



**ALAMO COMMUNITY COLLEGE DISTRICT MEETING OF THE BOARD OF TRUSTEES IN  
CONJUNCTION WITH THE MEETING OF THE  
ACCD PUBLIC FACILITY CORPORATION BOARD OF DIRECTORS**

**WEDNESDAY, OCTOBER 27, 2021  
8:00 PM**

**OR UPON THE LATER ADJOURNMENT OR RECESS OF THE  
ALAMO COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES MEETING**

**ALAMO COLLEGES DISTRICT  
Multipurpose Conference Center/Board Room  
2222 N. Alamo St.  
San Antonio, TX 78215**

NOTICE IS HEREBY GIVEN THAT THE SPECIAL MEETING OF THE ACCD PUBLIC FACILITY CORPORATION BOARD OF DIRECTORS WILL BE HELD AT THE PHYSICAL LOCATION REFERENCED ABOVE ON WEDNESDAY, OCTOBER 27, 2021. FEWER THAN A QUORUM OF DIRECTORS MAY ATTEND REMOTELY BY VIDEOCONFERENCE AS AUTHORIZED BY TEXAS GOVERNMENT CODE SECTION 551.127. THE SPECIAL MEETING OF THE ACCD PUBLIC FACILITY CORPORATION BOARD AT WHICH A QUORUM OF THE BOARD OF TRUSTEES MAY BE PRESENT WILL CONVENE IN OPEN SESSION AT 8:00 PM OR UPON THE LATER ADJOURNMENT OR RECESS OF THE ALAMO COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES MEETING.

**AGENDA**

- 1. **CALL TO ORDER**
- 2. **CERTIFICATION AND POSTING**
- 3. **ROLL CALL**
- 4. **CITIZENS TO BE HEARD**
  - A. Registration: 5:00 PM - 5:55 PM
- 5. **APPROVAL OF MINUTES**
  - A. Discussion and Possible Action on Approval of Minutes of the ACCD Public Facility Corporation Meeting on September 14, 2021 3
- 6. **NEW BUSINESS**
  - A. Report on Closing of Transaction Transferring Lessee's interest in the Tobin Lofts Project to 1415 North Main. LLC.
- 7. **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 §551.074, 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.
- F. Pursuant to §551.073, Texas Government Code, the Board may deliberate regarding a negotiated contract for 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), including, without limitation, the duties of the Chancellor and District Director of Internal Audit.
- H. Any action on these matters will be taken in Open Session

**8. RECONVENE OPEN MEETING**

- A. Discussion and Possible Action on Items Discussed in Executive Session.

**9. ADJOURNMENT**

POSTED AT THE  
ALAMO COMMUNITY COLLEGE DISTRICT  
2222 N. Alamo St.; San Antonio, TX 78215  
5:00 PM ON THIS 22TH DAY OF OCTOBER 2021

“The following notices apply to this meeting.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.”

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

---

Dr. Mike Flores  
Chancellor

**Discussion and Possible Action on Minutes of the ACCD Public Facility Corporation Meeting on September 14, 2021.**

Presented and recommended for approval to the ALAMO COMMUNITY COLLEGE DISTRICT PUBLIC FACILITY CORPORATION on October 27, 2021

**MINUTE ORDER**

**“The minutes of the ACCD Public Facility Corporation Board Meeting held on September 14, 2021 are hereby approved.”**

**PURPOSE** To officially approve the minutes of the ACCD Public Facility Corporation Board Meeting held on September 14, 2021

**IMPLICATIONS**

**Financial:** None

**Strategic Objective:** III.

**Performance Excellence Human Resources:** None

**ATTACHMENT:** Minutes of September 14, 2021

---

Dr. Mike Flores, Chancellor





**Minutes**  
**Meeting of ACCD Public Facility Corporation Board of Directors**  
**Alamo Colleges District, 2222 N. Alamo St., San Antonio, TX 78215**  
**SEPTEMBER 14, 2021**

---

**1. CALL TO ORDER**

Chair Dr. Gene Sprague called the meeting to order at 9:42 p.m.

**2. CERTIFICATION AND POSTING OF NOTICE**

*Chair Dr. Gene Sprague announced that the notice of the Special Board Meeting has been posted in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.*

**3. ROLL CALL**

The following directors were present:

Dr. Gene Sprague, Chair  
Dr. Yvonne Katz., Vice-Chair  
Clint Kingsbery, Secretary

Presiding Administrator: Dr. Mike Flores, Chancellor

Chair Dr. Gene Sprague announced that a quorum of board members was present.

**4. PLEDGE OF ALLEGIANCE**

The pledge was recited.

**5. CITIZENS TO BE HEARD**

A. There were no citizens to be heard.

**6. APPROVAL OF MINUTES**

A. Discussion and Possible Action on Approval of Minutes of the ACCD Public Facility Corporation Meeting on July 27, 2021

On a motion by Director Dr. Katz seconded by Director Kingsbery and by unanimous vote of the Board of Directors, the following minute order was approved:

*“The minutes of the ACCD Public Facility Corporation Board Meeting held on July 27, 2021 are hereby approved.”*

**7. NEW BUSINESS**

A. Discussion and Possible Action to Approve a Sale by Subsidiary Tobin Lofts, LLC of the Tobin Lots Project and to Approve Agreements by the Corporation to Accommodate the Sale.

On a motion by Director Dr. Katz seconded by Director Kingsbery and by unanimous vote of the Board of Directors, the following was approved:

*WHEREAS, ACCD Public Facility Corporation, a nonprofit Texas public facility corporation organized under Chapter 303 of the Texas Local Government Code ("PFC"), the sponsor of which is the Alamo Community College District, a Texas junior college district and local governmental unit ("ACCD"), is the sole member of Tobin Lofts, LLC, a Texas limited liability company ("LLC"), owner of the Tobin Lofts mixed use project in San Antonio, Texas;*  
*And*

*WHEREAS, COVID-19 exacerbated occupancy problems resulting from the design of the student housing units within the Tobin Lofts project as presently configured; and*

*WHEREAS, NRP Group has advised that the cash flow deficits of the property are no longer sustainable, and recommends that LLC's leasehold interest be sold to an entity willing to invest to reconfigure the dwelling units and continue to provide affordable housing which will be available to ACCD's students and faculty; and*

*WHEREAS, the PFC finds there is a continuing need for housing at ACCD's San Antonio College campus and that its continued participation in the Project assuring some level of affordability and cooperation is in the best interest of PFC, ACCD and ACCD students; and*

*WHEREAS, NRP Group has identified a buyer for the leasehold interest which has executed a purchase agreement with LLC containing contingencies, including the negotiation of mutually satisfactory ground lease amendments and a regulatory agreement enforcing affordability standards, and a long-term parking agreement with ACCD; and*

*WHEREAS, the potential buyer is seeking certain commitments of PFC as ground lessor as a condition of any purchase and agreeing to make required capital improvements, reconfigure the building to more conventional apartments and provide 50% of the units to tenants whose income is less than 80% of the area median income; and*

*WHEREAS, the Project was subject to being lost due to a foreclosure that could cause ACCD adverse consequences and cause ACCD 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 ACCD's reversionary interest in the Project, offer an opportunity to repay ACCD on its outstanding promissory note and provide that 50% of the residential units would be more affordable to District employees and students; and*

*WHEREAS, ACCD on 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 WHEREAS, by resolution passed on July 27, 2021, the Board determined that the potential purchaser's offer on appropriate terms would be in the best interest of PFC and LLC, and of sponsor ACCD; and*

*WHEREAS, such appropriate documentation has now been substantially negotiated; be it therefore RESOLVED, that the Board finds that the Project was at risk being lost due to a foreclosure that could cause ACCD adverse consequences and cause ACCD 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 repaid, preserve ACCD's reversionary interest in the Project, offer an opportunity to repay ACCD on its outstanding promissory note and provide that 50% of the residential units would be more affordable to ACCD employees and students; and*

*RESOLVED FURTHER, that the Board of Directors of the PFC, as sole Member of Tobin Lofts, LLC, hereby approves the sale by assignment of the leasehold interest of Tobin Lofts, LLC in the Tobin Lofts project, substantially on terms reflected in the attached draft Assignment and Assumption of Lease Agreement, Amended and Restated Lease, Regulatory Agreement, Commission Agreement, Liquidated Damages Agreement, the instruments to be executed by LLC reflected in the attached executed Purchase and Sale Agreement, the previously authorized execution of which by LLC is hereby confirmed and ratified, and the attached Debt Defeasance Resolutions and associated agreements and instruments, including, without limitation, Amendment to Loan Agreement, Defeasance Pledge and Security Agreement, Defeasance Account Agreement, Defeasance Assignment, Assumption and Release Agreement and escrow agreement, approving the execution of all of the foregoing in final form approved by LLC counsel, and ratifies the execution of the attached Engagement Agreement with Commercial Defeasance, LLC;*

*RESOLVED FURTHER, that the Board of Directors of the PFC hereby authorizes certain commitments by the PFC in support of a potential sale by Tobin Lofts, LLC of its leasehold and other interests in the Tobin Lofts project, substantially on terms reflected in the attached draft Amended and Restated Lease, Regulatory Agreement, and Liquidated Damages Agreement, approving the execution of all of the foregoing in final form approved by Corporation counsel;*

*RESOLVED FURTHER, that the Board of Directors of the PFC, as sole Member of Tobin Lofts, LLC, hereby authorize and direct the officers of Tobin Lofts, LLC to transfer, promptly after closing of the transactions herein referenced, the preponderance of the cash held by Tobin Lofts, LLC to its parent company the PFC, retaining only a reasonable reserve against anticipated post-closing expenses;*

*RESOLVED FURTHER, that the officers of the PFC and of Tobin Lofts, LLC are authorized and directed to modify, execute and deliver any of*

*the documents to be signed by or consented to by the PFC or Tobin Lofts, LLC, and any and all certificates and other instruments necessary to carry out the intent thereof and hereof, in form approved by PFC counsel;*

*RESOLVED FURTHER, that the officers of the PFC and of Tobin Lofts, LLC, are authorized to negotiate and approve such changes in, or additions to, the terms of any of the documents, including, without limitation, the Debt Defeasance Resolutions, including future amendments, renewals, and extensions, as such officers shall deem necessary or appropriate upon the advice of counsel to the PFC, 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 (its three directors), 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.*  
*DEBT DEFEASANCE RESOLUTIONS OF TOBIN LOFTS, LLC, A TEXAS LIMITED LIABILITY COMPANY (“Company”)*

*WHEREAS, the Company obtained a mortgage loan (the “Loan”) from Silverpeak Real Estate Finance, LLC, a Delaware limited liability company (“Original Lender”) in the original principal amount of THIRTY-FOUR MILLION, FIVE HUNDRED THOUSAND AND ZERO/100 DOLLARS (\$34,500,000.00) evidenced by that certain Promissory Note dated as of October 9, 2014 (the “Note”), and secured by, among other things, that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Security Agreement dated as of the date of the Note (the “Deed of Trust”) from the Company to and for the benefit of Original Lender which grants to Original Lender, among other things, a lien on the real and personal property described in the Deed of Trust (the “Property”);*

*WHEREAS, Original Lender assigned all of its right, title and interest in the Loan to WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF RBS COMMERCIAL FUNDING INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2014-C25 (the “Lender”);*

*WHEREAS, Lender is the current holder of the Note and the owner of the Loan; and*

*WHEREAS, pursuant to the terms of the Loan, the Company may obtain the release of the lien of the Deed of Trust from the Property pursuant to the defeasance provisions of the loan documents governing the Loan by substituting government securities to be acquired by or on behalf of the Company as the collateral for the Loan in place of the Property (such transaction being hereinafter referred to as the “Defeasance”).*

*NOW, THEREFORE, BE IT RESOLVED, it is in the best interest of the Company to effectuate the Defeasance, and therefore the Defeasance is approved;*

*RESOLVED FURTHER, that either of Diane E. Snyder, PhD, CPA, Manager of the Company and President of the Company's sole Member, ACCD Public Facility Corporation, a Texas public facility corporation, and Dr. R. Mike Flores, PhD, President of the Company (the "Managers), are authorized to effectuate the Defeasance in accordance with the terms and conditions set forth in the Defeasance Pledge and Security Agreement, the Defeasance Account Agreement, the Defeasance Assignment, Assumption and Release Agreement and the Certificate of Borrower (collectively, the "Defeasance Documents");*

*RESOLVED FURTHER, that each of the Managers be and it hereby is authorized, empowered and directed by and on behalf of the Company to execute and deliver to the Lender the Defeasance Documents, and take such other actions they deem necessary or appropriate in their sole and absolute discretion on behalf of the Company to consummate the Defeasance;*

*RESOLVED FURTHER, that each of the Managers be, and hereby are authorized, empowered and directed by and on behalf of the Company to execute and deliver such other agreements, instruments, certificates or other documents, and to take any further action as the Managers in their sole discretion deem necessary and appropriate to consummate the Defeasance; and*

*RESOLVED FURTHER, that any and all acts of the Managers in furtherance of the transactions contemplated by the foregoing resolutions taken prior to the adoption of these resolutions, are hereby ratified, confirmed, approved, and adopted.*

## **7. EXECUTIVE SESSION**

## **No 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.

- 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

**8. RECONVENE OPEN MEETING**

**No Executive Session**

- A. Discussion and Possible Action on Items Discussed in Executive Session.

**9. ADJOURNMENT**

There being no further business, Chair Dr. Gene Sprague adjourned the meeting at 9:46 p.m.

Submitted for Board Approval:

  
\_\_\_\_\_  
Denise Lee

Administrative Assistant- Special Projects



9/2/2021

Tobin Lofts, LLC  
Attn: Corinne Bittner  
Phone: (216) 553-3672  
Email: CRBittner@nrpgroup.com

**Re: Wells Fargo - Loan #301741012**

Dear Corinne:

Thank you for this opportunity to help you defease your loan. To start the defeasance process, please return all of the following to us:

- Acceptance Page to attached Terms of Engagement executed by the *current borrowing entity*
- Copy of the signed, completed defeasance notice, *including target closing date*
- Borrower and Borrower Counsel contact information
- Deposit(s) as described in Section 4 of the Terms of Engagement

For the quickest and most efficient processing of your transaction, we prefer to send the notice and deposit directly to the Servicer on your behalf. We will also need Borrower Counsel contact information before we can begin the process with the Servicer's counsel. We can receive any other unknown contact information at a later date.

When executed and returned to us with all deposits required hereunder, the attached Terms of Engagement will evidence the terms upon which you have engaged us to help you *Defease With Ease*<sup>®</sup>. We appreciate your business and look forward to working with you.

Sincerely,

Scott Burnett  
Commercial Defeasance, LLC



## **ENGAGEMENT AGREEMENT**

THIS ENGAGEMENT AGREEMENT (the “Agreement”) is entered into this 3rd day of September, 2021 between Commercial Defeasance, LLC (“Commercial Defeasance”) and the Borrower named on the Acceptance Page attached hereto (“Borrower”) regarding the terms and conditions pursuant to which Commercial Defeasance will facilitate the defeasance of Borrower’s loan #301741012 (the “Loan”) serviced by Wells Fargo (“Servicer”).

### **1. Services**

Commercial Defeasance will work diligently with the Borrower to coordinate the defeasance of the Loan (the “Defeasance”) on the Borrower’s closing schedule and in accordance with the Servicer’s requirements. Please keep in mind that our ability to effectively assist the Borrower in meeting its closing schedule depends, in part, upon the Borrower’s timely delivery of accurate and complete documentation and information.

### **2. Securities Purchase**

Commercial Defeasance will deliver the most efficient, transparent, and cost effective defeasance structure in the industry. We will not receive any fee or other compensation from the purchase of the securities comprising the defeasance collateral. Fees charged by one of our preferred broker-dealers in connection with purchasing a portfolio of government securities range from \$1,000-\$5,000, depending upon transaction size and number of securities, and will be included in the final securities cost. This pre-negotiated fee range does not apply to broker-dealers outside of our network or to securities not readily available in the secondary market, which can include custom, direct-issue securities. Please be aware that your loan documents may allow the Lender to purchase the securities portfolio. If that right is exercised by the Lender, an additional securities purchasing fee may apply.

### **3. Guarantee**

Commercial Defeasance provides a premium level of service to *every* customer on *every* transaction, and we stand behind our work. We guarantee we will meet your closing timeline, and when you purchase through our experienced network of broker-dealers, we guarantee the cost of the securities portfolio will be at, or below, market pricing on the date of purchase. If we fail to meet the closing timeline we agree to at the outset of your transaction (as revised by the Borrower based upon other factors unrelated to the defeasance) or cannot obtain at or below market pricing on the securities portfolio, we will not charge a fee for the services provided by Commercial Defeasance.

#### 4. Deposits and Fees

Commercial Defeasance will collect all deposits required to start the defeasance process, including the Servicer deposit of \$25,000, and will wire the deposits to the recipients on the Borrower's behalf. The Borrower agrees to pay Commercial Defeasance \$12,000 for the services described in this Agreement, of which \$5,000 will be paid as a non-refundable processing fee when the Borrower returns this executed Agreement. Upfront deposits will be applied by the recipients to their respective transaction costs with any balances paid by the Borrower on the Closing Date.

**Please use the following instructions to wire total deposits of \$30,000:**

**Truist**  
**214 N. Tryon Street**  
**Charlotte, NC 28202**  
**ABA: 053101121**  
**Account: 5199023812**  
**Account Name: Commercial Defeasance, LLC**  
**Reference: Tobin Lofts, LLC**

Based upon our prior experience with the Servicer, other third party expenses of the Defeasance include the following fees (collectively, the "Costs"):

Servicer Processing	\$20,000
Servicer Legal	Fee Set by Wells Fargo
Successor Borrower	\$6,500
Custodian	\$6,500
Accountant Certificate	\$3,000

The Successor Borrower, Custodian, and Accountant are part of Commercial Defeasance's network of preferred providers, and their fees are fixed. Other third-party fees are estimated based upon our prior experience but could change. Base Servicer legal fees generally range from \$15,000 to \$20,000, but significant negotiation of documents, additional opinions issued by Servicer counsel, and unique transaction structures (Partial Release/NY Style Assignment/Rating Agency review) can increase legal fees. Also, all costs assume that the Loan is not in default. The Servicer will not permit a defeasance transaction to proceed if they or their attorneys discover an Event of Default (even a technical, non-monetary default), until the default is cured by the Borrower.

#### 5. Closing Procedures

In order for the closing of the Defeasance to occur on a given day (the "Closing Date"), the Borrower, Commercial Defeasance, the Servicer, and Servicer's counsel must agree up to two (2) days prior to the Closing Date that the conditions to closing have been or will (with certainty) be satisfied on or before the Closing Date. Commercial Defeasance will "circle" the securities described in the draft accountant's report on the Borrower's behalf, when, *and only when*, the Borrower has faxed a signed Securities Purchase Authorization to Commercial Defeasance. The one page Securities Purchase Authorization form will be provided to the Borrower several days prior to "circling" the securities. Once the securities are "circled", they have been purchased in the Borrower's name even though the securities will not be delivered and paid for until closing.

Thereafter, if the Defeasance fails to close on the Closing Date, the securities broker-dealer may sell the securities in the open market, which may result in loss, cost and expense. The Borrower understands and agrees that once the securities are “circled”, the Borrower will be liable for all loss, cost and expense associated with the purchase of the securities and arising as a result of the sale of the securities due to the failure of the Defeasance to close on the Closing Date for any reason. Borrower will only be entitled to receive any gain from such a sale, if the Borrower has actually paid for the securities.

If the Borrower elects not to “circle” the securities for any reason, including, but not limited to, market conditions, and Commercial Defeasance has performed substantially all of the other services to be provided by it under this Agreement, the Borrower agrees to pay the balance of the fees of Commercial Defeasance and the Successor Borrower within five (5) days of receipt of an invoice therefor.

## **6. Independent Contractor**

It is understood and agreed that, with respect to the relationship between Commercial Defeasance (and its affiliates, including Defeasance Holding Company and the Successor Borrower) and the Borrower (and its affiliates), (i) each of the parties is an independent contractor, and (ii) none of such parties is an agent, partner, fiduciary or representative of the other, except that Commercial Defeasance shall be a representative (but not a fiduciary) for the limited purpose of circling the securities as described in and pursuant to the terms of Section 5 of this Agreement.

## **7. Limitation on Recourse, Damages and Actions**

The Borrower agrees that Commercial Defeasance and its personnel shall not be liable to the Borrower for any claims, liabilities, damages or expenses for any matters arising from or relating to this Agreement in an aggregate amount in excess of the fees paid by the Borrower to Commercial Defeasance hereunder and that Commercial Defeasance’s only obligation to the Borrower for a breach of this Agreement shall be, and the Borrower’s sole and exclusive remedy shall be, the refund of any fees paid to Commercial Defeasance.

## **8. Arbitration**

Any dispute or controversy arising from or relating to this Agreement shall be determined and settled by arbitration in the City of Charlotte, North Carolina, in accordance with then prevailing Commercial Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator(s) shall be final and conclusive. The expenses of the arbitration shall be borne equally by the Borrower and Commercial Defeasance, provided that each party shall pay for and bear the cost of its own experts and legal counsel.

## **9. Governing Law, Jurisdiction and Severability**

This Agreement and all matters relating hereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina. Both parties hereby submit to the jurisdiction of the State and Federal courts located in the State of North Carolina and both parties agree that the other may, at its option, enforce its rights under this Agreement in such courts.

## **10. Complete Agreement**

This Agreement, when executed by the parties hereto, contains the complete and entire understanding of the parties with respect to the subject matter hereof, and no changes or waivers

will be recognized as valid, unless they are made in writing and similarly executed. No specific waiver of any of the terms hereof shall be considered as a general waiver. A faxed or e-mailed signature on this Agreement shall have the same force and effect as an original signature.

Accepted and agreed this 3<sup>rd</sup> day of September 2021:

**SIGN HERE:**

Borrower: Tobin Lofts LLC,  
a Texas limited liability company

By: ACCD Public Facility Corporation,  
a Texas public facility corporation,  
its Sole Member

Mailing Address:  
2222 N. Alamo Street  
San Antonio, Texas 78215  
Attn: General Counsel

By: \_\_\_\_\_  
Name: Dr. Diane E. Snyder, Ph.D., CPA  
Title: President  
Borrower EIN/TIN: [46-0689050]  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: rlaughead@alamo.edu

*Approved as to form only:*

By:  \_\_\_\_\_  
Name: Ross Laughead  
Title: General Counsel, Alamo Colleges

This transaction is for a:

- Purchase/Sale
- Refinance

Commercial Defeasance, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Telephone: 704-248-2600

## DEAL CONTACT INFORMATION

### **Title Company**

Closer's Name: Drex Baker  
Company: Stewart Title Guaranty Company  
Address: 5600 Clearfork Main Street  
Suite 120  
Fort Worth, Texas 76109  
Telephone: 682-707-3444  
Facsimile: \_\_\_\_\_  
E-mail: [dBaker@stewart.com](mailto:dBaker@stewart.com)

### **NRP's Counsel**

Counsel: Andrew Cohen, Esq.  
Firm: Hornberger Fuller Garza & Cohen  
Address: 7373 Broadway  
Suite 300  
San Antonio, Texas 78209  
Telephone: 210-271-1715  
Facsimile: \_\_\_\_\_  
E-mail: [ACohen@hfgtx.com](mailto:ACohen@hfgtx.com)

### **Borrower's Counsel**

Counsel: James Plummer  
Firm: Bracewell LLP  
Address: 300 Convent  
Suite 1500  
San Antonio, Texas 78205  
Telephone: 210-299-3530  
Facsimile:  
E-mail: [james.plummer@bracewell.com](mailto:james.plummer@bracewell.com)

### **NRP**

Corinne Bittner  
Address: 1228 Euclid Avenue  
4<sup>th</sup> Floor  
Cleveland, OH 44115  
Cell: 856-275-5541  
Direct: 216-553-3672  
Fax: 216-475-9300  
[crbittner@nrpgroup.com](mailto:crbittner@nrpgroup.com)

**Lender's Counsel (for refi or sale)**

Counsel: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Buyer (If applicable)**

Contact Person: Mike Lytle  
Company: Jesselson Warsavsky Capital  
Management, LLC  
Address: 445 Park Avenue  
Suite 1502  
New York, New York 10022  
Telephone: 212-751-3344  
Facsimile: \_\_\_\_\_  
E-mail: [mike.lytle@jwcmllc.com](mailto:mike.lytle@jwcmllc.com)

**Broker**

Name: David Roth  
Company: BWE Investment Sales LLC  
Address: 1375 E. 9<sup>th</sup> Street  
Suite 2300  
Cleveland, Ohio 44114  
Telephone: 216-785-2991  
Facsimile: \_\_\_\_\_  
E-mail: [dRoth@bwecap.com](mailto:dRoth@bwecap.com)

**Lender (for refi or sale)**

Lender: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Buyer's Counsel (If applicable)**

Counsel: Peter R. Broderick, Esq.  
Firm: Jackson Walker, LLP  
Address: 112 East Pecan Street  
Suite 2400  
San Antonio, Texas 78205  
Telephone: 210-978-7705  
Facsimile: \_\_\_\_\_  
E-mail: [pbroderick@jw.com](mailto:pbroderick@jw.com)

# Tobin Lofts, LLC

September 3, 2021

**CONFIDENTIAL**

Wells Fargo Bank NA  
401 S Tryon Street  
8th Floor  
Charlotte NC, 28202

Re: **Defeasance Notice: Tobin Lofts, LLC (“Borrower”)**  
**Original Loan Amount: \$34,500,000.00**  
**Wells Fargo Loan Number: 301741012 (the “Loan”)**

To Whom It May Concern:

In accordance with the documents evidencing the Loan, the Borrower hereby gives notice that it intends to defease the Loan on or before October 3, 2021 which shall be the “Release Date.” On the Release Date, the Borrower will deliver the Defeasance Collateral and satisfy the conditions for such defeasance.

In addition, please be advised that we have engaged Commercial Defeasance, LLC to assist us in the defeasance of the Loan. In that connection, we hereby authorize and instruct you to discuss with and disclose to Commercial Defeasance relevant information regarding the Loan and request that you not disclose information regarding the pending defeasance transaction, including its mere existence, to any person or entity, including an affiliate or subsidiary, that does not need to know about the defeasance transaction in order for us to complete it.

Commercial Defeasance will coordinate the purchase of the securities comprising the defeasance collateral for the defeasance of this Loan through a securities broker of Borrower’s choosing, and Borrower designates Defeasance Holding Company to provide the successor borrower that will assume the defeased Loan. We look forward to working with you to complete the transaction. Please direct all correspondence regarding the defeasance to Commercial Defeasance.

Very truly yours,

Tobin Lofts, LLC,  
a Texas limited liability company

By: ACCD Public Facility Corporation,  
a Texas public facility corporation,  
its Sole Member

**By:** \_\_\_\_\_  
**Name:** Dr. Diane E. Snyder, Ph.D., CPA  
**Title:** President

APPROVED  
AS TO FORM ONLY  
  
GENERAL COUNCIL ALAMO COLLEGES

**APPROVED**  
By Ross Laughead at 11:10 am, Sep 03, 2021



9/2/2021

Tobin Lofts, LLC  
Attn: Corinne Bittner  
Phone: (216) 553-3672  
Email: CRBittner@nrpgroup.com

**Re: Wells Fargo - Loan #301741012**

Dear Corinne:

Thank you for this opportunity to help you defease your loan. To start the defeasance process, please return all of the following to us:

- Acceptance Page to attached Terms of Engagement executed by the *current borrowing entity*
- Copy of the signed, completed defeasance notice, *including target closing date*
- Borrower and Borrower Counsel contact information
- Deposit(s) as described in Section 4 of the Terms of Engagement

For the quickest and most efficient processing of your transaction, we prefer to send the notice and deposit directly to the Servicer on your behalf. We will also need Borrower Counsel contact information before we can begin the process with the Servicer's counsel. We can receive any other unknown contact information at a later date.

When executed and returned to us with all deposits required hereunder, the attached Terms of Engagement will evidence the terms upon which you have engaged us to help you *Defease With Ease®*. We appreciate your business and look forward to working with you.

Sincerely,

Scott Burnett  
Commercial Defeasance, LLC



## **ENGAGEMENT AGREEMENT**

THIS ENGAGEMENT AGREEMENT (the “Agreement”) is entered into this 3rd day of September, 2021 between Commercial Defeasance, LLC (“Commercial Defeasance”) and the Borrower named on the Acceptance Page attached hereto (“Borrower”) regarding the terms and conditions pursuant to which Commercial Defeasance will facilitate the defeasance of Borrower’s loan #301741012 (the “Loan”) serviced by Wells Fargo (“Servicer”).

### **1. Services**

Commercial Defeasance will work diligently with the Borrower to coordinate the defeasance of the Loan (the “Defeasance”) on the Borrower’s closing schedule and in accordance with the Servicer’s requirements. Please keep in mind that our ability to effectively assist the Borrower in meeting its closing schedule depends, in part, upon the Borrower’s timely delivery of accurate and complete documentation and information.

### **2. Securities Purchase**

Commercial Defeasance will deliver the most efficient, transparent, and cost effective defeasance structure in the industry. We will not receive any fee or other compensation from the purchase of the securities comprising the defeasance collateral. Fees charged by one of our preferred broker-dealers in connection with purchasing a portfolio of government securities range from \$1,000-\$5,000, depending upon transaction size and number of securities, and will be included in the final securities cost. This pre-negotiated fee range does not apply to broker-dealers outside of our network or to securities not readily available in the secondary market, which can include custom, direct-issue securities. Please be aware that your loan documents may allow the Lender to purchase the securities portfolio. If that right is exercised by the Lender, an additional securities purchasing fee may apply.

### **3. Guarantee**

Commercial Defeasance provides a premium level of service to *every* customer on *every* transaction, and we stand behind our work. We guarantee we will meet your closing timeline, and when you purchase through our experienced network of broker-dealers, we guarantee the cost of the securities portfolio will be at, or below, market pricing on the date of purchase. If we fail to meet the closing timeline we agree to at the outset of your transaction (as revised by the Borrower based upon other factors unrelated to the defeasance) or cannot obtain at or below market pricing on the securities portfolio, we will not charge a fee for the services provided by Commercial Defeasance.

#### 4. Deposits and Fees

Commercial Defeasance will collect all deposits required to start the defeasance process, including the Servicer deposit of \$25,000, and will wire the deposits to the recipients on the Borrower's behalf. The Borrower agrees to pay Commercial Defeasance \$12,000 for the services described in this Agreement, of which \$5,000 will be paid as a non-refundable processing fee when the Borrower returns this executed Agreement. Upfront deposits will be applied by the recipients to their respective transaction costs with any balances paid by the Borrower on the Closing Date.

**Please use the following instructions to wire total deposits of \$30,000:**

**Truist**  
**214 N. Tryon Street**  
**Charlotte, NC 28202**  
**ABA: 053101121**  
**Account: 5199023812**  
**Account Name: Commercial Defeasance, LLC**  
**Reference: Tobin Lofts, LLC**

Based upon our prior experience with the Servicer, other third party expenses of the Defeasance include the following fees (collectively, the "Costs"):

Servicer Processing	\$20,000
Servicer Legal	Fee Set by Wells Fargo
Successor Borrower	\$6,500
Custodian	\$6,500
Accountant Certificate	\$3,000

The Successor Borrower, Custodian, and Accountant are part of Commercial Defeasance's network of preferred providers, and their fees are fixed. Other third-party fees are estimated based upon our prior experience but could change. Base Servicer legal fees generally range from \$15,000 to \$20,000, but significant negotiation of documents, additional opinions issued by Servicer counsel, and unique transaction structures (Partial Release/NY Style Assignment/Rating Agency review) can increase legal fees. Also, all costs assume that the Loan is not in default. The Servicer will not permit a defeasance transaction to proceed if they or their attorneys discover an Event of Default (even a technical, non-monetary default), until the default is cured by the Borrower.

#### 5. Closing Procedures

In order for the closing of the Defeasance to occur on a given day (the "Closing Date"), the Borrower, Commercial Defeasance, the Servicer, and Servicer's counsel must agree up to two (2) days prior to the Closing Date that the conditions to closing have been or will (with certainty) be satisfied on or before the Closing Date. Commercial Defeasance will "circle" the securities described in the draft accountant's report on the Borrower's behalf, when, *and only when*, the Borrower has faxed a signed Securities Purchase Authorization to Commercial Defeasance. The one page Securities Purchase Authorization form will be provided to the Borrower several days prior to "circling" the securities. Once the securities are "circled", they have been purchased in the Borrower's name even though the securities will not be delivered and paid for until closing.

Thereafter, if the Defeasance fails to close on the Closing Date, the securities broker-dealer may sell the securities in the open market, which may result in loss, cost and expense. The Borrower understands and agrees that once the securities are “circled”, the Borrower will be liable for all loss, cost and expense associated with the purchase of the securities and arising as a result of the sale of the securities due to the failure of the Defeasance to close on the Closing Date for any reason. Borrower will only be entitled to receive any gain from such a sale, if the Borrower has actually paid for the securities.

If the Borrower elects not to “circle” the securities for any reason, including, but not limited to, market conditions, and Commercial Defeasance has performed substantially all of the other services to be provided by it under this Agreement, the Borrower agrees to pay the balance of the fees of Commercial Defeasance and the Successor Borrower within five (5) days of receipt of an invoice therefor.

## **6. Independent Contractor**

It is understood and agreed that, with respect to the relationship between Commercial Defeasance (and its affiliates, including Defeasance Holding Company and the Successor Borrower) and the Borrower (and its affiliates), (i) each of the parties is an independent contractor, and (ii) none of such parties is an agent, partner, fiduciary or representative of the other, except that Commercial Defeasance shall be a representative (but not a fiduciary) for the limited purpose of circling the securities as described in and pursuant to the terms of Section 5 of this Agreement.

## **7. Limitation on Recourse, Damages and Actions**

The Borrower agrees that Commercial Defeasance and its personnel shall not be liable to the Borrower for any claims, liabilities, damages or expenses for any matters arising from or relating to this Agreement in an aggregate amount in excess of the fees paid by the Borrower to Commercial Defeasance hereunder and that Commercial Defeasance’s only obligation to the Borrower for a breach of this Agreement shall be, and the Borrower’s sole and exclusive remedy shall be, the refund of any fees paid to Commercial Defeasance.

## **8. Arbitration**

Any dispute or controversy arising from or relating to this Agreement shall be determined and settled by arbitration in the City of Charlotte, North Carolina, in accordance with then prevailing Commercial Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator(s) shall be final and conclusive. The expenses of the arbitration shall be borne equally by the Borrower and Commercial Defeasance, provided that each party shall pay for and bear the cost of its own experts and legal counsel.

## **9. Governing Law, Jurisdiction and Severability**

This Agreement and all matters relating hereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina. Both parties hereby submit to the jurisdiction of the State and Federal courts located in the State of North Carolina and both parties agree that the other may, at its option, enforce its rights under this Agreement in such courts.

## **10. Complete Agreement**

This Agreement, when executed by the parties hereto, contains the complete and entire understanding of the parties with respect to the subject matter hereof, and no changes or waivers

will be recognized as valid, unless they are made in writing and similarly executed. No specific waiver of any of the terms hereof shall be considered as a general waiver. A faxed or e-mailed signature on this Agreement shall have the same force and effect as an original signature.

Accepted and agreed this 3<sup>rd</sup> day of September 2021:

**SIGN HERE:**

Borrower: Tobin Lofts LLC,  
a Texas limited liability company

By: ACCD Public Facility Corporation,  
a Texas public facility corporation,  
its Sole Member

Mailing Address:  
2222 N. Alamo Street  
San Antonio, Texas 78215  
Attn: General Counsel

By: \_\_\_\_\_  
Name: Dr. Diane E. Snyder, Ph.D., CPA  
Title: President  
Borrower EIN/TIN: [46-0689050]  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: rlaughead@alamo.edu

*Approved as to form only:*

By:  \_\_\_\_\_  
Name: Ross Laughead  
Title: General Counsel, Alamo Colleges

This transaction is for a:

- Purchase/Sale
- Refinance

Commercial Defeasance, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Telephone: 704-248-2600

## DEAL CONTACT INFORMATION

### **Title Company**

Closer's Name: Drex Baker  
Company: Stewart Title Guaranty Company  
Address: 5600 Clearfork Main Street  
Suite 120  
Fort Worth, Texas 76109  
Telephone: 682-707-3444  
Facsimile: \_\_\_\_\_  
E-mail: [dBaker@stewart.com](mailto:dBaker@stewart.com)

### **NRP's Counsel**

Counsel: Andrew Cohen, Esq.  
Firm: Hornberger Fuller Garza & Cohen  
Address: 7373 Broadway  
Suite 300  
San Antonio, Texas 78209  
Telephone: 210-271-1715  
Facsimile: \_\_\_\_\_  
E-mail: [ACohen@hfgtx.com](mailto:ACohen@hfgtx.com)

### **Borrower's Counsel**

Counsel: James Plummer  
Firm: Bracewell LLP  
Address: 300 Convent  
Suite 1500  
San Antonio, Texas 78205  
Telephone: 210-299-3530  
Facsimile:  
E-mail: [james.plummer@bracewell.com](mailto:james.plummer@bracewell.com)

### **NRP**

Corinne Bittner

Address: 1228 Euclid Avenue  
4<sup>th</sup> Floor  
Cleveland, OH 44115  
Cell: 856-275-5541  
Direct: 216-553-3672  
Fax: 216-475-9300  
[crbittner@nrpgroup.com](mailto:crbittner@nrpgroup.com)

**Lender's Counsel (for refi or sale)**

Counsel: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Buyer (If applicable)**

Contact Person: Mike Lytle  
Company: Jesselson Warsavsky Capital  
Management, LLC  
Address: 445 Park Avenue  
Suite 1502  
New York, New York 10022  
Telephone: 212-751-3344  
Facsimile: \_\_\_\_\_  
E-mail: [mike.lytle@jwcmllc.com](mailto:mike.lytle@jwcmllc.com)

**Broker**

Name: David Roth  
Company: BWE Investment Sales LLC  
Address: 1375 E. 9<sup>th</sup> Street  
Suite 2300  
Cleveland, Ohio 44114  
Telephone: 216-785-2991  
Facsimile: \_\_\_\_\_  
E-mail: [dRoth@bwecap.com](mailto:dRoth@bwecap.com)

**Lender (for refi or sale)**

Lender: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Buyer's Counsel (If applicable)**

Counsel: Peter R. Broderick, Esq.  
Firm: Jackson Walker, LLP  
Address: 112 East Pecan Street  
Suite 2400  
San Antonino, Texas 78205  
Telephone: 210-978-7705  
Facsimile: \_\_\_\_\_  
E-mail: [pbroderick@jw.com](mailto:pbroderick@jw.com)

# Tobin Lofts, LLC

September 3, 2021

**CONFIDENTIAL**

Wells Fargo Bank NA  
401 S Tryon Street  
8th Floor  
Charlotte NC, 28202

Re: **Defeasance Notice: Tobin Lofts, LLC (“Borrower”)**  
**Original Loan Amount: \$34,500,000.00**  
**Wells Fargo Loan Number: 301741012 (the “Loan”)**

To Whom It May Concern:

In accordance with the documents evidencing the Loan, the Borrower hereby gives notice that it intends to defease the Loan on or before October 3, 2021 which shall be the “Release Date.” On the Release Date, the Borrower will deliver the Defeasance Collateral and satisfy the conditions for such defeasance.

In addition, please be advised that we have engaged Commercial Defeasance, LLC to assist us in the defeasance of the Loan. In that connection, we hereby authorize and instruct you to discuss with and disclose to Commercial Defeasance relevant information regarding the Loan and request that you not disclose information regarding the pending defeasance transaction, including its mere existence, to any person or entity, including an affiliate or subsidiary, that does not need to know about the defeasance transaction in order for us to complete it.

Commercial Defeasance will coordinate the purchase of the securities comprising the defeasance collateral for the defeasance of this Loan through a securities broker of Borrower’s choosing, and Borrower designates Defeasance Holding Company to provide the successor borrower that will assume the defeased Loan. We look forward to working with you to complete the transaction. Please direct all correspondence regarding the defeasance to Commercial Defeasance.

Very truly yours,

Tobin Lofts, LLC,  
a Texas limited liability company

By: ACCD Public Facility Corporation,  
a Texas public facility corporation,  
its Sole Member

**By:** \_\_\_\_\_  
**Name:** Dr. Diane E. Snyder, Ph.D., CPA  
**Title:** President

APPROVED  
AS TO FORM ONLY  
  
GENERAL COUNSEL/ALAMO COLLEGES

**APPROVED**  
By Ross Laughead at 11:10 am, Sep 03, 2021