**Note to drafter: form for use when Hedge Counterparty is an institution other than Truist Bank**

**COLLATERAL ASSIGNMENT OF HEDGE**

This **COLLATERAL ASSIGNMENT OF HEDGE** (this “**Assignment**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_, with an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), in favor of **TRUIST BANK**,a North Carolina banking corporation, with an office at 303 Peachtree St., NE, Atlanta, Georgia 30308 (with its successors and assigns, “**Lender**”). Capitalized terms used but not defined in this Assignment shall have the same meanings as in the Loan Agreement dated as of the Effective Date (as amended from time to time, the “**Loan Agreement**”), between Borrower and Lender; and if not defined in the Loan Agreement shall have the definitions in the Hedge (as defined below).

1. *Collateral Assignment.* To further secure the Obligations under the Loan Agreement, Borrower assigns, pledges and transfers to Lender, and grants to Lender a security interest in, all of Borrower’s right, title and interest (but not Borrower’s obligations or liabilities), whether now owned or later acquired, now existing or later arising, in, to, and under the following (collectively, as amended from time to time in compliance with this Assignment, the “**Hedge**”):

1. *Hedge Transaction(s).* The interest rate cap, collar, floor, swap, swaption, forward foreign exchange transaction, currency swap, cross-currency rate swap, currency option, forward rate transaction, basis swap, interest rate option, other interest rate protection product(s) or agreement(s), other derivatives contract(s), option(s) to enter into any of the foregoing, or combination(s) of any of the foregoing, as described (or copies of which are attached) in Exhibit A, entered into with the counterparty(ies) identified in Exhibit A (the “**Counterparty**”);

(ii) *Confirmations.* Only the confirmations and schedules listed in Exhibit A that Counterparty issued for the transaction(s) Exhibit A identifies (the “**Confirmations**”), including without limitation the interest rate *[swap/cap]* entered into to hedge the Borrower’s exposure to fluctuations in interest rates in connection with the Loan Agreement;

(iii) *Security.* Any and all collateral (if any) supporting Counterparty’s obligations under any of the preceding Hedge documents (the “**Hedge Documents**”);

(iv) *Rights and Remedies.* All rights and remedies under any of the Hedge Documents, including any right (if one exists) to declare an Early Termination Date;

(v) *Hedge Payments.* All payments that any of the Hedge Documents require or permit Counterparty to make, when and as such documents contemplate, whether upon termination or default (including default, cross-default, or early termination, a “**Termination Hedge Payment**”), or otherwise, but in all cases subject to and in accordance with the terms of such Hedge Documents as affected by this Assignment (the “**Hedge Payments**”);

(vi) *Proceeds*. All proceeds, as defined in the Uniform Commercial Code of the jurisdiction whose law governs this Assignment (the “**UCC**”), of any of the foregoing; and

(vii) *Other.* All rights of Borrower to receive, or otherwise relating to or arising from, any of the foregoing.

2. *Continuing Liability under Hedge.* This Assignment does not limit Borrower’s obligations or liability, or impose any obligation or liability on Lender, under the Hedge. Lender shall have no duty to enforce the Hedge or collect any Hedge Payment. Except where this Assignment expressly limits or modifies any terms of the Hedge, this Assignment is subject to all such terms.

3. *Impairment.* Without Lender’s prior written consent, which Lender may withhold in its absolute discretion:

(i) *Transfer.* Borrower shall not assign, convey, encumber or grant a security interest or option relating to, hypothecate, mortgage, pledge, sell, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, in whole or in part, collateral or absolute, and whether or not for consideration) (“**Transfer**”) any of its rights, title, interest or obligations under any Hedge Documents except pursuant to this Assignment. Counterparty shall not acknowledge, honor, or recognize any such Transfer, except any Lender Transfer. To the extent the Hedge Documents require Borrower’s consent to any Transfer by Counterparty, such Transfer shall also require Lender’s consent.

(ii) *Amendment.* Neither Borrower nor Counterparty shall amend, cancel, modify, or terminate (or give any Termination Notice under) the Hedge Documents, or waive any of its terms.

4. *Status and Consent.* Counterparty represents and warrants to Lender that: (a) Counterparty has duly authorized, executed, and delivered, **[and been fully paid for – *delete for a swap*]**, the Hedge; (b) the Hedge Documents are in full force and effect as against Counterparty; (c) Counterparty and Borrower have entered into no agreements with respect to the Hedge Documents except as the Hedge states; (d) to Counterparty’s knowledge, no party is in default under the Hedge Documents; and (e) Counterparty has received notice of (and consents to) this Assignment and has received no notice of any other presently effective Transfer of the Hedge.

5. *Lender’s Security.*

(i) *Loan Event of Default.* If an Event of Default exists under the Loan Agreement (or if Borrower fails to perform any obligation to Lender under this Assignment and does not cure such failure within five business days) (an “**Event of Default**”), if any Termination Event occurs for Counterparty, or an event of default occurs for Counterparty under the Hedge, then Lender may (but need not) notify Counterparty in writing that an Automatic Early Termination (hence an Early Termination Date) shall have occurred under the Hedge Documents (a “**Termination Notice**”). Any Termination Notice shall be fully effective without Borrower’s consent, confirmation, or signature.

(ii) *Intended Beneficiary.* Lender is an intended beneficiary of the Hedge. Whenever any Event of Default exists under the Loan Agreement, Lender may exercise any right or remedy, and give any notice, under the Hedge, with no need for Borrower’s consent, confirmation, or signature. Counterparty shall perform accordingly under the Hedge.

1. *Netting Waiver*. Counterparty waives any right to net or setoff against any Hedge Payment(s), except on account of the transaction(s) described in Exhibit A (the “**Netting Waiver**”).

6. *Exercise of Remedies.* Counterparty consents to any direct or indirect Transfer of the Hedge (a “**Lender Transfer**”) that: (a) results from (or in lieu of) Lender’s exercise of any rights and remedies of Lender, whether under the Loan Agreement or other loan documents, at law or in equity (“**Lender’s Remedies**”); or (b) is made by any transferee resulting from “(a)” or by any of its direct or indirect successors or assigns.

7. *Hedge Payments.* Whether or not an Event of Default exists, Borrower directs Counterparty to remit all Hedge Payments only as Lender directs from time to time in writing, with no need for Borrower’s consent, confirmation, or signature. [Lender initially directs Counterparty to remit to this account:\_\_\_\_\_\_\_.][[1]](#footnote-1)

8. *Counterparty Protection*. Counterparty may conclusively rely, without investigation, on any notice, demand, or instruction from Lender about the Hedge or any Hedge Payment, Event of Default, or related matter (“**Lender Direction**”), with no need for Borrower’s consent, confirmation or signature. Borrower irrevocably instructs Counterparty to rely upon and accept any Lender Direction and to disregard and ignore any instruction from Borrower that either: (a) conflicts with any Lender Direction; or (b) Counterparty receives after Lender has notified Counterparty of an Event of Default (unless Lender has rescinded that notice). Borrower shall hold harmless and indemnify Counterparty from and against any and all claims, damages, expenses, judgments, liabilities, losses, and penalties (including reasonable attorneys’ fees and disbursements) that Counterparty incurs because Borrower or any other Person asserts any claim against Counterparty that arises from or relates to any act or omission of Counterparty in reliance on any Lender Direction (unless caused by Counterparty’s gross negligence or willful misconduct). To the extent that Counterparty pays any Hedge Payment to Lender, it shall satisfy Counterparty’s corresponding obligations to Borrower under the Hedge.

9. *Lender Protection.* This Assignment does not impose on Lender any obligations of Borrower under the Hedge. Any person that acquires the Hedge through any Lender Transfer shall have no personal obligations and no personal liability under the Hedge, including any personal obligation to make any payment the Hedge requires of Borrower. Counterparty shall at all times look solely to Borrower under the Hedge. Nothing in this paragraph limits Counterparty’s: (a) obligations as Counterparty; or (b) right to offset or net any payment, or exercise any other rights and remedies (including termination rights), as the Hedge allows, subject to the Netting Waiver.

10. *Termination.* This Assignment and Lender’s rights under this Assignment shall terminate and Lender shall at Borrower’s expense so confirm in writing if and when either: (a) the Hedge terminates or expires and Counterparty has paid all Hedge Payments (including without limitation all Termination Hedge Payments) as this Assignment requires; or (b) Borrower has paid and performed all its obligations under the Loan Agreement, and Lender has no further obligations under the Loan Agreement.

11. *Borrower-Lender Agreements.* As between Borrower and Lender only, without affecting Counterparty, Borrower and Lender agree as follows (the “**Loan-Related Covenants**”):

(i) *Assurances.* Borrower represents and warrants: (a) the Hedge and this Assignment are enforceable against Borrower and Counterparty; (b) the copies of the Hedge attached to this Assignment (or otherwise provided to Lender) are true, correct, and complete; (c) Borrower owns the Hedge free and clear of any claims of others, and has not Transferred its interest in the Hedge to anyone except Lender; (d) no party is in default under the Hedge; and (e) Borrower has reviewed the Hedge, approves its terms, and confirms that the Hedge refers to an interest rate index that precisely matches an interest rate index used in the Loan Agreement. Borrower acknowledges that Lender makes no representation or warranty about the effectiveness, if any, of Borrower’s hedging strategy.

(ii) *Collateral; Remedies.* The Hedge shall constitute collateral under the Loan Agreement and related loan documents. If any Event of Default exists, Lender may exercise all Lender’s Remedies, which are cumulative. Lender may exercise them partially or sequentially and in any order. If Lender liquidates or terminates the Hedge upon an Event of Default, Lender shall have no liability to Borrower for any resulting loss.

1. *Covenants.* Borrower shall: (a) perform all its obligations, if any, under the Hedge; (b) promptly give Lender a copy of any notice Borrower sends or receives about the Hedge; and (c) hold in trust (as Lender’s fiduciary) and within two Business Days remit to Lender any Hedge Payment Borrower receives. Except with Lender’s consent, Borrower shall not: (d) take any action that would allow Counterparty to assert a claim, counterclaim, or defense against its Hedge obligations; (e) Transfer the Hedge; (f) enter into any transaction(s) under the Hedge, except the Confirmation(s); (g) release any Counterparty obligations; or (h) give any Termination Notice.
2. *Hedge Enforcement*. Borrower shall exercise with reasonable diligence its rights and remedies under the Hedge, except: (a) during any Event of Default, Borrower shall comply with Lender’s directions regarding how, when, and whether to enforce such rights and remedies; and (b) Borrower shall not give a Termination Notice without Lender’s consent.

(v) *Application of Hedge Payments.* If Lender receives any Hedge Payment, Lender shall apply it against the Obligations, in such order as Lender determines subject to the terms of the Loan Agreement. Borrower shall remain responsible for the full and timely payment of all other Obligations.

(vi) *UCC Financing Statement; Further Assurances.* Borrower consents to Lender’s filing a UCC financing statement (and making any other filings) necessary or appropriate, in Lender’s judgment, to perfect Lender’s security interest in the Hedge. Borrower shall execute such certificates, deliveries, and documents as Lender reasonably requests from time to time to further effectuate the parties’ intentions. Borrower represents and warrants that its correct legal name is as typed on the signature page(s) of this Assignment.

12. *Notice of Assignment*. If Lender assigns its interest in the Hedge, then Lender shall promptly notify Counterparty in writing, with the assignee’s name and notice information. Failure to do so shall not constitute a default, or limit Lender’s rights, under this Assignment. If Lender gives such a notice of assignment, then Counterparty shall upon request confirm to the assignee that it has succeeded to Lender’s rights and obligations under this Assignment and such other matters as the assignee reasonably requests.

13. *Waiver of Jury Trial.* ALL PARTIES WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN ANY WAY IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THIS ASSIGNMENT, OR THE INTERPRETATION OR DETERMINATION THEREOF, OR THE ENFORCEMENT OF ANY LENDER’S REMEDIES, OR THE RELATIONSHIP OF THE PARTIES REGARDING THE LOAN, THE HEDGE, THIS ASSIGNMENT, AND ALL RELATED MATTERS (ANY OF THE FOREGOING, A “**DISPUTE**”). ANY DISPUTE SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

14. *Miscellaneous.* The law that governs the Loan Agreement shall govern this Assignment and any Dispute. If Lender assigns the Loan, then Counterparty shall upon request confirm to the assignee that such assignee has succeeded to Lender’s rights and obligations under this Assignment and such other matters as the assignee shall reasonably request. This Assignment may be executed in any number of counterparts. Each shall be an original. All constitute one instrument.

**IN WITNESS WHEREOF**, Borrower has executed this Assignment as of the Effective Date.

BORROWER:

**NAME OF ENTITY**

[SIGNATURE BLOCK]

Attached:

Counterparty Confirmation

Confirmation of Counterparty’s Signing Authority

Exhibit A: Description or Copy of Hedge

**COUNTERPARTY CONFIRMATION**

Counterparty accepts, agrees to, and acknowledges the foregoing Assignment and all its terms (except the Loan-Related Covenants).

**COUNTERPARTY[[2]](#footnote-2)**

**NAME OF ENTITY**

By:

Name:

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

**CONFIRMATION OF COUNTERPARTY’S SIGNING AUTHORITY**

The undersigned, who holds the office in Counterparty identified below, confirms that the above Counterparty Confirmation was duly authorized, executed, and delivered, and the person signing such Counterparty Confirmation for Counterparty had the power and authority to do so.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF COUNTERPARTY AND HEDGE**

Counterparty \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Hedge (Master \_\_\_\_\_\_\_\_\_\_\_ Agreement (\_\_\_\_\_\_\_\_\_\_\_ Reference No.\_\_\_\_\_\_), between

Agreement) Counterparty and Borrower, dated as of \_\_\_\_\_\_\_, as supplemented only

by the Schedules listed below as amended from time to time (in compliance with the foregoing Hedge Pledge)

Schedule(s) to Schedule \_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_

Master Agreement

Amendment(s) Transaction Amendment (\_\_\_\_\_\_\_\_\_\_ Reference No.\_\_\_\_\_\_\_\_) dated as

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Confirmation(s) Confirmation(s) issued under Counterparty’s Reference No.\_\_\_\_ dated as

of \_\_\_\_\_\_\_\_\_\_

1. If Hedge Payments will not be paid directly to Lender, delete this provision and replace with: “If either (a) Lender notifies Counterparty of any Event of Default; or (b) the Hedge terminates or is in default, then unless Lender consents otherwise, Counterparty shall pay all Hedge Payments only as Lender directs in writing, with no need for Borrower’s consent, confirmation, or signature.” [↑](#footnote-ref-1)
2. ***Note to drafter***: this form is not intended for use when Truist Bank is Hedge Counterparty. [↑](#footnote-ref-2)