

ESCROW AGREEMENT

This **ESCROW AGREEMENT**, dated as of December 20, 2012, by and among Greenville County, South Carolina (the "**County**"), a body corporate and politic and a political subdivision of the State of South Carolina (the "**State**"), the City of Greenville, South Carolina (the "**City**"), a body corporate and politic and a municipal corporation organized under the laws of the State, and The Bank of New York Mellon Trust Company, N.A. (the "**Escrow Agent**"), a national banking association organized and existing under the laws of the United States of America, as escrow agent.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby formally covenant, agree, and bind themselves as follows:

Section 1. Findings of Fact.

(a) The County Council of the County (the "**County Council**"), the governing body of the County, has previously enacted Ordinance No. 2594 of 1994, as amended by Ordinance No. 2842 of 1996, as amended by Ordinance No. 4276 of 2009, as amended by Ordinance No. ____ of 2012 (collectively, the "**County Ordinance**") and the City Council of the City (the "**City Council**"), the governing body of the City, has previously enacted Ordinance No. 94-27 of 1994, as amended by Ordinance No. 96-63 of 1996, as amended by Ordinance No. 2009-33 of 2009, as amended by Ordinance No. 2012-__ of 2012 (collectively, the "**City Ordinance**"), each of which provides for the establishment and collection of an accommodations fee of 2.3% of gross receipts (the "**Accommodations Fees**") of businesses engaged in providing accommodations for transients within the boundaries of the County (exclusive of incorporated municipalities) and within the boundaries of the City, respectively, and other matters related thereto.

(b) Pursuant to the City Ordinance and the County Ordinance, the City Council and the County Council have respectively provided that the Accommodations Fees shall be used (i) first to pay debt service on obligations issued from time to time by the District pursuant to a bond resolution (the "**Bond Resolution**"), as such Bond Resolution may be supplemented, amended or restated (or replaced by a new bond resolution in connection with the issuance of obligations) and (ii) secondly as further provided in an Intergovernmental Agreement dated of even date herewith (the "**Intergovernmental Agreement**") among the City, the County, the Greenville Arena District, South Carolina (the "**District**") and the Escrow Agent.

(c) The Board of Trustees (the "**Board**"), the governing body of the District, has adopted the Bond Resolution pursuant to which the District has agreed to make Debt Service Payments (as defined therein) payable solely from and secured by a pledge of and lien on the Accommodation Fees received pursuant to the Intergovernmental Agreement as security for the issuance of Accommodations Fees Revenue Bonds (the "**Bonds**") issued by the District from time to time for the financing or refinancing of a portion of the District's sports and entertainment arena (the "**Arena**").

(d) The District intends to secure its obligations under the Bond Resolution by assigning its rights to the Intergovernmental Agreement and its rights to receive Accommodation Fees thereunder from the City and the County to the Escrow Agent, as trustee, pursuant to the Bond Resolution.

(e) In exercising their respective business and proprietary powers, the County Council and the City Council have determined that it is necessary and advantageous to the citizens of the County and the City that the County and the City establish an Escrow Fund (as defined below) with the Escrow Agent

to provide for the pledge and application of the Accommodations Fees to the payment of the costs of financing or refinancing the Arena.

(f) The County, the City and an escrow agent have previously entered into an Escrow Agreement (the “*2009 Escrow Agreement*”) dated as of July 1, 2009 concerning the payment of the Accommodations Fees to the escrow agent for the purpose of making installment payments on the District’s \$14,985,000 Greenville Arena District Public Facilities Corporation, Refunding Certificate of Participation, Series 2009B (the “*Series 2009B Certificate*”). The parties to the 2009 Escrow Agreement now desire to terminate that agreement and replace it with this Agreement.

Section 2. Definitions. The following words, terms, or phrases, when used in this Escrow Agreement, have the following meanings respectively, unless the context clearly indicates a different meaning.

“*Accommodations Fees*” means the Accommodations Fees collected by the City and the County pursuant to the City Ordinance and the County Ordinance, respectively. The term Accommodations Fees specifically excludes any accommodations fees collected by the County pursuant to Ordinance No. 2595 of 1994.

“*Bond Resolution*” means the Bond Resolution adopted by the Board of the District on November 27, 2012, as amended or supplemented from time to time.

“*Bonds*” means the Greenville Arena District, South Carolina Accommodations Fee Revenue Bonds issued by the District payable from and secured by a pledge of and lien on the Accommodations Fees revenues, as may be outstanding from time to time.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of South Carolina or in the State of New York are required or authorized by law (including executive orders) to close.

“*City*” means the City of Greenville, South Carolina, its successors and assigns.

“*City Council*” means the governing body of the City.

“*City Ordinance*” means Ordinance No. 94-27 of 1994, as amended by Ordinance No. 96-63 of 1996, as amended by Ordinance No. 2009-33 of 2009, as amended by Ordinance No. 2012-__ of 2012, as enacted by the City Council.

“*County*” means Greenville County, South Carolina, its successors and assigns.

“*County Council*” means the governing body of the County.

“*County Ordinance*” means Ordinance No. 2594 of 1994, as amended by Ordinance No. 2842 of 1996, as amended by Ordinance No. 4276 of 2009, as amended by Ordinance No. ____ of 2012, as enacted by the County Council. The term County Ordinance specifically does not include Ordinance No. 2595 of 1994.

“*Escrow Agent*” means The Bank of New York Mellon Trust Company, N.A., a national banking association, acting in the capacity of trustee pursuant to the Bond Resolution, and any successor thereto appointed under the Bond Resolution.

“Escrow Agreement” means this Escrow Agreement among the City, the County, and the Escrow Agent, as amended from time to time.

“Escrow Fund” means the fund by that name established pursuant to **Section 3** hereof.

“Intergovernmental Agreement” means the Intergovernmental Agreement, of even date herewith, among the District, the County, the City and the Escrow Agent, as amended or supplemented from time to time.

“Permitted Investments” means investments permitted under State law for political subdivisions and by the District’s investment policy:

“Public Body Representative” means (a) the person or persons at the time designated to act on behalf of the City and the County for the purpose of performing any act under this Agreement by a written certificate furnished to the Escrow Agent containing the specimen signature of such person or persons and signed on behalf of the District by the Chairman of the Board of Trustees of the District, or (b) if the Chairman of the Board of Trustees of the District has failed to designate a person pursuant to clause (a), the person or persons designated at the time to serve as Public Body Representative hereunder by the City and the County.

Section 3. Accommodations Fees and Escrow Fund.

(a) Upon the terms and conditions of the Intergovernmental Agreement, the City and the County respectively agree to pay, or cause to be paid, to the Escrow Agent on or before the twenty-fifth day of each month or the next succeeding Business Day if the twenty-fifth day of the month is not a Business Day (each a **“Deposit Date”**), commencing December 26, 2012 (the **“Initial Deposit Date”**), for the entire term of the Intergovernmental Agreement all Accommodations Fees collected by the City and the County, pursuant to the City Ordinance and the County Ordinance, respectively.

(b) A special fund is hereby created and established with the Escrow Agent to be designated **“Greenville Arena District Escrow Fund”** (the **“Escrow Fund”**), which shall be expended in accordance with paragraph (c) of this **Section 3**. Upon receipt by the Escrow Agent of any Accommodations Fees from either the City or the County pursuant to paragraph (a) of this **Section 3**, the same shall be deposited immediately into the Escrow Fund.

(c) On the first Business Day following each Deposit Date, commencing with the first Business Day following the Initial Deposit Date, all moneys in the Escrow Fund shall be withdrawn by the Escrow Agent and transferred to the Debt Service Fund (as defined and established in the Bond Resolution) held and maintained by the Escrow Agent, as trustee,, to be immediately transferred to the following accounts in the following order of priority:

(i) To the Interest Account of the Debt Service Fund, an amount equal to 1/6th of the amount of the next interest installment due on the Bonds; provided that, for the deposits commencing on the Business Day following the Initial Deposit Date and all deposits to such Account due prior to March 1, 2013, an amount equal to 1/4th of the amount of the next installment due on March 1, 2013, shall be transferred.

(ii) To the Principal Account of the Debt Service Fund, an amount equal to 1/12th of the amount of the next payment of principal due on the Bonds; provided that, for the deposits commencing on the Business Day following the Initial Deposit Date and all deposits to such

Account due prior to March 1, 2013, an amount equal to 1/4th of the amount of the next installment due on March 1, 2013, shall be transferred.

(iii) To the Reserve Fund, if any, until the amount therein equals the reserve requirement, if any, or to the reimbursement of the surety bond provider, if any, pursuant to the Bond Resolution.

(iv) Notwithstanding any other provision of this Escrow Agreement to the contrary, to the provider of the Existing Debt Service Forward Delivery Agreement (defined below) in satisfaction of any obligations then owing by the District to such provider (except, for the avoidance of duplication, amounts previously satisfied through the regular periodic deposits timely made by the District thereunder in accordance with its terms). "Existing Debt Service Forward Delivery Agreement" means the Debt Service Forward Delivery Agreement dated as of January 21, 1999, by and among The Bank of New York Mellon Trust Company, N.A., as trustee (as successor in such capacity to First Union National Bank), the District and Bank of America, N.A. (formerly known as NationsBank, N.A.) as the "Provider" thereunder, as amended to date, including without limitation the amendment among the parties thereto dated December 20, 2012 (being entered in connection with the refunding of the Series 2009B Certificate) and as the same may be further amended from time to time in accordance with the provisions thereof.

(v) To the Excess Accommodations Fees Account of the Debt Service Fund the amount of Accommodations Fees received in excess of the amounts required by subsections 3.(c)(i), 3.(c)(ii) and 3.(c)(iii) above; such amounts in the Excess Accommodations Fees Account will be paid to the City and the County on a pro rata basis on July 1 of each year, commencing July 1, 2013.

(d) On July 1 of each year, commencing July 1, 2013, after the Debt Service Payments (as defined in the Bond Resolution) have been satisfied for the prior twelve-month period, the Escrow Agent shall transfer all moneys remaining in the Excess Accommodations Fees Account to the City and the County on a pro rata basis based on the relative amounts of Accommodations Fees paid by the City and the County for the prior twelve-month period as a rebate of the excess paid by the City and the County for the Debt Service Payments on the Bonds for the prior twelve-month period.

(e) Any moneys held as part of the Escrow Fund shall, at the written direction of and as specified by the Public Body Representative, be invested and reinvested by the Escrow Agent in Permitted Investments to the extent practicable. Any investments shall be held by or under the control of the Escrow Agent and shall be deemed at all times a part of the Escrow Fund and the interest accruing thereon and any profit realized from said investments shall be credited to the Escrow Fund, and any loss resulting from the investments shall be charged to the Escrow Fund. The Escrow Agent is directed to sell and reduce to cash funds a sufficient amount of investments whenever the cash balance of the Escrow Fund is insufficient to make any necessary transfers or withdrawals from the Escrow Fund. The Escrow Agent shall value the Permitted Investments in the Escrow Fund on the same occasions and under the same terms and conditions as it shall value funds held under the Bond Resolution.

Section 4. Creation of Lien. The City and the County hereby grant to the Escrow Agent a first lien on the Accommodations Fees and acknowledge that the Accommodation Fees on deposit in the Escrow Fund shall be subject to an express lien and trust for the benefit of the holders of the Bonds, subject, however, to the terms of this Agreement.

Section 5. Acceptance of the Trusts. The Escrow Agent hereby accepts the trusts imposed upon it by this Escrow Agreement, and agrees to perform those trusts.

Section 6. Representatives and Responsibilities of Escrow Agent. The Escrow Agent shall not be held to any personal liability whatsoever in tort, contract, or otherwise in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of moneys and securities deposited in the Escrow Fund, or any payment, transfer, or other application of money or securities by the Escrow Agent, or any act, omission, or error of the Escrow Agent made in good faith in the conduct of its duties and not involving negligence or willful misconduct.

Section 7. Resignation or Removal of Escrow Agent. The Escrow Agent may resign and thereby become discharged from the duties and obligations hereby created, by notice in writing given to the City and the County not less than sixty (60) days before the date the resignation shall take effect. The Escrow Agent may be removed by the City and the County upon sixty (60) days written notice to the Escrow Agent by an instrument executed and signed by the duly authorized officers of the City and the County. The resignation or removal shall take effect upon the appointment of a successor Escrow Agent that shall accept the duties and obligations hereof. If at any time the Escrow Agent shall resign or be removed and no appointment of a successor Escrow Agent shall be made pursuant to the provisions of **Section 9** hereof within sixty (60) days of the date of resignation or removal of the Escrow Agent, then the Escrow Agent, the City or the County, may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. The court may thereupon, after any notice as it may deem proper and prescribed, appoint a successor Escrow Agent. Upon the resignation or removal of the Escrow Agent, all moneys, securities, or other obligations shall be transferred immediately to the successor Escrow Agent without the execution or filing of any instruments or any further act, deed, or conveyance on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 8. Successor Escrow Agent. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any conversion, sale, merger, consolidation, or transfer to which it is a party shall be and become successor Escrow Agent hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9. Appointment of Successor Escrow Agent. In case the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the City and the County by an instrument executed and signed by the duly authorized officer of each.

Section 10. Miscellaneous.

(a) This Escrow Agreement replaces the 2009 Escrow Agreement, and the 2009 Escrow Agreement terminates on the effective date of this Escrow Agreement.

(b) All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either (i) hand delivered, (ii) sent via overnight delivery service or (iii) deposited in the United States mail, certified mail, return receipt requested, with postage pre-paid, and addressed to the party or parties for whom intended as follows:

If to the County:

Greenville County
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attention: County Administrator

If to the City:

City of Greenville
P.O. Box 2207
Greenville, South Carolina 29602
Attention: City Manager

If to the Escrow Agent:

The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Corporate Trust Division

A duplicate copy of each notice, certificate, request, or other communication given hereunder to the County, the City, or the Escrow Agent, shall also be given to the others. The County, the City, and the Escrow Agent, by notice given hereunder, may designate any further or different address as to which subsequent notices, certificates, requests, or other communication shall be sent.

(b) No covenant, obligation, or agreement contained herein shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee, of the County, the City, or the Escrow Agent, in any other than his official capacity, and neither the members of the County Council or the City Council, nor any official executing this Escrow Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the County, the City, or the Escrow Agent contained in this Escrow Agreement.

(c) This Escrow Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Escrow Agent, the County, the City, and their respective successors and assigns.

(d) This Escrow Agreement may not be effectively amended, changed, modified, altered, or terminated, except in accordance with the express provisions of this Escrow Agreement or with the written consent of all parties hereto.

(e) This Escrow Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

(f) If any other provision of this Escrow Agreement, or any covenant, obligation, or agreement contained herein, is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable

application thereof, and each such provision, covenant, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

(g) This Escrow Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

(h) Upon termination of this Escrow Agreement, at the termination of the Intergovernmental Agreement, the Escrow Agent shall transfer all moneys held in the Escrow Fund to the other funds held by the Escrow Agent be used pursuant to the terms of the Bond Resolution and second, any remaining funds, to the City and the County on a pro rata basis.

Section 11. Effective Date. This Escrow Agreement will become effective on the date of issuance of the first series of Bonds under the Bond Resolution.

[Signature page follows]

IN WITNESS WHEREOF, the County, the City, and the Escrow Agent have caused this Agreement to be duly executed in their respective names, all as of the date first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

ATTEST:

By: _____
Its: Clerk to County Council

By: _____
Its: Chairman, County Council

By: _____
Its: County Administrator

CITY OF GREENVILLE, SOUTH CAROLINA

ATTEST:

By: _____
Its: City Clerk

By: _____
Its: City Manager

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
AS ESCROW AGENT**

By: _____

Its: _____