

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## Schedule to the 2002 Master Agreement

dated as of December 6, 2019

between

**FIRST HORIZON BANK**

and

**GONDOLIER PROPERTIES, LLC**

("Party A")

("Party B")

### Part 1. Termination Provisions.

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:—

Section 5(a)(v), none

Section 5(a)(vi), none

Section 5(a)(vii), none

Section 5(b)(v), none

and in relation to Party B for the purpose of:—

Section 5(a)(v), Any current or future Affiliate of Party B

Section 5(a)(vi), Any current or future Affiliate of Party B

Section 5(a)(vii), Any current or future Affiliate of Party B

Section 5(b)(v), Any current or future Affiliate of Party B

- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement.
- (c) The **"Cross-Default"** provisions of Section 5(a)(vi) will apply to Party A and Party B, and for such purpose:

**"Specified Indebtedness"** will have the meaning specified in Section 14 of this Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business.

**"Threshold Amount"** means (i) with respect to Party A, three percent (3%) of the stockholder's equity of Party A, as shown on its most recent audited year end consolidated financial statements prepared in accordance with generally accepted principles, consistently applied, and (ii) with respect to Party B \$100,000.

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(ii) will not apply to Party A and will apply to Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A or to Party B.
- (f) **"Termination Currency"** means United States Dollars.

- (g) **Additional Termination Event** will apply. It shall be an "Additional Termination Event" with Party B being the Affected Party if (i) the loan or other indebtedness in connection with which a Transaction is entered into by Party B for the purpose or with the effect of altering the net combined payment of Party B from a floating to fixed or a fixed to floating rate basis is repaid, in whole or in part, whether upon acceleration of principal, at maturity, or otherwise, or for any other reason is not an obligation of Party B, (ii) any Credit Support Document expires, terminates, or ceases to be in full force and effect for the purpose of this Agreement unless this Agreement is expressly amended in writing to reflect that it is no longer a Credit Support Document hereunder, or (iii) the obligations of Party B cease to be secured equally and ratably on a pari passu basis with the obligations owing to the lenders in respect of any loan or other indebtedness in connection with which a Transaction is entered.

**Part 2. Tax Representations.**

- (a) For the purpose of Section 3(e) of this Agreement, Party A and Party B each make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) For the purpose of Section 3(f) of this Agreement:

- (i) Party A represents at all times hereunder that (A) it is a national banking association organized under the laws of the United States, and (B) it is a "U.S. person" (as that term is defined in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for United States federal income tax purposes; and
- (ii) Party B represents at all times hereunder that (A) it is organized or formed under the laws of a state within the United States, and (B) it is (or, if Party B is disregarded for United States federal income tax purposes, its beneficial owner is) a "U.S. person" (as that term is defined in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for United States federal income tax purposes.

**Part 3. Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

- (a) Tax forms, documents or certificates to be delivered: Each party agrees to deliver to the other party, upon reasonable demand by such other party, an executed IRS Form W-9 or any other tax form that may be required or reasonably requested in writing in order to allow such other party to make a payment under this Agreement (or under any Credit Support Document) without any deduction or withholding for or on account of any tax imposed by any government or other taxing authority in respect of any such payment (other than a stamp, registration, documentation or similar tax), or with such deduction or withholding at a reduced rate, which form shall be correct, complete and duly executed.
- (b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party B	A certificate of an authorized officer of Party B evidencing the necessary corporate authorizations, resolutions, and approvals with respect to the execution, delivery and performance of this Agreement, and certifying the names, true signatures, and authority of the officer(s) signing this Agreement and executing Transactions hereunder	Upon execution and delivery of this Agreement and thereafter upon request of Party A	Yes
Party B	A copy of the latest annual report of such Party containing audited consolidated financial statements for each such fiscal year certified and a copy of the latest quarterly report of such Party containing unaudited consolidated financial statements all prepared in accordance with generally accepted accounting principles in the United States of America	If such financial statement is not publicly available on "EDGAR" or such party's internet home page, then promptly upon reasonable Request	Yes
Party B	IRS Form W-9	Promptly upon reasonable request	No
Party B	ACH Authorization Form	Promptly upon reasonable request	No
Party B	Risk Acknowledgement	Promptly upon reasonable request	No
Party B	Additional information with respect to Party B as Party A may reasonably request from time to time	Promptly upon reasonable request	Yes

Part 4. **Miscellaneous.**

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

FHN Financial Capital Markets  
845 Crossover Lane, Suite 150  
Memphis, TN 38117  
Attention: Randi Bernsen  
Email: [DPG@FHNFInancial.com](mailto:DPG@FHNFInancial.com)  
Telephone: 901-435-8131

Address for notices or communications to Party B:

GONDOLIER PROPERTIES, LLC  
1435 E. Venice Ave., Ste 104-170  
Venice, FL 34292  
Attention: Thomas Cassidy  
Email: [tcassidy09@gmail.com](mailto:tcassidy09@gmail.com)

Telephone: 941-497-6622

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:  
Party A appoints as its Process Agent: Not applicable  
Party B appoints as its Process Agent: Not applicable.
- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:—  
Party A is not a Multibranch Party  
Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent is Party A unless otherwise specified in a Confirmation in relation to the relevant Transaction.
- (f) **Credit Support Document.** In relation to Party B, means any guarantee, security agreement, mortgage, deed of trust, pledge agreement, credit agreement, or other collateral agreement typically used in the banking industry, currently in effect or entered into in the future, that by its terms guarantees, secures, or otherwise supports the full and timely performance of any of Party B's obligations to Party A.
- (g) **Credit Support Provider.** Any individual or entity named in a Credit Support Document who is securing or guarantying Party B's full and timely performance of its obligations to Party A under such documents, including, without limitation, guarantors.
- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine).
- (i) **Netting of Payments.** "Multiple Transaction Payment Netting" will apply for the purpose of Section 2(c) of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.
- (k) **Absence of Litigation.** For the purpose of Section 3(c):  
"Specified Entity" means in relation to Party A, none.  
"Specified Entity" means in relation to Party B, none.
- (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (m) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representations:
  - (i) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):
    - (1) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and

explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

- (2) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
  - (3) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
- (ii) **Eligible Contract Participant.** Party B represents to Party A (which representation will be deemed to be repeated by Party B on each date on which a Transaction is entered into) that it is an "Eligible Contract Participant" as defined in 7 USC § 1a and 17 CFR § 1.3(m).

If Party B cannot represent that it is an Eligible Contract Participant, it represents:

- (I) It is entering into the Transaction to hedge the floating interest rate risk associated with the loan.
- (II) The Transaction is being guaranteed by either a Corporate Guarantor or an Indirect Proprietor Guarantor.
- (III) Any Corporate Guarantor or Indirect Proprietor Guarantor:
  - a) Is an owner of Party B, and
  - b) Plays an active role in Party B's business (other than performing solely clerical, secretarial and administrative functions).

"Corporate Guarantor" means a corporation, partnership, proprietorship, organization, trust or other entity that has a net worth exceeding \$1 million.

"Indirect Proprietor Guarantor" means an individual with more than \$1 million in net worth or \$5 million in amounts invested on a discretionary basis.

Notwithstanding anything to the contrary in the Master Agreement or any credit agreement or guarantee, no person that does not qualify as an "Eligible Contract Participant" as defined in 7 USC § 1a and 17 CFR § 1.3(m) shall be a guarantor of, or deemed a party to, any Transaction under this Agreement or under any Credit Support Document. Such exclusion shall have no effect on any other obligations of such person under this Agreement or under any Credit Support Document.

- (iii) **Not a Special Entity.** Party B represents to Party A (which representation will be deemed to be repeated by Party B on each date on which a Transaction is entered into) that it is not a "Special Entity" as defined in Section 4s of the Commodity Exchange Act, as amended from time to time.

- (iv) **End-User Status.** Party B represents to Party A (which representation will be deemed to be repeated by Party B on each date on which a Transaction is entered into)

- (1) It is not a "financial entity" as defined in Section 2(h)(7) of the Commodity Exchange Act, as amended, or is excluded or exempt from the definition of "financial entity."

- (2) It is using the swap to hedge or mitigate commercial risk.

- (3) It authorizes Party A, to the extent permitted, to make an initial filing or an annual renewal filing pursuant to CFTC Regulation 50.50(b)(2), as applicable, on its behalf and Party A may rely on all information set forth herein in support of such filing.

- (4) It meets its financial obligations with respect to swaps through one or more of the following (*check all that apply*):
- a. A written credit support agreement \_\_\_\_;
  - b. Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise) \_\_\_\_;
  - c. A written third-party guarantee \_\_\_\_;
  - d. Party B's own available financial resources X; or
  - e. Means other than those described in the preceding items \_\_\_\_. (*specify*)
- (5) If Party B is an issuer of securities registered under Section 12 of, or is required to file reports under Section 15(d) of, the Securities Exchange Act of 1934, as amended, an appropriate committee of Party B's board of directors (or equivalent body) has reviewed and approved the decision to enter into swaps that are exempt from the clearing requirement of Section 2(h)(1) and Section 2(h)(8) of the Commodity Exchange Act.
- (v) **Legal Entity Identifiers.** Party B represents to Party A (which representation will be deemed to be repeated by Party B on each date on which a Transaction is entered into):
- (1) Party B does not have a Legal Entity Identifier and authorizes Party A to obtain one on Party B's behalf.
  - (2) Party B does not have and is not required to have a CIK under SEC rules.
- (vi) **Election Not to Clear.** Party B has elected not to clear any Transaction under this Agreement through a derivatives clearing organization. Party B acknowledges that it cannot make such an election at any time with respect to a Transaction that is required to be cleared pursuant to CFTC regulations when it cannot make all of the representations in clause (iv) above.
- (n) **Reporting Counterparty.** Party A will be the "reporting counterparty" for this Agreement and all Transactions under this Agreement. Party B agrees that:
- (1) Party A is authorized to make all reports required under CFTC or other applicable rules or regulations (including any rules of the applicable swap data repository) to a swap data repository of its choosing. In making such reports, Party A is entitled to rely on all representations of Party B under this Agreement and any Transaction confirmation hereunder and on all other information furnished by Party B to Party A with respect thereto.
  - (2) If Party B becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, Party B shall promptly notify Party A of the error and/or correction.
  - (3) Party B acknowledges that it is required by law to keep full, complete and systematic records relating to this Agreement and each Transaction under this Agreement, together with all pertinent data and memoranda, including all records supporting the representations and election not to clear set forth above. These records must be maintained for five years after the termination of the final Transaction under this Agreement and must be retrievable within five business days of any request for such records. These records may be in either electronic or paper form.
- (o) **Notification of Change in Status.** Party B agrees that it will notify Party A promptly (and in any event within one business day) if it determines that any representation made under this Agreement (including in

connection with any Transaction) was inaccurate when made or has ceased to be accurate, including as a result of the change of ownership or control of Party B.

- (p) **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.
- (q) **Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement."

#### Part 5. Other Provisions.

- (a) **Waiver of Jury Trial.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all rights it may have to trial by jury in respect of any proceedings arising out of or relating to this Agreement or any Transaction and acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, these mutual waivers.
- (b) **ISDA Definitions.** Reference is hereby made to the 2006 ISDA Definitions (the "2006 Definitions") and the 1998 FX and Currency Option Definitions (the "FX Definitions") (collectively, the "ISDA Definitions"), each as published by the International Swaps and Derivatives Association, Inc., which are hereby incorporated by reference herein. Any terms used and other otherwise defined herein which are contained in the ISDA Definitions shall have the meaning set forth therein.
- (c) **Scope of Agreement.** This Agreement shall not require the parties to enter into any Transactions. Upon the effectiveness of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement with respect to Specified Transactions, all Specified Transactions then outstanding between Offices of the parties listed in the Schedule shall be Transactions hereunder and subject to the terms hereof. Any Specified Transaction (whether now existing or hereafter entered into) between the parties, the confirmation of which fails by its terms expressly to exclude application of this Agreement, shall be governed by and be subject to this Agreement. Any such confirmation shall be a "Confirmation", and any such Specified Transaction shall be a "Transaction", for all purposes of this Agreement.
- (d) **Confirmation.** For each Transaction which Party A and Party B enter into hereunder, Party A shall transmit to Party B a Confirmation. Each Confirmation shall be substantially in the form of one of the Exhibits to the 2006 ISDA Definitions in existence from time to time which are specifically relevant to the Transaction, or in such other form as the parties may agree. Any documents or other confirming evidence (including electronic messages) exchanged between the parties confirming any Specified Transaction shall be deemed a "Confirmation", even if not described as such.
- (e) **Inconsistency.** In the event any inconsistency between the provisions contained in this Agreement and those contained in any of the 2006 Definitions, the provisions contained in this Agreement will prevail. In the event of any inconsistency between the provisions contained in a Confirmation and those contained in the 2006 Definitions or the Agreement, the provisions contained in such Confirmation shall prevail unless otherwise specified in a Confirmation or other writing signed by the parties. In the event of any inconsistency between the provisions contained in the 2006 Definitions and the FX Definitions, the FX Definitions shall prevail.

- (f) **Disclaimer.** In entering into this Agreement:
- (I) Party B understands that there is no assurance as to the direction in which interest rates in the financial markets may move in the future and that Party A makes no covenant, representation, or warranty in this regard or in regard to the suitability of the terms of the Agreement or any Transaction to the particular needs and financial situation of Party B.
  - (II) Party B has made its own independent, informed decision to enter into this Agreement and any Transaction, and acknowledges that Party A is not acting as fiduciary for Party B.
- (g) **Complete Agreement; Nothing Deemed Specifically Incorporated.** The terms of this Agreement are limited specifically to the text herein. No other terms or provisions shall be deemed to be specifically incorporated. Only with the written consent of all parties to this Agreement shall additional terms be incorporated herein.
- (h) **Event of Default.** Each Party agrees to notify the other party of the occurrence of any Event of Default or Potential Event of Default immediately upon learning of the occurrence thereof.
- (i) **Severability.** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
- (j) **FATCA.** The parties agree that the definitions and provisions contained in the ISDA 2012 FATCA Protocol as published by the International Swaps and Derivatives Association, Inc. on August 15, 2012 (the "FATCA Protocol"), are incorporated into and apply to the Agreement as if set forth in full therein.

IN WITNESS WHEREOF, the parties have executed and delivered this document as of the date specified on the first page of this document.

**FIRST HORIZON BANK**  
 \_\_\_\_\_  
 (Name of Party)

By: Al Farlow  
 Name: Al Farlow  
 Title: Manager - DPC  
 Date: 1/27/20

**GONDOLIER PROPERTIES, LLC**  
 \_\_\_\_\_  
 (Name of Party)

By: [Signature]  
 Name: John R. Cassidy  
 Title: Member  
 Date: 1/3/20