

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 18, 2023 ☒ Consent ☐ Regular
 ☐ Ordinance ☐ Public Hearing

Department: Housing and Economic Development

I. EXECUTIVE BRIEF

Motion and title: Staff recommends motion to:

A) approve a request for an Amendment to the 2016 Bond Series and to the Bond Documents R-2016-0938 pursuant to which such Bond was issued to finance a project on behalf of Caron of Florida, Inc. (the "Borrower"); and

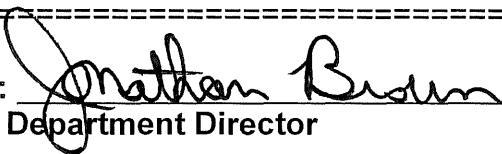
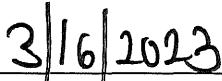

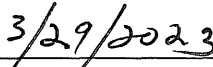
B) adopt a Resolution of the Board of County Commissioners of Palm Beach County, Florida authorizing certain amendments to the Revenue Bonds (Caron of Florida, Inc. Project) Series 2016, previously issued in the principal amount of \$6,983,000, for the purpose of making a loan to finance a project on behalf of the Borrower; confirming that such revenue bonds shall not constitute a debt, liability or obligation of Palm Beach County, Florida or the State of Florida or any political subdivision thereof, but shall be payable solely from the revenues herein provided; approving and authorizing the execution and delivery of the documents necessary to complete such amendments.

Summary: The 2016 Bonds were issued on September 1, 2016 to finance a project consisting of the refunding of the County's Amended and Restated Tax-Exempt Adjustable Mode Revenue Bonds (Caron Foundation of Florida, Inc. Project) Series 2008 which were originally issued to finance the (i) acquisition, construction, installation and furnishing of certain leasehold improvements to the apartment facilities known as Fairways on the Green located at 2101 Lawson Boulevard, Delray Beach, Florida; (ii) acquisition, build-out, installation and furnishing of an office and outpatient treatment facility known as Beacon Square located at 8051 Congress Avenue, Boca Raton, Florida; and (iii) the payment of the costs of issuance of the 2016 Bonds. The proposed amendments will (a) modify the terms of the 2016 Bonds to, among other things, adjust the interest calculation from a London Interbank Offered Rate (LIBOR) based index to a Term Secured Overnight Financing Rate (SOFR) based index for the 2016 Bonds; and (b) make certain other necessary amendments to the terms and conditions of the financing documents. Neither the taxing power nor the faith and credit of the County nor any County funds, shall be pledged to pay the principal, premium, if any, or interest on the Bonds. Districts 4 and 7 (DB)

Background & Justification: See Page 3

Attachment:
1. Resolution

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Recommended By:		
	Department Director	Date
Approved By:		
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No X
Does this Item include the use of Federal Funds? Yes _____ No X

Budget Account No.: N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact: N/A

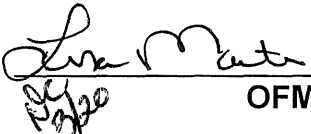
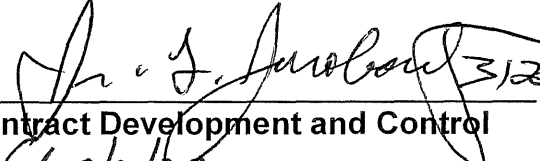
No Fiscal Impact

C. Departmental Fiscal Review:


Valerie Alleyne, Division Director II
Finance and Administrative Services, DHED

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 3/26/2023
OFMB MB 3/20 UM 3/20
 3/28/23
Contract Development and Control Feb 3/21/23

B. Legal Sufficiency:

 3/22/23
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Justification: Continued from Page 1

As required under the Internal Revenue Code, the County conducted the required TEFRA Public Hearing in connection with the issuance of the 2016 Bonds on July 12, 2016. A public hearing is not required to complete the proposed amendments.

RESOLUTION NO. R-2023-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AUTHORIZING CERTAIN AMENDMENTS TO THE REVENUE BONDS (CARON OF FLORIDA, INC. PROJECT), SERIES OF 2016, PREVIOUSLY ISSUED TO FINANCE THE COSTS OF A PROJECT ON BEHALF OF CARON OF FLORIDA, INC.; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSOLIDATED AMENDMENT TO BOND DOCUMENTS; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS REQUIRED IN CONNECTION WITH THE FOREGOING; AND PROVIDING CERTAIN OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, Palm Beach County, Florida (the “Issuer”) is a political subdivision of the State of Florida and is empowered by the provisions of the Florida Constitution and Chapter 159, Part II, Florida Statutes (the “Act”), to issue obligations for the purpose of financing and refinancing healthcare facilities; and

WHEREAS, the Board of County Commissioners (the “Governing Body”) of the Issuer previously authorized the issuance of its Revenue Bonds (Caron of Florida, Inc. Project) Series of 2016 under the Act, in the original principal amount of \$6,983,000 (the “Bonds”) and agreed to loan the proceeds from the Bonds to Caron of Florida, Inc. (the “Borrower”) for the purpose of refunding the County’s Amended and Restated Tax-Exempt Adjustable Mode Revenue Bonds (Caron Foundation of Florida, Inc. Project) Series 2008 which were originally issued to finance the (i) acquisition, construction, installation and furnishing of certain leasehold improvements to the apartment facilities known as Fairways on the Green located at 2101 Lowson Boulevard, Delray Beach, Florida; and (ii) acquisition, build-out, installation and furnishing of an office and outpatient treatment facility known as Beacon Square located at 8051 Congress Avenue, Boca Raton, Florida; and

WHEREAS, the Bonds were issued by the Issuer under and pursuant to a Trust Indenture, dated as of September 1, 2016 (the “Indenture”) between the Issuer and Truist Bank, formerly known as Branch Banking and Trust Company, as trustee (the “Bond Trustee”); and

WHEREAS, the Issuer loaned the proceeds of the Bonds to the Borrower pursuant to the terms of a Loan Agreement dated September 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the Bonds were purchased by BB&T Community Holdings Co., as purchaser (the “Purchaser”), pursuant to the provisions of a Continuing Covenants Agreement dated as of September 1, 2016 (the “Covenants Agreement”), between the Purchaser and the Borrower; and

WHEREAS, the Bonds do not constitute a debt, liability or obligation or a pledge of the faith and credit or taxing power of the Issuer or of the State of Florida or of any political subdivision thereof, but the Bonds are payable solely from the revenues and proceeds derived by the Issuer from certain of the payments received under the Loan Agreement; and

WHEREAS, the Borrower and the Purchaser have agreed to (a) modify the terms of the Series 2016 Bond to, among other things, replace the LIBOR Index with a new variable rate index based upon the Secured Overnight Financing Rate; and (b) make corresponding amendments to the Loan Agreement and make certain other necessary amendments to the terms and conditions of the Loan Agreement (collectively, the “Proposed Amendments”); and

WHEREAS, to effect the proposed amendments to the Bond Documents, the Borrower has requested the Issuer to authorize the execution and delivery of a Consolidated Amendment to Bond Documents among the Issuer, the Bond Trustee, the Borrower and the Purchaser (the “Consolidated Amendment”); and

WHEREAS, the proposed amendments to the Bond Documents will, in the judgment of the Issuer, serve the intended public purpose and in all respects conform to the provisions and requirements of the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY THAT:

SECTION 1. Authority for this Resolution. This resolution, herein called the “Resolution,” is adopted pursuant to the Act.

SECTION 2. Authorization of Proposed Amendments. The Issuer hereby approves the proposed amendments to the 2016 Series Bond Documents.

SECTION 3. Authorization of Execution and Delivery of the Consolidated Amendment. The Consolidated Amendment, in substantially the form attached hereto as Exhibit A with such changes, modifications and additions as may be approved by the Mayor (upon consultation with the County Attorney and bond counsel for the Issuer), such approval to be presumed by the execution thereof by the Mayor, is hereby approved by the Issuer, and the Issuer authorizes and directs the Mayor to execute the Consolidated Amendment and the Clerk to attest thereto under the official seal of the Issuer, and to deliver the Consolidated Amendment to the Borrower, all of the provisions of which, when executed and delivered by the Issuer as authorized herein shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 4. No Personal Liability. No covenant, stipulation, obligation or agreement herein contained or contained in the Loan Agreement, the Bonds, or any instrument contemplated thereby shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, member, agent or employee of the Issuer in his or her individual capacity, and no member of the Governing Body of the Issuer executing the Bonds or other documents herein mentioned shall be liable personally thereon or be subject to any personal accountability by reason of the issuance or execution thereof.

SECTION 5. No Third Party Beneficiaries. Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any Person other than the Issuer, the Borrower and the Purchaser any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

SECTION 6. Prerequisites Performed. All acts, conditions and things relating to the passage of this Resolution and required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

SECTION 7. General Authority. The Clerk and the members of the Governing Body of the Issuer are hereby authorized to do all acts and things required of them by this Resolution or the Loan Agreement, or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Bonds, the Loan Agreement and this Resolution.

SECTION 8. General Authorizations. The Mayor, and any other member of the Governing Body of the Issuer, the Clerk, the County Attorney, and any other appropriate employee of the Issuer, are hereby each authorized to execute, publish, file and record such other documents, instruments, notices, and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution, and to comply with and perform the obligations of the Issuer under the Loan Agreement.

SECTION 9. Limited Obligation. The Bonds shall not be deemed to constitute a debt, liability, or obligation of the Issuer or the State of Florida, or of any political subdivision thereof, or a pledge of the faith and credit of the Issuer or of the State of Florida or of any political subdivision thereof, but shall be payable solely from the loan payments received from or on behalf of the Borrower. Any and all payments of any nature relating to the Bonds shall not be payable from any funds of the Issuer.

SECTION 10. Severability. If any one or more of the covenants, agreements, or provisions contained herein or in the Bonds shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions hereof and thereof and shall in no way affect the validity of any of the other provisions of this Resolution or of the Bonds.

SECTION 11. Repealer. All resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

SECTION 12. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the motion passed as follows:

- Commissioner Gregg K. Weiss, Mayor _____
- Commissioner Maria Sachs, Vice Mayor _____
- Commissioner Maria G. Marino _____
- Commissioner Michael A. Barnett _____
- Commissioner Marci Woodward _____
- Commissioner Sara Baxter _____
- Commissioner Mack Bernard _____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2023.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Joseph Abruzzo, Clerk and Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney

Exhibit A
Form of Consolidated Amendment

CONSOLIDATED AMENDMENT TO BOND DOCUMENTS

Issuer: PALM BEACH COUNTY, FLORIDA
Borrower: CARON OF FLORIDA, INC.
Lender: TRUIST COMMERCIAL EQUITY, INC., as successor to
BB&T COMMUNITY HOLDINGS CO.
Bond Caption: \$6,983,000 Palm Beach County, Florida Revenue Bonds (Caron
of Florida, Inc. Project) Series of 2016
Date of Bonds: September 1, 2016
Original Principal Amount: \$6,983,000
Date of Amendment: March [●], 2023

BACKGROUND

A. The Issuer issued, executed and delivered the bonds described above (such bonds being referred to herein as the “Bonds”) pursuant to the terms of the Trust Indenture dated as of September 1, 2016 (as amended, modified or restated, the “Trust Agreement”), between the Issuer and Truist Bank, formerly known as Branch Banking and Trust Company, as trustee (the “Trustee”), and the proceeds of such Bonds were loaned to the Borrower pursuant to the terms of a Loan Agreement dated as of September 1, 2016 between the Issuer and the Borrower (the “Loan Agreement”).

B. The Lender is the current holder of the Bonds.

C. The interest rate applicable to the Bonds is based upon LIBOR and, in contemplation of the cessation of LIBOR on June 30, 2023, the Borrower, the Issuer and the Lender desire to amend the Trust Agreement, the Bonds, the Loan Agreement and each of the other documents executed in connection with the issuance of the Bonds (collectively, the “Bond Documents”) to provide for, in the manner as described herein, the replacement of LIBOR upon its cessation.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged and intending to be legally bound, the parties hereto are entering into this Consolidated Amendment to Bond Documents (this “Amendment”), and hereby covenant and agree as follows:

1. Defined Terms. Any capitalized terms used in this Amendment or the Background provisions hereof which are not so defined, but which are defined in a Bond Document, shall have the meanings ascribed to those terms in such Bond Document, as applicable.

2. LIBOR Fallback Provisions.

(a) Notwithstanding anything to the contrary set forth in the Bonds or any other Bond Document, the Borrower, the Lender and the Issuer agree that the Bonds and the other Bond Documents are hereby amended to include the provisions attached hereto as Exhibit A, and such provisions shall govern as to all matters related to the replacement of LIBOR.

(b) The Borrower, the Lender and the Issuer intend that any current fallback provision addressing the replacement of LIBOR, including but not limited to the events or conditions under which LIBOR will be replaced and/or the manner, methodology, or mechanism for the replacement of LIBOR with a new index or benchmark upon the unavailability of LIBOR

(whether on a temporary or a permanent basis), shall be deemed replaced with the provisions attached hereto as Exhibit A.

(c) The parties hereto intend for this Amendment to constitute a covered modification within the meaning of Treasury Regulation Section 1.1001-6 and IRS Revenue Procedure 2020-44 dated October 9, 2020, as further amended by the issuance of the final regulations related thereto effective March 7, 2022.

3. Continuing Effect. Except as expressly modified hereby, all of the terms, covenants, and conditions of the Bonds and the other Bond Documents shall remain in full force and effect. This Amendment is given as a modification of the current fallback provision addressing the replacement of LIBOR, and is not given in substitution therefor or extinguishment thereof and is not intended to be a novation.

4. Attachment to Trust Agreement, Bonds, and Loan Agreement. This Amendment shall be and remain attached to the Trust Agreement, the Bonds, and the Loan Agreement and shall be an integral part thereof.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the domestic internal laws (but not the law of conflict of laws) of the State of Florida.

6. Indemnity. Without limiting the foregoing, the Borrower confirms that its indemnification obligations under Sections 7.05 and 7.06 of the Loan Agreement shall apply to this Amendment and all documentation entered into in connection therewith or related thereto.

7. Miscellaneous. Wherever possible, the provisions of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of any such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument. The headings in this Amendment are included for convenience only and shall neither affect the construction or interpretation of any provision in this Amendment nor affect any of the rights or obligations of the parties to this Amendment. The Borrower agrees to pay all reasonable costs and expenses of the Lender and the Issuer in connection with the preparation, execution and delivery of the documents executed in connection with this Amendment, including without limitation, the reasonable fees and out-of-pocket expenses of Lender's counsel, bond counsel and Issuer's counsel.

BORROWER ACKNOWLEDGES AND AGREES THAT: (I) BORROWER MAY REQUEST AND APPLY FOR A REPLACEMENT INDEX FOR USD LIBOR NOW OR AT ANY TIME HEREAFTER; (II) THE INTEREST RATE FOLLOWING THE REPLACEMENT OF USD LIBOR THROUGH ANY REQUESTED AMENDMENT MAY BE LOWER OR HIGHER THAN THE INTEREST RATE FOLLOWING REPLACEMENT OF USD LIBOR AT CESSATION AS CONTEMPLATED BY THIS AMENDMENT; AND (III) BORROWER HAS KNOWINGLY AND VOLUNTARILY ENTERED INTO THIS AMENDMENT.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the Date of Amendment referenced above.

TRUSTEE:
TRUIST BANK, formerly known as BRANCH
BANKING AND TRUST COMPANY

By_____

Name:

Title:

BORROWER:
CARON OF FLORIDA, INC.

By_____

Name:

Title:

LENDER:
TRUIST COMMERCIAL EQUITY, INC., as successor
to BB&T COMMUNITY HOLDINGS CO.

By:_____

Name:

Title:

[Signature page to Consolidated Amendment to Bond Documents]

ATTEST:

Joseph Abruzzo, Clerk & Comptroller

By: _____
Deputy Clerk

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

ISSUER:
PALM BEACH COUNTY, FLORIDA

By: _____
Gregg K. Weiss, Mayor
Board of County Commissioners

[Signature page to Consolidated Amendment to Bond Documents]

Exhibit A
INTEREST RATE PROVISIONS

The following provisions are hereby made a part of the Trust Agreement, the Bonds and the Loan Agreement.

1. BENCHMARK REPLACEMENT SETTING.

1.1 **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Bond Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then, (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, in connection with a Benchmark Transition Event, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Bond Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, the Bond or any other Bond Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, or in connection with an Early Opt-in Election, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Bond Document in respect of any Benchmark setting at or after 5:00 p.m. (Charlotte, North Carolina) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Borrower without any amendment to the Bonds or any other Bond Document, or further action or consent of any other party to the Bonds or any other Bond Document. For avoidance of doubt, upon the replacement of USD LIBOR, or any subsequent Benchmark, with a Benchmark Replacement, the interest rate on the Bonds shall equal the then-current Benchmark (with such Benchmark remaining subject to any applicable adjustment set forth in the Bond Documents resulting from the tax-exempt status of the Bonds) plus the Margin, and fixed minimum rates, if any, shall continue to apply.

1.2 **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Bond Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to the Bonds or any other Bond Document.

1.3 **Notices; Standards for Decisions and Determinations.** Lender will promptly notify Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 1.4 below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Lender pursuant to Section 1, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent of any other party to the Bonds or any other Bond Document.

1.4 **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Bond Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Lender may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement),

then Lender may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

1.5 **Benchmark Unavailability Period.** Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the obligation of Lender to make any advance based upon USD LIBOR shall cease, and Borrower may revoke any request for such an advance to be made during any Benchmark Unavailability Period, the reference to “USD LIBOR” in the calculation of the applicable interest rate on the Bonds shall be deemed and interpreted to mean the “Standard Rate”, and the Margin and fixed minimum rates, if any, shall continue to apply. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Standard Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Standard Rate.

1.6 **Definitions.** In addition to the terms defined in the Bond Documents, the following definitions shall apply:

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to the Bond Documents as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 1.4.

“**Benchmark**” means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 1.1.

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by Lender for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by Lender as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of the Bonds and the other Bond Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by Lender:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Lender for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by Lender in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Standard Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of the Bonds and the other Bond Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to Borrower.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 1 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 1.

“**Business Day**” means a day other than a Saturday, Sunday, legal holiday or any other day when Truist is authorized or required by applicable law to be closed.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Lender decides that any such convention is not administratively feasible for Lender, then Lender may establish another convention in its reasonable discretion.

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a determination by Lender that at least five currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate, and

(2) the election by Lender to trigger a fallback from USD LIBOR and the provision by Lender of written notice of such election to Borrower.

“Federal Funds Rate” shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Truist.

“Floor” means the Benchmark rate floor, if any, provided in any Bond Document initially (as of the issuance of the Bonds, the modification or amendment of the Bonds or otherwise) with respect to USD LIBOR.

“Interest Period” if defined in a Bond Document, has the meaning set forth in such Bond Document and, if not defined in a Bond Document, means the construct under the Bond Documents that establishes the recurring determination date of the then-current Benchmark and the subsequent period of time during which the then-current Benchmark is fixed.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Margin” means the per annum credit spread component of the interest rate that is applicable to the Bonds on the date hereof.

“Prime Rate” means the interest rate announced by Truist from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by Truist.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by Lender in its reasonable discretion.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Standard Rate**” means, for any day, the rate of interest per annum equal to the lesser of (i) the Federal Funds Rate plus 1.00% and (ii) the Prime Rate, provided that in no event will the Standard Rate ever be less than 0%. Each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective, if applicable.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Truist**” means Truist Bank, and its successors and assigns.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

1.7 **Notices and Disclosures.** Lender hereby discloses and Borrower understands and agrees to the following with respect to USD LIBOR:

- (a) On March 5, 2021 the Financial Conduct Authority (“**FCA**”), the regulatory supervisor of USD LIBOR’s administrator (“**IBA**”), announced in a public statement the future cessation of 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings on June 30, 2023. This announcement constituted a Benchmark Transition Event.
- (b) Term SOFR has been endorsed by the Alternative Reference Rate Committee (the “**ARRC**”), the Relevant Governmental Body established by the Federal Reserve Board.
- (c) The ARRC has also endorsed the spread adjustments for the replacement of USD LIBOR as follows:

USD LIBOR tenor being replaced	spread adjustment
1-Month USD LIBOR	.11448%
3-Month USD LIBOR	.26161%
6-Month USD LIBOR	.42826%
1-year USD LIBOR	.71513%

2. **BENCHMARK REPLACEMENT SETTING IF BOND HAS AN INTEREST RATE SWAP WITH TRUIST.** If any Bond is subject to an interest rate swap agreement with Truist, the following provisions shall apply in lieu of Section 1:

- 2.1 **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Bond Document, if a Benchmark Replacement Date has occurred prior to the Reference Time in respect of any setting of the then-current Benchmark on any date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Bond Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, the Bond or any other Bond Document.
- 2.2 **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Bond Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to the Bond or any other Bond Document.
- 2.3 **Notices; Standards for Decisions and Determinations.** Lender will promptly notify Borrower of (i) any occurrence of a Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination or decision that may be made by Lender pursuant to Section 2, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non- occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be

conclusive and binding absent manifest error and may be made in Lender's sole discretion and without consent of any other party to the Bond or any other Bond Document.

2.4 Benchmark Unavailability Period. Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the obligation of Lender to make any advance based upon USD LIBOR shall cease, and Borrower may revoke any request for such an advance to be made during any Benchmark Unavailability Period, the reference to "USD LIBOR" in the calculation of the applicable interest rate on the Bond shall be deemed and interpreted to mean the "Standard Rate", and the Margin and fixed minimum rates, if any, shall continue to apply.

2.5 Certain Defined Terms. In addition to the terms defined in the Bond Documents, the following definitions shall apply for purposes of this Section 2:

"Benchmark" means, initially, USD LIBOR; provided that if a Benchmark Replacement Date has occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.1.

"Benchmark Replacement" means, for any Interest Period, the sum of the successor rate and any applicable spread adjustment that would apply for derivatives transactions referencing the ISDA Definitions upon the occurrence of an index cessation effective date with respect to the then-current Benchmark for the applicable tenor; provided that if the Benchmark Replacement would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of the Bond and the other Bond Documents. In the event of the payment of any principal prior to the last day of an Interest Period for any reason, any reference to the Benchmark Replacement shall mean the most recent Benchmark Replacement rate available as determined by Lender in its reasonable discretion.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Standard Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Lender in a manner Lender decides is reasonably necessary in connection with the administration of the Bond and the other Bond Documents.

"Benchmark Replacement Date" means the occurrence of an index cessation effective date with respect to an index cessation event for the then-current Benchmark, upon which the then-current Benchmark would be replaced in derivatives transactions referencing the ISDA Definitions.

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 2 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Bond Document in accordance with Section 2.

"Business Day" means a day other than a Saturday, Sunday, legal holiday or any other day when Truist is authorized or required by applicable law to be closed.

"Floor" means the Benchmark rate floor, if any, provided in the Bond initially (as of the execution of the Bond, the modification or amendment of the Bond or otherwise) with respect to USD LIBOR.

"Interest Period" "if defined in a Bond Document, has the meaning set forth in such Bond Document and, if not defined in a Bond Document, means the construct under the Bond Documents that establishes the recurring determination date of the then-current Benchmark and the subsequent period of time during which the then-current Benchmark is fixed.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Margin” means the per annum credit spread component of the interest rate applicable to the Bond on the date hereof.

“Prime Rate” means the interest rate announced by Truist from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by Truist.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by Lender in its reasonable discretion.

“Standard Rate” means, for any day, the rate of interest per annum equal to the lesser of (i) the Federal Funds Rate plus 1.00% and (ii) the Prime Rate, provided that in no event will the Standard Rate ever be less than 0%. Each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective, if applicable.

“Truist” means Truist Bank, and its successors and assigns.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

2.6 **Notices and Disclosures.** Lender hereby discloses and Borrower acknowledges and agrees: The ISDA Definitions contain trigger and fallback provisions in respect of USD LIBOR in the event USD LIBOR is permanently discontinued or is deemed to be non-representative. In the event of a permanent cessation or pre-cessation event of USD LIBOR, the floating rate of the derivatives transaction that is based on USD LIBOR will first fall back to a term adjusted risk-free rate for the relevant currency plus a spread (the “Spread Adjustment”) published by Bloomberg Index Services Limited (or a successor provider as approved and/or appointed by ISDA from time to time) (“BISL”). Under the ISDA Definitions, the applicable fallback rate for USD LIBOR is “Fallback Rate (SOFR)” which means the term adjusted SOFR plus the Spread Adjustment relating to USD LIBOR, in each case, for a period of the designated maturity provided by BISL on the Fallback Rate (SOFR) Screen. BISL will determine the term adjusted SOFR based on a formula in which SOFR is compounded over an accrual period corresponding to the tenor of USD LIBOR. On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of USD LIBOR’s administrator (“IBA”), announced in a public statement the future cessation of 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings on June 30, 2023, which constituted the “Spread Adjustment Fixing Date” under the applicable guidance. As a result the “all-in” fallback rate under the ISDA Definitions for USD LIBOR as published by BISL is anticipated to be the sum of: (i) term adjusted SOFR, as calculated by BISL, and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months’ duration.