

ORDINANCE 3222-21

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA AUTHORIZING AN ALLONGE TO THE EXISTING COMMERCIAL NOTE AUTHORIZED BY ORDINANCE NO. 3077-17 IN A PRINCIPAL AMOUNT NOT TO BE OUTSTANDING THEREUNDER AT ANY ONE TIME TO EXCEED \$8,000,000 WITH TRUIST BANK OR AN AFFILIATE THEREOF TO FINANCE WORKING CAPITAL NEEDS OF THE CITY'S ELECTRIC UTILITY SYSTEM AND TO PAY THE COSTS OF SUCH LINE OF CREDIT; DELEGATING TO THE MAYOR OR CITY MANAGER THE AUTHORITY TO EXECUTE AND DELIVER THE ALLONGE TO THE COMMERCIAL NOTE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City adopted Ordinance No. 3077-17 authorizing a revolving line of credit and commercial note with Suntrust Bank (now known as Truist Bank after merger with BB&T Bank) and such was entered into on May 9, 2017; and

WHEREAS, in order to keep the line of credit active, Truist Bank ("Lender") has requested that the City execute an Allonge to Commercial Note (the "Allonge"), including a replacement Addendum A to Commercial Note (the "Addendum") to address the elimination of the LIBOR Rate as the standard for setting interest under the line of credit and commercial note and replace such with a new interest rate index and a new maturity date as more specifically set forth in Allonge attached hereto as Exhibit "1".

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA (the "Issuer") that:

Section 1. Authority for this Ordinance. This Ordinance is adopted pursuant to the provisions of Chapter 166, Part 1, Florida Statutes; Article VIII, Section 2, Constitution of the State of Florida and the City Charter; and other applicable provisions of law (collectively, the "Act").

Section 2. Addendum Authorization. The City Commission hereby authorizes the execution and delivery of the Allonge, including the Addendum, attached hereto as Exhibit "1". The Mayor or City Manager are authorized to execute and deliver to Lender such Allonge and the Addendum on behalf of the City.

Section 3. Severability. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 4. Effective Date. This Ordinance shall take effect immediately upon its adoption.

Passed and duly adopted in public session of the City Commission of the City of Winter Park, Florida on the 13th day of October, 2021.

CITY OF WINTER PARK, FLORIDA

Phillip M. Anderson, Mayor

ATTEST:

Rene Cranis, City Clerk

Exhibit "1"

**ALLONGE TO COMMERCIAL NOTE
OF THE CITY OF WINTER PARK, FLORIDA**

THIS ALLONGE TO COMMERCIAL NOTE OF THE CITY OF WINTER PARK, FLORIDA (this "Allonge") dated _____, 2021 (the "Effective Date"), is made by the City of Winter Park, Florida (the "Borrower"), a home rule city existing under the laws of the State of Florida, to and for the benefit of Truist Bank, a North Carolina banking corporation, as successor by merger to SunTrust Bank (the "Bank"). All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Note.

WITNESSETH:

WHEREAS, the Borrower previously issued its up to \$8,000,000 Commercial Note (the "Note") pursuant to an Ordinance enacted by the City Commission of Borrower on May 8, 2017 (the "Original Ordinance") and an Agreement to Commercial Note dated May 9, 2017 (the "Agreement") by and between the Borrower and the Bank; and

WHEREAS, the Borrower is executing and delivering this Allonge in order to extend the maturity date of the Note and make certain modifications to the interest rate on the Note.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Borrower ratifies the Note and agrees as follows:

1. This Allonge is to be physically attached to the Note and is incorporated into and forms a part of the Note.
2. From and after the Effective Date, "Maturity Date" means September 29, 2022, or such date to which this Note may be extended or renewed in the sole discretion of Truist Bank by written notice from Truist Bank to Borrower.
3. From and after the Effective Date, the section titled "Interest" in the Note shall be amended and restated in its entirety with the following:

Interest will accrue on an actual/360 day basis (calculated on the basis of a 360 day year based on actual days elapsed). Interest shall accrue from the date of disbursement of the unpaid balance and shall continue to accrue until this Note is paid in full.

Subject to the above, interest per annum payable on this Note (the "Rate") shall be:

Variable: This a variable rate transaction. The interest is prospectively subject to increase or decrease without prior notice and is based on the Index (as defined in Addendum A hereto).

The Rate shall equal the greater of (i) the Index plus 2% per annum or (ii) 3.00% per annum.

Adjustments to the Rate shall be effective as of the date referenced on the attached Addendum A.

4. From and after the Effective Date, Addendum A to the Note is replaced in its entirety by Addendum A attached hereto.

5. Except as amended hereby, the Note remains in full force and effect and shall be binding upon Borrower.

6. This Allonge shall be construed, and the obligations, rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the State of Florida without regard to conflicts of laws or principles, except to the extent that the laws of the United States of America may prevail.

7. All references to the term "Note" in the Note, the Agreement and any other documents related to the Note shall mean the Note as amended by this Allonge.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the City of Winter Park, Florida has caused this Allonge to be executed in its name by the manual signature of its Mayor and attested by the manual signature of its Clerk, all as of this ___ day of _____, 2021.

CITY OF WINTER PARK, FLORIDA

ATTEST:

By: _____
Mayor

By: _____
Clerk

Addendum A to Note 30 Day Average SOFR in Advance

The terms of this Addendum are hereby incorporated into the Note and in the event of any conflict between the terms of the Note and the terms of this Addendum, the terms of this Addendum shall control.

1. **Definitions.** As used in this Addendum, the following terms shall have the meanings set forth below:

"Adjusted SOFR Rate" means the variable annual interest rate calculated for each Interest Period equal to the sum obtained by adding (i) the Index for said Interest Period (truncated at the 5th decimal place if necessary) plus (ii) the margin provided for in the Note. For the avoidance of doubt, the term "margin" shall mean the difference between the Rate (as defined in the Note) minus the Index (as defined in the Note).

"Bank" shall mean Truist Bank and its successors and assigns.

"Borrower" shall mean the City of Winter Park, Florida referred to in the attached note dated May 9, 2017, as amended by that certain Allonge dated _____, 2021 ("Note").

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

"Determination Date" means that date that is five (5) Business Days prior to the commencement of the Interest Period; provided, however, that if the Interest Period does not commence on a Business Day, then that date that is five (5) Business Days prior to the Business Day immediately preceding the first day of the Interest Period.

"Index" means, for any Interest Period, the 30 Day Average rate published on the Determination Date by the SOFR Administrator on the SOFR Administrator's Website as quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by Bank on the Determination Date; provided that if the Index would be less than zero percent (0%), then the Index shall be deemed to be zero percent (0%).

"Interest Period" means a one month period commencing the first numeric calendar day of each month, provided that (i) the initial Interest Period shall commence on the initial funding date of the loan evidenced by the Note and may be shorter than one month and (ii) no Interest Period shall operate to extend the date on which any amount owed under the Note is due and payable.

"Prime Rate" means, for any day, a rate per annum equal to Bank's announced Prime Rate, and shall change effective on the date any change in Bank's Prime Rate is publicly announced as being effective; provided however, if the Note is governed by Subtitles 9 or 10 of Title 12 of the Commercial Law Article of the Annotated Code of Maryland, "Prime Rate" shall mean the Wall Street Journal Prime Rate, which is the Prime Rate published in the "Money Rates" section of the Wall Street Journal from time to time, and shall change effective on the date any change in such rate is reported; further provided if either rate referenced in this paragraph is at any time less than zero percent (0%), then such rate shall be deemed to be zero percent (0%).

"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.

2. **Interest.** Except as provided in this Addendum, the Borrower shall pay interest upon the unpaid principal balance of the Note at the Adjusted SOFR Rate, subject to any interest rate floor or interest rate ceiling contained in the Note. Interest shall be due and payable as provided in the Note and shall be calculated as described in the Note. The interest rate shall remain fixed during each Interest Period based upon the Adjusted SOFR Rate established pursuant to this Addendum on the applicable Determination Date.

3. **Inability to Determine Index.** In the event Bank determines in its sole discretion that (i) Bank cannot make, fund, or maintain a loan based upon the Index, for any reason, including without limitation illegality or the inability to

ascertain or determine said rate on the basis provided for herein, and for any length of time (whether by virtue of a temporary unavailability or the cessation of the rate) or (ii) the Index does not accurately reflect Bank's cost of funds, then Bank will have no obligation to make, fund or maintain a loan based on the Index. Upon the date of such determination, the interest rate shall convert to the Prime Rate, subject to any interest rate floor or interest rate ceiling contained in the Note, and shall be the governing interest rate for any fundings or advances requested by Borrower and for any outstanding balance and, thereafter, the interest rate on the Note shall adjust simultaneously with any fluctuation in the Prime Rate. Bank shall provide notice of any action taken pursuant to the terms of this Section in a commercially reasonable time and manner.

In the event Bank determines that the circumstances giving rise to the application by Bank of this Section have ended, the interest rate will revert to the then-current Adjusted SOFR Rate, and Bank shall provide notice to the Borrower in a commercially reasonable time and manner.

4. Additional Costs. In the event that any applicable law or regulation, guideline or order or the interpretation or administration thereof by any governmental or regulatory authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Bank of any amounts payable by the Borrower hereunder (other than taxes imposed on the overall net income of Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank, or (iii) shall impose any other condition with respect to the loan evidenced by the Note, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining the loan evidenced by the Note or to reduce any amount receivable by Bank under the loan evidenced by the Note, and Bank determines that such increased costs or reduction in amount receivable was attributable to the Index used to establish the interest rate hereunder, then the Borrower shall from time to time, upon demand by Bank, pay to Bank additional amounts sufficient to compensate Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to the Borrower by Bank, shall be conclusive and binding in the absence of manifest error.

By signing below, the Borrower agrees to the terms of this Addendum A to Note.

CITY OF WINTER PARK, FLORIDA

ATTEST:

By: _____
Mayor

By: _____
Clerk

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