

ORIGINAL  
STAMPED IN RED

ORDINANCE NO.: 2023-110

*Authorizing the City Manager to execute the Sixth Amendment to ATM Site Lease with Truist Bank f/k/a Branch Banking and Trust Company (BB&T) for use of 3905 Ensor Avenue (Lutheran Survey Building)*

BE IT ORDAINED by the Mayor and City Council this 3<sup>rd</sup> day of October, 2023, that the City Manager is authorized to execute the attached Sixth Amendment to ATM Site Lease with Truist Bank f/k/a Branch Banking and Trust Company (BB&T) for use of 3905 Ensor Avenue (Lutheran Survey Building).


Requested by:

Assistant City Manager Palen

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

Introduced: 9/19/2023  
Final Reading: 10/3/2023

Mayor

ATTEST:

  
City Clerk

**SIXTH AMENDMENT TO ATM SITE LEASE**

**THIS SIXTH AMENDMENT TO ATM SITE LEASE** (this "**Amendment**"), dated as of the Effective Date (as hereinafter defined), between **CITY OF COLUMBIA** ("**Landlord**"), and **TRUIST BANK**, a North Carolina banking corporation, formerly known as Branch Banking and Trust Company ("**Tenant**"), recites and provides:

**RECITALS**

A. By ATM Site Lease dated as of November 29, 2004, as amended by First Amendment to Lease dated as of October 3, 2008, as further amended by Second Amendment to Lease dated as of November 29, 2008, as further amended by Third Amendment to Lease Agreement dated as of December 16, 2009, as further amended by Fourth Amendment to Lease Agreement dated as of April 16, 2013, and as further amended by Lease Renewal Agreement dated as of September 4, 2018 (collectively, the "**Lease**"), Landlord leases to Tenant and Tenant leases from Landlord those certain premises located at 3905 Ensor Ave., Columbia, SC (the "**Premises**"), upon the terms and conditions set forth therein.

B. Landlord and Tenant now desire to enter into this Amendment to extend the term of the Lease and to set forth certain additional understandings, all as more particularly described below.

**AMENDMENT**

FOR and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions; Recitals.** Unless specifically defined herein, all capitalized terms used in this Amendment shall have the meanings set forth in the Lease. The recitals to this Amendment are hereby incorporated into and made a part of this Amendment.

2. **Extended Term.** The current term of the Lease will expire on November 28, 2023. The Lease is hereby amended to extend the Term of the Lease for an additional period of one (1) year and two (2) days commencing on November 29, 2023 and expiring on November 30, 2024, unless sooner terminated as provided in the Lease (the "**Extended Term**"), upon the terms and conditions set forth in the Lease, as amended hereby.

3. **Renewal Term.** The Lease is hereby amended to provide that Tenant shall have the option to renew the Term of the Lease for one (1) additional period of two (2) years (the "**Renewal Term**"). Tenant may exercise the foregoing option to renew by providing Landlord with written notice thereof no later than sixty (60) days prior to the expiration date of the then current term of the Lease. If Tenant exercises the foregoing option to renew, all of the terms and provisions of the Lease shall apply for the Renewal Term, with the exception that (i) Tenant shall not have the right to renew the term beyond the Renewal Term set forth herein, and (ii) the rent payable during the Renewal Term shall be as set forth below. Tenant's failure to timely exercise its option to renewal shall be deemed a waiver of Tenant's renewal option. Tenant further acknowledges and agrees that all options of Tenant under the Lease to extend the term of the Lease, other than the Renewal Term above, are hereby waived in their entirety.

4. **Rent.** For the sake of clarity, the rent payable to Landlord during the Extended Term, and during the Renewal Term, if exercised by Tenant, shall be payable in monthly installments of \$450.00.

5. Notices. Notwithstanding any provisions of the Lease to the contrary, all notices required or permitted by any provision of the Lease may be sent by a reputable overnight delivery service or by electronic mail. Notwithstanding any provisions of the Lease to the contrary, any notice to Tenant required or permitted by any provision of the Lease may not be delivered to the Premises. The Lease is hereby amended so that the notice address for Tenant under the Lease is changed to the following:

If to Tenant:       Truist Bank  
                          Attn: Lease Administration  
                          101 N. Cherry Street, Suite 710  
                          Winston-Salem, NC 27101  
                          Email: RealEstateServices-LeaseAdministration@truist.com  
                          Re: Property ID #991214

6. Form of Rent Payment. The Lease is hereby amended to reflect that Tenant's payment of all amounts due thereunder may be made by check, by automated clearinghouse (ACH), or by wire transfer, at Tenant's election. If it has not already done so, Landlord shall provide to Tenant a duly executed Form W-9, in customary form reasonably acceptable to Tenant, and a customary ACH form provided by Tenant. Landlord agrees to provide its wire transfer information as requested by Tenant for the payment of amounts due hereunder.

7. Permitted Transfers. Notwithstanding any provisions of the Lease to the contrary, Tenant shall have the right, without Landlord's consent, at any time during the term of the Lease, to assign or otherwise transfer the Lease and its rights thereunder, or sublet the Premises, in whole or in part, to (a) any corporation or other entity controlling, controlled by, or under common control with, Tenant, or to any parent or subsidiary (at any level) of Tenant; (b) a business entity with which Tenant or a parent or subsidiary (at any level) of Tenant merges or consolidates; (c) any corporation or other entity which shall be a successor of Tenant; (d) any corporation or other entity which has directly or indirectly acquired, or is concurrently therewith is directly or indirectly acquiring, ownership or control of a substantial portion of Tenant's assets; (e) a business entity directly or indirectly acquiring all or substantially all of the capital stock or other equity interests of Tenant or of any of Tenant's parent companies (at any level); or (f) another financial institution (any such transferee permitted pursuant to the foregoing shall be referred to as a "Permitted Transferee"); provided, however, that Tenant shall not be permitted to assign its interest in the Lease to consummate a step transaction in which the Lease is assigned to a wholly owned subsidiary whose only asset is the Lease, followed by a sale of such subsidiary's stock to a third party. If Tenant shall assign the Lease to any Permitted Transferee, Tenant shall be liable and responsible for the full and complete performance of the Lease and for all payments arising prior to the effective date of such assignment, but Tenant shall be relieved of any responsibility for any obligation, payment or performance falling due or arising after the effective date of such assignment; provided, however such Permitted Transferee has a net worth of at least \$100 million as of effective date of such assignment.

8. Signage and Trade Name. Notwithstanding any provisions of the Lease to the contrary, Tenant shall have the right, at its expense, from time to time, to change its trade name and associated signage under the Lease and Landlord shall have no approval rights over Tenant's trade name or logo. Landlord expressly acknowledges and agrees that it shall not have the right to use, copy or reproduce any of Tenant's or its affiliates signage, logos, trademarks or tradenames without the prior written consent of Tenant. Such logos, trademarks and tradenames are and shall remain solely the property of Tenant and its affiliates at all times.

9. Self-Insurance. Notwithstanding anything to the contrary set forth in the Lease, Tenant may self-insure, or contract with Tenant's parent corporation to insure, for all or any part of the insurance

required pursuant to the Lease, provided that (i) Tenant has in effect a program of self-insurance insuring Tenant as a named insured against such risks which program complies with any and all applicable laws with respect to self-insurance in the jurisdiction in which the Premises is located, (ii) the insuring entity maintains a net worth at least \$100 million, (iii) the failure to carry such insurance does not violate any legal requirement which is issued by any governmental or governmental agency with jurisdiction over the Premises or which is applicable to Tenant in the conduct of its business, and (iv) Landlord's interests under the self-insurance program will be consistent with the requirements set forth in the Lease. In addition, Tenant may carry the insurance required by the Lease in one or more blanket insurance policies.

10. Effective Date. "Effective Date" shall mean the last day that this Amendment is executed by the parties as set forth on the signature page hereof.

11. Ratification. Except as expressly amended hereby, the Lease is hereby ratified and confirmed and remains in full force and effect. In the event of any inconsistency between the terms of the Lease and this Amendment, the terms of this Amendment shall in all cases govern.

12. Acknowledgment of Non-Existence of Claims. Landlord represents to Tenant that there are no existing defaults or, to the actual knowledge of Landlord, any events, which with the giving of notice or the passage of time or both, would constitute a default under the Lease by Tenant.

13. Brokerage Commission. Each party represents and warrants that it has not engaged the services of or dealt with any broker, salesperson or other entity who may claim a commission or other payment in conjunction with this Amendment. Each party agrees to indemnify, defend and hold the other harmless from and against all loss, claims, costs and expenses (including attorneys' fees) caused by a breach of the foregoing representation.

14. Authorization. Each party represents and warrants to the other that this Amendment has been duly authorized, executed and delivered by all necessary action on its behalf, constitutes the valid and binding agreement of such party and is enforceable in accordance with its terms. Landlord represents and warrants to Tenant that (i) there are no mortgages, security deeds or deeds of trust encumbering the Premises which require the beneficiary of such mortgage, security deed or deed of trust to consent to this Amendment and that any failure of Landlord to obtain its lender's consent will not impair the validity of this Amendment as between Landlord and Tenant or as between Landlord's lender and Tenant in the event of a foreclosure or, if such consent is required, Landlord has obtained such consent, and (ii) Landlord is the sole owner of fee simple title to the Premises and the landlord under the Lease and there is no other person or entity who has an ownership interest in the Premises or the Lease or whose consent is required to this Amendment.

15. Successors and Assigns. This Amendment shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives, successors and assigns.

16. Entire Agreement. This Amendment, together with the Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto (including without limitation all previously-generated offers, counter-offers, expressions of interest, deal letters, term sheets and letters of intent, whether or not signed). This Amendment and the Lease may be modified only by a written instrument duly executed by the parties hereto.

17. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the jurisdiction in which the Premises are located, without regard to principles of conflicts of laws.

18. Counterparts; Delivery. This Amendment may be executed in any number of separate

counterparts by the parties hereto, each of which, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument. Any signature page from any such counterpart may be attached to any other counterpart to complete a fully executed counterpart of this Amendment. Signatures to this Amendment (or to any assignment or amendment to this Amendment) transmitted in a commonly accepted electronic format that reproduces an image of the actual executed signature page shall be deemed a binding original and shall have the same legal effect, validity, and enforceability as a manually executed counterpart of the document to the extent and as provided for in the Federal Electronic Signatures in Global and National Commerce Act and the applicable state law based on the Uniform Electronic Transactions Act. In no event shall any party be obligated hereunder unless and until this Amendment has been fully executed and delivered by all parties hereto.

19. OFAC Disclosure. Landlord represents and warrants to Tenant (i) that neither Landlord nor any person or entity that directly or indirectly owns any interest in Landlord (other than any public shareholder) nor any of its officers, directors or managing members is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the U.S. Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (ii) that Landlord's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Money Laundering Act"), and (iii) that throughout the term of the Lease, as amended hereby, Landlord shall comply with the Executive Order and with the Money Laundering Act.

20. Automatic Rescission. This Amendment shall be automatically rescinded and shall be null and void in the event this Amendment has not been fully-executed and delivered by all parties hereto within ninety (90) days after the date this Amendment is executed by the first of the parties to execute on the signature page hereof, TIME BEING OF THE ESSENCE.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed or caused this Amendment to be executed on their behalf by their duly authorized representatives as of the Effective Date.

**LANDLORD:**

**CITY OF COLUMBIA**

By: Teresa B. Wilson  
Print Name: Teresa B. Wilson  
Title: City Manager  
Date: 10/6/2023, 2023

APPROVED AS TO FORM

[Signature]  
Legal Department City of Columbia, SC  
08/24/2023

**TENANT:**

**TRUIST BANK**, a North Carolina banking corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2023

Address: 3905 Ensor Ave., Columbia, SC  
Property ID: 991214

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#### **RECITALS**

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#### **AMENDMENT**

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If to Tenant:      Truist Bank  
                         Attn: Lease Administration  
                         101 N. Cherry Street, Suite 710  
                         Winston-Salem, NC 27101  
                         Email: RealEstateServices-LeaseAdministration@truist.com  
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6. **Form of Rent Payment.** The Lease is hereby amended to reflect that Tenant's payment of all amounts due thereunder may be made by check, by automated clearinghouse (ACH), or by wire transfer, at Tenant's election. If it has not already done so, Landlord shall provide to Tenant a duly executed Form W-9, in customary form reasonably acceptable to Tenant, and a customary ACH form provided by Tenant. Landlord agrees to provide its wire transfer information as requested by Tenant for the payment of amounts due hereunder.

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8. **Signage and Trade Name.** Notwithstanding any provisions of the Lease to the contrary, Tenant shall have the right, at its expense, from time to time, to change its trade name and associated signage under the Lease and Landlord shall have no approval rights over Tenant's trade name or logo. Landlord expressly acknowledges and agrees that it shall not have the right to use, copy or reproduce any of Tenant's or its affiliates signage, logos, trademarks or tradenames without the prior written consent of Tenant. Such logos, trademarks and tradenames are and shall remain solely the property of Tenant and its affiliates at all times.

9. **Self-Insurance.** Notwithstanding anything to the contrary set forth in the Lease, Tenant may self-insure, or contract with Tenant's parent corporation to insure, for all or any part of the insurance



required pursuant to the Lease, provided that (i) Tenant has in effect a program of self-insurance insuring Tenant as a named insured against such risks which program complies with any and all applicable laws with respect to self-insurance in the jurisdiction in which the Premises is located, (ii) the insuring entity maintains a net worth at least \$100 million, (iii) the failure to carry such insurance does not violate any legal requirement which is issued by any governmental or governmental agency with jurisdiction over the Premises or which is applicable to Tenant in the conduct of its business, and (iv) Landlord's interests under the self-insurance program will be consistent with the requirements set forth in the Lease. In addition, Tenant may carry the insurance required by the Lease in one or more blanket insurance policies.

10. **Effective Date.** "**Effective Date**" shall mean the last day that this Amendment is executed by the parties as set forth on the signature page hereof.

11. **Ratification.** Except as expressly amended hereby, the Lease is hereby ratified and confirmed and remains in full force and effect. In the event of any inconsistency between the terms of the Lease and this Amendment, the terms of this Amendment shall in all cases govern.

12. **Acknowledgment of Non-Existence of Claims.** Landlord represents to Tenant that there are no existing defaults or, to the actual knowledge of Landlord, any events, which with the giving of notice or the passage of time or both, would constitute a default under the Lease by Tenant.

13. **Brokerage Commission.** Each party represents and warrants that it has not engaged the services of or dealt with any broker, salesperson or other entity who may claim a commission or other payment in conjunction with this Amendment. Each party agrees to indemnify, defend and hold the other harmless from and against all loss, claims, costs and expenses (including attorneys' fees) caused by a breach of the foregoing representation.

14. **Authorization.** Each party represents and warrants to the other that this Amendment has been duly authorized, executed and delivered by all necessary action on its behalf, constitutes the valid and binding agreement of such party and is enforceable in accordance with its terms. Landlord represents and warrants to Tenant that (i) there are no mortgages, security deeds or deeds of trust encumbering the Premises which require the beneficiary of such mortgage, security deed or deed of trust to consent to this Amendment and that any failure of Landlord to obtain its lender's consent will not impair the validity of this Amendment as between Landlord and Tenant or as between Landlord's lender and Tenant in the event of a foreclosure or, if such consent is required, Landlord has obtained such consent, and (ii) Landlord is the sole owner of fee simple title to the Premises and the landlord under the Lease and there is no other person or entity who has an ownership interest in the Premises or the Lease or whose consent is required to this Amendment.

15. **Successors and Assigns.** This Amendment shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives, successors and assigns.

16. **Entire Agreement.** This Amendment, together with the Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto (including without limitation all previously-generated offers, counter-offers, expressions of interest, deal letters, term sheets and letters of intent, whether or not signed). This Amendment and the Lease may be modified only by a written instrument duly executed by the parties hereto.

17. **Governing Law.** This Amendment shall be construed and enforced in accordance with the laws of the jurisdiction in which the Premises are located, without regard to principles of conflicts of laws.

18. **Counterparts; Delivery.** This Amendment may be executed in any number of separate

counterparts by the parties hereto, each of which, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument. Any signature page from any such counterpart may be attached to any other counterpart to complete a fully executed counterpart of this Amendment. Signatures to this Amendment (or to any assignment or amendment to this Amendment) transmitted in a commonly accepted electronic format that reproduces an image of the actual executed signature page shall be deemed a binding original and shall have the same legal effect, validity, and enforceability as a manually executed counterpart of the document to the extent and as provided for in the Federal Electronic Signatures in Global and National Commerce Act and the applicable state law based on the Uniform Electronic Transactions Act. In no event shall any party be obligated hereunder unless and until this Amendment has been fully executed and delivered by all parties hereto.

19. **OFAC Disclosure.** Landlord represents and warrants to Tenant (i) that neither Landlord nor any person or entity that directly or indirectly owns any interest in Landlord (other than any public shareholder) nor any of its officers, directors or managing members is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the U.S. Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (ii) that Landlord's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**"), and (iii) that throughout the term of the Lease, as amended hereby, Landlord shall comply with the Executive Order and with the Money Laundering Act.

20. **Automatic Rescission.** This Amendment shall be automatically rescinded and shall be null and void in the event this Amendment has not been fully-executed and delivered by all parties hereto within ninety (90) days after the date this Amendment is executed by the first of the parties to execute on the signature page hereof, TIME BEING OF THE ESSENCE.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed or caused this Amendment to be executed on their behalf by their duly authorized representatives as of the Effective Date.

**LANDLORD:**

**CITY OF COLUMBIA**

By: *Teresa B. Wilson*  
Print Name: Teresa B. Wilson  
Title: City Manager  
Date: 10/6/2023, 2023

APPROVED AS TO FORM

*[Signature]*  
Legal Department City of Columbia, SC  
08/24/2023

**TENANT:**

**TRUIST BANK, a North Carolina banking corporation**

By: *Ryan Schuetz*  
Print Name: Ryan Schuetz  
Title: Vice President  
Date: October 12, 2023