to recover any and all damages to PFC Tenant for the violation or breach of this Easement by Grantor; provided, however, that such thirty-day cure period and obligation to provide notice shall be inapplicable and PFC Tenant may immediately take any of the aforesaid actions in the event a Grantor Event of Default arises out of Grantor's obligations to pay insurance as provided hereunder. Notwithstanding any contrary provisions of this Easement, any Mortgagee of Grantor shall be privileged, but not obligated, to cure any default hereunder by Grantor within the same time periods after its receipt of Notice of such default as are set forth in this Section 16(c). *Upon any Grantor Event of Default*, PFC Tenant may, at its option, and without waiving any claim for breach of Grantor's obligations, cure such default for Grantor at Grantor's expense. Grantor shall reimburse PFC Tenant upon PFC Tenant's demand all costs and expenses incurred by PFC Tenant in curing Grantor's default, and additionally shall pay to PFC Tenant a fifteen percent (15%) surcharge to cover PFC Tenant's administrative costs in effecting such cures, *all as actual damages*. The parties agree that the agreement of the parties allowing PFC Tenant to cure the Grantor Event of Default shall be deemed a "contract for good and services" for purposes of Section 271 of the Texas Local Government Code relating to the liability of Grantor under certain contracts, with the time for PFC Tenant's performance being a reasonable period from the date it commences such curative efforts and with PFC Tenant being entitled to all rights under such section, including the accrual and collection of interest, should the amounts owed to PFC Tenant

not be paid when due. It is agreed that all of PFC Tenant's rights and remedies set forth in this Easement shall be cumulative and shall be in addition to every other right and remedy provided in this Easement or otherwise available to PFC Tenant at law or in equity as a result of a Grantor Event of Default.

(d) Additional Remedies. The rights and remedies of the Parties under this Easement shall not be mutually exclusive; that is, the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. It is stipulated that damages at law may be an inadequate remedy for a breach or threatened breach of this Easement and that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy due to the impact a breach by Grantor would have on the operation and value of the Project and that PFC Tenant has limited ability to recover consequential damages from Grantor. For so long as Grantor's interest in the Parking Garage is held by Alamo Community College District or another governmental entity, in no event will Grantor or PFC Tenant be liable to the other for punitive, incidental, consequential, economic, or "lost profit" damages.

(e) Late Payments. If any Party fails to pay the other Party any sums which are due hereunder within the time periods specified herein (including applicable cure periods) for payment then, in addition to any other remedies available to such Party, such payment shall bear interest at the Default Rate until such amounts are paid in full.

(f) Remedies Cumulative. All of the remedies permitted or available to a non-defaulting Party under this Easement at law or in equity shall be cumulative and not alternative, and the invocation of any remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

17. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given under this Easement will be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed by the courier delivery service), or by nationally recognized expedited delivery service with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery will be deemed to have been given at the time of such delivery, notices delivered by mail will be effective when deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notice by expedited delivery service will be considered to have been given on the day deposited with such delivery service, and addressed, as provided below.

The proper address for PFC Tenant is as follows:

1415 North Main, LLC

With a copy to:

Jesselson Warsavsky Capital Management, LLC
445 Park Avenue, Suite 1502
New York, New York 10022
Attn: Mike Lytle
Email: mike.lytle@jwcmllc.com

The proper address for Grantor is as follows:

ACCD Public Facility Corporation
Attention: Chief Financial Officer
2222 N. Alamo Street
San Antonio, Texas 78215

with a copy to:

ACCD Public Facility Corporation
Attention: General Counsel
2222 N. Alamo Street
San Antonio, Texas 78215
Email: dst-legal@alamo.edu

The proper address for the initial Registered Holder as follows:

Acres Realty Funding, Inc.
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
RE: Loan Name: Tobin Lofts
Attention: Debt Asset Management

with a copy to:

Acres Capital, LLC
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
RE: Loan Name: Tobin Lofts
Attention: Jaclyn Jesberger, Esq. – General Counsel

Any party hereto may change the address for notice specified above by giving the other party five (5) days' advance written notice of such change of address in the manner provided above.

18. Applicable Law. This Easement will be governed by and construed in accordance with the laws of the State of Texas.

19. Severability. In case any one or more of the provisions contained in this Easement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality, or unenforceability will not affect any other provision hereof, and this Easement will be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

20. Covenants Run With the Land. The rights, obligations and benefits established pursuant to this Easement run with the Parking Garage and are binding upon Grantor, PFC Tenant, and their respective successors and assigns and all subsequent owners of any portion of the Parking Garage and all successors to and assigns of PFC Tenant under the PFC Lease or in and to the PFC Apartments and PFC Retail Spaces in the event the PFC Lease is terminated in accordance with its terms, except that if the PFC Lease is terminated due to a default by the holder of the lessee's interest in same and not replaced with a new lease in favor of the lessee's lender or another successor in accordance with its terms then this Easement shall terminate. From and after a transfer of the Parking Garage by Grantor to a successor or assignee, such successor or assignee shall be solely responsible for the obligations of Grantor arising hereunder. From and after a transfer of PFC Tenant's leasehold rights under the PFC Lease to a successor or assignee, such successor or assignee shall be solely responsible for the obligations of PFC Tenant arising hereunder.

PFC Tenant shall have the right at any time during the Term to mortgage, or otherwise grant a deed of trust on, or collaterally assign or similarly encumber (collectively, a "**Collateral Assignment**") all of PFC Tenant's rights, title and interest hereunder without Grantor's consent, but upon prior notice to Grantor, as additional security for any indebtedness secured by a Project Mortgage on the PFC Tenant's interest in the PFC Lease, so that upon foreclosure on the Project Mortgage (by power of sale, judicial foreclosure or deed or assignment in lieu of foreclosure (collectively, a "**Foreclosure**")) and the lender or other purchaser of the PFC Tenant's interest in the PFC Lease (the "**Purchaser**") succeeding to the ownership in and to the PFC Tenant's interest in the PFC Lease, the Purchaser shall succeed to all of the rights, title and interest of PFC Tenant under this Easement. No mortgage may allow for the transfer of the right, title and interest of PFC Tenant under this Easement to a party other than a party acquiring ownership of the PFC Tenant's interest in the PFC Lease and the granting of any Collateral Assignment which does so shall constitute a material breach of this Easement.

Except as herein expressly provided to the contrary, in the event of Foreclosure of a Project Mortgage and the exercise of the lender's rights under the Project Mortgage, the Purchaser shall be deemed to have assumed and agreed to perform the duties of PFC Tenant under this Easement arising from and after the date of such Foreclosure; provided the Purchaser shall not be liable or obligated for any act or omission of any predecessor in title, except as to any such default that is curable by such Purchaser and is continuing (including without limitation, any monetary default, the cure of which shall include all arrearages). Following the acquisition of PFC Tenant's rights hereunder by the Purchaser, the Purchaser shall commence the cure of each curable existing default hereunder and thereafter diligently pursue such cure to completion.

In the event of a default by PFC Tenant in the performance of any of the terms, covenants, agreements, or conditions of this Easement on PFC Tenant's part to be performed, any Registered Holder shall have the right, within the grace period provided above for curing such default, to cure such default, and Grantor shall accept any such performance by any such Registered Holder as though the same had been done or performed by PFC Tenant.

When giving notice to PFC Tenant with respect to any default hereunder, Grantor shall also give simultaneous notice to any Registered Holder by written notice specifying such default. No Notice of Default from Grantor to PFC Tenant shall be effective until given to each such Registered Holder. All notices by Grantor to Registered Holders shall be given in accordance with Section 17 of this Easement.

21. Entire Agreement. This Easement embodies the entire agreement between the parties relating to the subject matter hereof, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof.

22. Amendment. This Easement and the easements, rights and interests granted hereunder may only be amended by a written instrument executed jointly by the Parties and first mortgage lienholders.

23. Estoppels. Each Party shall, from time to time, without additional consideration and promptly upon request, execute and deliver to each other or to such other person as the requesting party may designate (i) an estoppel certificate consisting of statements, if true, that (a) this Easement is in full force and effect, with payment of all charges and other fees hereunder being current through the date of the certificate (or stating the date through which such charges and fees have been paid), (b) this Easement has not been modified or amended (or setting forth all modifications and amendments) and (c) to the best of such party's knowledge and belief, the other party is not then in default and there are no existing circumstances which may give rise to an event of default with the passage of time, and whether each Party shall have fully performed all of their respective obligations hereunder.

24. Time of Essence. Time is of the essence of this Easement.

25. Counterparts. This Easement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Easement.

26. Consent. In any instance in which either Party is requested to consent to or approve of any matter with respect to which such consent or approval is required by any of the provisions of this Easement, such consent or approval shall be given in writing and shall be granted or withheld by such Party in the exercise of its commercially reasonable judgment (and not be unreasonably delayed or conditioned), unless the provisions of this Easement with respect to a particular consent or approval shall expressly provide that the same shall be given or refused in the sole and absolute judgment or discretion of such Party or is otherwise qualified. Wherever in this Easement approval of any Party is required, and unless a different time limit is provided in this Easement, such approval or disapproval shall be given within ten (10) Business Days following the receipt of the item to be so approved or disapproved, or the same shall be conclusively deemed to have been disapproved by the Party to whom the request is submitted. Any disapproval shall specify with particularity the reasons therefor; provided, however, that wherever in this Easement a Party is given the right to approve or disapprove in its sole and absolute discretion it may disapprove without specifying a reason therefor. Any document submitted for consent or approval shall contain a cover page prominently listing the date mailed or sent for delivery, and if applicable, a statement to the effect that the document or the facts contained within such document shall be deemed disapproved by the recipient unless the recipient

makes response thereto within the time specified in such notice, which shall be ten (10) Business Days after receipt unless this Easement shall specify a different period. If either party is deemed to have disapproved any request, such Party shall deliver to the requesting Party particular and specific reasons for such disapproval within ten (10) Business Days following the deemed disapproval and any failure to provide such reasons within such period will be deemed a PFC Tenant Event of Default or Grantor Event of Default, as applicable hereunder.

27. Authority. PFC Tenant warrants that all consents or approvals required of third parties (including but not limited to its Board of Directors or partners) for the execution, delivery and performance of this Easement have been obtained and that PFC Tenant has the right and authority to enter into and perform its covenants contained in this Easement. Grantor warrants that all consents or approvals required of third parties (including but not limited to its Board of Directors) for the execution, delivery and performance of this Easement have been obtained and that Grantor has the corporate right and authority to enter into and perform its covenants contained in this Easement.

In the event that a court of competent jurisdiction finds that Grantor could not lawfully enter into this Easement under any Legal Requirements applicable to it, then Grantor and PFC Tenant shall work together in good faith to enter into lawful arrangements that provide PFC Tenant with the rights and benefits to which it is entitled in this Easement without expanding its obligations in any way, beyond those set forth herein.

28. No Presumption Against Brokers. In light of the parties' relatively equal negotiating strength and the fact that both are represented by competent and experienced legal counsel, they mutually intend that who drafted this Easement and the other papers referred to or contemplated by this Easement shall not be a factor considered by any court construing any of such papers.

29. Grantor Transfer. Grantor shall have the right to transfer and assign, in whole or in part, all and every feature of Grantor's rights and obligations under this Easement to any successor owner of the fee interest in and to the Parking Garage, provided that such successor owner expressly assumes that obligations of Grantor under this Easement and notice of such assignment and assumption is promptly provided to PFC Tenant.

30. Memorandum of Agreement. This Easement shall not be recorded. Contemporaneously with the extension hereof, PFC Tenant and Grantor shall execute a Memorandum of Agreement, in the form attached hereto as **Exhibit E** for recordation in Bexar County, Texas, at the expense of PFC Tenant. Upon request after the expiration or earlier termination of this Easement, PFC Tenant shall, at its expense, file a release of this Easement in the Official Public Records of Real Property of Bexar County, Texas. Shall PFC Tenant fail to do so within five (5) days of Grantor's request, then Grantor shall be entitled to file a memorandum of termination in addition to pursuing any other remedies it may have against PFC Tenant for such failure. This obligation shall survive the expiration of the Term or earlier termination of this Easement.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date and year first set forth in this Easement.

PFC TENANT:

1415 NORTH MAIN, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF _____

§
§
§

COUNTY OF _____

On this the _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared _____, who acknowledged to be the _____ of _____, and that he, as such authorized signatory, being duly authorized to do so, executed the foregoing Easement for the purposes therein contained by signing his name in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public of the State of _____

(Notary Seal)

GRANTOR:

ALAMO COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF BEXAR

§
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On this the ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared _____, who acknowledged to be the _____ of Alamo Community College District and that he/she, as such officer, being duly authorized to do so, executed the foregoing Easement for the purposes therein contained by signing his/her name as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public of the State of Texas

(Notary Seal)

EXHIBIT A
DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B
DESCRIPTION OF PROJECT SITE

[SEE ATTACHED]

EXHIBIT C
GARAGE PLAN

[SEE ATTACHED]

Liquidated Damages Agreement

This Liquidated Damages Agreement (“Agreement”) is made by and between 1415 North Main, LLC (“Buyer”) ACCD Public Facility Corporation (“PFC”) and the Alamo Community College District (“ACCD”), effective as of the Date of Closing of the Sale Agreement as hereinbelow defined.

WHEREAS, ACCD is a Texas junior college district and local governmental unit located in Bexar County, Texas; and

WHEREAS, PFC is a Texas public facility corporation established under Chapter 303 of the Texas Local Government Code with ACCD as sponsor; and

WHEREAS, PFC has leased a mixed-use property consisting largely of multi-family residential units with a small commercial component known as the Tobin Lofts (“Project”) which it owns adjoining San Antonio College (“Land”) to LLC, a Texas limited liability company, the sole member of which is PFC; and

WHEREAS, the Project was initiated, designed and constructed by or on behalf of NRP Group and affiliates (“NRP”) pursuant to a development agreement dated August 1, 2012, under which such parties retain certain ongoing responsibilities relating to the Project; and

WHEREAS, the Project has been managed as required by the Development Agreement by a professional management company rather than by LLC; and

WHEREAS, NRP has advised LLC that the Property cannot be operated as presently configured without unsustainable losses and that the necessary refinancing of its mortgage debt coming due in Fall 2024 is very likely infeasible; and

WHEREAS; NRP identified the assignor of Buyer as a potential purchaser of the Property willing and able to invest in its reconfiguration anticipating profitable operation thereafter; and

WHEREAS, the Board of Trustees of ACCD has consented to the a sale of the leasehold interest by LLC, and made a finding of a public purpose in leasing the Project to a purchaser and continuing an apartment project adjoining San Antonio College available to students and staff which qualifies as an affordable housing project for exemption from property tax;

WHEREAS, LLC and the assignor of Buyer entered into an agreement for assignor of Buyer to purchase the leasehold interest in the project dated June 30, 2021 (“Sale Agreement”), which has subsequently been assigned to buyer. The closing of the Purchase Agreement (“Closing”) is contingent, without limitation, on the negotiation of a mutually acceptable amended and restated ground and improvements lease to be assigned to Buyer at Closing (“Amended and Restated Lease”), an agreement whereby ACCD formalizes the continuation of the Project’s partial use of an adjoining ACCD-owned parking garage for compensation paid to ACCD (“Parking Agreement”) and an agreement whereby certain restrictions concerning the economic demographics of the tenant mix of the residential portion of the Project are imposed (“Regulatory Agreement”); and

WHEREAS, the price to be paid by Buyer is premised, without limitation, on the continuation of the Parking Agreement under its terms as stated and a property tax exemption available pursuant to commitments in the Amended and Restated Lease and Regulatory Agreement; and

WHEREAS, ACCD has strictly limited its involvement in the Project to avoid financial responsibility or liability and as a local governmental unit is afforded significant immunities; and

WHEREAS, PFC has determined that closing the Sale Agreement is in the best interest of PFC, its subsidiary LLC, and its sponsor ACCD; and

WHEREAS, the parties have determined that establishing liquidated damages for certain possible eventualities is necessary for the reasons that liquidated damages are permitted by law as hereinafter recited; and

WHEREAS, two such possible eventualities are that the material provisions of the Amended and Restated Lease and/or the Parking Agreement are void or unenforceable due to governmental immunities; and

WHEREAS, the assets of PFC are limited to its fee ownership of the Project:

NOW, THEREFORE, for independent consideration of \$100 and in consideration of the mutual promises contained herein, in the Sales Agreement and the agreements which are to be executed at its Closing (including, without limitation, the Amended and Restated Lease and its Assignment, and the Parking Agreement), and of the findings of the respective governing bodies of PFC and ACCD, the parties hereby agree as follows.

1. Liquidated Damages. The parties acknowledge and agree that should Buyer become unable to enforce the provisions of Section 22.4 or a breach of the warranty contained in Section 25.4, of the Amended and Restated Lease, and/or a breach of warranty contained in Section 27 of the Parking Agreement, or in the event that it is determined that the Parking Agreement is not a “contract for goods and services” for purposes of Section 271 of the Texas Local Government Code such that the Grantor is not liable as provided in the Parking Agreement, Buyer will incur substantial losses and damages. Because the exact amount of such losses and damages cannot be readily ascertained as of the date of Closing, and because each of PFC, ACCD and Buyer desire certainty with respect to their rights and obligations under such circumstances, the parties agree that in the event of such an uncured default by any party other than Buyer, PFC shall convey its fee estate in the Land and all improvements situated thereon, and any personal property owned by PFC and used at the Project described as leased to Buyer in the Amended and Restated Lease, to Buyer for no further consideration (in each case, free and clear of all liens and encumbrances placed thereon by PFC, but subject to the duly authorized rights, liens, assignments and security interests of any lender to Buyer), and none of PFC or ACCD shall have any further liability, regardless of legal theory, including, without limitation, any warranty of authority to execute and deliver any legal instrument.

2. Scope. The exclusive remedy herein provided shall remain the exclusive remedy for any Buyer inability to enforce the material provisions outlined above for the Amended and Restated

Lease, the Parking Agreement and the Regulatory Agreement. Furthermore, the specification of this or similar remedies, under the circumstances herein recited or under other circumstances, in any and all other legal instruments executed by Buyer and any one or more of PFC, LLC and/or ACCD, including, without limitation, under the Amended and Restated Lease under circumstances of loss of property tax exemption or Major Casualty Event, and/or the occurrence of events causing the application of such remedies, in whatever order and however cumulative, shall have no effect on the exclusivity of such remedies notwithstanding any cumulation of buyer losses or unavailability of application of remedy on behalf of Buyer due to prior application.

3. Illegality. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

4. Counterparts; Facsimile or Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original counterpart hereof and all of which, taken together, shall constitute collectively one and the same agreement; provided, that in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature. To further facilitate execution of this Agreement, the parties hereto do each hereby agree that an executed copy of this Agreement delivered by facsimile or electronic mail transmittal shall have the effect of an original, executed instrument.

5. Governing Law. The terms of this Agreement shall be governed by the laws of the State of Texas.

[SIGNATURES APPEAR FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Liquidated Damages Agreement to be executed effective as of September _____, 2021.

ACCD PUBLIC FACILITY CORPORATION

By: _____
Name: _____
Title: _____

ALAMO COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____

1415 NORTH MAIN, LLC

By: _____
Name: _____
Title: _____