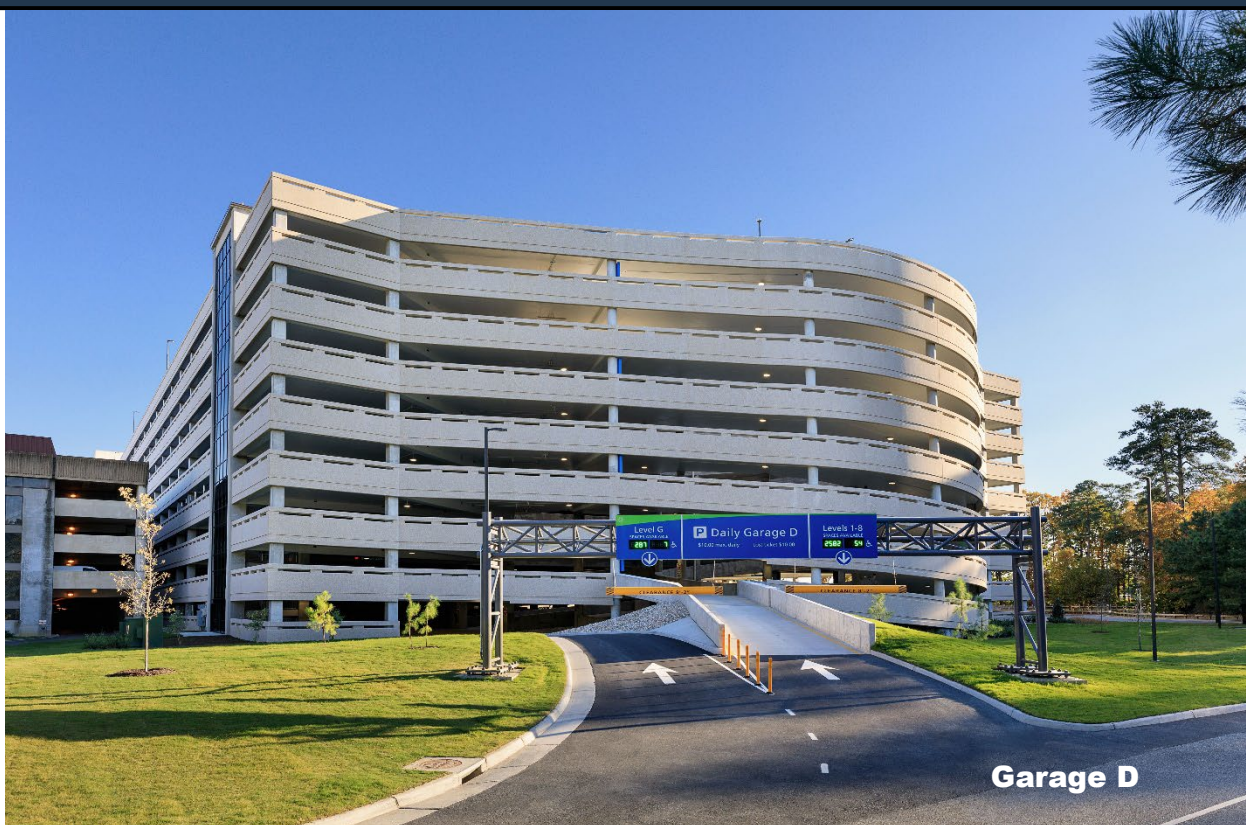


# Board of Commissioners Meeting Packet

Thursday, January 27, 2022, 1:00 p.m.  
Human Resources Conference Room A

# 2022

## Norfolk Airport Authority



Garage D



**Norfolk International Airport**  
**2200 Norview Avenue**  
**Norfolk, Virginia 23518**  
**757-857-3351**

**Malcolm P. Branch, Chair, NAA**  
**Board of Commissioners**

**Robert S. Bowen, A.A.E.,**  
**Executive Director & Secretary**  
**of the Board of Commissioners**

**BOARD OF COMMISSIONERS  
NORFOLK AIRPORT AUTHORITY  
January 27, 2022  
AGENDA**

**CALL TO ORDER**

**PUBLIC HEARING**

- Norfolk Collegiate School Bond Refinancing  
(Thomas William Bruno, McGuireWoods LLP)

**REGULAR AGENDA**

- Approval of Board Meeting Minutes December 9, 2021
- Becker / Capital Results Legislative Update  
(Anthony Bedell, Clarence Williams, Robert Shinn)
- R-1** Recommendation to Approve Award of Main Lobby Coffee Shop  
(William L. Nusbaum, Esquire, Chair, Concessions Committee)
- R-2** Recommendation to Approve a Mid-Year Adjustment to the Fiscal Year 2022 Budget  
(Deborah H. Painter, Chair, Finance Audit Committee)

**EXECUTIVE DIRECTOR'S REPORT**

**CHAIRMAN'S REPORT**

**OLD BUSINESS**

**NEW BUSINESS**

**CLOSED MEETING (Required)**

**RECONVENE OPEN MEETING (Required)**

**ADJOURNMENT**

**Norfolk Collegiate School  
Bond Refinancing**

**(Thomas William Bruno,  
McGuire Woods LLP)**

**RESOLUTION OF THE NORFOLK AIRPORT AUTHORITY, AUTHORIZING THE ISSUANCE OF REFUNDING REVENUE BONDS IN AN AMOUNT UP TO \$5,700,000 FOR THE BENEFIT OF NORFOLK COLLEGIATE SCHOOL**

A. The Norfolk Airport Authority (the "Authority"), a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Commonwealth") is empowered by Chapter 463 of the Acts of Assembly of 1948, as amended (the "Act"), to issue its bonds for the purpose of encouraging and promoting the safety, welfare, education, convenience and prosperity of the inhabitants of the City of Norfolk (the "City") and the Commonwealth by among other things acquiring educational facilities.

B. The Authority has received a request from Norfolk Collegiate School, a Virginia nonstock corporation, described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Borrower"), to issue its bonds (the "Bonds"), in one or more series from time to time, to provide funds to the Borrower:

(1) to refinance previously issued tax-exempt revenue bonds of the Authority that financed and refinanced the costs of school facilities of the Borrower that have been constructed on the Campuses (as defined below); and

(2) to finance, if and as needed, costs of issuance, reserves, working capital, and other expenses related to the issuance of the Bonds (collectively items (1) and (2), the "Plan of Refunding").

C. The Borrower owns and operates a private school located on two separate campuses in the City of Norfolk, Virginia. The Borrower's lower school campus (the "Lower School Campus") is located in and around 5429 Tidewater Drive, Norfolk, Virginia. The Borrower's middle and upper school campus (the "Upper School Campus" and together with the Lower School Campus, the "Campuses") is located in and around 7336 Granby Street, Norfolk, Virginia.

D. The Authority's assistance in connection with the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Borrower, and the Bonds shall provide that the City and the Authority shall not be obligated to pay the Bonds or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth or the City shall be pledged thereto. By the adoption of this resolution the Authority does not intend for such action to constitute approval of the Borrower, its policies or its management.

E. The Authority will issue the Bonds under one or more Bond Purchase and Loan Agreements (each a "Bond Purchase and Loan Agreement"), among the Authority, the Borrower and one or more lenders selected by the Borrower (each a "Lender"), and each Lender will purchase one or more series of the Bonds pursuant to a Bond Purchase and Loan Agreement.

F. The Authority will loan the proceeds of the Bonds to the Borrower under the applicable Bond Purchase and Loan Agreement, and the Borrower will apply the proceeds under the terms of the applicable Bond Purchase and Loan Agreement to undertake the Plan of Refunding.

G. To evidence the Borrower's obligations under the Bond Purchase and Loan Agreements, the Borrower will execute and deliver one or more promissory notes to secure the Bonds (each a "Note").

H. The Bonds are expected to be sold to the Lenders pursuant to the terms of the Bond Purchase and Loan Agreements; provided that (1) the aggregate principal amount of the Bonds shall not exceed \$5,700,000, (2) the final maturity of the Bonds is not later than 15 years from the date of the Bonds, (3) the Bonds shall bear interest at a variable or fixed rate (as directed by the Borrower), (4) the interest rate on any fixed rate Bonds shall not exceed 6% per annum (exclusive of default interest and penalties) and (5) the initial rate on any variable rate Bonds shall not exceed 6% per annum (collectively, the "Bond Terms").

I. There have been presented to this meeting the preliminary forms of the following instruments, which the Authority, if a party thereto, proposes to execute to carry out the transactions described above, copies of which have been filed with the records of the Authority:

- (a) a Bond Purchase and Loan Agreement, including the form of the Bonds;  
and
- (b) a Note, with the Authority's assignment thereof.

J. The Bond Purchase and Loan Agreements and the assignment of Note are referred to below as the "Authority Documents."

**NOW, THEREFORE, BE IT RESOLVED BY THE NORFOLK AIRPORT AUTHORITY:**

1. It is hereby found and determined that the Plan of Refunding will be in the public interest and will promote the safety, welfare, education, convenience and prosperity of the Commonwealth, the City, and their citizens.

2. The issuance of the Bonds, in one or more series, for the purpose of undertaking the Plan of Refunding is hereby approved. The Bonds shall be in substantially the form attached to the Bond Purchase and Loan Agreement.

3. The Bonds and the Authority Documents are hereby approved in substantially the forms submitted to this meeting, with such changes, insertions or omissions (including, without limitation, changes of the dates thereof) consistent with the Bond Terms as may be approved by the Chairman, Vice Chairman or Executive Director of the Authority, any of whom may act, whose approval will be evidenced conclusively by the execution and delivery of the Bonds.

4. The Chairman, Vice Chairman or Executive Director, any of whom may act, is hereby authorized and directed to execute and deliver the Bonds to or for the account of the Lender and the Authority Documents to the other parties thereto upon approval of their final form, terms and conditions consistent with the Bond Terms. The Chairman, Vice Chairman or Executive Director, any of whom may act, is hereby authorized to approve the number of series, interest rates, maturities, redemption provisions, put provisions and other terms of the Bonds, consistent with the Bond Terms, with the inclusion of such terms in the Bond Purchase and Loan Agreements being

conclusive evidence of such approval. The sale of the Bonds to the Lender pursuant to the Bond Purchase and Loan Agreements is hereby approved and authorized provided such sale shall be consistent with the Bond Terms.

5. The Chairman, Vice Chairman or Executive Director, any of whom may act, is hereby authorized to execute on behalf of the Authority the Bonds and the Authority Documents to which the Authority is a party, and the Assistant Secretary of the Authority is hereby authorized to affix the seal of the Authority to the Bonds and, if required, the Authority Documents and to attest such seal. The signatures of the officers and the seal of the Authority may be by facsimile. Each officer of the Authority is hereby authorized to execute and deliver on behalf of the Authority such instruments, documents or certificates and to do and perform such things and acts, as he or she deems necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds, the Authority Documents or such instruments, documents or certificates (including the execution and delivery of amendments to existing documents related to other bonds of the Authority issued for the benefit of the Borrower), and all of the foregoing, previously done or performed by such officers of the Authority, are in all respects approved, ratified and confirmed.

6. All costs and expenses in connection with the undertaking of the Plan of Refunding, including the fees and expenses of Bond Counsel, Authority Counsel, and counsel to the Lenders shall be paid by the Borrower or, to the extent permitted by applicable law, from the proceeds of the Bonds. If for any reason no bond is issued, it is understood that all such expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

7. Any authorization of an officer under this Resolution entitles such officer to exercise his or her discretion in taking action on behalf of the Authority, unless expressly provided otherwise. For any authorization in this Resolution that authorizes more than officer to act, it shall be sufficient that any of the officers authorized act to bind the Authority.

8. This resolution shall be effective immediately.

[Signature Page Follows]

**CERTIFICATE**

The undersigned Assistant Secretary of the Norfolk Airport Authority (the "Authority") hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Commissioners of the Authority at a meeting duly called and held on January 27, 2022, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended but is in full force and effect on the date hereof.

WITNESS the following signature and seal of the Authority as of \_\_\_\_\_, 2022.

[SEAL]

---

Sheri L. Watts  
Assistant Secretary  
Norfolk Airport Authority





**RESOLUTION OF THE NORFOLK AIRPORT AUTHORITY, PROVIDING INITIAL APPROVAL OF THE ISSUANCE OF UP TO \$5,700,000 OF REFUNDING REVENUE BONDS FOR THE BENEFIT OF NORFOLK COLLEGIATE SCHOOL**

A. The Norfolk Airport Authority (the "Authority"), a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Commonwealth") is empowered by Chapter 463 of the Acts of Assembly of 1948, as amended (the "Act"), to issue its bonds for the purpose of encouraging and promoting the safety, welfare, education, convenience and prosperity of the inhabitants of the City of Norfolk (the "City") and the Commonwealth by among other things acquiring educational facilities.

B. The Authority has received a request from Norfolk Collegiate School, a Virginia nonstock corporation, described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), (the "Borrower"), to issue bonds (the "Bonds"), in one or more series from time to time, to provide funds to the Borrower:

(1) to refinance previously issued tax-exempt revenue bonds of the Authority that financed and refinanced the costs of school facilities of the Borrower that have been constructed on the Campuses (as defined below); and

(2) to finance, if and as needed, costs of issuance, reserves, working capital, and other expenses related to the issuance of the Bonds (collectively items (1) and (2), the "Plan of Refunding").

C. The Borrower owns and operates a private school located on two separate campuses in the City of Norfolk, Virginia. The Borrower's lower school campus (the "Lower School Campus") is located in and around 5429 Tidewater Drive, Norfolk, Virginia. The Borrower's middle and upper school campus (the "Upper School Campus" and together with the Lower School Campus, the "Campuses") is located in and around 7336 Granby Street, Norfolk, Virginia.

D. Preliminary plans for the Plan of Refunding have been described to the Authority and a public hearing after public notice has been held as required by Section 147(f) of the Code. The Borrower has represented that the estimated cost of undertaking the Plan of Refunding will require an issue of bonds, in one or more series from time to time, in the aggregate principal amount not to exceed \$5,700,000.

E. Each member of the Board of Commissioners of the Authority (the "Board") has, before entering upon his duties during his or her present term of office, taken and subscribed to the oath prescribed by Section 49-1 of the Code of Virginia of 1950, as amended.

F. No member of the Board has any personal interest or business interest in the Borrower, the Bonds, or any of the transactions contemplated therein or has otherwise engaged in conduct prohibited under the Conflict of Interests Act, Chapter 31, Title 2.2 of the Code of Virginia of 1950, as amended in connection with this resolution or any other official action of the Authority in connection therewith.

G. The Authority's assistance in connection with the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the

Borrower, and the Bonds shall provide that the City and the Authority shall not be obligated to pay the Bonds or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth or the City shall be pledged thereto. By the adoption of this resolution the Authority does not intend for such action to constitute approval of the Borrower, its policies or its management.

**NOW, THEREFORE, BE IT RESOLVED BY THE NORFOLK AIRPORT AUTHORITY:**

1. It is hereby found and determined that the Plan of Refunding will be in the public interest and will promote the safety, welfare, education, convenience and prosperity of the Commonwealth, the City, and their citizens.

2. The Authority hereby agrees to assist the Borrower in undertaking the Plan of Refunding by issuing its refunding bonds, in one or more series from time to time, in an aggregate principal amount not to exceed \$5,700,000 upon terms and conditions mutually agreeable to the Authority and the Borrower. The Bonds will be issued under documents satisfactory to the Authority. The Bonds may be issued in one or more series from time to time.

3. At the request of the Borrower, the Authority approves McGuireWoods LLP, Richmond, Virginia, as Bond Counsel in connection with the issuance of the Bonds.

4. The Borrower agrees to indemnify and save harmless the Authority, its officers, directors, counsel, advisors, employees, attorneys and agents for and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the Borrower, the issuance or non-issuance of the Bonds.

5. The Authority hereby approves the Plan of Refunding and recommends that the governing body of the City approve the Plan of Refunding and the issuance of the Bonds pursuant to Section 147(f) of the Code.

6. The Authority, including its commissioners, officers, employees, agents and counsel, shall not be liable and hereby disclaims all liability to any person for any damages, direct or consequential, resulting from the Authority's failure to issue the Bonds for any reason. The Borrower agrees to (i) indemnify and hold the Authority harmless and its commissioners, officers, employees, agents and counsel for any damages, direct or consequential, suffered by it as a result of any action or inaction of the Authority with respect to the issuance of the Bonds, (ii) provide for such indemnification in all documents to which the Borrower and the Authority are parties and (iii) provide in such documents that it will forbear to bring any action for such damages as aforesaid. Nothing contained in this Section 6 shall operate as or be deemed to be a condition precedent to or a limitation on the approval of the issuance of the Bonds and the Plan of Refunding for purposes of Section 147(f) of the Code.

7. All costs and expenses in connection with the undertaking of the Plan of Refunding, including the fees and expenses of Bond Counsel and Authority Counsel, shall be paid by the Borrower or, to the extent permitted by applicable law, from the proceeds of the Bonds. If for any

reason such bonds are not issued, it is understood that all such expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

8. This resolution shall be effective immediately.

9. The authorizations granted in this resolution shall continue in full force and effect for a period of two years after adoption, unless specifically extended by the Authority.

[Remainder of Page Intentionally Left Blank]

**CERTIFICATE**

The undersigned Assistant Secretary of the Norfolk Airport Authority (the "Authority") hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Commissioners of the Authority at a meeting duly called and held on January 27, 2022, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended but is in full force and effect on the date hereof.

WITNESS the following signature and seal of the Authority as of \_\_\_\_\_, 2022.

---

Sheri L. Watts  
Assistant Secretary  
Norfolk Airport Authority



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**BOND PURCHASE AND LOAN AGREEMENT**

**between**

**NORFOLK AIRPORT AUTHORITY**

**and**

**NORFOLK COLLEGIATE SCHOOL**

**and**

**TOWNEBANK**

**Dated as of February 1, 2022**

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NOTE: CERTAIN OF THE RIGHTS OF THE AUTHORITY UNDER THIS BOND PURCHASE AND LOAN AGREEMENT AND AN EXECUTED NOTE DELIVERED UNDER THIS BOND PURCHASE AND LOAN AGREEMENT HAVE BEEN ASSIGNED BY THE AUTHORITY TO THE LENDER.

THIS BOND PURCHASE AND LOAN AGREEMENT is dated as of February 1, 2022, and is between the NORFOLK AIRPORT AUTHORITY, a public body corporate and a political subdivision of the Commonwealth of Virginia (as more particularly defined below, the "Authority"), NORFOLK COLLEGIATE SCHOOL, a Virginia nonstock corporation (the "Borrower"), and TOWNEBANK, a Virginia banking corporation (as more particularly defined below, the "Lender");

WITNESSETH:

WHEREAS, the Authority was created pursuant to the Act (hereinafter defined);

WHEREAS, the Act authorizes the Authority to issue its bonds for the purpose of encouraging and promoting the safety, welfare, education, convenience and prosperity of the inhabitants of the City of Norfolk (the "City"), and the Commonwealth of Virginia by, among other things, acquiring educational facilities;

WHEREAS, to further the purposes of the Act, the Authority proposes to issue its \$ \_\_\_\_\_ Refunding Revenue Bond (Norfolk Collegiate School), Series 2022 (as more particularly defined below, the "Bond"), to make a loan to the Borrower (1) to refinance previously issued tax-exempt revenue bonds of the Authority that financed and refinanced the costs of school facilities of the Borrower; and (2) to finance, if and as needed, costs of issuance, reserves, working capital, and other expenses related to the issuance of the Bonds (collectively items (1) and (2), the "Plan of Refunding"); and

WHEREAS, the Lender has agreed to make a loan to the Borrower by purchasing the Bond upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1. Definitions.** The following terms shall have the following meanings in this Agreement unless a different meaning clearly appears from the context:

"Act" shall mean Chapter 463 of the Acts of Assembly of 1948, as amended.

"Act of Bankruptcy" shall mean, for any Person, the filing of a petition in bankruptcy under the Bankruptcy Code, or the commencement of a proceeding under, any other applicable law concerning insolvency, reorganization or bankruptcy, by or against such Person, as debtor.

"Accumulated Funding Deficiency" shall mean an "accumulated funding deficiency" as defined in Section 302 of ERISA or Section 412(a) of the Code.

"Agreement" shall mean this Bond Purchase and Loan Agreement, and shall include any amendments or supplements hereto.

"Assignment of Rents" means \_\_\_\_\_ dated as of the date hereof between the Borrower and certain trustees named therein, as the same may be altered, amended, modified or supplemented from time to time.

"Authority" shall mean the Norfolk Airport Authority, and its successors and assigns.

"Authorized Representative" shall mean the President, the Head of School, the Director of Finance and Operations or such other person as may be designated in writing by to the Lender by an Authorized Representative.

"Bankruptcy Code" shall mean the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., and all future acts supplemental thereto or amendatory thereof.

"Bond" shall mean the Authority's Refunding Revenue Bond (Norfolk Collegiate School), Series 2022, in the principal amount of \$\_\_\_\_\_ dated the date of its execution and delivery, as the same may be altered, amended, modified, or supplemented, from time to time.

"Bond Counsel" shall mean McGuireWoods LLP, Richmond, Virginia.

"Bond Documents" shall mean the Borrower Documents and the Bond and any other agreement or instrument executed and delivered in connection with the issuance of the Bond.

"Bond Resolution" shall mean the resolution adopted by the Authority on January 27, 2022, authorizing the issuance, execution, sale and delivery of the Bond, and the execution and delivery of this Agreement.

"Borrower Documents" shall mean this Agreement, the Note, the Tax Compliance Certificate, the Deed of Trust, the Commercial Security Agreement, the Environmental Indemnity, and all related documents required by this Agreement.

"Capital Lease" shall mean means any sales-type lease or direct financing lease of real or personal property that, in accordance with generally accepted accounting principles, constitutes indebtedness of the Borrower. Operating leases (those relating to the Borrower's right to use the leased asset for the lease term) that do not meet the criteria under generally accepted accounting principles as a sales-type lease or a direct financing lease are not Capital Leases.

"Cash Flow" shall mean, for a specified period:

- (a) the increase (or decrease) in net assets,
- (b) less:
  - (i) contributions and support,
  - (ii) unrealized gains on investments,
  - (iii) other cash income, and

(iv) any nonrecurring items of an extraordinary nature which do not involve the receipt, expenditure or transfer of assets,

(c) plus:

- (i) cash collections of contributions and support,
- (ii) unrealized losses on investments,
- (iii) interest expense,
- (iv) depreciation and amortization, and
- (v) other non-cash expenses.

"Closing Date" shall mean the date of the issuance and initial delivery of the fully executed Bond to the Lender.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including all applicable regulations and revenue rulings thereunder.

"Commercial Security Agreement" means \_\_\_\_\_ dated as of the date hereof between the Borrower and certain trustees named therein, as the same may be altered, amended, modified or supplemented from time to time.

"Commonly Controlled Entity" shall mean any trade or business (whether or not incorporated) which is under "common control" (as defined in the Code) and of which the Borrower or any subsidiary thereof is a part.

"Costs of Issuance" means any legal, accounting or financial advisory fees and expenses, including, without limitation, fees and expenses of Bond Counsel and counsel to the Authority, the Borrower, the Lender, any fees and expenses of the Authority or any Lender, filing fees, and printing and engraving costs, incurred in connection with the authorization, issuance, sale and purchase of the Note or the Bond, and the preparation of the Bond Documents and all other documents in connection with the authorization, issuance and sale of the Bond.

"Days Cash on Hand" shall mean 365 times (i) the aggregate unrestricted cash and unrestricted marketable securities and other liquid assets (including board-designated funds) of the Borrower as of the date of computation, divided by (ii) the total operating expenses of the Obligated Group for the immediately preceding fiscal year for which Financial Statements are available, excluding depreciation and amortization (as shown on the Financial Statements), provisions for bad debt and other nonrecurring items of an extraordinary nature which do not involve the receipt, expenditure or transfer of assets. All securities shall be valued at fair market value for purposes of this definition.

"Debt Service" shall mean, for a specified period, the sum of (a) all principal payments paid by the Borrower on Funded Debt plus (b) all interest expenses paid on Funded Debt.

"Debt Service Coverage Ratio" shall mean, for a specified period, the ratio of Cash Flow divided by Debt Service.

"Deed of Trust" shall mean the Credit Line Deed of Trust \_\_\_\_\_ dated as of the date hereof between the Borrower and certain trustees named therein, as the same may be altered, amended, modified or supplemented from time to time.

"Default Rate" shall mean the lesser of (i) the sum of the then current interest rate on the Bond plus 400 basis points and (ii) the maximum lawful rate.

"Determination of Taxability" shall mean the occurrence, after the date of this Agreement of (a) a final ruling or judgment entered by a federal court of competent jurisdiction or (b) an official and final action taken or announced by the Internal Revenue Service or by a federal official, in either event, determining that interest paid or payable on all or a portion of the Bond is or was includable in the gross income of the Lender for federal income tax purposes under the Code; provided, however, that no such ruling or judgment, or final action of the Internal Revenue Service will be considered final for this purpose unless the Borrower or the Lender has been given written notice and, if it is desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the Lender and until the conclusion of any appellate review, if sought.

"Environmental Indemnity" means \_\_\_\_\_ dated as of the date hereof between the Borrower and certain trustees named therein, as the same may be altered, amended, modified or supplemented from time to time..

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Financed Property" means the property financed or refinanced with the proceeds of the Bond.

"Financial Statements" shall mean a consolidated (and if applicable, consolidating) balance sheet and statements of income and cash flows prepared in accordance with GAAP applied on a consistent basis (subject in the case of interim statements, to normal year-end adjustments) for the Borrower and audited and certified without qualification by an independent certified public accountant or firm of accountants engaged by the Borrower. Notwithstanding the foregoing, any interim financial statements may be done on a modified cash basis.

"Funded Debt" shall mean (1) all obligations for money borrowed, (2) all obligations evidenced by a bond, indenture, note, letter of credit or similar instrument, (3) all obligations under Capital Leases and (4) all other obligations upon which interest charges are customarily paid.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Authority" shall mean any (i) federal, state or local governmental or quasi-governmental entity, including, without limitation, any agency, court, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity, and (ii) accreditation or approval organization, whether private, public or quasi-governmental, which is generally recognized in the Commonwealth of Virginia for such purposes.

"Governmental Requirements" shall mean all laws, ordinances, orders, rules or regulations of all Governmental Authorities, including, without limitation, laws, ordinances, orders, rules and regulations relating to public disclosures, zoning, certificates of need, licenses, permits, subdivision, building, safety, health, fire protection or environmental matters.

"Income Available for Debt Service" shall mean, for each fiscal year of the Borrower, the change in unrestricted net assets, plus depreciation, plus amortization, plus Interest Expense, plus unrealized losses on financial instruments (including interest rate swap agreements), minus unrealized gains on financial instruments for the Borrower, as determined in accordance with GAAP.

"Interest Expense" shall mean, for a specified period, interest expense on Funded Debt, for such period.

"Lender" shall mean TowneBank, and its successors and assigns.

"Licenses" shall mean and includes, collectively, any and all licenses, building permits, operating permits, franchises, certifications, certificates, accreditations, consents and other authorizations and approvals by any Governmental Authority, now or hereafter existing for the acquisition, leasing, ownership and/or operation of any of the Borrower's properties.

"Long-Term Funded Debt" shall mean Funded Debt having an original maturity or repayment term of greater than one year or that is otherwise treated as long-term debt in accordance with GAAP.

"Material Adverse Change" shall mean any material adverse change in the condition, financial or otherwise, operations, properties, assets, or prospects of the Borrower or in its ability to meet its payment obligations to the Lender or to perform its other obligations under the Borrower Documents, as determined by the Lender in its sole discretion.

"Mortgaged Property" shall mean the real property and improvements covered by the Deed of Trust.

"Multiemployer Plan" shall mean a multiemployer plan (as defined in ERISA) to which the Borrower or any Commonly Controlled Entity, as appropriate, has or had an obligation to contribute.

"Note" shall mean the Borrower's promissory note, in the principal amount of the Bond, dated the date of its execution and delivery, and any authorized amendments, supplements or substitutions thereto or therefor.

"OFAC" shall mean the United States Department of the Treasury's Office of Foreign Assets Control or any successor thereto.

"Payment of the Bond" shall mean payment in full of the Bond and all other amounts due under the Note and this Agreement.

"Person" or "person" shall mean any natural person, firm, association, corporation, company, joint venture, trust, partnership, public body or other entity.

"Plan" shall mean any pension, profit sharing, savings, stock bonus or other deferred compensation plan which is subject to the requirements of ERISA, together with any related trusts.

"Prohibited Transaction" shall mean a "prohibited transaction" as defined in Section 406 of ERISA or Section 4975 of the Code.

"Reportable Event" shall mean a "reportable event" as defined in Title IV of ERISA.

"Restricted Gift" shall mean a gift, devise or bequest collected by the Borrower that is conditioned upon its use by the Borrower for (a) the acquisition, construction or equipping of the Financed Property or payment of the price thereof, or (b) the payment or prepayment, in whole or in part, of the Bond.

"Sanctioned Country" shall mean a country subject to the sanctions program identified on the list maintained by OFAC as published from time to time.

"Sanctioned Person" shall mean (a) a Person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC as published from time to time, or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a Person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

"Tax Compliance Certificate" shall mean the certificate dated the date of issuance of the Bond executed by the Borrower for compliance with the Code and the applicable regulations and revenue rulings thereunder relating to the issuance of the Bond.

"Tax-Exempt Rate" has the meaning assigned to it in Section 5.2(a).

"Taxable Period" shall mean the period of time between (a) the earliest date (which may be earlier than the date of a Determination of Taxability) that interest of the Bond to be includable in the gross income of the Lender for federal or Virginia income tax purposes as established by a Determination of Taxability and (b) the date of the Determination of Taxability.

"Taxable Rate" shall mean a per annum rate equal to the product of the Tax-Exempt Rate and the Taxable Rate Factor.

"Taxable Rate Factor" shall mean, on the applicable date of determination, an amount equal to (a) one divided by (b) one minus the highest marginal federal corporate income tax rate in effect as of such date, rounded upwards to the nearest one-hundredth percent.

"Taxes" shall mean all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, charges and levies and any prior liens (including federal tax liens) for the Taxes which are or may be levied, imposed or assessed upon the property of the Borrower or any part thereof, or any leases pertaining thereto, or upon the rents, issues, income or

profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.2. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the prepayment or calling for prepayment of the Bond shall not include or connote the Payment of the Bond at its stated maturity.

(c) Whenever the sense of this Agreement so requires, the masculine gender shall be deemed to include the feminine and the neuter gender and vice versa.

(d) Unless otherwise indicated, all references herein to particular articles or sections are references to articles or sections of this Agreement.

(e) The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(f) All accounting terms not otherwise defined herein have the respective meanings assigned to them in accordance with GAAP.

(g) If at any time any other change in GAAP would affect the computation of any covenant (including the computation of any financial covenant) and/or pricing grid set forth in this Agreement, the Borrower and Lender shall negotiate in good faith to amend such covenant and/or pricing grid to preserve the original intent in light of such change; provided, that, until so amended, (i) each such covenant and/or pricing grid shall continue to be computed in accordance with the application of GAAP prior to such change and (ii) the Borrower shall provide to Lender simultaneously with the delivery of each set of financial statements referred to in Section 5.3(a) of this Agreement a written reconciliation in form and substance reasonably satisfactory to Lender, between calculations of such covenant and/or pricing grid made before and after giving effect to such change in GAAP.

## **ARTICLE II REPRESENTATIONS**

**Section 2.1. Representations and Findings by Authority.** (a) The Authority makes the following representations and findings as the basis for its undertakings hereunder:

(i) The Authority is duly organized under the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(ii) The Authority has the power to enter into this Agreement and to carry out its obligations hereunder and to issue the Bond; by proper action the Authority has duly authorized the execution and delivery of this Agreement, the performance of its obligations



hereunder and the issuance of the Bond and, simultaneously with the execution and delivery of this Agreement, has duly issued and sold the Bond.

(iii) To the Authority's knowledge, it is not in violation of the Act. The execution and delivery by the Authority of this Agreement and the Bond and the compliance with the terms and conditions hereof and thereof will not conflict with the Act.

(iv) To the Authority's knowledge, no further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required to be obtained by the Authority in connection with the issuance and delivery of the Bond by the Authority, the execution or delivery of or compliance by the Authority with the terms and conditions of this Agreement, or the assignment by the Authority to the Lender of the Note.

(v) To the Authority's knowledge, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the Authority's knowledge, threatened against the Authority regarding (1) the organization or existence of the Authority, (2) its authority to execute or deliver this Agreement or the Bond or to assign the Note to the Lender, (3) the validity or enforceability of any such instruments or the transactions contemplated hereby or thereby, (4) the title of any officer of the Authority who executed such instruments, or (5) any authority or proceedings related to the execution or delivery of such instruments on behalf of the Authority, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(vi) The issuance of the Bond and the financing of the Plan of Refunding will serve the purposes of the Act.

(b) It is specifically understood and agreed that the Authority makes no representation, covenant or agreement as to the financial position or business condition of the Borrower and does not represent or warrant as to any statements, materials, representations or certifications furnished by the Borrower in connection with the sale of the Bond, or as to the correctness, completeness or accuracy thereof.

**Section 2.2. Representations by the Borrower.** The Borrower makes the following representations:

(a) *Status of Borrower.*

(i) The Borrower (A) is a nonstock corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, (B) has the corporate power to own its property and to carry on its operations as now being conducted, and (C) is duly qualified and in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its operations makes such qualification necessary.

(ii) The Borrower is recognized and operated exclusively for charitable, religious, and/or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in

Section 501(h) of the Code), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, all within the meaning of Section 501(c)(3) of the Code.

(iii) The Internal Revenue Service (the "Service") has determined that the Borrower is an organization described in Section 501(c)(3) of the Code. The Borrower has not received any indication or notice, written or verbal, from representatives of the Service to the effect that its exemption under Section 501(c)(3) of the Code has been modified, limited, revoked or superseded, or that the Service is considering modifying, limiting, revoking, or superseding, such exemption and the exemption of the Borrower under Section 501(c)(3) of the Code is still in full force and effect as of the date hereof. The Borrower is in compliance with the terms, conditions and limitations of the Service's determination. There has been no material change in the facts and circumstances represented to the Service as a basis for receiving, and which formed the basis on which the Service issued its determination relating to the Borrower's status (as an organization described in Section 501(c)(3) of the Code and as an organization which is not a "private foundation" as defined in Section 509 of the Code) of a nature or to a degree as would warrant any action by the Service to modify, limit, revoke, or supersede such determination.

(iv) No administrative or judicial proceedings are pending or, to the Borrower's knowledge, threatened which in any way may adversely affect the classification of the Borrower as an organization (A) described in Section 501(c)(3) of the Code which is exempt from federal income taxation under Section 501(a) of the Code (except for "unrelated business taxable income" within the meaning of Section 512(a) of the Code), and (B) which is not a "private foundation" as defined in Section 509 of the Code.

(v) The Borrower has not diverted a substantial part of the corpus of its assets or income for a purpose or purposes other than such purpose or purposes for which it is recognized and operated as described in paragraph (ii) above.

(vi) The Borrower is not a "private foundation" as defined in Section 509 of the Code.

(b) Authority. The Borrower has full power and authority to enter into and execute and deliver this Agreement and each of the Borrower Documents executed and delivered by the Borrower, and to incur and perform the obligations provided for therein and herein, all of which have been duly authorized by all proper and necessary corporate action by the Borrower. No consent or approval of any person or public authority or regulatory body (except those already obtained) is required as a condition to the validity or enforceability of this Agreement or any of the Borrower Documents and the performance by the Borrower of the Borrower's obligations under the Borrower Documents.

(c) Binding Agreements. This Agreement and each of the other Borrower Documents executed and delivered by the Borrower have been duly and properly executed by the Borrower, constitute the valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights

and remedies of creditors and secured parties, and general principles of equity regardless of whether applied in a proceeding in equity or at law.

(d) Litigation. Except as disclosed to the Lender in writing on the date of execution and delivery of this Agreement, there are no proceedings, actions or investigations pending or, so far as the Borrower knows, threatened before or by any court, arbitrator or any Governmental Authority which, in any one case or in the aggregate, if determined adversely to the interests of the Borrower, would result in a Material Adverse Change. There are no proceedings, actions or investigations pending, or so far as the Borrower knows, threatened before or by any court, arbitrator or any Governmental Authority regarding the ownership, operation or financing of any of the Financed Property or the Plan of Refunding.

(e) No Conflicting Agreements, Laws, etc. Neither the execution, delivery and performance of the terms of this Agreement or any of the other Borrower Documents executed and delivered by the Borrower nor the consummation of the transactions contemplated thereby will conflict with, violate or be prevented by (i) the Borrower's organizational documents or the terms of the instruments under which the Borrower was formed and exists, (ii) any existing mortgage, indenture, contract or agreement binding on the Borrower or affecting its property, or (iii) any provision of law, rule, regulation, decree, ordinance or order of court binding on the Borrower or affecting any of the Borrower's property.

(f) Financial Information, Liabilities, Liens. All financial information heretofore furnished to the Lender regarding the Borrower, including the Borrower's most recent Financial Statements, is complete and correct and fairly presents the financial position of the Borrower. As of the date of such financial information, there are no material liabilities, direct or indirect, fixed or contingent, of the Borrower except as reflected therein. Except as contemplated by this Agreement, there has been no Material Adverse Change in the financial condition or operations of the Borrower since the dates of such financial information (and to the Borrower's knowledge no such Material Adverse Change is pending or threatened), and the Borrower has not guaranteed the obligations of, or made any investment in or advances to, any company, individual, or other entity except as disclosed in such information. The Borrower has good and marketable title to all of the Financed Property.

(g) Tax Returns. The Borrower has filed all returns, reports and forms for Taxes, including withholding taxes, as and when due. No tax liability has been asserted by the Service or any state or local authority against the Borrower for Taxes.

(h) Licenses.

(i) The Borrower has obtained or will obtain as required, and there are currently, or will be when required, in full force and effect, all Licenses from any and all Governmental Authorities that would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Borrower of the Borrower's obligations under the Borrower Documents.

(ii) To the best knowledge of the Borrower, there has been no breach of any condition to the issuance, maintenance, renewal and/or continuance of any of the Licenses,

and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a breach. To the best knowledge of the Borrower, all fees, charges and other expenses required in connection with the Licenses have been paid, all information has been provided and all material conditions precedent to the issuance, maintenance, renewal and continuance of all of the Licenses have been complied with.

(iii) There is no pending, or to the best of the knowledge of the Borrower, threatened, and the Borrower has received no notice of any, intended, revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any Licenses by any Governmental Authority.

(i) No Defaults.

(i) No Event of Default has occurred and is continuing.

(ii) The Borrower is not in default under any obligation under any existing mortgage, indenture, contract or agreement binding on it or affecting its property in any respect that could result in a Material Adverse Change.

(iii) To the best of the knowledge of the Borrower, the Borrower is not in violation of any provision of law or order of court binding on the Borrower or affecting any of the Borrower's property (including, without limitation, any such laws relating to employment practices or to environmental, occupational and health standards and controls) or order, writ, injunction, decree or demand of any court, arbitrator, or any Governmental Authority affecting the Borrower or any of its properties, the violation of which, considered in the aggregate, could result in a Material Adverse Change.

(j) Compliance with Law. The Borrower (i) is in compliance with all Governmental Requirements to which it is subject, the failure to comply with which could constitute a Material Adverse Change, and (ii) has not received any notice or is not the subject of any investigation to the effect that the operations of the Borrower are not in material compliance with any Governmental Requirements.

(k) Insurance. The Borrower maintains and has in full force and effect, with financially sound and reputable insurers, insurance for its properties and business, and covering such risks, liabilities, casualties and contingencies, and in such types and, amounts as complies with this Agreement.

(l) Accurate and Complete Disclosure. Except for the Note and as disclosed in the Financial Statements referred to in Section 5.3(a)(i), there are no liabilities, including, without limitation, judgments, direct or indirect, of the Borrower that would have a Material Adverse Change. The Financial Statements referred to in Section 5.3(a)(i) and the statements, reports or certificates furnished by the Borrower to the Lender in connection with the Borrower Documents (i) do not contain any untrue statement of a material fact and (ii) when taken in their entirety, do not omit any material fact necessary to make the statements contained therein not misleading in any material respects. There is no fact known to the Borrower which the Borrower has not disclosed to the Lender in writing prior to the date of this Agreement for the transactions contemplated by the Borrower Documents which materially and adversely affects or in the future

could, in the reasonable opinion of the Borrower, materially adversely affect the condition, financial or otherwise, results of operations or assets of the Borrower.

(m) *ERISA*. (i) Any Plan established and maintained by the Borrower or any Commonly Controlled Entity is a qualifying plan under the applicable requirements of ERISA, and there is no current matter which would materially adversely affect the qualified tax-exempt status of any Plan; (ii) neither the Borrower nor any Commonly Controlled Entity has engaged in or is engaging in any Prohibited Transaction or has incurred any Accumulated Funding Deficiency in connection with any such Plan, whether or not waived, and no Reportable Event has occurred regarding any Plan subject to the minimum funding requirements of Section 412 of the Code; (iii) no Multiemployer Plan has "terminated", as that term is defined in ERISA; (iv) neither the Borrower nor any Commonly Controlled Entity has "withdrawn" or "partially withdrawn" from any Multiemployer Plan; and (v) no Multiemployer Plan is in "reorganization" nor has notice been received from the administrator of any Multiemployer Plan that any such Plan will be placed in "reorganization".

(n) *Labor Matters*. The Borrower is not subject to collective bargaining agreements. There are no strikes or other material labor disputes pending or, to the Borrower's knowledge, threatened against the Borrower. To the extent applicable, the Borrower has complied in all material respects with the Fair Labor Standards Act.

(o) *Corporate Information*. The Borrower represents and warrants that the information about itself previously provided to the Lender is complete and correct in all material respects.

(p) *Funded Debt*. Except for the Borrower's obligations under the Borrower Documents and except as otherwise set forth in the Financial Statements referred to in Section 5.3(a)(i), the Borrower has no Funded Debt.

(q) *Restricted Gifts*. The Borrower has not collected, and does not expect to collect, Restricted Gifts, that exceed, in the aggregate, the difference between (i) the anticipated aggregate cost of the acquisition, construction and equipping of the Financed Property and the costs of issuance, and (ii) the original principal amount of the Bond plus the anticipated earnings from the investment of the proceeds thereof.

(r) *OFAC Matters*. The Borrower (i) is not a Sanctioned Person and (ii) does not do business in a Sanctioned Country or with a Sanctioned Person in violation of the economic sanctions of the United States administered by OFAC. The proceeds of the Bond will not be used to fund any operation in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country.

### **ARTICLE III USE OF BOND PROCEEDS; CONDITIONS TO PURCHASE OF BOND; APPLICATION OF BOND PROCEEDS**

**Section 3.1. Conditions Precedent to the Purchase of Bond and Disbursement of Proceeds**. The Authority agrees to issue, sell and deliver the Bond to the Lender and to use the proceeds of the Bond for the purposes set forth in the Recitals hereto; the Borrower agrees to

execute and deliver the Borrower Documents; and the Lender agrees to purchase the Bond, all upon the terms and conditions set forth herein. The Lender will purchase the Bond only upon the fulfillment of the following conditions precedent:

(a) The Bond Resolution and all other necessary governmental approvals shall have been duly adopted in form and substance satisfactory to the Lender. A certified copy of the Bond Resolution and all other necessary governmental approvals, and executed counterparts of the Borrower Documents in form and substance satisfactory to the Lender, shall have been delivered to the Lender.

(b) The Lender shall have received (i) the Bond in substantially the form of Exhibit C attached hereto, (ii) the Note in substantially the form of Exhibit A attached hereto, and (iii) the other executed Bond Documents.

(c) The Lender shall have received from Bond Counsel, a favorable written opinion that under existing statutes, regulations and rulings, the interest on the Bond is exempt from gross income for Federal income tax purposes and exempt from income taxation by the Commonwealth of Virginia.

(d) The Lender shall have received from McGuireWoods LLP, Richmond, Virginia, as counsel for the Borrower, a satisfactory written opinion, subject to customary qualifications and exceptions, relating to the corporate existence of the Borrower, the status of the Borrower as an organization described in Section 501(c)(3) of the Code, the power of the Borrower to enter into the Borrower Documents, the enforceability of such Borrower Documents, the validity and security of the Note, and such other matters as the Lender may request.

(e) The Lender shall have received a written opinion of counsel to the Authority in form and substance satisfactory to the Lender.

(f) The Lender shall have received a copy of the Borrower's articles of incorporation, bylaws, certificate of good standing, Section 501(c)(3) status determination letter and Board of Trustees resolutions authorizing the execution of all instruments and agreements securing the Bond, and any existing amendments thereto.

(g) The Lender shall have received receipts evidencing the proper recording of the Deed of Trust and financing statements in all places as shall be necessary to perfect the security interests granted in the Deed of Trust.

(h) The Lender shall have received evidence regarding the status of title to personal property owned by the Borrower, including information regarding liens or other encumbrances thereon, which evidence may be in the form of a UCC search conducted by a firm or attorney acceptable to the Lender.

(i) The Lender's counsel, the Borrower's counsel and Bond Counsel shall have received their respective legal fees and costs.

(j) The Lender shall have received such other documents or certificates as it may reasonably require.

(k) The Lender shall have received evidence that all insurance required by Section 5.1 or by the Deed of Trust is in full force and effect.

(l) The Lender shall have received a final title insurance policy, or a title insurance commitment marked up by the title insurance company in a manner satisfactory to the Lender, as required by Section 5.1(a).

(m) The Lender shall have received a certificate of a person selected by the Borrower and knowledgeable in the insurance business who is not an officer, director or employee of the Borrower reciting that the Borrower is in compliance with all insurance requirements set forth in Section 5.1.

(n) The Lender shall have received an appraisal of the Mortgaged Property, performed by an appraiser approved and engaged by the Lender, which indicates an aggregate value of at least \$9,700,000.

(o) The Lender shall have received a current ALTA survey of the Mortgaged Property sufficient to provide for customary survey-related endorsements to the title insurance policy required herein.

(p) The Lender shall have received documentation and other information required by bank regulatory authorities or reasonably requested by the Lender under or in respect of applicable "know your customer" and anti-money laundering legal requirements including the Patriot Act and a Beneficial Ownership Certification in relation to the Borrower.

(q) The representations of the Borrower set forth in Section 2.2 shall be true and correct.

**Section 3.2. Disbursement of Proceeds.** If the conditions provided in Section 3.1 have been satisfied or waived, on the Closing Date, the Lender will cause the proceeds of the Bond (a total of \$ \_\_\_\_\_), other than \$ \_\_\_\_\_ of such amount, which shall be retained by the Lender for payment of the Lender's commitment fee, to be disbursed as follows:

(a) The Lender will transfer \$ \_\_\_\_\_ to Truist Bank to redeem the outstanding principal amount of the Authority's Revenue Bond (Norfolk Collegiate School Project), Series 2015A;

(b) The Lender will transfer \$ \_\_\_\_\_ to Truist Bank to redeem the outstanding principal amount of the Authority's Revenue Bond (Norfolk Collegiate School Project), Series 2015B;

(c) The Lender will transfer \$ \_\_\_\_\_ to Truist Bank to redeem the outstanding principal amount of the Authority's Refunding Revenue Bond, (Norfolk Collegiate School), Series 2013; and

(d) The Lender will transfer \$ \_\_\_\_\_ of the proceeds of the Bond to the Borrower to be used by the Borrower to pay the Costs of Issuance relating to the Bond.

**Section 3.3. Limitation of Authority's Liability.** Anything contained in this Agreement to the contrary notwithstanding, any obligation for the payment of money that the Authority may incur under the Bond or in connection with the issuance of the Bond shall not be deemed to constitute a debt, liability or general obligation of the Authority or a pledge of the faith and credit of the Commonwealth of Virginia or any other political subdivision thereof, but shall be payable solely from the revenues and receipts derived by the Authority from or in connection with this Agreement, including payments received under the Note. The Authority has no taxing power.

**Section 3.4. Disclaimer of Warranties; Limitation of Lender's Liability.**

(a) THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE FINANCED PROPERTY, except that the Financed Property is free from encumbrances done, made or knowingly suffered by the Authority or anyone claiming by, through or under the Authority, except for those created by or in connection with this Agreement. THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE FINANCED PROPERTY OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BOND WILL PAY THE COSTS TO BE INCURRED IN CONNECTION THEREWITH.

(b) Nothing contained in this Agreement or any other Bond Document shall constitute or create any duty on or warranty by the Lender regarding (i) the quality or condition of the Financed Property, or (ii) the suitability of the Financed Property for its intended purposes. The Borrower (1) acknowledges that the Borrower has not relied and will not rely on any experience, awareness or expertise of the Lender regarding such matters, and (2) to the extent permitted by law, shall indemnify, hold harmless, and defend the Lender from any costs, expenses, damages, judgments, or liabilities, including without limitation, reasonable attorneys' fees, arbitration fees, and expert witness fees, arising from or connected with such matters; provided that the Borrower is not obligated to indemnify the Lender for any costs, expenses, damages, judgments or liabilities incurred solely as a result of the Lender's gross negligence or willful misconduct.

**Section 3.5. Sale of Financed Property.** The Authority hereby sells, transfers and conveys the Financed Property to the Borrower and the Borrower hereby purchases and accepts the same from the Authority by the issuance and delivery of the Note to the Authority in payment for the Financed Property simultaneously with the execution and delivery of this Agreement.

**ARTICLE IV  
LOAN OF BOND PROCEEDS; PAYMENTS ON NOTE**

**Section 4.1. Loan by the Authority; Payments by the Borrower.**

(a) The Authority agrees to cause the proceeds of the Bond to be loaned to the Borrower for the purposes set forth in this Agreement, such loan to be evidenced by the Note.

(b) The Borrower shall make all payments required by the Note, this Agreement and the other Borrower Documents as and when they become due.



(c) The Borrower agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with:

(i) the authorization, issuance and sale of the Bond;

(ii) prepayment or redemption of the Bond;

(iii) administrative costs and expenses of the Authority, including the annual administrative fee payable to the Economic Development Authority of the City of Norfolk on each anniversary of the Closing Date (equal to .00125 times the aggregate outstanding principal balance of the Bond on each such payment date), and the fees of attorneys, accountants, or consultants paid or incurred by the Authority by reason of the Bond being outstanding or pursuant to requirements of the Bond Documents; and

(iv) such other fees and expenses of the Authority attributable to the Authority's refinancing of the Financed Property.

**Section 4.2. Agreement to Assign Note.** The Authority shall assign the Note, without recourse, to the Lender.

**Section 4.3. Obligations of the Borrower Unconditional.** The obligations of the Borrower to make the payments on the Note and to perform and observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Authority or the Lender. The Borrower may, after giving to the Authority and the Lender ten (10) days' notice of its intention to do so, at its own expense and in its own name, or in the name of the Authority to the extent procedurally required, prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems reasonably necessary to secure or protect any of its rights hereunder. In the event the Borrower takes any such action, the Authority shall cooperate fully with the Borrower and shall take all necessary action to substitute the Borrower for the Authority in such action or proceeding if the Borrower shall so request. The parties hereby acknowledge and agree that the Borrower's funds subject to donor restrictions (as designated and identified in accordance with GAAP in the Financial Statements) may not be applied to the payment of the Note or other payments hereunder except as permitted by the instruments governing such restricted funds.

## ARTICLE V SPECIAL COVENANTS

### **Section 5.1. Insurance Required.**

(a) *Title Insurance.* The Borrower shall provide at Closing, from a title insurance company acceptable to the Lender, in respect of the Lender, a mortgagee's title insurance policy or marked up unconditional binder for such insurance, dated the Closing Date. Such policy shall (i) be in an amount equal to the amount of the Bond; (ii) insure that the Deed of Trust insured thereby creates a valid first lien on the property covered by the Deed of Trust free and clear of all defects and encumbrances (except those acceptable to the Lender); (iii) name the Lender as the insured party thereunder; (iv) be in the form of ALTA Loan Policy 2006 or another form approved

by the Lender; and (v) contain such endorsements and effective coverage as the Lender may reasonably request, each in form and substance acceptable to the Lender, including, without limitation the following ALTA forms: 3.1-06; 8.2-06; 9-06; 17-06; 17.2-06; 18-06; 19.1-06; 22-06; 25-06; 26-06; and 39-06.

(b) Property Insurance. The Borrower shall maintain a "causes of loss-special form" property insurance policy, issued by an insurance company acceptable to the Lender, in an amount equal to the total replacement value of the Mortgaged Property. Such policy shall (i) contain a standard mortgagee clause listing the Lender as mortgagee and (ii) require 30 days' prior written notice to the Lender before any modification or termination thereof, provided that such notice period shall be 10 days in the case of non-payment of premiums.

(c) Flood Insurance. If any part of the Mortgaged Property is located in a "special flood hazard" area within the meaning of the Federal Flood Disaster Protection Act of 1973, the Borrower shall maintain a flood insurance policy satisfactory to the Lender and naming the Lender as insured party.

(d) General Liability Insurance. The Borrower shall maintain a commercial general liability insurance policy, issued by an insurance company acceptable to the Lender, with limits not less than \$2,000,000 per accident or occurrence and \$5,000,000 in the aggregate for personal injury and injury to property. Such policy shall provide primary and noncontributing liability coverage and shall name the Lender as an additional insured.

(e) Worker's Compensation Insurance. The Borrower shall maintain worker's compensation insurance with statutory coverage limits.

**Section 5.2. Yield Protection Provisions.** Interest Rate on the Bond; Determination of Taxability; and Yield Maintenance Provisions.

(a) The Bond shall bear interest at a per annum rate equal to (a) prior to a Determination of Taxability and in the absence of an Event of Default, three and six-hundredths percent (3.06%) (the "Tax-Exempt Rate"), (b) after a Determination of Taxability, the Taxable Rate or (c) so long as an Event of Default is continuing, the Default Rate. Upon the occurrence of a Determination of Taxability the Borrower shall pay to the Lender (i) an additional amount equal to the difference between (A) the amount of interest paid on the Bond during the Taxable Period and (B) the amount of interest that would have been paid on the Bond during such Taxable Period had the Bond borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties or overdue interest and additions to tax owed by the Lender as a result of the Determination of Taxability.

(b) So long as no Determination of Taxability shall have occurred, if at any time, or from time to time, there is an increase or decrease in the maximum marginal federal income tax rate applicable to the registered owner of the Bond, then the rate payable under the Bond shall be adjusted, effective as of the effective date of the change, to a new rate determined by multiplying the Tax-Exempt Rate then in effect by a fraction, the denominator of which is 100% minus the maximum marginal Federal income tax rate applicable to such registered owner of the Bond on the date of issuance of the Bond, and the numerator of which is 100% minus the maximum

marginal federal income tax rate applicable to such registered owner of the Bond after the change in such rate. Anything contained in this paragraph to the contrary notwithstanding, the rate payable under the Bond shall not be readjusted solely by reason of the transfer of the Bond to a different registered owner.

(c) In the event that after the date of the execution hereof the application, enactment or adoption of, or any change in, any law, rule, regulation, treaty, guideline, accounting principle or directive, or the occurrence of the effective date of any law, rule, regulation, treaty, guideline, accounting principle or directive, or any provision thereof enacted or adopted on the date of the execution hereof but which has not yet become effective, or the application, interpretation or enforcement of any of the foregoing by any court, central bank, administrative or other Governmental Authority charged with the authority thereof (whether or not having the force of law) shall either:

(i) limit the deductibility of interest on funds obtained by the Lender to pay any of its liabilities or subject the Lender to any tax, duty, charge, deduction or withholding on or with respect to payments relating to the Bond, or any amount paid or to be paid by the Lender hereunder (other than any tax measured by or based upon the overall net income of the Lender imposed by any jurisdiction having control over the Lender);

(ii) impose, modify, require, make or deem applicable to the Lender, any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans or commitments by, a domestic office of the Lender;

(iii) change the basis of taxation of payments due the Lender under this Agreement (or similar document) or Bond (other than by a change in taxation of the overall net income of the Lender); or

(iv) impose upon the Lender, any other condition with respect to any amount paid or payable to or by the Lender, or with respect to this Agreement (or similar document), or the Bond;

and the result of any of the foregoing shall be to increase the cost to the Lender, of extending, issuing or maintaining any agreement, commitment, or other arrangement to extend credit or other financial accommodations or to purchase, maintain or carry obligations of the Borrower ("Arrangements") or to reduce any amount (or the effective return on any amount) received or receivable by the Lender in connection with any such Arrangements (which increase in cost or reduction in yield shall be the result of the Lender's reasonable allocation, in a nondiscriminatory manner among borrowers having obligations to the Lender similar to those of the Borrower, of the aggregate of such cost increases or yield reductions resulting from such event), then, within sixty (60) days of written demand by the Lender, the Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts which shall be sufficient to compensate the Lender for all such increased costs or reductions in yield. The Lender shall submit to the Borrower, at or prior to the making of each such demand, a certificate setting forth in reasonable detail such increased costs or yield reduction incurred by the Lender as a result of any of the foregoing, which certificate shall be conclusive, absent manifest error, as against all other persons or entities,

including, without limitation, the Borrower.

(d) If the Lender shall have determined that any Change in Law (as defined below) affecting the Lender regarding capital requirements has or would have the effect of reducing the rate of return on capital of the Lender as a consequence of its obligations hereunder or its purchase or holding of the Bond to a level below that which the Lender could have achieved but for such Change in Law (taking into consideration the policies of the Lender with respect to capital adequacy) by an amount deemed by the Lender to be material, then within thirty (30) days after demand by the Lender, the Borrower shall pay to the Lender from time to time, as specified by the Lender, such additional amount or amounts as will compensate the Lender for such reduction from the date of such adoption, change or compliance with respect to such law, rule, regulation, guideline, request or directive, together with interest on each such amount from the date payment is demanded until the earlier of the date of payment in full thereof or the date on which such payment is due, at the interest rate payable on the Bond.

(e) If such costs are to be incurred on a continuing basis and the Borrower shall be so notified by the Lender in writing as to the amount thereof, then such costs shall be payable by the Borrower to the Lender on each principal and interest payment date to the extent theretofore incurred.

(f) The obligations of the Borrower under this Section shall survive the termination of this Agreement (or similar document) and the payment in full of the Bond and the other obligations of the Borrower hereunder.

(g) For purposes of this Section, reference to the Lender shall be deemed to include the Lender's parent companies.

(h) For the purposes of this section, (i) the term "Change in the Law" shall include any changes in the Code, including any administrative or judicial interpretations thereof, made subsequent to the date of this commitment letter, regardless of the effective date of such change, (ii) the term "Corporate Tax Rate" shall mean the highest marginal statutory rate of Federal income tax generally imposed on corporations (or, if as a result of a change in the Code, the rates of general income tax generally imposed on corporations shall not be applicable to the registered owner of the Bond, the highest marginal statutory rate of Federal income tax which could apply to the registered owner of the Bond), and (iii) all computations are made on the assumption that Federal taxes are payable by the registered owner of the Bond at the Corporate Tax Rate (after taking into account deductions attributable to the imposition of state and local taxes) and that state and local taxes are payable by the registered owner of the Bond at the highest marginal statutory rates then applicable to banking corporations without allocation to any other jurisdiction.

(i) All adjustments of the interest rate on the Bond made by the Lender under the terms of the Bond or this Section shall be binding on the Authority and the Borrower absent manifest error. The Lender agrees to give the Borrower written notice of any demand for payment to be made to the Lender under the Bond and this Section at least ninety (90) days prior to the demanded initial payment date.

**Section 5.3. Affirmative Covenants of the Borrower.** Until the termination of this Agreement, unless the prior written consent to do otherwise is obtained from the Lender, the Borrower agrees with the Lender as follows:

(a) Reporting Requirements. Furnish to the Lender:

(i) Annual Financial Statements. The Borrower shall furnish to the Lender as soon as available, and in any event within 150 days after the close of each fiscal year of the Borrower, the complete Financial Statements of the Borrower, including the balance sheet as of the end of such fiscal year and the related statements of revenues and expenses, changes in fund balance and cash flows of general funds for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail, audited and prepared by an independent certified public accountant in accordance with GAAP, consistently applied and fairly presenting the financial condition of the Borrower as of the end of such fiscal year, and containing the unqualified opinion of such accountant. The Borrower shall provide to the Lender, upon request, such other information regarding the affairs, condition or operations, financial or otherwise of the Borrower that is customarily prepared by the Borrower in the ordinary course of operations.

(ii) Quarterly Reports. The Borrower shall furnish to the Lender as soon as available, and in any event within 45 days after the end of each of fiscal quarter of the Borrower, unaudited, internally prepared financial statements, including the balance sheet as of the end of such fiscal quarter and the related statements of revenues and expenses, changes in fund balance and cash flows of general funds for such fiscal quarter, certified as true and correct in all respects by the chief financial officer of the Borrower.

(iii) Certificate of Compliance. Simultaneously with the delivery of each set of Financial Statements referred to in Section 5.3(a)(i), the Borrower shall furnish to the Lender a certificate of an Authorized Representative of the Borrower in the form attached hereto as Exhibit B, (A) stating whether there exists on the date of such certificate any Event of Default and, if any Event of Default then exists, setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto, and (B) for the certificate for the Borrower's fiscal year ending June 30, 2022 and each certificate due thereafter, certifying that the Borrower is in compliance, in all material respects, with the covenants contained in Section 5.3(k) and Section 5.3(l) and containing a detailed computation of the Debt Service Coverage Ratio for the period reported.

(b) Conduct of Business and Maintenance of Existence. The Borrower shall maintain its corporate existence in good standing in the jurisdiction in which it is incorporated and in each other jurisdiction where it is required to register or qualify if the failure to do so in such other jurisdiction might result in a Material Adverse Change.

(c) Compliance with Governmental Requirements. The Borrower shall comply with all applicable Governmental Requirements and observe the valid requirements of all Governmental Authorities, the noncompliance with or the nonobservance of which might result in a Material Adverse Change.

(d) Books and Records, Inspection. The Borrower shall maintain (i) a standard system of accounting in accordance with GAAP, and (ii) proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its properties, operations and activities. The Borrower shall permit authorized representatives of the Lender to visit and inspect the Borrower's offices to review, audit, check and inspect the Borrower's other books of record at any time upon reasonable notice and to make abstracts and photocopies thereof, and to discuss the affairs, finances and accounts of the Borrower with the officers, employees and other representatives of the Borrower and the Borrower's accountants, all at such times during normal operational hours and other reasonable times and as often as the Lender may reasonably request.

(e) Maintenance of Properties. The Borrower will at all times do or cause to be done all things necessary to preserve and to keep in full force and effect its material franchises, leases of real and personal property and permits which are necessary for the orderly continuance of its operations.

(f) Taxes and Claims. The Borrower will at all times pay and discharge, or cause to be paid and discharged all Taxes imposed upon it or its taxable income or properties prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any of its properties. The Borrower shall have the right to contest the validity of any such Taxes by timely and appropriate proceedings, provided that the Borrower shall (i) give the Lender written notice of its intention to contest, (ii) diligently prosecute such contest, (iii) at all times effectively stay or prevent any official or judicial sale of any of its properties or any part thereof by reason of nonpayment of any such Taxes and (iv) establish reasonable reserves for such liabilities being contested if the Lender reasonably determines such reserves to be necessary.

(g) Payment of Funded Debt. The Borrower will make full and timely payment of the principal of and interest on all of its Funded Debt, whether now existing or hereafter arising, and comply in all material respects with all covenants and agreements set forth in instruments evidencing, securing or governing such Funded Debt, unless the amount or validity is contested in good faith by the Borrower in appropriate proceedings; provided, however, that the Borrower shall (i) give the Lender prior written notice of its intention to contest, (ii) diligently prosecute such contest and (iii) establish reserves for such liabilities being contested if the Lender reasonably determines such reserves to be necessary.

(h) Use of Financed Property. The Borrower shall use the Financed Property, or cause the same to be used, only for any use authorized by the Act and in accordance with the Tax Compliance Certificate.

(i) Notification of Events of Default and Adverse Developments. The Borrower shall promptly notify the Lender upon obtaining knowledge of the occurrence of:

- (i) any Event of Default;
- (ii) any litigation instituted against the Borrower or the entry of any judgment where the claims against the Borrower exceed \$500,000 and are not covered by insurance or bonded to the satisfaction of the Lender;

(iii) any litigation threatened against the Borrower where the claims against the Borrower, if adversely decided, could result in a Material Adverse Change;

(iv) any event, development or circumstance whereby the Financial Statements furnished hereunder fail in any material respect to present fairly, in accordance with GAAP, the financial condition and operational results of the Borrower;

(v) any judicial, administrative or arbitral proceeding pending against the Borrower and any judicial or administrative proceeding actually known by the Borrower to be threatened against it which, if adversely decided, could result in a Material Adverse Change;

(vi) the receipt by the Borrower of any notice, claim or demand from any Governmental Authority which alleges that the Borrower is in violation of any of the terms of, or has failed to comply with any applicable laws regulating its operation and activities, for which the alleged violation or failure, if true, could be expected to result in a Material Adverse Change; and

(vii) any other development in the operations, activities or affairs of the Borrower which may result in a Material Adverse Change;

in each case describing in detail satisfactory to the Lender the nature thereof and the action the Borrower proposes to take with respect thereto.

(j) Certifications, Accreditations and Licenses. The Borrower will maintain all current and/or required certifications, accreditations and Licenses.

(k) Debt Service Coverage Ratio. The Borrower shall maintain a minimum annual Debt Service Coverage Ratio of 1.10 tested annually as of the close of each fiscal year of the Borrower, commencing with the Borrower's fiscal year ending June 30, 2022.

(l) Liquidity Covenant. The Days Cash on Hand of the Borrower shall not be less than 90 days. Compliance will be tested and enforced only annually as of each June 30, commencing June 30, 2022, on the basis of the Borrower's audited Financial Statements provided to the Lender for each fiscal year ending June 30.

**Section 5.4. Negative Covenants of the Borrower**. Until the termination of this Agreement, without the prior written consent of the Lender, the Borrower agrees with the Lender as follows:

(a) Sale of Assets; Loans. The Borrower will not (i) sell, lease, transfer or otherwise dispose of all or any of its property or assets (including, without limitation, any cash or investments), whether now owned or hereafter acquired; or (ii) have outstanding any loans or advances to or otherwise extend credit to any person, firm, corporation or other entity, except (1) in the ordinary course of business, (2) upon fair and reasonable terms or in return for other assets or property of equal or greater value, (3) for any furniture, fixtures or equipment the Borrower reasonably determines have become obsolete or worn out and are no longer necessary for the ordinary conduct of the Borrower's business, or (4) if the Borrower delivers to the Lender a certificate signed by an Authorized Representative certifying that the Borrower would have complied with the covenants set forth in Section 5.3(k) and Section 5.3(l) as if such disposition or

loan had occurred as of the end of the most recent fiscal year for which Financial Statements are available. Any loan shall be treated as a transfer of all of the money loaned for purposes of the certificate referenced in the preceding sentence.

(b) Fundamental Changes.

(i) The Borrower shall not sell or transfer any beneficial interest in the Borrower, or dissolve or otherwise dispose of all or substantially all of its assets, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated under the laws of the United States of America or one of the states thereof) or permit one or more other domestic corporations to consolidate with or merge into it, unless:

(1) the consolidation, merger, transfer, sale or assignment would not give rise to an Event of Default under this Agreement;

(2) the surviving, resulting or transferee corporation or governmental unit:

(A) is a "501(c)(3) organization" described in Section 145 of the Code or is a "governmental unit" within the meaning of Section 141(b)(6) of the Code; provided however, that the surviving, resulting or transferee corporation or governmental unit need not qualify as a 501(c)(3) organization or governmental unit if the Lender has received an opinion of bond counsel that such action will not adversely affect the exclusion of interest on the Bond from gross income for federal income tax purposes; and

(B) has the power to assume and does assume in writing all of the obligations of the Borrower herein; and

(C) is (1) a Virginia corporation, (2) a political subdivision of the Commonwealth of Virginia, (3) qualified to do business in the Commonwealth of Virginia or (4) files with the Lender a consent to service of process reasonably acceptable to the Lender.

(ii) Except in connection with a transaction permitted by subpart (i), the Borrower shall not (1) change its name as it appears in official filings in the state of its incorporation or organization, (2) change its chief executive office or principal place of business, (3) change the type of entity that it is, (4) change its organization identification number, if any, issued by its state of incorporation or other organization, or (5) change its state of incorporation or organization or incorporate or organize in any additional jurisdictions, in each case without at least thirty (30) days' prior written notice to the Lender and after the Lender's written acknowledgment that any reasonable action requested by the Lender in connection therewith, has been completed or taken, and provided that any such new location shall be in the continental United States. Without limiting the foregoing, the Borrower shall maintain its corporate existence in good standing in the jurisdiction in which it is incorporated and in each jurisdiction where it is required



to register or qualify to do business except where the failure to qualify will not result in a Material Adverse Change.

(iii) The Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably related thereto.

(c) Additional Funded Debt. The Borrower shall not issue, incur, suffer to exist, assume or guarantee any additional Funded Debt except for:

(i) Funded Debt existing as of the Closing Date;

(ii) extensions, renewals, replacements or refundings of any Funded Debt existing as of the Closing Date, so long as the Borrower does not (A) increase the outstanding principal amount thereof, (B) shorten the maturity or the average weighted maturity of such Funded Debt, (C) shorten the amortization of the outstanding principal balance of such Funded Debt or (D) change the collateral, if any, securing such Funded Debt; or

(iii) Funded Debt incurred to the extent that the Borrower would have had a Debt Service Coverage Ratio of at least 1.25 to 1.00 if the Funded Debt were incurred in the most-recently completed fiscal year for which Financial Statements are available.

(d) Accounting Method. The Borrower shall not change the method of accounting employed in the preparation of any Financial Statements furnished by the Borrower to the Lender under the provisions of Section 5.3(a) above or any internally prepared financial statements, unless required to conform to GAAP and on the condition that the Borrower's accountants shall furnish such information as the Lender may request to reconcile the changes with the Borrower's prior Financial Statements or any internally prepared financial statements.

(e) Fiscal Year. The Borrower shall not change its fiscal year.

(f) Charter Amendments. The Borrower shall not materially amend or terminate its articles of incorporation or bylaws.

(g) Affiliates. The Borrower shall not enter into or participate in any transaction with an affiliate or subsidiary except on terms and at rates no more favorable than those which would have prevailed in an arm's length transaction between unrelated third parties.

(h) Sale and Leaseback Transactions. The Borrower shall not sell or transfer any property to concurrently or subsequently lease as lessee such or similar property.

(i) ERISA Compliance. The Borrower shall not (i) restate or amend any Plan established and maintained by the Borrower or any Commonly Controlled Entity in a manner designed to disqualify such Plan under the applicable requirements of the Code; (ii) permit any officers or members of the Borrower or any Commonly Controlled Entity to materially adversely affect the qualified tax-exempt status of any Plan of the Borrower or any Commonly Controlled Entity; (iii) engage in or permit any Commonly Controlled Entity to engage in any Prohibited Transaction; (iv) incur or permit any Commonly Controlled Entity to incur any Accumulated Funding Deficiency, whether or not waived, in connection with any Plan; (v) take or permit any

Commonly Controlled Entity to take any action or fail to take any action which causes a termination of any Plan in a manner which could result in the imposition of a lien on the property of the Borrower or any Commonly Controlled Entity pursuant to Section 4068 of ERISA; (vi) fail to notify the Lender that notice has been received of a termination of any Multiemployer Plan to which the Borrower or any Commonly Controlled Entity has an obligation to contribute; (vii) incur or permit any Commonly Controlled Entity to incur a complete or partial withdrawal from any Multiemployer Plan to which the Borrower or any Commonly Controlled Entity has an obligation to contribute; or (viii) fail to notify the Lender that notice has been received from the administrator of any Multiemployer Plan to which the Borrower or any Commonly Controlled Entity has an obligation to contribute that any such plan will be placed in "reorganization."

(j) 501(c)(3) Status. The Borrower shall not perform any act or enter into any agreement that shall cause any revocation or adverse modification of its status as an organization described in Section 501(c)(3) of the Code, or carry on or permit to be carried on in the facilities of the Borrower or permit such facilities to be used in or for any trade or business the conduct of which is not substantially related to the exercise or performance by the Borrower of the purposes or functions constituting the basis for its exemption under Section 501(c)(3) of the Code if such use of such facilities would result in the loss of the Borrower's exempt status under Section 501(c)(3) of the Code.

**Section 5.5. Special Indemnity**. The Borrower hereby agrees to indemnify and hold the Lender and the Authority harmless from any costs, taxes, losses, assessments, charges, interest, levies, claims or fees (including legal fees) of any kind or character which may arise due to (a) the invalidity of the Bond or (b) the failure of the interest on the Bond to be excludible from the gross income of the holders thereof for purposes of federal income taxation pursuant to Section 103 of the Code.

**Section 5.6. Indemnification of Lender and Authority**. In addition to all amounts payable hereunder, the Borrower shall protect, indemnify, and save harmless the Lender and its directors, officers, employees, attorneys and agents and the Authority and its directors, officers, employees and agents, against and from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Lender and its directors, officers, agents or employees, or the Authority and its directors, officers, agents, attorneys or employees, by reason of (i) any accident, injury (including death) or damage to any person or property, however caused (other than the gross negligence or willful misconduct of the Lender or the Authority), resulting from, connected with or growing out of any act of commission or omission of the Borrower, or any officers, employees, agents, assignees, contractors or subcontractors of the Borrower, (ii) any liability relating to the issuance and sale of the Bond or the Note that may arise under federal or state securities laws, or (iii) any untrue statement of a material fact or any omission to state a material fact necessary to make any statements made, in light of the circumstances under which they were made, not misleading made in connection with the sale of the Bond (other than information concerning the Lender or the Authority), and, in any such case, regardless of whether such liabilities, suits, actions, claims, demands, damages, losses, expenses and costs are against the Lender or its directors, officers, agents or employees, or the Authority and its directors, officers, agents, attorneys or employees, or be against legal entities, officers, agents, or other persons to whom the Lender or its directors, officers, agents or employees or the Authority and its directors, officers, agents, attorneys or

employees, become liable therefor; provided, however, that neither the Lender nor the Authority shall be entitled to indemnification for its own gross negligence or willful misconduct. The Borrower may, and if so requested by the Lender or the Authority shall, undertake to defend, at its sole cost and expense, any and all suits, actions and proceedings brought against the Lender or its directors, officers, agents or employees or the Authority and its directors, officers, agents, attorneys or employees in connection with any of the matters indemnified against in this Section. The Lender and the Authority agree to give the Borrower timely notice of and shall forward to the Borrower every demand, notice, summons or other process received for any claim or legal proceedings within the purview hereof, but the failure of the Lender or the Authority to give such notice shall not affect its right to indemnification hereunder unless the failure to give notice shall have deprived the Borrower of a reasonable opportunity to contest the matter. The Lender and the Authority shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but, the fees and expenses of any such counsel shall be paid by the Borrower only if (1) the Borrower fails to assume the defense of such action as provided herein or (2) the Lender or the Authority shall have reasonably concluded that there may be one or more legal defenses available to it which are different from or additional to those available to the Borrower or other persons represented by counsel employed by the Borrower. The Borrower shall not be liable for any settlement of any such action made without its consent, but if settled with the consent of the Borrower or if there is a final judgment for the adverse party in any such action, the Borrower shall indemnify and hold harmless the indemnified parties hereunder from and against any loss or liability by reason of such settlement or judgment.

If the indemnification provided for herein is held by a court to be unavailable or is insufficient to hold the Lender and its directors, officers, employees and agents or the Authority and its directors, officers, employees, attorneys and agents harmless in respect of any losses, claims, damages or liabilities (or actions in respect thereof), then the Borrower shall contribute to the amount paid or payable by the Lender or the Authority as a result of the losses, claims, damages or liabilities (or actions in respect thereof) (except those caused by the gross negligence or willful misconduct of the Lender or the Authority) in such proportion as is appropriate to reflect the relative fault of the Borrower on the one hand and the Lender or the Authority on the other hand, as well as any other relevant equitable considerations.

**Section 5.7. Claims in Connection with the Bond.** The Borrower shall protect, indemnify, and save harmless the Lender and its directors, officers, employees and agents and the Authority and its directors, officers, employees, attorneys and agents, against and from any and all claims, liability, suits, actions, demands, losses, expenses or costs of any kind or nature whatsoever ("Claims") (except any claims arising from the gross negligence or willful misconduct of the Lender or the Authority or their respective agents) incurred by, or asserted or imposed against, any of them, and any loss or expense (including all reasonable attorneys' fees) in connection therewith, by reason of the Lender's or the Authority's issuance and sale of the Bond or the financing of the Plan of Refunding, including but not limited to, any (i) accident, injury (including death) or damage to any person or property, however caused, resulting from, connected with or growing out of any act of commission or omission of the Borrower, or any agents, assignees, contractors or subcontractors of the Borrower, (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under any of the Borrower Documents, (iii) any act or negligence of the Borrower or of any of its agents or licensees or (iv) any act or negligence of any assignee or lessee of the Borrower, regardless of whether such Claims are against the Lender or

the Authority, or any of their respective agents or are against any person to whom the Lender or the Authority or any of their respective agents may become liable therefor. Neither the Lender nor any other party to this transaction, including the Authority, shall be liable for any damage or injury to persons or property of the Borrower or any of its agents or any other person, and the Borrower hereby releases the Lender and the Authority from, and agrees that they shall not be liable for, and the Borrower shall hold them harmless from, any such liability. The Borrower may, and if so requested by the Lender or the Authority, shall undertake to defend, at its sole cost and expense, any and all Claims brought against the Lender, the Authority or any of their respective agents in connection with any of the matters mentioned in this Section, all of which obligations to indemnify, defend and hold harmless shall survive the termination of this Agreement. The Lender and the Authority agree to give the Borrower timely notice of and shall forward to the Borrower every demand, notice, summons or other process received for any claim or legal proceedings within the purview hereof, but the failure of the Lender or the Authority to give such notice shall not affect its right to indemnification hereunder unless the failure to give notice shall have deprived the Borrower of a reasonable opportunity to contest the matter. The Lender and the Authority shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but, the fees and expenses of any such counsel shall be paid by the Borrower only if (1) the Borrower fails to assume the defense of such action as provided herein or (2) the Lender or the Authority shall have reasonably concluded that there may be one or more legal defenses available to it which are different from or additional to those available to the Borrower or other persons represented by counsel employed by the Borrower. The Borrower shall not be liable for any settlement of any such action made without its consent, but if settled with the consent of the Borrower or if there is a final judgment for the adverse party in any such action, the Borrower shall indemnify and hold harmless the indemnified parties hereunder from and against any loss or liability by reason of such settlement or judgment.

**Section 5.8. Consequential Liability.** In addition to any other amounts payable under any of the Borrower Documents by way of indemnification or otherwise, the Borrower hereby agrees to pay and to indemnify and save the Lender and the Authority harmless from and against any damage, loss, cost or expense (including reasonable attorneys' fees) which the Lender or the Authority may incur or be subject to as a consequence, direct or indirect, of (i) any breach by the Borrower of any warranty, covenant, term or condition in, or the occurrence of any default by the Borrower under, any of the Borrower Documents, together with all expenses resulting from the compromise or defense of any claims or liabilities arising as a result of any such breach or default and (ii) any defense against any legal action commenced to challenge the validity of any of the Borrower Documents, all of which obligations to indemnify, defend and hold harmless shall survive the termination of this Agreement.

The provisions of this Section and Sections 5.5, 5.6 and 5.7 above shall survive the termination of the Borrower Documents.

**Section 5.9. Tax Covenants.** (a) The Borrower shall take no action, and shall not approve the taking of any action that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as such may be applicable to the Bond at the time of such action. The Borrower covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Bond to become includable

in the gross income of the owners thereof for federal income tax purposes pursuant to the provisions of the Code and regulation promulgated thereunder.

(b) All property provided by the proceeds of the Bond will be owned by the Borrower in accordance with Section 145(a)(1) of the Code.

(c) The Borrower will not lease or permit any lease of any property provided by the proceeds of the Bond to any Person or engage any Person to manage the operation of the Financed Property unless the Borrower obtains the opinion of Bond Counsel that such lease or management agreement will not adversely affect the tax exemption of the Bond.

(d) The average maturity of the Bond does not exceed 120% of the average reasonably expected economic life of the Financed Property as determined in accordance with Section 147 of the Code.

(e) No portion of the proceeds of the Bond is being used to provide any airplane, skybox or other private luxury box, facilities primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) If the Borrower collects a Restricted Gift, the Borrower shall, as soon as practicable and no later than 13 months after its receipt of such Restricted Gift, apply such Restricted Gift to pay costs of the Financed Property or debt service on or prepayment of the Bond. To the extent that a Restricted Gift cannot be so applied, the Borrower, as the case may be, shall invest such Restricted Gift as provided in the Tax Compliance Certificate.

(g) The Bond will not be federally guaranteed within the meaning of Section 149(b) of the Code. Neither the Borrower nor any user of the Financed Property has entered into any leases or sales or service contracts for the Financed Property with any federal government agency. The Borrower will not enter into any leases, sales or service contracts with any federal government agency for the Financed Property unless it obtains the opinion of Bond Counsel that such lease, sale or service contract will not adversely affect the exemption from federal income taxation of interest payable on the Bond.

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

**Section 6.1. Event of Default Defined.** Each of the following events is hereby declared an "Event of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one of the following events:

(a) Any representation or warranty made herein or any statement or representation made in any certificate, report or opinion (including legal opinions), financial statement or other instrument furnished in connection with this Agreement or any of the other Borrower Documents, proves to have been incorrect, false or misleading in any material respect when made;

(b) The Borrower fails to pay, on the date on which the same is due and payable as herein provided, any payment required by Article IV;

(c) The Borrower fails to duly and promptly perform, comply with or observe any of the terms, covenants, conditions or agreements contained in Sections 5.3(a), (i), (k) or (l) or Section 5.4;

(d) The Borrower fails to duly and promptly perform, comply with or observe any other term, covenant, condition or agreement contained in this Agreement or any of the other Borrower Documents, which failure remains unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Lender; provided, however, if such failure be such that it cannot be corrected within thirty (30) days, it shall not be an Event of Default if, in the opinion of the Lender in its sole and absolute discretion, the Borrower is taking appropriate corrective action to cure the failure and if such failure will not impair the ability of the Borrower to pay or perform the Borrower's obligations under this Agreement;

(e) An Act of Bankruptcy occurs regarding the Borrower, or the Borrower becomes generally unable to pay its debts as they become due; provided, however, if a proceeding regarding an Act of Bankruptcy is filed or commenced against the Borrower, the same shall not constitute an Event of Default if such proceeding is dismissed within sixty (60) days from the date of such Act of Bankruptcy;

(f) The Borrower is dissolved, merged, consolidated or reorganized, except in compliance with the terms of this Agreement;

(g) Any judgment against the Borrower or any attachment or other levy against the property of the Borrower remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of sixty (60) days;

(h) An "event of default" or "Event of Default" occurs under any of the Bond Documents which continues beyond any applicable grace or cure period;

(i) Default is made by the Borrower regarding any evidence of Funded Debt of the Borrower to the Lender or its affiliates (other than the Note), or default is made by the Borrower regarding any evidence of Funded Debt of the Borrower to any other Person if the effect of such default is to accelerate the maturity of such evidence of Funded Debt or to permit the holder or obligee thereof to cause any Funded Debt to become due prior to its stated maturity, or any such Funded Debt is not paid as and when due and payable after any applicable grace period;

(j) The Borrower fails to comply with any requirement of any Governmental Authority having jurisdiction within the time required by such Governmental Authority or during the appropriate appeal or administrative procedure available to contest the same; or any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority and not contested or appealed;

(k) Any amendment to any of the Bond Documents shall have been made without the prior written consent of the Lender;

(l) If any material provision (i.e., a provision that substantially affects the Lender's ability to realize the benefits contracted for hereunder) of this Agreement at any time for any reason ceases to be valid and binding on the Borrower, or is declared to be null and void, or

the validity or enforceability thereof is contested by the Borrower or any Governmental Authority, or the Borrower denies that it has any or further liability or obligation under this Agreement or any of the other Bond Documents; and

(m) Any Material Adverse Change shall occur.

**Section 6.2. Remedies in Default.** Whenever any Event of Default referred to in Section 6.1 occurs and is continuing, the Lender may take any one or more of the following remedial steps:

(a) The Lender, at its option, may declare all amounts payable under Article IV together with all other moneys payable hereunder to be immediately due and payable, whereupon the same shall become immediately due and payable, by written notice to that effect given to the Borrower, without protest, presentment, or further notice or demand, all of which are expressly waived by the Borrower. Upon such declaration by the Lender, payment of all amounts due under Article IV shall be made immediately by the Borrower, and the Borrower hereby promises to pay such amount immediately, to the Lender and, regarding the amounts owed to it, the Authority.

(b) The Lender and the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of all of the Borrower's obligations including, without limitation, any obligation, agreement or covenant of the Borrower under this Agreement.

(c) The Lender and the Authority may exercise any and all remedies available to it under any of the Bond Documents and the Lender may exercise any and all remedies available to it or its affiliates under any Funded Debt of the Borrower to the Lender or its affiliates.

In addition to the foregoing, if an Event of Default occurs and is continuing, the Bond will bear interest at the Default Rate.

**Section 6.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lender or the Authority is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle the Lender to exercise any remedy reserved herein, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 6.4. Delay, Failure to Act.** No delay, act or failure to act by the Lender or the Authority, however long continued, shall be construed as a waiver of any of its rights hereunder or of any Event of Default by the Borrower.

**Section 6.5. No Additional Waiver Implied by One Waiver.** If any party hereunder or its assignee waives a default by the other party under any covenant, condition or agreement herein, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 6.6. No Obligation to Expend Money.** Nothing in this Agreement shall be construed to impose any obligation upon the Lender or the Authority to expend any money or to take any other discretionary act herein permitted, and the Lender and the Authority shall not have any liability or obligation for any delay or failure to take any discretionary act.

**Section 6.7. No Diminution of Obligation or Defense.** No lawful act of commission or omission of any kind or at any time on the part of the Lender or the Authority in respect of any matter whatsoever shall in any way affect or impair the rights of any successor or assignee to enforce any right, power or benefit of the Lender or the Authority under this Agreement, and no set-off, claim, reduction or diminution of any obligation or any defense of any kind or nature which the Borrower may have against the Authority or the Lender shall be available against any such assignee or successor in any suit or action brought by the Lender, its successors or assigns, or the Authority, its successors or assigns, to enforce any right, power or benefit under this Agreement.

## **ARTICLE VII PREPAYMENT OF NOTE**

**Section 7.1. Option to Prepay Note and Terminate Agreement.** The Borrower may prepay the Note in whole for prepayment in whole of the Bond and terminate this Agreement at any time upon payment of the amounts set forth below:

(a) To the Lender for the account of the Authority, an amount certified by the Lender, which when added to the total amount on deposit with the Lender for the account of the Authority and the Borrower and available for such purpose, will be sufficient to pay the principal amount of the Bond then outstanding, plus interest thereon which has accrued and which will accrue to the date of prepayment and plus any other payments required by the Bond.

(b) To the Authority, an amount certified by the Authority as sufficient to pay all unpaid fees and expenses of the Authority incurred under this Agreement.

(c) To the appropriate Person, an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under this Agreement and not otherwise paid or provided for.

(d) The Bond shall be subject to optional prepayment in whole or in part, without penalty or premium, but only so long as such prepayment is not financed by a financial institution other than the registered owner of the Bond in which case there shall be a prepayment premium equal to 1% of the principal amount prepaid. Any such prepayment shall occur upon at least thirty (30) days prior written notice to the registered owner of the Bond by the Borrower. Such prepayment notice shall specify the amount of the prepayment and the prepayment date.

**Section 7.2. Prepayment in Part.** The Borrower may prepay the Note in part at any time for partial prepayment of the Bond upon payment of the principal amount to be prepaid plus accrued interest to the prepayment date plus any other payments required by the Bond or Section 7.1(d) above. All partial prepayments of the Note shall be applied to installments of principal in inverse chronological order, or applied in such other manner as may be approved by the Lender, and shall not reduce the amount of the regularly scheduled payments due under the Note.



**Section 7.3. Mandatory Prepayment.** If at any time the Bond is required to be prepaid because of an Event of Default, the Borrower shall prepay the Note in whole, or in part as the case may be, by payment of the amounts set forth in Section 7.1.

**Section 7.4. Mandatory Tender.** The Bond shall be subject to mandatory tender for purchase by the Borrower in full before maturity on February \_\_, 2032 (the "Tender Date"), at a purchase price equal to the outstanding principal amount of the Bond, together with all unpaid interest thereon accrued to the date of purchase (the "Purchase Price"). Notwithstanding the foregoing, before the Tender Date the Borrower may request that the Lender agree to continue to hold the Bond after the Tender Date, and the Lender may (but has no obligation to) offer to continue to hold the Bond in accordance with specified terms (including, without limitation, an alteration in the interest rate and/or the principal repayment schedule) that shall apply after the Tender Date. If the Lender and the Borrower agree to such specified terms, the Bond, the Agreement and any other applicable documents shall be amended appropriately to reflect such terms and the Borrower shall cause to be delivered to the Lender a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that such transaction will not have a material adverse effect on the tax-exempt status of the Bond. If the Lender does not offer, or the Lender and the Borrower do not agree to, the terms of continued ownership by the Lender after the Tender Date, the Bond shall continue to be subject to mandatory tender as provided above on the Tender Date, and the failure of the Borrower to pay the Purchase Price on the Tender Date shall constitute an Event of Default.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.1. Registration of Bond; Persons Treated as Owners.** (a) The Secretary or Assistant Secretary of the Authority shall act as Registrar and shall maintain registration books for the registration and the registration of transfer of the Bond. The transfer of the Bond may be registered only upon the books kept for the registration and registration of transfer of the Bond upon surrender thereof to the Registrar together with an assignment duly executed by the registered owner in person or by his duly authorized attorney or legal representative in such form as shall be reasonably satisfactory to the Registrar.

(b) The Registrar shall not be required to make any such registration or transfer during the five (5) days immediately preceding any principal or interest payment date. Prior to due presentment for registration of transfer of any Bond, the Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner of any Bond.

(c) The Lender may, from time to time, sell or offer to sell the Bond or interests therein to one or more assignees or participants, and is hereby authorized to disseminate any information it has pertaining to the Bond, including, without limitation, credit information on the Borrower, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits regarding this Agreement and the Bond as such person(s) would have if such person(s) were the Lender hereunder. The Lender shall provide prior written notice to the Borrower of any assignment or participation, and the Borrower shall

only be required to interact with the Lender. The Lender shall not sell, transfer, assign or participate any interest in this Agreement or the Bond to any person other than a "qualified institutional buyer," as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, that is also a financial institution.

**Section 8.2. Limitation of Liability of the Authority.** No covenant, agreement or obligation contained herein or the Bond shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee or agent of the Authority in his individual capacity, and no officer of the Authority executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Authority shall incur any personal liability for any other action taken by him pursuant to or in accordance with this Agreement or the Act.

The obligations of the Authority hereunder are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived by the Authority under this Agreement, which revenues and receipts have been pledged and assigned to such purposes from amounts received under this Agreement. The obligations of the Authority hereunder shall not be deemed to constitute a debt or a pledge of the faith and credit of the Authority, the Commonwealth of Virginia or any other political subdivision thereof. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority shall be obligated to pay the obligations hereunder or other costs incident thereto except from the revenues and receipts pledged therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority is pledged to the payment of the obligations hereunder.

**Section 8.3. Investment Representation by Lender; Payment of Fees.** (a) The Lender represents that it is purchasing the Bond for its own account as a commercial loan and not a security, and has no present intention of reselling or disposing of the Bond or engaging in any "distribution" (as that term is used in the Securities Act of 1933, as amended, and the regulations of the Securities and Exchange Commission thereunder) thereof. The Lender is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended. The Lender represents that it is familiar with the operations and financial condition of the Borrower based upon information furnished to the Lender by the Borrower and has made such inquiries as it deems appropriate in connection with the purchase of the Bond. The Lender represents that it is capable of evaluating the merits and risks of the purchase of the Bond and has the ability to bear the economic risk of extending the credit evidenced by the Bond. In determining to purchase the Bond, the Lender has not relied upon any information (including financial information) relating to the Borrower provided by the Authority, nor has it relied upon the omission of the Authority to provide any such information or the receipt by the Authority of any such information.

(b) The Borrower agrees to pay (i) the fees and expenses of the Lender, counsel to the Lender, the Authority and Bond Counsel, and all other costs and expenses incidental to the financing hereunder, the issuance of the Bond and the costs of producing the documents referred to herein; (ii) all taxes, if any, upon any documents or transactions under this Agreement; (iii) all expenses incidental to all filings or recordings under this Agreement; and (iv) all costs of collection (including reasonable counsel fees) in the event of a default in the payment of the principal of or

interest on the Bond or the Note or other charges payable thereunder or under this Agreement. Such payments under clauses (i), (ii) and (iii) above may be made with Bond proceeds to the extent that they do not exceed 2% of the net proceeds of the Bond or are otherwise approved by Bond Counsel.

(c) The Lender understands that the scope of engagement of McGuireWoods LLP as bond counsel for the Bond has been limited to matters set forth in its bond counsel opinion based on its review of such proceedings and documents as they deem necessary to approve the validity of the Bond and the excludability of the interest thereon for federal and state income tax purposes, and that McGuireWoods LLP has not made any assurances or opinion as to the accuracy or completeness of any information that may have been furnished to the Lender or relied upon by the Lender in acquiring the Bond.

**Section 8.4. Term of Agreement.** This Agreement shall be effective upon its execution and delivery and, subject to earlier termination upon prepayment in full of the Note, shall expire at midnight on the date payment of the Note in full shall have been made; provided, however, that in no event shall this Agreement expire before Payment of the Bond.

**Section 8.5. Amendments to Agreement and Note.** Neither this Agreement nor the Note shall be amended or supplemented and no substitution shall be made for the Note before Payment of the Bond without the consent of the Lender.

**Section 8.6. Successors and Assigns.** This Agreement shall be binding on, inure to the benefit of, and be enforceable by the parties and their respective successors, heirs, personal representatives and assigns.

**Section 8.7. Severability.** If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**Section 8.8. Applicable Law.** This Agreement and the Note shall be governed by the applicable laws of the Commonwealth of Virginia.

**Section 8.9. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

**Section 8.10. Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or three (3) business days after being mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Authority, at 2200 Norview Avenue, Norfolk, Virginia 23518 (Attn: Executive Director), (b) if to the Lender, at 4501 Cox Road, Glen Allen, Virginia 23060 (Attn: Commercial Lending), or (c) if to the Borrower, at 7336 Granby Street, Norfolk, Virginia 23505 (Attn: Director of Finance and Operations). The Borrower, the Authority and the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 8.11. Prior Agreements Cancelled.** This Agreement and the other Borrower Documents completely and fully supersede all other prior agreements, both written and oral, between the Lender and the Borrower relating to the issuance of the Bond and the matters set forth herein and therein.

**Section 8.12. Conflicting Agreements.** Whenever any duty or obligation is imposed upon the Borrower under the terms of any of the Bond Documents to which the Borrower is not a party, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were a party to such Bond Document, and the Borrower agrees to perform all of its duties and responsibilities thereunder. In the event of any conflict between the provisions of the Bond Documents and any other agreement, the provisions of the Bond Documents shall control as between the Lender and the Borrower. Performance by the Borrower under any provision of the Borrower Documents shall not relieve the Borrower from its obligation to strictly observe or comply with a similar provision of the Bond Documents.

**Section 8.13. Estoppel Certificate.** The Borrower will, upon not less than ten (10) days' request by the Lender, execute, acknowledge and deliver to the Lender a statement in writing, certifying (a) that the Borrower Documents and Bond Documents to which the Borrower is a party are unmodified and in full force and effect or describing the modification then in effect, (b) that the payments required by this Agreement to be paid by the Borrower have been paid, (c) the then unpaid principal balance of the Bond, and (d) whether or not to the knowledge of the signer of such certificate any party to any of the Borrower Documents or Bond Documents is in default in the performance of any covenant, agreement or condition contained therein and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered under this Section may be relied upon by the Lender and any Person to whom the Lender may transfer all or any portion of the Borrower's obligations hereunder.

**Section 8.14. Consent to Jurisdiction; Service of Process; Waiver of Jury Trial.** (a) The Borrower hereby agrees and consents that any action or proceeding arising out of or brought to enforce the provisions of this Agreement may be brought in any appropriate court in the Commonwealth of Virginia or in any other court having jurisdiction over the subject matter, all at the sole election of the Lender, and by the execution of this Agreement the Borrower irrevocably consents to the jurisdiction of each such court.

(b) If for any reason the Borrower should become not qualified to do business in the Commonwealth of Virginia, the Borrower hereby agrees to designate and appoint, without power of revocation, an agent for service of process within the Commonwealth of Virginia, as the agent for the Borrower upon whom may be served all process, pleadings, notice or other papers which may be served upon the Borrower as a result of any of the Borrower's obligations hereunder.

(c) The Borrower covenants that throughout the period during which the Bond is outstanding, if a new agent for service of process within the Commonwealth of Virginia is designated under the terms of subsection (b) of this Section, the Borrower will immediately file with the Lender the name and address of such new agent and the date on which his appointment is to become effective.

(d) The Borrower and the Lender hereby waive trial by jury in any action or proceeding to which the Borrower and the Lender may be parties, arising out of or in any way pertaining to (i) the Borrower Documents, or (ii) the Borrower's obligations hereunder. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to the Borrower Documents. This waiver is knowingly, willingly and voluntarily made by the Borrower and the Lender and the Borrower and the Lender hereby represent that no representations of fact or opinion have been made by any individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. The Borrower further represents that it has been represented in the execution of this Agreement and the other Borrower Documents and in making of this waiver by independent legal counsel, selected in its own free will, and that it has had the opportunity to discuss this waiver with counsel.

**Section 8.15. USA Freedom Act Notice.** The Lender hereby gives the Borrower notice that pursuant to the requirements of the USA Freedom Act, the Lender is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the USA Freedom Act.

**Section 8.16. Authorized Borrower Representative.** Whenever under the provisions of this Agreement or any of the other Borrower Documents the approval of the Borrower is required, or the Borrower is required to take some action at the request of any party to this Agreement, such approval or request shall be given on behalf of the Borrower by an Authorized Representative, and the other parties hereto are authorized to rely upon any such approval or request, and the Borrower shall not have any complaint against such parties as a result of any such reliance. The name and specimen signature of each Authorized Representative has been provided to the Lender. In the event that the Authorized Representative so designated should become unavailable or unable to take any action or make any certification provided for or required under this Agreement, a successor or successors shall be appointed by written certificate of the Borrower furnished to the Lender, executed on behalf of the Borrower by an authorized officer of the Borrower and containing a specimen signature of such successor or successors. Any person designated as the Authorized Representative under any of the other Borrower Documents shall be the Authorized Representative under this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

**NORFOLK AIRPORT AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title: Executive Director

**NORFOLK COLLEGIATE SCHOOL**

By: \_\_\_\_\_  
Name:  
Title: President

**TOWNEBANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**FORM OF PROMISSORY NOTE**

**NORFOLK COLLEGIATE SCHOOL**

\$ \_\_\_\_\_, 2022

Norfolk Collegiate School (the "Borrower"), for value received, hereby promises to pay to the Norfolk Airport Authority (as more particularly defined in the below-defined Agreement, the "Authority"), or assigns (the "Registered Owner"), in lawful money of the United States of America, all such amounts as shall be sufficient to pay all sums, including principal, penalty, if any, premium, if any, yield protection, if any, and interest when the same are due and payable under the terms of the Authority's \$ \_\_\_\_\_ Refunding Revenue Bond (Norfolk Collegiate School), Series 2022 (as the same may be altered, amended, modified, or supplemented, from time to time, the "Bond"), whether at maturity, by acceleration or call for prepayment or otherwise.

This Note is issued under a Bond Purchase and Loan Agreement (as the same may be altered, amended, modified, or supplemented, from time to time, the "Agreement") between the Borrower, the Authority and TowneBank (as more particularly defined in the Agreement, the "Lender"), dated as of February 1, 2022, and pursuant to a resolution duly adopted by the Board of Trustees of the Borrower (the "Resolution").

The Authority, by the execution of the assignment form at the end of this Note, is assigning this Note and the payments thereon to the Lender, as Registered Owner, as security for the Bond. Payments of principal of and penalty, if any, and premium, if any, late charges, if any, yield protection, if any, and interest on this Note shall be made directly to the Lender, as Registered Owner, for the account of the Authority under such assignment and applied only to the principal of and penalty, if any, and premium, if any, yield protection, if any, and interest on the Bond, and such payments shall be credited by the Lender against the obligation of the Authority to make future payments on the Bond. All obligations of the Borrower hereunder shall terminate when all sums due and to become due under the Agreement and the Bond have been paid or provided for in full.

In addition to the payments specified above, the Borrower shall also pay as an obligation under this Note such additional amounts, if any, which, together with other moneys available therefor under the Agreement, may be necessary to provide for payment when due of any other amounts which the Borrower agrees to pay under the Agreement; provided, however, that the amounts payable to the Authority under Sections 4.1(c), 5.5, 5.6, 5.7, 5.8, 6.2(b), 6.2(c), 7.1(b) and 8.3(b) of the Agreement shall be payable as obligations thereunder and not as obligations payable under this Note.

The Borrower shall have the option or may be required to prepay this Note upon the terms and conditions and in the manner specified in the Agreement.

In case an Event of Default, as defined in the Agreement, shall occur and be continuing, the Registered Owner may exercise any remedies provided under the Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed as of the date first above written.

**NORFOLK COLLEGIATE SCHOOL**

By: \_\_\_\_\_  
Name:  
Title: President



Assignment of Promissory Note

The Norfolk Airport Authority (the "Authority"), hereby irrevocably assigns without representation and without recourse the foregoing Note and all right, title and interest of the Authority in the Agreement as described therein, except for the Authority's rights under Sections 4.1(c), 5.5, 5.6, 5.7, 5.8, 6.2(b), 6.2(c), 7.1(b), 8.3(b) and 8.10 of the Agreement, to TowneBank (together with its successors and assigns, the "Lender"), and hereby directs the maker of the Note to make all payments due thereunder, except as excluded above, directly to the Lender, as Registered Owner, at its office in Norfolk, Virginia, or at such other place as the Lender may direct in writing. This assignment is made as security for the payment of the Authority's Bond, as defined in the Note. The Lender may take or release any security for the Note, may release any party primarily or secondarily liable under the Note, may grant extensions, renewals or indulgences regarding the Note, and may apply any security held by it to the satisfaction of the Note without prejudice to any of its rights under this assignment.

Date: \_\_\_\_\_, 2022

**NORFOLK AIRPORT AUTHORITY**

By: \_\_\_\_\_

Name:

Title: Executive Director

**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

The undersigned, being the Director of Finance and Operations of Norfolk Collegiate School (the "Borrower"), and, in such capacity, being familiar with the matters set forth herein and duly authorized and empowered to issue this Certificate for and on behalf of the Borrower, does hereby certify to TowneBank (the "Lender"), in connection with and under that certain Bond Purchase and Loan Agreement dated as February 1, 2022, between the Norfolk Airport Authority, the Borrower and the Lender (herein, as it may be amended to date, called the "Agreement"; capitalized terms used herein, without definition, having the meaning given to such terms in the Agreement) that, as of the date of this Certificate, there exists no Event of Default [or if an Event of Default has occurred, specify each such Event of Default, the nature and status thereof and any remedial steps taken or proposed to correct such default].

Without limiting the generality of the foregoing, the Borrower is in compliance, in all material respects, with the financial covenants in Section 5.3(k) and Section 5.3(l) of the Agreement, and the calculations thereof attached hereto as Schedule A are true and correct.

WITNESS my hand as of \_\_\_\_\_.

NORFOLK COLLEGIATE SCHOOL

By: \_\_\_\_\_

Its: \_\_\_\_\_

SCHEDULE "A" TO COMPLIANCE CERTIFICATE<sup>1</sup>

For the year ended June 30, [\_\_\_\_\_] ("Statement Date"), the following calculations are made from the financial statements as required to demonstrate compliance with the financial covenants in Section 5.3(k) of the Agreement:

I. Section 5.3(k) – Debt Service Coverage Ratio

A. Income Available for Debt Service for the twelve month period ending on the Statement Date (calculated below): \_\_\_\_\_

B. Debt Service on Funded Indebtedness for the twelve month period ending on the Statement Date (calculated below): \_\_\_\_\_

C. Debt Service Coverage Ratio (*Measured Annually*): \_\_\_\_\_

*Minimum Required* 1.10x

II. Calculation of "Income Available for Debt Service"

|  |       |
|--|-------|
| Increase (decrease) in Net Assets      | _____ |
| Plus: depreciation and amortization    | _____ |
| Plus: Interest Expense                 | _____ |
| Plus: unrealized losses on investments | _____ |
| Less: unrealized gains on investments  | _____ |
| Income Available for Debt Service      | _____ |

III. Calculation of "Debt Service"

|   |       |
|---|-------|
| Current maturities of Long-Term Funded Debt | _____ |
| Plus: Interest Expense                      | _____ |
| Debt Service                                | _____ |

IV. Section 5.3(l) – Liquidity Covenant

Cash and Cash Equivalents: \_\_\_\_\_

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<sup>1</sup> To be updated when covenants are finalized.

**EXHIBIT C**  
**FORM OF BOND**

\_\_\_\_\_, 2022

**THE TRANSFER OF THIS BOND IS  
SUBJECT TO THE TERMS AND  
CONDITIONS OF THE AGREEMENT  
(AS DEFINED BELOW)**

**UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA**

**NORFOLK AIRPORT AUTHORITY**  
**\$ \_\_\_\_\_**  
**REFUNDING REVENUE BOND**  
**(NORFOLK COLLEGIATE SCHOOL),**  
**SERIES 2022**

The NORFOLK AIRPORT AUTHORITY, a public body corporate and a political subdivision of the Commonwealth of Virginia (as more particularly defined in the below-defined Agreement, the "Authority"), acknowledges itself indebted and for value received hereby promises to pay, solely from the source and as hereinafter provided, to TowneBank (as more particularly defined in the below-defined Agreement, the "Lender") or registered assigns or legal representatives, at its address as it appears on the registration books kept by the Secretary or Assistant Secretary of the Authority as Registrar the principal sum of \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND DOLLARS (\$ \_\_\_\_\_) together with interest thereon accruing from the date of issuance hereof until payment and, to the extent permitted by law, interest on any overdue installments of such interest, at the interest rate specified below, subject to adjustment as described herein.

Principal and interest on this Bond shall be payable as follows:

Accrued interest on this Bond shall be paid monthly in arrears commencing \_\_\_\_\_ 1, 2022, and shall continue on the first day of each month thereafter until the entire unpaid principal balance of this Bond is paid. The principal amount of this Bond shall be payable monthly as set forth in Schedule I attached hereto. Subject to the prepayment provisions set forth in this Bond, principal and interest on this Bond shall be due and payable in full on \_\_\_\_\_ 1, 2037.

Interest on this Bond shall be calculated on the basis of a 30 day month and a 360 day year.

This Bond is issued pursuant to a Bond Resolution duly adopted by the Authority on January 27, 2022 (the "Resolution"), and a Bond Purchase and Loan Agreement (as the same may be altered, amended, modified, or supplemented, from time to time, the "Agreement") dated as of February 1, 2022, between the Authority, Norfolk Collegiate School (the "Borrower") and the Lender, for the purpose set forth in the Resolution and the Agreement. The Borrower's obligations

under the Agreement are evidenced by its promissory note issued on the date hereof and assigned to the Lender (as the same may be altered, amended, modified, or supplemented, from time to time, the "Note"). All capitalized terms used in this Bond and not otherwise defined shall have the meaning set forth in the Agreement.

The principal sum payable under this Bond shall be equal to the principal amount of this Bond, less the aggregate amount of principal payments which have been made on this Bond (whether upon principal installment dates, by prepayment or otherwise). No notation is required to be made on this Bond of the payment of any principal or interest on normal installment payment dates. HENCE, THE FACE AMOUNT OF THIS BOND MAY EXCEED THE PRINCIPAL SUM OUTSTANDING AND DUE HEREUNDER. The registered owner of this Bond, by acceptance of this Bond, agrees, before any sale, assignment or transfer of this Bond, to note in the certificate at the end of this Bond the aggregate amount of all principal payments which have been made and the date through which interest has been paid.

If the specified or last date for the making of any payment is not a business day, such payment shall be made on the next occurring business day.

#### *Mandatory Tender*

This Bond shall be subject to mandatory tender for purchase by the Borrower in full before maturity on February \_\_, 2032 (the "Tender Date"), at a purchase price equal to the outstanding principal amount of this Bond, together with all unpaid interest thereon accrued to the date of purchase (the "Purchase Price"). Notwithstanding the foregoing, before the Tender Date the Borrower may request that the Lender agree to continue to hold this Bond after the Tender Date, and the Lender may (but has no obligation to) offer to continue to hold this Bond under specified terms (including, without limitation, an alteration in the interest rate and/or the principal repayment schedule) that shall apply after the Tender Date. If the Lender and the Borrower agree to such specified terms, this Bond, the Agreement and any other applicable documents shall be amended appropriately to reflect such terms and the Borrower shall cause to be delivered to the Lender a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that such transaction will not have a material adverse effect on the tax-exempt status of this Bond. If the Lender does not offer, or the Lender and the Borrower do not agree to, the terms of continued ownership by the Lender after the Tender Date, this Bond shall continue to be subject to mandatory tender as provided above on the Tender Date, and the failure of the Borrower to pay the Purchase Price on the Tender Date shall constitute an Event of Default.

#### *Interest Rate; Determination of Taxability and Yield Maintenance Provisions*

(a) This Bond shall bear interest at a per annum rate equal to (a) prior to a Determination of Taxability and in the absence of an Event of Default, three and six-hundredths percent (3.06%) (the "Tax-Exempt Rate"), (b) after a Determination of Taxability, the Taxable Rate (as defined below) or (c) so long as an Event of Default is continuing, the Default Rate (as defined below). Upon the occurrence of a Determination of Taxability (as defined below) the Borrower shall pay to the Lender (i) an additional amount equal to the difference between (A) the amount of interest paid on this Bond during the Taxable Period (as defined below) and (B) the

amount of interest that would have been paid on this Bond during such Taxable Period had this Bond borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties or overdue interest and additions to tax owed by the Lender as a result of the Determination of Taxability.

(b) So long as no Determination of Taxability shall have occurred, if at any time, or from time to time, there is an increase or decrease in the maximum marginal federal income tax rate applicable to the registered owner of this Bond, then the rate payable under this Bond shall be adjusted, effective as of the effective date of the change, to a new rate determined by multiplying the Tax-Exempt Rate then in effect by a fraction, the denominator of which is 100% minus the maximum marginal federal income tax rate applicable to such registered owner of this Bond on the date of issuance of this Bond, and the numerator of which is 100% minus the maximum marginal federal income tax rate applicable to such registered owner of this Bond after the change in such rate. Anything contained in this paragraph to the contrary notwithstanding, the rate payable under this Bond shall not be readjusted solely by reason of the transfer of this Bond to a different registered owner.

(c) In the event that after the date of the execution hereof the application, enactment or adoption of, or any change in, any law, rule, regulation, treaty, guideline, accounting principle or directive, or the occurrence of the effective date of any law, rule, regulation, treaty, guideline, accounting principle or directive, or any provision thereof enacted or adopted on the date of the execution hereof but which has not yet become effective, or the application, interpretation or enforcement of any of the foregoing by any court, central bank, administrative or other Governmental Authority charged with the authority thereof (whether or not having the force of law) shall either:

(i) limit the deductibility of interest on funds obtained by the Lender to pay any of its liabilities or subject the Lender to any tax, duty, charge, deduction or withholding on or with respect to payments relating to this Bond, or any amount paid or to be paid by the Lender hereunder (other than any tax measured by or based upon the overall net income of the Lender imposed by any jurisdiction having control over the Lender);

(ii) impose, modify, require, make or deem applicable to the Lender, any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans or commitments by, a domestic office of the Lender;

(iii) change the basis of taxation of payments due the Lender under this Agreement (or similar document) or Bond (other than by a change in taxation of the overall net income of the Lender); or

(iv) impose upon the Lender, any other condition with respect to any amount paid or payable to or by the Lender, or with respect to this Agreement (or similar document), or this Bond;

and the result of any of the foregoing shall be to increase the cost to the Lender, of extending, issuing or maintaining any agreement, commitment, or other arrangement to extend credit or other

financial accommodations or to purchase, maintain or carry obligations of the Borrower ("Arrangements") or to reduce any amount (or the effective return on any amount) received or receivable by the Lender in connection with any such Arrangements (which increase in cost or reduction in yield shall be the result of the Lender's reasonable allocation, in a nondiscriminatory manner among borrowers having obligations to the Lender similar to those of the Borrower, of the aggregate of such cost increases or yield reductions resulting from such event), then, within sixty (60) days of written demand by the Lender, the Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts which shall be sufficient to compensate the Lender for all such increased costs or reductions in yield. The Lender shall submit to the Borrower, at or prior to the making of each such demand, a certificate setting forth in reasonable detail such increased costs or yield reduction incurred by the Lender as a result of any of the foregoing, which certificate shall be conclusive, absent manifest error, as against all other persons or entities, including, without limitation, the Borrower.

(c) If the Lender shall have determined that any Change in Law (as defined below) affecting the Lender regarding capital requirements has or would have the effect of reducing the rate of return on capital of the Lender as a consequence of its obligations hereunder or its purchase or holding of this Bond to a level below that which the Lender could have achieved but for such Change in Law (taking into consideration the policies of the Lender with respect to capital adequacy) by an amount deemed by the Lender to be material, then within thirty (30) days after demand by the Lender, the Borrower shall pay to the Lender from time to time, as specified by the Lender, such additional amount or amounts as will compensate the Lender for such reduction from the date of such adoption, change or compliance with respect to such law, rule, regulation, guideline, request or directive, together with interest on each such amount from the date payment is demanded until the earlier of the date of payment in full thereof or the date on which such payment is due, at the interest rate payable on this Bond.

(d) If such costs are to be incurred on a continuing basis and the Borrower shall be so notified by the Lender in writing as to the amount thereof, then such costs shall be payable by the Borrower to the Lender on each principal and interest payment date to the extent theretofore incurred.

(e) The obligations of the Borrower under this Section shall survive the termination of this Agreement (or similar document) and the payment in full of this Bond and the other obligations of the Borrower hereunder.

(f) For purposes of this Section, reference to the Lender shall be deemed to include the Lender's parent companies.

(g) For the purposes of this section, the following terms have the meanings assigned to them below:

(i) "Change in the Law" shall include any changes in the Code, including any administrative or judicial interpretations thereof, made subsequent to the date of this commitment letter, regardless of the effective date of such change,

(ii) "Corporate Tax Rate" shall mean the highest marginal statutory rate of Federal income tax generally imposed on corporations (or, if as a result of a change in the Code, the rates of general income tax generally imposed on corporations shall not be applicable to the registered owner of this Bond, the highest marginal statutory rate of Federal income tax which could apply to the registered owner of this Bond), and (iii) all computations are made on the assumption that Federal taxes are payable by the registered owner of this Bond at the Corporate Tax Rate (after taking into account deductions attributable to the imposition of state and local taxes) and that state and local taxes are payable by the registered owner of this Bond at the highest marginal statutory rates then applicable to banking corporations without allocation to any other jurisdiction.

(iii) "Default Rate" shall mean a per annum rate equal to the interest rate on the Bond plus four percent (4%).

(iv) "Determination of Taxability" shall mean the occurrence, after the date hereof, of (a) a final ruling or judgment entered by a federal court of competent jurisdiction or (b) an official and final action taken or announced by the Internal Revenue Service or by a federal official, in either event, determining that interest paid or payable on all or a portion of the Bond is or was includable in the gross income of the Lender for federal income tax purposes under the Code; provided, however, that no such ruling or judgment, or final action of the Internal Revenue Service, will be considered final for this purpose unless the Borrower or the Lender has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the Lender, and until the conclusion of any appellate review, if sought.

(v) "Tax-Exempt Rate" has the meaning assigned to it in Section 5.2(a).

(vi) "Taxable Period" shall mean the period of time between (a) the earliest date (which may be earlier than the date of a Determination of Taxability) that interest of the Bond to be includable in the gross income of the Lender for federal or Virginia income tax purposes as established by a Determination of Taxability and (b) the date of the Determination of Taxability.

(vii) "Taxable Rate" shall mean a per annum rate equal to the product of the Tax-Exempt Rate and the Taxable Rate Factor.

(viii) "Taxable Rate Factor" shall mean, on the applicable date of determination, an amount equal to (a) one divided by (b) one minus the highest marginal federal corporate income tax rate in effect as of such date, rounded upwards to the nearest one-hundredth percent.

In the event any installment of interest or principal is not paid within ten (10) days after the installment is due, the Authority shall pay the Lender a late charge equal to 5% of the installment of interest or principal then due.

*Prepayment Provisions:* This Bond is subject to optional prepayment in whole or in part, without penalty or premium, but only so long as such prepayment is not financed by a financial institution other than the registered owner of this Bond in which case there shall be a prepayment



premium equal to 1% of the principal amount prepaid. Any such prepayment shall occur upon at least thirty (30) days prior written notice to the registered owner of this Bond by the Borrower. Such prepayment notice shall specify the amount of the prepayment and the prepayment date.

Any partial prepayment of this Bond shall be applied to installments of principal in inverse order of maturity and shall not reduce the amount of the regularly scheduled payments on this Bond or shall be applied in such other manner as may be approved by the registered owner of this Bond.

The principal of and premium, if any, late charge, if any, yield protection, if any, and interest on this Bond are limited obligations of the Authority payable solely from the revenues and receipts derived by the Authority from the Agreement and the Note, which revenues and receipts have been pledged and assigned to secure payment thereof. The principal of and premium, if any, late charge, if any, yield protection, if any, and interest on this Bond shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority, shall be obligated to pay the principal of or premium, if any, late charge, if any, yield protection, if any, or interest on this Bond or other costs incident thereto except from the revenues and receipts pledged and assigned therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority, is pledged to the payment of the principal of or premium, if any, late charge, if any, yield protection, if any, or interest on this Bond or other costs incident thereto. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer or employee thereof executing this Bond on behalf of the Authority shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance hereof. The Authority has no taxing power.

All payments made by or on behalf of the Borrower to the registered owner of this Bond under the Agreement or the Note shall, to the extent of the sum or sums so paid, satisfy and discharge the limited liability of the Authority upon this Bond or the instruments securing this Bond, as the case may be.

Upon default in the payment when due of any principal of or premium, if any, late charge, if any, yield protection, if any, or interest on this Bond or upon the occurrence and continuation of an Event of Default under the Agreement, the registered owner hereof may at its option declare the entire principal balance and all accrued interest hereon to be due and payable.

The transfer of this Bond is subject to the terms and conditions of the Agreement.

The transfer of this Bond may be registered by the registered owner hereof in person or by his duly authorized attorney or legal representative at the office of the Registrar, but only in the manner and subject to the limitations and conditions provided herein and in the Agreement. Upon any such registration of transfer, the Registrar shall give the Borrower notice of such transfer and the address at which payments hereunder are thereafter to be made. The Registrar shall treat the registered owner of this Bond as the person exclusively entitled to payment of principal, premium,

if any, late charge, if any, yield protection, if any, and interest and the exercise of all other rights and powers of the owner.

[Signature Page Follows]

IN WITNESS WHEREOF, the Norfolk Airport Authority, has caused this Bond to be executed in its name by its Executive Director, and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, all as of the date first above written.

**NORFOLK AIRPORT AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title: Executive Director

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Sheri L. Watts  
Title: Assistant Secretary

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the attached Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the attached Bond on the books kept for registration thereof, with full power of substitution in the premises.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the attached Bond in every particular, without alteration or enlargement or any change whatever.

Transfer of Bond

The transfer of this Bond may be registered by the registered owner or his duly authorized attorney upon presentation hereof to the Secretary or Assistant Secretary of the Authority, as Registrar, at the Authority's office in Norfolk, Virginia, who shall make note of such transfer in the books kept by him for that purpose and in the registration blank below.

| <u>Date of Transfer</u> | <u>Name of New Registered Owner</u> | <u>Signature of Registrar</u> |
|-------------------------|-------------------------------------|-------------------------------|
| _____                   | _____                               | _____                         |
| _____                   | _____                               | _____                         |
| _____                   | _____                               | _____                         |
| _____                   | _____                               | _____                         |

Certificate of Principal Payments

The undersigned certifies that as registered owner of this Bond the undersigned has received payments of principal on this Bond in the aggregate amount of \$ \_\_\_\_\_ and interest has been paid on this Bond through \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Certificate of Prepayments

The principal amount of this Bond shall be reduced by an amount equal to the aggregate of prepayments noted hereunder. All prepayments shall be certified hereunder by an authorized representative of the registered owner of this Bond, and such certification shall constitute a cancellation of the principal amount due on this Bond in the aggregate of the amounts certified below.

| <u>Amount</u> | <u>Date</u> | <u>Authorized Signature</u> |
|---------------|-------------|-----------------------------|
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |
| _____         | _____       | _____                       |

**SCHEDULE I**

**Approval of Board  
Meeting Minutes  
December 9, 2021**



# NORFOLK AIRPORT AUTHORITY

## BOARD OF COMMISSIONERS MEETING MINUTES

**Thursday, December 9, 2021  
1:00 p.m.**

The combined November and December Norfolk Airport Authority (NAA) Board of Commissioners Meeting was held on Thursday, December 9, 2021, at the Norfolk International Airport (NIA), Human Resources Conference Room A, Main Passenger Terminal.  
Malcolm P. Branch, Chair, presided.

### **Commissioners Present:**

Malcolm P. Branch  
John R. Broderick  
Peter G. Decker III, Esquire  
Mekbib Gameda  
William L. Nusbaum, Esquire  
Deborah H. Painter

### **Commissioners Absent:**

Michael B. Burnette, CCIM  
Paul D. Fraim, Esquire  
Bruce Smith  
Dr. Harold J. Cobb, Jr., Emeritus Commissioner

### **Staff Present:**

Robert S. Bowen, A.A.E., Executive Director  
Charles Braden, Director Market Development  
Jarred Roenker, Director of Finance  
Anthony E. Rondeau, Deputy Executive Director  
Engineering and Facilities  
Steven C. Sterling, Deputy Executive Director  
Administration and Operations  
Sheri Watts, Executive Administrative Assistant and  
Assistant Secretary of the Board



**Others Present:**

Anthony Bedell, Federal Co-Lead Lobbyist, Becker & Poliakoff  
Janette Crumley, Owner, Cordell & Crumley  
Jessica Dennis, Management Analyst, City of Norfolk  
Anita O. Poston, Esquire, General Counsel  
The Honorable Martin Thomas, Esquire, City of Norfolk  
Vice-Mayor  
Susan E. Winslow, P.E., President, Tela Vuota, PLLC

**Welcome, and Call to Order (Malcolm P. Branch, Chair):**

Malcolm P. Branch, Chair, determined that a quorum was present as noted above and called the meeting to order at 1:00 p.m.

**REGULAR AGENDA**

**Approval of Minutes of Board of Commissioners Meeting on October 28, 2021:**

Chairman Branch entertained a motion by Vice Chair Painter to approve the minutes for the meeting on Thursday, October 28, 2021; the motion was seconded by Treasurer Gameda and unanimously approved.

**Becker & Poliakoff/Capital Results Legislative Update (Anthony Bedell, Federal Lobbying Co-Lead, Becker & Poliakoff):**

Mr. Bedell provided a legislative update on their action plan from December 15, 2021, to March 1, 2022. A copy of the presentation was provided to the Commissioners before the meeting. Mr. Bedell outlined targeted meetings with key local and federal government leaders. These meetings will establish an opportunity to highlight the Norfolk Airport Authority's priorities.

Mr. Bedell also provided an update on the Virginia General Assembly. The Capital Results team will monitor legislation that could impact the Authority. Mr. Bedell stated that the team is working to schedule meetings with key officials from both the legislative and executive branches.

**Presentation of 2021 Strategic Plan (Susan E. Winslow, P.E., President, Tela Vuota, PLLC):**

Ms. Winslow provided the Final Strategic Plan update. A copy of the Strategic Plan handout was presented to the Board before the meeting. The plan will be tracked and reviewed monthly to help ensure the goals are realistic and those executing the strategy are accountable.

Chairman Branch commended Ms. Winslow and the Strategic Planning Committee for the Plan's development. The Commissioners asked to be informed monthly on its progress.

**R-1 Recommendation to Approve the 2021 Strategic Plan (Mekbib Gemedu and Michael Burnett Strategic Plan Committee):**

On behalf of the Strategic Planning Committee, Mr. Gemedu moved to accept the 2021 Strategic Plan (Stronger Together). Chairman Branch called for a vote and the Commissioners unanimously accepted the Report.

**R-2 Recommendation to Approve an Employee Bonus from the Fiscal Year 2021 Surplus (Deborah H. Painter, Chair, Finance Audit Committee):**

During the October 28, 2021 Board of Commissioners Meeting, the Commissioners approved the recommendation by Committee Chair Painter to provide a bonus for employees subject to a cap of \$600,000, however, the Authority's payroll service provider (ADP) advised that the total cost for the bonuses, payroll taxes, and fees is \$767,250.

Committee Chair Painter moved to approve the budget increase for the total of employee bonuses from \$600,000 to \$770,000. The motion was duly seconded and unanimously approved.

**Executive Director's Report (Robert S. Bowen, A.A.E.):**

Mr. Bowen supplemented the Capital Projects Updates for November 26, 2021, distributed before the meeting, and announced that Garage D is officially open. In addition, the staff is updating the Capital Improvement Plan.

Mr. Bowen provided an overview of the November 30, 2021, Air Service review prepared by Mr. Braden.

**Chairman's Report: None**

**Old Business: None**

**New Business: None**

**Closed Meeting (1:25 p.m.):**

Treasurer Gemedu moved that the Board of the Norfolk Airport Authority convene in a closed session, pursuant to the following provisions of the Virginia Code:

- (i) Section 2.2-3711.A. 3: To discuss and consider the disposition by lease of Authority owned real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority;*
- (ii) Section 2.2-3711.A. 8: To consult with legal counsel retained by the Authority regarding specific legal matters requiring the provision of legal advice by counsel involving the concession agreements at the Airport, the contract with the search consultant, and perspective candidates for employment;*
- (iii) Section 2.2-3711.A.29: To discuss the award of a public contract involving the expenditure of public funds and to discuss the scope and terms of the contract where discussion in open session would adversely affect the bargaining position or negotiating strategy of the Authority; and*
- (iv) Section 2.2-3711.A.1 To discuss and consider the performance and compensation of certain specific individual employees of the Authority.*

The motion was duly seconded by Vice-Chair Painter and unanimously approved.

**Reconvene Open Meeting (1:45 p.m.):**

Following the Closed Meeting, Chairman Branch reconvened the Open Meeting. Treasurer Gemeda moved for adoption of the following resolution:

*Now, therefore, be it resolved that the Board of the Norfolk Airport Authority hereby certifies that to the best of each member’s knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Code, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the closed meeting.* The motion was duly seconded by Vice-Chair Painter.

A roll call vote was taken to approve the motion as follows:

| <b>Name</b>                | <b>Attendance</b> | <b>Name</b>         | <b>Attendance</b> |
|----------------------------|-------------------|---------------------|-------------------|
| <b>Malcolm P. Branch</b>   | Yes               | Deborah H. Painter  | Yes               |
| <b>Mekbib Gemeda</b>       | Yes               | John R. Broderick   | Yes               |
| <b>Michael B. Burnette</b> | Absent            | Peter G. Decker III | Yes               |
| <b>Paul D. Fraim</b>       | Absent            | William L. Nusbaum  | Yes               |
| <b>Bruce Smith</b>         | Absent            |                     |                   |

Commissioner Nusbaum then made a motion to approve the recommendation of the staff regarding the Main Lobby concession now utilized as a Starbucks. The motion was seconded by Commissioner Decker III and unanimously approved.

**Adjournment:**

There being no further business, Treasurer Gemeda moved that the meeting adjourn. The motion was seconded and unanimously approved. The meeting was adjourned at 2:10 p.m. The next regular meeting of the Board will be held on Thursday, January 27, 2022, at 1:00 p.m.

\_\_\_\_\_  
 Malcolm P. Branch  
 Board Chair

\_\_\_\_\_  
 Robert S. Bowen, A.A.E.  
 Executive Director

**R-1 Recommendation to  
Approve Award of Main Lobby  
Coffee Shop**

**(William L. Nusbaum, Esquire,  
Chair, Concessions Committee)**



January 18, 2022

Mr. William L. Nusbaum, Esquire, Chair, Concessions Committee  
Mr. John R. Broderick, Vice Chair, Concessions Committee

Re: Recommendation for Award of Main Lobby Coffee Shop

Dear Bill and John,

Following the December 2021 Board meeting, staff requested updated proposals from HMSHost and Hudson-NIA for the operations of a Starbucks and a Dunkin' Donuts in the current Departures Terminal Main Lobby Starbucks. Both concessionaires complied with our request.

Please find attached the proposals submitted by HMSHost and Hudson-NIA, as well as a memorandum of recommendation from Steve Sterling, Deputy Executive Director for Administration and Operations. Staff reviewed the proposals and reached a consensus for a recommendation to select the HMSHost Starbucks proposal for the Main Lobby store.

It is my recommendation that the Board approve the selection of the HMSHost Starbucks proposal for the Main Lobby Store.

Please let me know if you have any questions. I will place this matter on the agenda for Board Action at its meeting scheduled for January 27, 2022.

Sincerely,

A handwritten signature in black ink that reads "Robert S. Bowen".

Robert S. Bowen, A.A.E.,  
Executive Director

Attachments

Copy with attach: Commissioners  
Anita O. Poston, Esquire



## Memorandum

January 18, 2022

**TO:** Robert S. Bowen, Executive Director  
**FROM:** Steven C. Sterling, Deputy Executive Director A&O  
**COPIES:** Anthony E. Rondeau, Deputy Executive Director E&F  
**SUBJECT:** Recommendation for Main Lobby Coffee Shop Operator/Brand

We have received proposals from both HMSHost and Hudson-NIA to operate the Main Lobby Starbucks facility. Both operators propose operating either a Starbucks or Dunkin Donuts brand. The following is a summary of each proposal.

HMSHost, the current operator of the Main Lobby Starbucks, proposes to invest approximately \$400,000 to remodel the existing facility and continue operating as Starbucks. HMSHost proposes that the remodel can be completed “before the busy summer season”, if approved. As an alternative, HMSHost proposes to convert the current Starbucks brand to a Dunkin Donuts at a cost of over \$400,000. This, too, would be open by summer 2022. In their proposal, HMSHost does not request an extension of the existing agreement since they have programmed the funding in the existing term.

Hudson-NIA submitted a proposal to operate the facility as either a Starbucks or Dunkin Donuts, contingent on approval by their parent company, Dufry. Hudson-NIA proposes an investment of \$766,000 for Starbucks and \$828,000 for Dunkin Donuts. Hudson-NIA is requesting a five (5) year extension of their current agreement in order to realize a return on their investment. If approved, Hudson-NIA proposes to increase the commission paid by 2% of gross revenue beginning in 2027 when the existing agreement expires. Hudson-NIA proposes to operate this facility during the hours of 4:30 a.m. until the last flight departs.

I have heard from a few of our Commissioners that they prefer the Starbucks brand over the Dunkin Donuts brand. I have also had an opportunity to speak with the local manager of HMS Host since our last Board meeting. Dennis Blohm stated that there are several occasions where customers purchase drinks at the main lobby Starbucks and fail to realize they cannot take it through screening, which results in them disposing of it. After passing screening, some passengers will go the concourse Starbucks and complain about having to discard their drink. Dennis stated that on several occasions, he has directed his staff to give them a complimentary replacement drink. Dennis emphasized to me that he would not replace a drink sold by a different operator, which makes sense. Between this observation and the possibilities of price differentials, having two separate operators of the same brand could cause some confusion and inconsistency of customer experience and expectations. I therefore recommend that a single operator operate all Starbucks locations within the terminal building.



You and I have had discussions with Hudson-NIA regarding their desire for an extension of the current agreement. I have expressed to their executives that we do not desire any further extensions. Our agreement will be 28 years-old when it expires, and we are obligated to rebid the concession at that time. We have recently extended it one-year to account for the reduction of activity during the pandemic. It appears that Hudson-NIA is unable to recover their investment over the existing 5-year remaining term.

During our meeting today, you, Anthony Rondeau and I discussed these two proposals. We collectively agree that the Starbucks proposal by HMSHost is our preferred selection and is based on the following:

- HMSHost does not require an extension.
- It seems logical that the operator can share staff and resources among the three Starbucks locations.
- Allows some consistency regarding customer experience and expectations (pricing, customer service).
- A HMSHost remodel would not result in a total demolition of the existing facility and thereby seems logical that the duration of the closure associated with the remodel will be much shorter than that associated with a demolition/new construction approach by Hudson-NIA.
- We would require HMS Host to operate the facility consistent with those hours of operation offered by Hudson-NIA (4:30 a.m. through last flight out).
- No extension of the agreement associated with this remodel is authorized.

Upon approval, I am willing to notify both proposers of our selection. Please let me know if you have any questions.

Thank you,

Steven C. Sterling



December 21, 2021

Mr. Robert S. Bowen, A.A.E.  
Executive Director  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, VA 23518

Dear Mr. Bowen,

This letter is meant as a follow up to my previous letter dated November 16<sup>th</sup>, concerning our existing Starbucks Coffee Main Lobby location.

In addition to the offer of redeveloping the current space as a Dunkin' Donuts, HMSHost would like the Authority to also consider an extensive remodel of our current Starbucks Coffee. We have the refurbishment plans and scope already completed – and estimate the cost to be \$400,000. If approved, this work could be accomplished before the busy summer season.

Thank you for considering either a Dunkin' Donuts or Starbucks Coffee operation moving forward in this pre-security location. We thank you for your partnership and opportunity to serve the travelers and employees at Norfolk International Airport.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bryan Loden', with a long, sweeping horizontal line extending to the right.

Bryan Loden  
Vice President, Business Development

CC: Anthony E. Rondeau, Deputy Executive Director  
Steven C. Sterling, Deputy Executive Director  
Jarred M. Roenker, Director of Finance





November 16, 2021

Mr. Robert S. Bowen, A.A.E.  
Executive Director  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, VA 23518

Dear Mr. Bowen,

I am in receipt of your letter dated November 1, 2021, advising HMSHost of the Authority's intent to recover the Starbucks Main Lobby location using the Termination for Convenience clause.

As is consistent with many airport operators in the country, HMSHost has experienced a myriad of hardships and significant force majeure delays in the performance of its leasehold obligations brought on by the COVID 19 pandemic. Massive employee shortages have plagued the entire industry and employees are not available in the same capacities as they were pre-COVID. The granting of increased unemployment benefits, sick workers and others fearing for their own health have also contributed, and continue to contribute, to a reduced HMSHost workforce.

While labor challenges are still a significant issue in the industry and Norfolk specifically, the trend for hiring is certainly positive. With the exception the baggage claim kiosk location, HMSHost currently has all restaurants open to service the passengers and employees of Norfolk International Airport. In addition, we plan on opening the baggage claim location this week.

HMSHost respectfully asks the Authority to reconsider its intent to recover the Starbucks location. Furthermore, if the location is retained, HMSHost commits to spend over \$400,000 to redevelop the space as a Dunkin' Donuts. We are confident that Dunkin' Donuts will be a welcome addition by passengers and employees alike. We would plan on having the new location open by summer of 2022.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bryan Loden', is written over a light blue horizontal line.

Bryan Loden  
Vice President, Business Development

CC: Anthony E. Rondeau, Deputy Executive Director  
Steven C. Sterling, Deputy Executive Director  
Jarred M. Roenker, Director of Finance

January 14, 2022

**VIA E-MAIL**

Rbowen@norfolkairport.com

Robert Bowen  
Executive Director  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, VA 23518

Re: Norfolk Main Lobby Coffee and Retail Proposal

Dear Robert:

Thank you for the opportunity to submit a letter of interest for the Starbucks Main Lobby Coffee Shop.

Hudson-Nia is interested in this opportunity and can provide a concept that we feel would be compatible for the Norfolk International Airport (ORF) passengers. We would like to propose two concepts, Starbucks and Dunkin Donuts. These brands have a proven track record of success and will generate additional revenue for this Authority as we navigate through these most difficult times.

If the Main Lobby Starbucks is recovered by the Authority, there are a couple of considerations that should be addressed. Hudson- Nia would need an additional term of five (5) years added to our lease to get a Return on Investment (ROI) for the capital expenditures and approval by our parent company, Dufry. Projected capex for Starbucks is \$766,000 and Dunkin \$828,000.

Although there is no payback on either Starbucks or Dunkin, Hudson-Nia is prepared to complete the build-out and will require more term. Due to the Pandemic and COVID19 other U.S. airports have provided extensions (see attached list). Further, we are willing to work with the Airport to develop the brand of your choosing.

Another point of discussion is the Authority's concern regarding "The Long-Term Exclusive" duration of our relationship at the Norfolk International Airport. Here are some airports that Hudson has been the exclusive retail operator in and the years in the contracts: Rochester 1999 - 2031; Harrisburg 2004 - 2039; Manchester 1999 - 2028; Richmond 2006 - 2029 and Myrtle Beach 2011 - 2028.

To recap, we propose the following terms:

- Five (5) year extension to our current retail contract.
- Increase in percentage rent when our contract expires in 2027 (travel convenience 17%, specialty and coffee 15%).
- Capex – Starbucks \$766,000 and Dunkin \$828,000 (Authority chooses which brand).
- Hour of operation – 4:30AM until last flight departs.

Thank you for giving us the opportunity to continue to service and enhance the passenger experience at ORF.

Please let know if you have any questions or concerns. I have attached menus and photos of Starbucks and Dunkin Donuts for your review.

Sincerely,



Laura Alphran

Vice President Business Development

Cc- Brian Quin

Courtney Thornton

Rosa Owens

## Airport Extensions (COVID19 Related)

| Market                                    | Years   |
|---|---|
| Atlanta                                   | Domestic Contracts Concourse A, B, C, D and T (4 years) |
| Atlanta                                   | International Contract Concourse E & F (4.6 years)      |
| Birmingham                                | 7 years   |
| Denver                                    | 3 years   |
| Minneapolis                               | 3 years   |
| Mobile                                    | 2 years   |
| Norfolk                                   | 1 year  |
| Phoenix                                   | 3 years   |
| San Diego                                 | 2 years (Terminal T 2 West)                             |
| San Diego                                 | 3 years (Terminal 1)                                    |
| Houston Hobby                             | 3 years   |
| Houston Bush                              | 3 years   |
| Des Moines                                | 6 years   |
| Tulsa                                     | 2 years   |
| Oakland                                   | 1 year  |
| Seattle                                   | 3 years   |
| Anchorage                                 | 2 years   |
| LAX                                       | 2 years   |
| Tampa (duty paid)                         | 2 years   |
| Miami (duty free)                         | 6 years   |
| Miami (all contracts with term remaining) | 5 years   |
| Miami (all contracts month-to-month)      | 4 years   |

**NOW BREWIN' HOT COFFEE**  
**Dunkin' Midnight**

RICH • INTENSELY DARK CHOCOLATE NOTES

Dark Roast

**Original Blend**

LIVELY • SMOOTH CARAMEL NOTES

ALSO AVAILABLE IN DECAF

Light/Medium Roast

**Holiday Blend**

SWEET NOTES OF MOLASSES & DRIED FRUIT

Medium Roast



**COFFEE & ESPRESSO**

|   | S    | HOT  | ICED | CAL     | M    | HOT  | ICED | CAL     | L    | HOT  | ICED | CAL     |
|---|------|------|------|---------|------|------|------|---------|------|------|------|---------|
| <b>Coffee</b><br>Upgrade Hot to XL: 2.75   5-320  |      | 2.05 | 2.55 | 5-130   |      | 2.35 | 2.89 | 5-190   |      | 2.55 | 3.09 | 5-260   |
| <b>Frozen Coffee</b>  | --   |      | 3.49 | 390     | --   |      | 4.39 | 590     | --   |      | 4.99 | 780     |
| <b>Cold Brew</b>  | --   |      | 3.05 | 5-130   | --   |      | 3.39 | 5-190   | --   |      | 3.59 | 5-260   |
| <b>Pumpkin Cream Cold Brew</b>  | --   |      | 3.75 | 150     | --   |      | 4.09 | 210     | --   |      | 4.29 | 280     |
| <b>Cold Brew with Cold Foam</b>   | --   |      | 3.75 | 80      | --   |      | 4.09 | 80      | --   |      | 4.29 | 120     |
| <b>Nitro Cold Brew with Cold Foam</b>   | --   |      | 4.09 | 80      |      |      |      |         |      |      |      |         |
| <b>Nitro Cold Brew Signature Latte</b><br>Peppermint Mocha, Toasted White Chocolate, Pumpkin Spice, Caramel Craze, Cocoa Mocha* | 3.19 |      | 3.69 | 300-320 | 3.75 |      | 4.19 | 400-440 | 4.09 |      | 4.59 | 520-570 |
| <b>Latte</b>  |      | 2.89 | 3.39 | 120     |      | 3.45 | 3.95 | 170     |      | 3.85 | 4.35 | 230     |
| <b>Cappuccino</b>   |      | 2.89 | 3.39 | 80      |      | 3.45 | 3.95 | 120     |      | 3.85 | 4.35 | 160     |
| <b>Macchiato</b>  |      | 3.29 | 3.69 | 80      |      | 3.85 | 4.25 | 120     |      | 4.19 | 4.49 | 160     |
| <b>Americano</b>  |      | 2.45 | 2.95 | 5       |      | 2.75 | 3.25 | 10      |      | 2.95 | 3.45 | 10      |
| <b>Espresso</b>   |      | 1.29 | --   | 5       |      |      |      |         |      |      |      |         |

**Cold Brew with Sweet Cold Foam**



**Peppermint Mocha Signature Latte**



**Toasted White Chocolate Iced Signature Latte**



**MAKE IT YOURS**

**Non-Dairy Substitutes**

- Coconutmilk .50
- Almondmilk .50
- Oatmilk .50

**Sweetened Flavors**

Adds 110-270 CAL

- Toasted White Chocolate
- Peppermint Mocha
- Pumpkin Caramel Mocha
- French Vanilla
- Hazelnut

**Unsweetened Flavors**

Adds 5-20 CAL

- Vanilla
- Hazelnut
- Coconut
- Blueberry
- Toasted Almond
- Raspberry

**Cold Foam**

.70 | Adds 40-110 CAL

- Sweet Cold Foam
- Pumpkin Cream Cold Foam

**Espresso Shot**

.99 | 5 CAL

Flavors may be an additional charge  
 \*Made with hot chocolate powder

2,000 calories a day is used for general nutrition advice, but calorie needs vary. Additional nutrition information available upon request.

# SNACKIN' & MORE



## Pancake Minis

6 Pancakes with dipping syrup  
2.29 | 230 CAL **10g Protein**



## Grilled Cheese

3.69 | 480 CAL  
With Black Forest Ham  
3.99 | 510 CAL



## Croissant Stuffers

Chicken, Bacon & Cheese  
3.49 | 330 CAL



## Rollups

2 Bacon & Cheese or  
2 Ham & Cheese  
3.00 | 370/280 CAL



## Wake-Up Wrap<sup>®</sup> Sandwich

Add Your Choice of Protein  
2.09 | 200-290 CAL



## Snackin' Bacon

8 Snack-Sized Strips of  
Maple Sugar Bacon  
2.49 | 190 CAL



## Stuffed Bagel Minis

2 Everything • 2 Plain  
2.00 | 260/240 CAL



## Hash Browns

1.19 | 130 CAL



## Turkey Sausage, Egg & Cheese English Muffin

4.19 | 460 CAL

# EATS

## Avocado Toast

on Toasted Sourdough  
2.99 | 240 CAL  
Topped with Bacon  
3.99 | 290 CAL



## Maple Sugar Bacon Sandwich

Extra Bacon with Sweet Maple  
Seasoning with White Cheddar  
4.69 | 650 CAL



## Sourdough Breakfast Sandwich

Bacon, 2 Fried Eggs  
& White Cheddar  
4.69 | 650 CAL



## Power Breakfast Sandwich

Veggie Egg White Omelet  
Turkey Sausage & White Cheddar  
4.69 | 420 CAL



# CLASSICS

## Bacon, Egg & Cheese Bagel

Cherrywood Smoked Bacon, Egg & Cheese  
4.19 | 520 CAL

## Sausage, Egg & Cheese Croissant

4.19 | 720 CAL

## Egg & Cheese English Muffin

3.05 | 340 CAL

**GO2s** **\$2**  
2 EGG & CHEESE WAKE-UP WRAP SANDWICHES

**\$3**  
2 SAUSAGE, EGG & CHEESE WAKE-UP WRAP SANDWICHES

**\$4**  
2 BAGELS WITH CREAM CHEESE SPREAD

**\$6**  
2 BACON, EGG & CHEESE CROISSANTS

Coverage that goes where  
you go is #LivingProof

HIGHMARK

DUNKIN' DONUTS

DUNKIN' DONUTS  
NOW OPEN!

Elevator



RENDERED VIEW

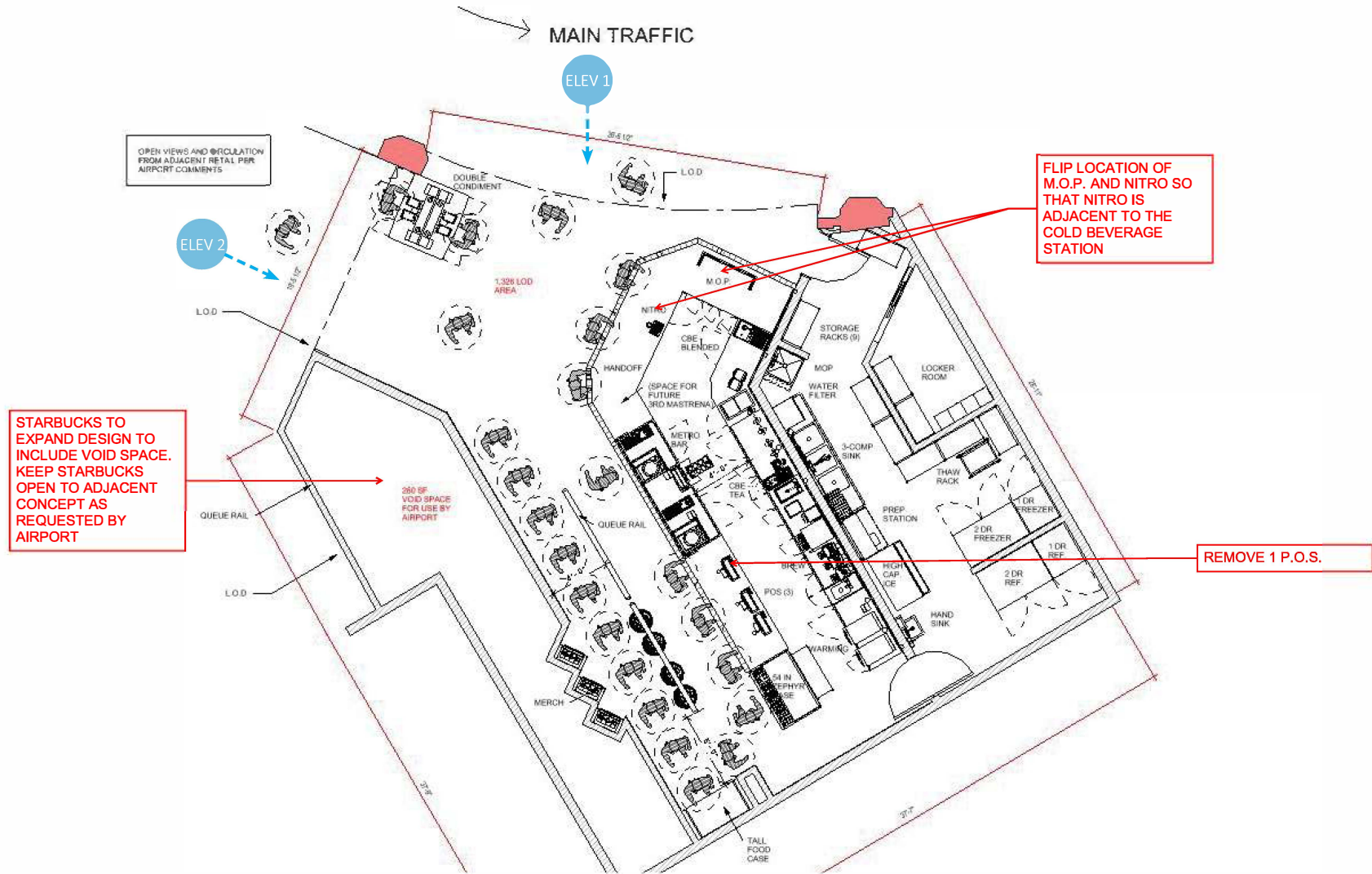




RENDERED VIEW



PROPOSED FLOOR PLAN



# Starbucks Menu

## Espresso and Coffee

White Chocolate Mocha  
 Caffè Mocha  
 Caramel Macchiato  
 Flat White  
 Caffè Latte  
 Cinnamon Dolce Latte  
 Vanilla Sweet Cream Cold Brew  
 Cold Brew w. Dark Cocoa Almondmilk Foam  
 Cold Brew w. Cinnamon Almondmilk Foam  
 Starbucks Cold Brew  
 Salted Caramel Cream Cold Brew  
 Cappuccino  
 Caffè Americano  
 Freshly Brewed Coffee  
 Add Espresso  
 Add Flavor  
 Add Non-Dairy

## Frappuccino

Caramel Ribbon Crunch  
 Mocha Cookie Crumble  
 Vanilla Bean Crème  
 Strawberry  
 Caramel  
 Mocha

## Tea & Refreshment

Chai Tea Latte  
 Matcha Green Tea Latte  
 Honey Citrus Mint Tea  
 Iced Pineapple Matcha Coconutmilk Drink  
 Iced Guava Passionfruit Coconutmilk Drink  
 Iced Peach Green Tea Lemonade  
 Kiwi Starfruit  
 Mango Dragonfruit  
 Strawberry Acai  
 Dragon Drink

## Highlighted Drinks

Honey Almondmilk Flat White  
 Honey Almondmilk Cold Brew  
 Kiwi Starfruit Starbucks Refreshers  
 Mango Dragonfruit Starbucks Refreshers  
 Pink Drink  
 Pistachio Latte  
 Pistachio Frappuccino

## Sandwiches

Southwest Chipotle Grilled Chicken  
 Cherrywood Ham & Swiss  
 Turkey & Swiss Panini

## Accoutrements

Fresh Fruit Cup  
 Fresh Red Grapes  
 Strawberry Blueberry Yogurt Parfait

## Chilled Beverages

Teavana 14.5oz  
 Arctic Sol 1 Liter  
 Arctic Sol 25oz  
 Galvanina 16.9oz  
 Naked Juice 15.2oz  
 Organic Milk 8oz  
 Organic Apple Juice 8oz

## Grab N' Go

Chips

## Merch.

Mint Recycled Plastic Tumbler 16oz  
 Dark Blue Stainless Tumbler 20oz  
 Whole Bean 8.8oz Coffee Bags  
 VIA Instant 12 ct  
 Siren Waves Recycled Tote Bag

|                                      |
|--------------------------------------|
| Undersea Tail Plastic Cold Cup 24oz  |
| Recycled Glass Cold Cup 16oz         |
| Matte Black Soft Touch Cold Cup 24oz |
| Starbucks borrow a cup program       |

**R-2 Recommendation to  
Approve a Mid-Year  
Adjustment to the Fiscal  
Year 2022 Budget**

**(Deborah H. Painter,  
Chair, Finance Audit  
Committee)**



January 18, 2022

Ms. Deborah H. Painter, Chair, Finance Audit Committee  
Mr. Paul D. Fraim, Esquire, Vice-Chair, Finance Audit Committee

Re: Mid-Year Adjustment to the Fiscal Year 2022 Budget

Dear Deb and Paul,

Please find attached a memorandum from Jarred Roenker, Director of Finance, regarding his Fiscal Year 2022 Budget Mid-Year Update. Due to increased airline and passenger activity, we now expect to receive approximately \$6.2 million over the projected operating revenues of the original Fiscal Year 2022 Budget. This, combined with actual operating expenses at or below Fiscal Year 2022 Budget levels, presents the opportunity for changes to the budget for the remainder of the Fiscal Year, including:

- An increase in the Expense Budget for salaries and wages in the amount of \$763,000 to reflect the bonus paid to employees in December 2021.
- An increase in the Authority's share of expenses of employee family health insurance plans from 31-36% to 66-68%, resulting in an increase in the amount of \$105,000 for the Expense Budget. This issue was identified in the newly approved Strategic Plan.
- An increase in the Capital Project Budget in the amount of \$902,085 for high priority capital projects that were deferred in Fiscal Years 2020, 2021 and 2022 due to the lack of funding during the pandemic, or newly identified due to continuing operations.

These changes will project a \$4.4 million increase in expected cash inflows compared to the original Fiscal Year 2022 Budget. It is my recommendation that this mid-year adjustment be approved by the Board of Commissioners.

Please let me know if you have any questions. I will place this matter on the agenda for Board action at its meeting scheduled for January 27, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "R. S. Bowen".

Robert S. Bowen, A.A.E.,  
Executive Director

Attachment

Copy w/attach: Commissioners  
Anita O. Poston, Esquire

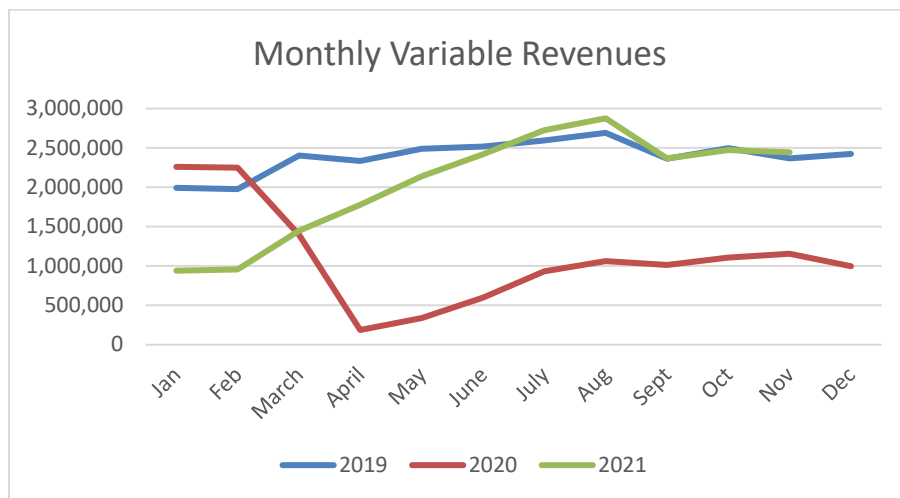


**Norfolk  
Airport  
Authority**

TO: Robert Bowen, Executive Director  
 FROM: Jarred Roenker, Director of Finance  
 SUBJECT: FY 2022 Budget Mid-Year Update  
 DATE: January 4, 2022

During the budget process for fiscal year 2022, we projected that the Airport would enplane approximately 1,513,000 passengers in FY22. This number was based on current conditions in early 2021 and was projected without knowledge of how long the slump in air travel would endure. The actual results thus far in FY22 have significantly exceeded these projections. We now estimate that 1,920,000 enplanements will take place at the Airport in FY22, an increase of 27% over the original budgeted figure.

With this substantial increase in passengers comes a corresponding increase in revenues. As shown in the below table, our variable (passenger generated) revenues have fully recovered, and are now at historic highs.



With this increase in our expected revenues for FY22, we have the opportunity to resume necessary capital expenditures and implement new policies. As such, we have developed an updated FY22 budget which is attached. In modeling the updated passenger expectations over the course of the fiscal year, we now expect to receive approximately \$6.2M more in operating revenues than had been projected in the original FY22 budget. This increase in revenue is primarily driven by an increase in parking revenue of \$3.3M and rental car revenue of \$2.5M. See Exhibit A of the updated budget for the full listing of updated revenues.

Exhibit B of the updated budget presents changes to budgeted expenses for FY22. The budget for salaries and wages was increased by \$763k to reflect the bonus paid to employees in December. Additionally, there



is a change in health insurance costs. This is the result of feedback we received in the strategic plan with regards to pricing of health insurance coverage. We agree with this feedback that our current rate structure is not equitable for employees that wish to cover family members. Under the Authority's current policy, for FY22, employee only plans are covered between 88-100% by the Authority. However, the Authority only pays for 31-36% of the cost of family plans. This pricing structure makes family plans unaffordable for many of our employees. Under the new pricing structure, the Authority's share of family plans increases to 66-68% of the total cost. We believe that this change will shift employee behavior as family plans become more affordable. Thus, future fiscal years may have higher health insurance costs than this budget increase. However, this change is in keeping with our strategic plan and is vital to righting a known source of inequity.

Exhibit C presents additional capital expenditures requests for FY22. With the onset of the pandemic, the Authority significantly restricted capital expenditures. Now that our revenue base has recovered, we have identified several high priority capital needs that should be addressed immediately. In total, these capital items amount to \$902k. Many of these capital items were deferred due to lack of funding through the pandemic, while others are newly identified due to continuing operations.

Overall, with an operating revenue increase of \$6.2M, operating expense increase of \$0.9M, and a capital item increase of \$0.9M, these changes result in a \$4.4M increase in expected cash inflows compared to the original FY22 budget.

Thanks,



Jarred Roenker, CPA  
Director of Finance



**Summary of Revenues**

**Exhibit A**

|                                       | Original<br>Budget FY22  | Amended<br>Budget FY22   | Variance from<br>Original<br>Budget | %                   |
|---------------------------------------|--------------------------|--------------------------|-------------------------------------|---------------------|
| <b>Landing Fees</b>                   | 6,444,394                | 6,444,394                | -                                   | 0.0%                |
| Airline Space                         | 3,717,532                | 3,717,532                | -                                   | 0.0%                |
| Common Use Gates                      | 250,000                  | 350,000                  | 100,000                             | 40.0%               |
| Passenger Loading Bridges             | 111,030                  | 111,030                  | -                                   | 0.0%                |
| <b>Airline Rent</b>                   | <u>4,078,563</u>         | <u>4,178,563</u>         | <u>100,000</u>                      | <u>2.5%</u>         |
| Conference Rooms                      | 500                      | 4,000                    | 3,500                               | 700.0%              |
| Building Rent                         | 2,003,000                | 2,003,000                | -                                   | 0.0%                |
| <b>Non-Airline Rent</b>               | <u>2,003,500</u>         | <u>2,007,000</u>         | <u>3,500</u>                        | <u>0.2%</u>         |
| Advertising                           | 225,000                  | 225,000                  | -                                   | 0.0%                |
| Food/Beverage Concessions             | 1,057,000                | 1,100,000                | 43,000                              | 4.1%                |
| Retail Concessions                    | 1,087,200                | 1,400,000                | 312,800                             | 28.8%               |
| Vending Machines                      | 16,000                   | 16,000                   | -                                   | 0.0%                |
| ATMs                                  | 25,000                   | 25,000                   | -                                   | 0.0%                |
| <b>Concession Fees</b>                | <u>2,410,200</u>         | <u>2,766,000</u>         | <u>355,800</u>                      | <u>14.8%</u>        |
| Lots                                  | 13,224,000               | 16,500,000               | 3,276,000                           | 24.8%               |
| Employee & Tenants                    | 211,200                  | 250,000                  | 38,800                              | 18.4%               |
| <b>Parking</b>                        | <u>13,435,200</u>        | <u>16,750,000</u>        | <u>3,314,800</u>                    | <u>24.7%</u>        |
| Rental Cars Commission                | 6,000,000                | 8,500,000                | 2,500,000                           | 41.7%               |
| <b>Rental Car</b>                     | <u>6,000,000</u>         | <u>8,500,000</u>         | <u>2,500,000</u>                    | <u>41.7%</u>        |
| TNC's                                 | 755,000                  | 690,000                  | (65,000)                            | -8.6%               |
| Taxicabs                              | 18,000                   | 15,000                   | (3,000)                             | -16.7%              |
| Vehicle Access Priviledge Fee         | 1,000                    | 1,000                    | -                                   | 0.0%                |
| <b>Ground Transportation Services</b> | <u>774,000</u>           | <u>706,000</u>           | <u>(68,000)</u>                     | <u>-8.8%</u>        |
| Field Ground Rent                     | 70,000                   | 70,000                   | -                                   | 0.0%                |
| <b>Land Rent</b>                      | <u>70,000</u>            | <u>70,000</u>            | <u>-</u>                            | <u>0.0%</u>         |
| Gourmet Gang - Catering               | 75,000                   | 75,000                   | -                                   | 0.0%                |
| Signature Flight Support (FBO)        | 375,000                  | 375,000                  | -                                   | 0.0%                |
| <b>Concessions</b>                    | <u>450,000</u>           | <u>450,000</u>           | <u>-</u>                            | <u>0.0%</u>         |
| Cargo Terminal                        | 250,000                  | 250,000                  | -                                   | 0.0%                |
| Fuel Farm                             | 340,000                  | 340,000                  | -                                   | 0.0%                |
| Miscellaneous                         | 10,000                   | 10,000                   | -                                   | 0.0%                |
| SIDA Fees                             | 50,000                   | 50,000                   | -                                   | 0.0%                |
| Security Reimbursements               | 75,000                   | 75,000                   | -                                   | 0.0%                |
| Telephone Reimbursements              | 11,000                   | 11,000                   | -                                   | 0.0%                |
| <b>Other</b>                          | <u>736,000</u>           | <u>736,000</u>           | <u>-</u>                            | <u>0.0%</u>         |
| <b>OPERATING REVENUE</b>              | <u><b>36,401,857</b></u> | <u><b>42,607,957</b></u> | <u><b>6,206,100</b></u>             | <u><b>17.0%</b></u> |
| Rental Cars-CFC                       | 2,400,000                | 2,500,000                | 100,000                             | 4.2%                |
| State Grants                          | 35,000                   | 35,000                   | -                                   | 0.0%                |
| TSA - Canine Grants                   | 151,500                  | 151,500                  | -                                   | 0.0%                |
| Interest/Investments                  | 100,000                  | 100,000                  | -                                   | 0.0%                |
| Off Airport Property Rent             | 300,000                  | 300,000                  | -                                   | 0.0%                |
| CARES/CRRSA Grants                    | 12,706,451               | 12,706,451               | -                                   | 0.0%                |
| <b>NON-OPERATING REVENUE</b>          | <u><b>15,692,951</b></u> | <u><b>15,792,951</b></u> | <u><b>100,000</b></u>               | <u><b>0.6%</b></u>  |
| <b>TOTAL REVENUE</b>                  | <u><b>52,094,807</b></u> | <u><b>58,400,907</b></u> | <u><b>6,306,100</b></u>             | <u><b>12.1%</b></u> |

## Expense Summary

## Exhibit B

|  | Approved<br>FY 22<br>Budget | Updated FY<br>22 Budget | Variance         | %           |
|--|-----------------------------|-------------------------|------------------|-------------|
| Salaries & Wages                       | 14,247,500                  | 15,011,235              | 763,735          | 5.4%        |
| Advertising & Promotion                | 925,000                     | 925,000                 | -                | 0.0%        |
| Consultant Fees                        | 381,500                     | 381,500                 | -                | 0.0%        |
| Sick Time Redeemed                     | 130,000                     | 130,000                 | -                | 0.0%        |
| Education & Tuition                    | 88,650                      | 88,650                  | -                | 0.0%        |
| Electricity                            | 2,070,000                   | 2,070,000               | -                | 0.0%        |
| Employee & Comm Relations              | 70,350                      | 70,350                  | -                | 0.0%        |
| Equip & Office Rental                  | 24,000                      | 24,000                  | -                | 0.0%        |
| Fuel & Lubricants                      | 155,800                     | 155,800                 | -                | 0.0%        |
| Heating                                | 260,000                     | 260,000                 | -                | 0.0%        |
| Health Insurance                       | 1,861,100                   | 1,966,100               | 105,000          | 5.6%        |
| Insurance                              | 1,150,000                   | 1,150,000               | -                | 0.0%        |
| Laundry and Uniform Cleaning           | 58,000                      | 58,000                  | -                | 0.0%        |
| Legal Fees                             | 200,000                     | 200,000                 | -                | 0.0%        |
| Miscellaneous                          | 600                         | 600                     | -                | 0.0%        |
| Postage                                | 4,850                       | 4,850                   | -                | 0.0%        |
| Publications & Dues                    | 69,230                      | 69,230                  | -                | 0.0%        |
| Safety Apparel & Equipment             | 65,000                      | 65,000                  | -                | 0.0%        |
| Sanitation & Stormwater                | 1,066,000                   | 1,066,000               | -                | 0.0%        |
| Services                               | 3,791,200                   | 3,791,200               | -                | 0.0%        |
| Social Security                        | 1,004,500                   | 1,004,500               | -                | 0.0%        |
| State Insurance                        | 180,000                     | 180,000                 | -                | 0.0%        |
| State Retirement                       | 1,687,600                   | 1,687,600               | -                | 0.0%        |
| Telephone                              | 135,470                     | 135,470                 | -                | 0.0%        |
| Tools & Equip                          | 232,750                     | 232,750                 | -                | 0.0%        |
| Travel                                 | 80,700                      | 80,700                  | -                | 0.0%        |
| Uniforms                               | 45,050                      | 45,050                  | -                | 0.0%        |
| Unemployment Insurance                 | 20,000                      | 20,000                  | -                | 0.0%        |
| Water                                  | 177,900                     | 177,900                 | -                | 0.0%        |
| Signs                                  | 16,000                      | 16,000                  | -                | 0.0%        |
| Maint & Repair                         | 2,720,600                   | 2,720,600               | -                | 0.0%        |
| Maint & Repair - Fuel Farm             | 280,000                     | 280,000                 | -                | 0.0%        |
| Supplies                               | 646,300                     | 646,300                 | -                | 0.0%        |
| <b>Total</b>                           | <b>33,845,650</b>           | <b>34,714,385</b>       | <b>868,735</b>   | <b>2.6%</b> |
| Capital Expenditures - Not Amortized   | 440,000                     | 1,342,085               | 902,085          | 205.0%      |
| <b>Total Operating Expenditures</b>    | <b>34,285,650</b>           | <b>36,056,470</b>       | <b>1,770,820</b> | <b>5.2%</b> |
| Enplaned Passengers                    | 1,513,651                   | 1,920,000               | 406,349          | 26.8%       |
| Operating Expenditures per Enplanement | 22.65                       | 18.78                   | (3.87)           | -17.1%      |

## Capital Project Additions - FY22

## Exhibit C

| Project #        | Department / Location            | Description   | Cost             | Notes   | Deferred or New |
|------------------|----------------------------------|---|------------------|---|-----------------|
| 1                | Departures                       | Renovate Staff Locker Rooms (Police, Men's and Women's) | \$100,000        | Existing spaces are in need of attention. This project would include replacing the wooden benches, lockers, repairing the surrounding drywall, painting and changing out the lighting to LEDs.  | Deferred        |
| 2                | Departures                       | Replace Interior Trash Cans                             | \$34,000         | Departures Terminal 1st Floor - The existing trash cans are concrete and very difficult for staff to move. The tops are metal and have been dented from years of being in service. These would be replaced with the Magnuson Group Sotare model that matches the trash cans on the 2nd floor of departures. | Deferred        |
| 3                | Departures / Arrivals            | Replace Exterior Trash Cans                             | \$25,000         | Concrete trash cans for departures and arrival exterior are worn, dirty and damaged   | Deferred        |
| 4                | Departures / Arrivals            | Kubota Utility Vehicle                                  | \$17,000         | Smaller vehicle which will be used to put down mulch and straw in the courtyard and for cleanup in the garages and around the terminals   | Deferred        |
| 5                | Departures / Arrivals            | Portable Yard / Delivery Ramp                           | \$34,000         | Used to safely load and unload heavy items and equipment from the back of a truck. Needed since there is no loading dock at truck level.  | Deferred        |
| 6                | Operations                       | Reflectometer   | \$85,000         | Measures airfield marking reflectivity against FAA standards  | Deferred        |
| 7                | Fire                             | Fire Training Facility Repairs                          | \$65,000         | This project will address numerous deferred maintenance and repair items  | Deferred        |
| 8                | Ground Transportation / Field    | Crack Sealing equipment                                 | \$54,000         | Seal cracks in the asphalt pavement which will prevent water from entering the pavement section resulting in extended service life  | New             |
| 9                | Janitorial                       | Replace AP-2  | \$25,000         | Replace AP2 which is a 2010 model year vehicle. A pickup truck would help staff to haul trash and supplies to and from the TNC area, taxi que and the Customs facility at GA.   | New             |
| 10               | Departures                       | Gate B27 Seating Expansion                              | \$77,140         | Replaces old Herman Miller seating units with the Authority standard Arconas units. Charging units will be provided for seating.  | New             |
| 11               | Field                            | Airfield Tractor with Mow Deck                          | \$75,000         | Replace AP#43 which has been in use since 2014 and requires more maintenance each year  | New             |
| 12               | Field                            | Replace AP-72   | \$56,000         | Replaces a 2005 truck that is used for landside and field operations  | New             |
| 13               | Ground Transportation / Arrivals | Portable Variable Message Board                         | \$25,000         | 3-line message board, solar power   | New             |
| 14               | Parking                          | Update Lighting in Garage A and D Stair Towers          | \$94,945         | Replace the old can lights with LED can lights for better energy efficiency and brightness. Covers both the stairs and elevator lobby for Garage A and the Stairs for Garage D.   | New             |
| 15               | Police / Fire                    | Public Safety Radios                                    | \$95,000         | Replace 26 units  | New             |
| 16               | Parking                          | New vehicle   | \$40,000         | Small pick-up truck for new parking maintenance tech position which will be used for daily access to all lane equipment   | New             |
| <b>Deferred*</b> |                                  |   | <b>\$360,000</b> | * These items were either denied or stopped during COVID  |                 |
| <b>New**</b>     |                                  |   | <b>\$542,085</b> | **These items have been needed for some time but were not requested during COVID  |                 |
| <b>Total</b>     |                                  |   | <b>\$902,085</b> |   |                 |

# **Executive Director Report**

**(Robert S. Bowen, A.A.E.,  
Executive Director)**

## **Capital Projects Update – January 14, 2022**

### **Parking Revenue Control System Replacement**

- General Contractor – HUB Parking Technology USA
- This project will replace the entry and exit terminals at all the public parking lots and garages.
- All Authority employees, tenants and Non-Domiciled Airline Employees have been issued the new parking access card for the new system.
- All lanes in Garage complex are operational.
- The online prebooking/reservation platform is now operational.
- We are reviewing punch-list items and anticipate closing out the project upon HUB's completion of a software upgrade, which is intended to fix several issues. Anticipated closeout is June 2022.

### **General Aviation Fuel Farm Replacement**

- General Contractor – Oil Equipment Sales and Service Co., Inc. (OESSCO)
- Project will replace the Underground Aviation Fuel Tank at the General Aviation Facility with an above ground tank at the fuel farm.
- Tank delivery is pending. Contractor will set the construction schedule once all materials are on site.

### **HVAC Renovation**

- General Contractor - Virtexco
- Project started September 1<sup>st</sup> with completion scheduled for June 2, 2022.
- This project will replace a cooling tower, an air handler, two tug bay heaters and provide limited duct cleaning in the Departures building.
- Replacement of this equipment will increase the reliability of our HVAC system and provide additional energy efficiencies.

### **Garage 'A' Elevator Modernization**

- Contractor - Thyssenkrupp
- The existing elevators will have their electronic controls, motors and cabling modernized.
- This will allow for increased reliability since the major components will be better supported by the manufacturers after the update.
- Inspection of third and final elevator is set for January 31<sup>st</sup>. Once any items found in the inspection are corrected the project will be completed and closed.

**Taxiway 'C' North Rehabilitation**

- General Contractor - Branscome
- This project rubblized and overlaid Taxiway 'C' from Taxiway 'H' to the approach end of Runway 5/23.
- Project completed in December 2021.



**FUNDING SUMMARY**

- 34 total projects in various stages of planning, design and construction

| <b>Overall Budget</b> |                 | <b>Budget Balance</b> | <b>Fund Balance</b> |
|-----------------------|-----------------|-----------------------|---------------------|
| <b>\$91,782,000</b>   | <b>Totals</b>   | <b>\$16,802,921</b>   | <b>\$51,536,741</b> |
| \$58,000,000          | Bonds           | \$0                   | \$0                 |
| \$0                   | PFC             | \$0                   | \$3,695,109         |
| \$16,400,000          | Parking         | \$6,297,472           | \$8,792,998         |
| \$6,835,000           | AIP             | \$5,275,370           | \$5,275,370         |
| \$4,200,000           | State Ent.      | \$2,465,843           | \$7,751,387         |
| \$1,100,000           | FBO             | \$817,519             | \$1,409,874         |
| \$1,350,000           | Capital Reserve | \$837,661             | \$2,536,678         |
| \$150,000             | CFC             | \$10,741              | \$2,630,271         |
| \$3,747,000           | Renewal         | \$1,098,316           | \$19,445,054        |



**Closed Meeting  
(Required)**



Norfolk Airport Authority  
Board of Commissioners Meeting  
Closed Meeting Script (if required)  
Thursday, January 27, 2022  
1:00 p.m.

## Code of Virginia

I move that the Board of the Norfolk Airport Authority convene in a closed session, pursuant to:

- (i) the personnel exemption of Virginia Code Section 2.2-3711. A 1, for the purpose of discussion and consideration of the retirement of the Executive Director, the employment and possible salary of a successor, prospective candidates for employment, and the selection and engagement of a search firm;
- (ii) the public contract exemption at Section 2.2-3711. A. 29, for the purpose of discussion of the award of a public contract involving the expenditures of public funds and discussion of the scope and terms of the contract where discussion in open session would adversely affect the bargaining position or negotiating strategy of the Authority; and
- (iii) Section 2.2-3711. A. 8, for the purpose of consultation with legal counsel regarding legal matters pertaining to the contract with the search consultant and perspective candidates for employment.

**Reconvene Open Meeting  
(Required)**



**Norfolk Airport Authority**  
**Board of Commissioners Meeting**  
**Reconvene Public Meeting Certificate**  
**(if required)**  
**Thursday, January 27, 2022**  
**1:00 p.m..**

**SCRIPT:**

Now, therefore, be it resolved that the Board of the Norfolk Airport Authority hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Code, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.

# ADJOURNMENT



**Norfolk Airport Authority**  
**Board of Commissioners Meeting**  
**Thursday, January 27, 2022**  
**1:00 p.m.**

**I, MOVE THAT THE BOARD ADJOURN AND THAT THE  
NEXT REGULAR PUBLIC SESSION OF THE BOARD  
BE HELD AT  
1:00 P.M.,  
ON THURSDAY, FEBRUARY 24, 2022  
IN THE  
HUMAN RESOURCES CONFERENCE ROOM A,  
MAIN PASSENGER TERMINAL,  
NORFOLK INTERNATIONAL AIRPORT  
OR AS OTHERWISE DETERMINED AND NOTICED.**

