**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, as Administrative Agent for the Lenders (with its successors and assigns in that capacity, “**Administrative Agent**”). 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**”), among Borrower, as borrower; Administrative Agent, as Administrative Agent for the benefit of the Lenders; and such Lenders; 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 Administrative Agent, and grants to Administrative Agent, in each case for the benefit of the Lenders, 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 Administrative Agent, under the Hedge. Administrative Agent 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 Administrative Agent’s prior written consent, which Administrative Agent 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 Administrative Agent Transfer. To the extent the Hedge Documents require Borrower’s consent to any Transfer by Counterparty, such Transfer shall also require Administrative Agent’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 Administrative Agent 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. *Administrative Agent’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 Administrative Agent 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 Administrative Agent 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.* Administrative Agent is an intended beneficiary of the Hedge. Whenever any Event of Default exists under the Loan Agreement, Administrative Agent 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. *Loan Repayment*. If the Hedge imposes any material obligations on Borrower and Borrower repays the Loan, then an Early Termination Date shall automatically occur under the Hedge unless Administrative Agent or Counterparty elects otherwise in writing. Notwithstanding anything to the contrary in the Loan Agreement or any related loan document, Administrative Agent need not release any security document related to the Loan (including without limitation any mortgage, deed to secure debt, or deed of trust) unless and until Borrower has performed all its obligations (if any) arising under the Hedge on account of any such Early Termination Date. ***[delete this paragraph if the mortgage or other security instrument does not secure Borrower’s obligations under the Hedge]***
2. *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 (an “**Administrative Agent Transfer**”) that: (a) results from (or in lieu of) Administrative Agent’s exercise of any rights and remedies of Administrative Agent and the Lenders, whether under the Loan Agreement or other loan documents, at law or in equity (“**Administrative Agent’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 Administrative Agent directs from time to time in writing, with no need for Borrower’s consent, confirmation, or signature. [Administrative Agent 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 Administrative Agent about the Hedge or any Hedge Payment, Event of Default, or related matter (“Administrative Agent Direction”), with no need for Borrower’s consent, confirmation or signature. Borrower irrevocably instructs Counterparty to rely upon and accept any Administrative Agent Direction and to disregard and ignore any instruction from Borrower that either: (a) conflicts with any Administrative Agent Direction; or (b) Counterparty receives after Administrative Agent has notified Counterparty of an Event of Default (unless Administrative Agent 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 Administrative Agent Direction (unless caused by Counterparty’s gross negligence or willful misconduct). To the extent that Counterparty pays any Hedge Payment to Administrative Agent, it shall satisfy Counterparty’s corresponding obligations to Borrower under the Hedge.

9. *Administrative Agent Protection.* This Assignment does not impose on Administrative Agent any obligations of Borrower under the Hedge. Any person that acquires the Hedge through an Administrative Agent 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 Administrative Agent’s rights under this Assignment shall terminate and Administrative Agent 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 Administrative Agent and Lenders have no further obligations under the Loan Agreement.

11. *Borrower-Administrative Agent Agreements.* As between Borrower and Administrative Agent only, without affecting Counterparty, Borrower and Administrative Agent 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 Administrative Agent) 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 Administrative Agent; (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 Administrative Agent 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, Administrative Agent may exercise all Administrative Agent’s Remedies, which are cumulative. Administrative Agent may exercise them partially or sequentially and in any order. If Administrative Agent liquidates or terminates the Hedge upon an Event of Default, Administrative Agent 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 Administrative Agent a copy of any notice Borrower sends or receives about the Hedge; and (c) hold in trust (as Administrative Agent’s fiduciary) and within two Business Days remit to Administrative Agent any Hedge Payment Borrower receives. Except with Administrative Agent’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 Administrative Agent’s directions regarding how, when, and whether to enforce such rights and remedies; and (b) Borrower shall not give a Termination Notice without Administrative Agent’s consent.

(v) *Application of Hedge Payments.* If Administrative Agent receives any Hedge Payment, Administrative Agent shall apply it against the Obligations, in such order as Administrative Agent 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 Administrative Agent’s filing a UCC financing statement (and making any other filings) necessary or appropriate, in Administrative Agent’s judgment, to perfect Administrative Agent’s security interest in the Hedge. Borrower shall execute such certificates, deliveries, and documents as Administrative Agent 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 Administrative Agent assigns its interest in the Hedge, then Administrative Agent 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 Administrative Agent’s rights, under this Assignment. If Administrative Agent gives such a notice of assignment, then Counterparty shall upon request confirm to the assignee that it has succeeded to Administrative Agent’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 ADMINISTRATIVE AGENT’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. *Role of Administrative Agent.* Wherever this Assignment refers to any benefit, claim, expenditure, or right of Administrative Agent, each such reference also refers automatically to all Lenders, all as the Loan Agreement more fully provides. Wherever this Assignment benefits Administrative Agent, it automatically benefits all Lenders. In acting under this Assignment, Administrative Agent acts in all respects for all Lenders. Administrative Agent shall, however, have sole authority to enforce this Assignment and the Hedge for Lenders. No Lender shall have any right to enforce this Assignment or the Hedge directly, but only through Administrative Agent. Nothing in this paragraph limits any Lender’s right to exercise any right of set-off or offset on account of the Loan, provided that such Lender delivers the proceeds of such exercise to Administrative Agent to be applied in accordance with the Loan Agreement. In enforcing this Assignment and the Hedge for the Lenders, Administrative Agent need not demonstrate that Administrative Agent has obtained any necessary concurrence or approval of any Lender(s). Any lack of, or deficiency in, any such concurrence or approval shall not constitute a defense to enforcement of this Assignment or the Hedge.

15. *Miscellaneous.* The law that governs the Loan Agreement shall govern this Assignment and any Dispute. If Administrative Agent assigns the Loan, then Counterparty shall upon request confirm to the assignee that such assignee has succeeded to Administrative Agent’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 Administrative Agent, delete this provision and replace with: “If either (a) Administrative Agent notifies Counterparty of any Event of Default; or (b) the Hedge terminates or is in default, then unless Administrative Agent consents otherwise, Counterparty shall pay all Hedge Payments only as Administrative Agent 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)