

ORDINANCE NO. _____

AUTHORIZING GREENVILLE COUNTY, SOUTH CAROLINA, TO EXECUTE DOCUMENTS INCLUDING A SECOND SUPPLEMENT TO LEASE AGREEMENT BY AND BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND GREENVILLE COUNTY TOURISM PUBLIC FACILITIES CORPORATION; CONSENTING TO THE ISSUANCE OF REFUNDING CERTIFICATES OF PARTICIPATION IN THE SECOND SUPPLEMENT TO LEASE AGREEMENT IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$29,300,000; APPROVING THE FORM OF A SECOND SUPPLEMENT TO TRUST AGREEMENT BETWEEN GREENVILLE COUNTY TOURISM PUBLIC FACILITIES CORPORATION AND THE TRUSTEE NAMED THEREUNDER; AUTHORIZING A PLEDGE OF AND LIEN ON THE HOSPITALITY TAX REVENUES TO SECURE THE PAYMENT OF THE **BASE RENTLEASE RENTALS UNDER THE LEASE AGREEMENT; AND OTHER MATTERS RELATING THERETO.**

BE IT ORDAINED BY THE COUNTY COUNCIL OF GREENVILLE COUNTY, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Findings and Determinations. Greenville County, South Carolina (the “*County*”) hereby finds and determines:

(a) The County desires to enhance the recreation, leisure and cultural opportunities within the county to promote tourism thereby increasing revenues of businesses within the County.

(b) On December 12, 2006, the County Council of the County (the “*Council*”) enacted an ordinance authorizing a local hospitality tax (the “*Hospitality Tax*”) pursuant to Title 6, Chapter 1, Article 7 of the Code of Laws of South Carolina 1976, as amended, which is a significant source of revenue for the County.

(c) Section 4-9-30 of the Code of Laws of South Carolina, 1976, as amended, empowers the County to lease real and personal property.

(d) The County has entered into a Ground Lease Agreement (the “*Original District Ground Lease*”) dated as of March 1, 2008, as supplemented by a First Supplement to Ground Lease Agreement (the “*First Supplement to District Ground Lease*”) and, together with the Original District Ground Lease, the “*District Ground Lease*”) dated as of August 1, 2010 with the Greenville County Recreation District, South Carolina (the “*District*”), a body corporate and politic and a political subdivision of the State of South Carolina, whereby the County leased from the District the land described in Exhibit A to the District Ground Lease.

(e) The County has entered into a Ground Lease Agreement (the “*Original Corporation Ground Lease*”) dated as of March 1, 2008, as supplemented by a First Supplement to Ground Lease Agreement (the “*First Supplement to Corporation Ground Lease*”) and, together with the Original Corporation Ground Lease, the “*Corporation Ground Lease*”) dated as of August 1, 2010 with the Greenville County Tourism Public Facilities Corporation (the “*Corporation*”), a nonprofit corporation incorporated and existing under the laws of the State of South Carolina, and the District whereby the Corporation leased from the County the land described in Exhibit A to the Corporation Ground Lease.

(f) Pursuant to the terms of a Lease Agreement (the “**Original Lease**”) dated as of March 1, 2008 among the County, the Corporation, and the District, the Corporation acquired, constructed and installed certain improvements described in Exhibit A to the Original Lease and defrayed the costs of the acquisition, construction and installation thereof through the execution and delivery of \$35,710,000 Greenville County Tourism Public Facilities Corporation, Certificates of Participation, Series 2008 (the “**Series 2008 Certificates**”), evidencing the undivided proportionate interests of the holders thereof in the rights of the Corporation to receive payments under the Original Lease.

(g) The Series 2008 Certificates are currently outstanding in the principal amount of \$27,990,000 maturing or subject to mandatory sinking fund redemption on April 1 of 2015 to 2028, inclusive, and bearing interest at rates per annum ranging from 4.00% to 5.00%. The Series 2008 Certificates maturing or subject to mandatory sinking fund redemption on April 1 of 2018 to 2028, inclusive, in the principal amount of \$23,330,000 (the “**Refunded Certificates**”) are subject to redemption at the option of the County in whole or in part beginning April 1, 2017 at the redemption price of par, plus accrued interest to the redemption date.

(h) Pursuant to the terms of the Original Lease as supplemented by a First Supplement to Lease Agreement dated as of August 1, 2010, among the City, the Corporation and the District (the “**First Supplement to Lease**”), the Corporation acquired, constructed and installed certain improvements described in the First Supplement to Lease and defrayed the cost of the acquisition, construction and installation thereof through the execution and delivery of \$14,680,000 Greenville County Tourism Public Facilities Corporation, Certificates of Participation, Series 2010, evidencing the undivided proportionate interests of the holders thereof in the rights of the Corporation to receive payments under the Original Lease as supplemented by the First Supplement to Lease.

(i) The Corporation intends to advance refund and defease the Refunded Certificates, fund the applicable debt service reserve fund, if any, and pay for any related costs of issuance, through the execution and delivery of Refunding Certificates of Participation in the aggregate principal amount of not exceeding \$29,300,000, dated as of their date of delivery, or such other date as selected by the County Administrator, in a series designated as Series 2014 (the “**Series 2014 Certificates**”), representing proportionate undivided interests in rights to receive payments under the Original Lease, as supplemented by a Second Supplement to Lease Agreement (the “**Second Supplement to Lease**” and, together with the Original Lease and the First Supplement to Lease, the “**Lease**”) between the County and the Corporation, pursuant to and more fully described in the Lease; and

(j) Pursuant to the terms of the Lease, the Corporation will lease the Facilities (as defined in the Lease) to the County.

(k) Pursuant to the terms of a Trust Agreement (the “**Original Trust Agreement**”) dated as of March 1, 2008 between the Corporation and U.S. Bank National Association (the “**Trustee**”), as supplemented by the First Supplement to Trust Agreement (the “**First Supplement to Trust Agreement**”) dated as of August 1, 2010 between the Corporation and the Trustee, as supplemented by the Second Supplement to Trust Agreement (the “**Second Supplement to Trust Agreement**” and, together with the Original Trust Agreement and the First Supplement to Trust Agreement, the “**Trust Agreement**”) between the Corporation and the Trustee, the Corporation will assign to the Trustee certain of its rights, title and interest in, to and under the Lease, except the rights of the Corporation to receive payment of its fees and expenses.

(l) The Series 2014 Certificates will be purchased by Raymond James & Associates, Inc. (the “**Underwriter**”) through a negotiated sale pursuant to the terms of a Certificate Purchase Agreement (the “**Certificate Purchase Agreement**”) among the County, the Corporation and the Underwriter.

(m) Section 11-27-110 of the Code of Laws of South Carolina 1976, as amended, provides that the Hospitality Tax is an “enterprise charge” as defined in Section 11-27-110(A)(4). Section 11-27-110 further provides that a governmental entity may enter into an enterprise financing agreement as described in Section 11-27-110(A)(5).

(n) The County has determined that the Corporation Ground Lease and the Lease constitute an enterprise financing agreement within the meaning of Section 11-27-110(A)(5). The County has further determined that the enterprise charge, mentioned above, has “been imposed in an amount expected to be sufficient to pay the amounts due under the financing agreement.”

(o) As a result of the above-finding contemplated in Section 11-27-110(A)(5) and as permitted by Section 11-27-110(B), the County has determined that this financing will not count against the County’s eight percent (8%) constitutional debt limitation.

(p) Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended (the “*State Constitution*”), provides that a political subdivision may incur indebtedness payable solely from a revenue-producing project which source does not involve revenues from any tax or license. Pursuant to Title 6, Chapter 17 and Section 6-1-760 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “*Enabling Act*”), the County may issue obligations (i) to defray the cost of tourist-related projects as enumerated in Title 6, Chapter 1, Articles 5 and 7 of the Code of Laws of South Carolina, 1976, as amended, secured by a pledge of the Hospitality Tax revenues and (ii) to refund obligations issued for such purposes. The payment of Base Payments under the Lease is not subject to annual appropriation by the Council. As set forth in **Section 3** below, the County has granted a pledge of and lien on the Hospitality Tax revenues to secure the payment of the ~~Base Rent~~Lease Rentals under the Lease Agreement.

(q) On June 11, 2013 the Greenville County Recreation Commission, the governing body of the District, adopted a resolution dissolving the District and transferring all of the District’s assets and liabilities to the County. On June 18, 2013 the Council adopted a resolution accepting all of the District’s assets and liabilities. The dissolution of the District became effective on September 30, 2013 (the “*Dissolution Date*”). On the Dissolution Date the District transferred all of its assets to the County, and the County assumed all of the District’s assets and liabilities, including all of the District’s rights, duties, obligations and responsibilities under the Corporation Ground Lease, the Lease and the Trust Agreement. The County operates the District as a division of the County. As a result of the absorption of the District by the County, the District Ground Lease is no longer effective as of the Dissolution Date since the District and the County are the only two parties to such agreement.

(r) There have been prepared for review and consideration by the County Council of the County (the “*Council*”) the form of: (a) the Second Supplement to Lease, (b) the Second Supplement to Trustee Agreement, and (c) the Certificate Purchase Agreement.

Section 2. Approval of the Second Supplement to Lease. The form, terms and provisions of the Second Supplement to Lease presented to this meeting and filed with the Clerk to Council be and hereby are approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Second Supplement to Lease was set out in this Ordinance in its entirety. The Chairman of the Council and the County Administrator be and are hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to Council is hereby authorized, empowered and directed to attest, the Second Supplement to Lease in the name and on behalf of the County, and thereupon to cause the Second Supplement to Lease to be delivered to the Corporation and to cause the Second Supplement to Lease (or memoranda thereof) to be recorded in the office of the Register of Deeds for the County. The Second Supplement to Lease is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Chairman of Council and the County

Administrator, the Chairman of Council's and the County Administrator's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of the Second Supplement to Lease now before this meeting. Any amendment to the Second Supplement to Lease shall be executed in the same manner.

Section 3. Granting of Pledge of and Lien on the Hospitality Tax Revenues. Previously, under the Original Lease and the First Supplement to Lease the County agreed to make Base Payments to the Corporation from Hospitality Tax revenues subject to annual appropriation of such revenues by the County Council of the County. Now, in order to provide additional security for the Series 2014 Certificates as well as all Certificates previously issued and to be issued under the Trust Agreement and pursuant to the Enabling Act, the County hereby grants a pledge of and lien on the Hospitality Tax revenues to secure the payment of the ~~Base Rent~~Lease Rentals under the Lease Agreement. As a result of this pledge of and lien on the Hospitality Tax revenues, the payment of Base Payments under the Lease is no longer subject to annual appropriation by the Council.

The Certificates do not now and shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation (other than Article X, Section 14, Paragraph 10 of the State Constitution authorizing obligations of political subdivisions payable solely from special sources not involving revenue from any tax or license), and shall never constitute nor give rise to a pecuniary liability of the County or a charge against the general credit or taxing powers of the County, the State of South Carolina or any of its agencies or political subdivisions. No recourse shall be had for the payment of the Certificates, or interest thereon, or any part thereof, against the several funds of the County, except from the Trust Estate (as defined in the Trust Agreement) in the manner and to the extent provided in the Trust Agreement. The Certificates, and interest thereon, shall not be a charge, lien, or encumbrance, legal or equitable, upon any property of the County or upon any income, receipts, or revenues of the County other than the Trust Estate that have been pledged to the payment thereof.

Section 4. Award of the Series 2014 Certificates. The Council hereby authorizes the Chairman of Council and the County Administrator to award and sell the Series 2014 Certificates to the Underwriter. The Council authorizes and directs the Chairman of Council and the County Administrator to accept and execute the Certificate Purchase Agreement with such changes as they may approve upon advice of the County Attorney, their execution being conclusive evidence of such approval, and deliver it to the Underwriter.

Section 5. Approval of the Second Supplement to Trust Agreement. The form, terms and provisions of the Second Supplement to Trust Agreement are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Second Supplement to Trust Agreement was set out in this Ordinance in its entirety. The County Administrator is authorized to approve any and all changes or revisions therein from the form now before this meeting. The County approves of the issuance of the Series 2014 Certificates thereunder.

Section 6. Official Statement. The form of the Preliminary Official Statement pertaining to the sale of the Series 2014 Certificates by the Underwriter, and the distribution of the same, must be approved by the County Administrator. The County Administrator is hereby authorized to execute a certificate deeming the Preliminary Official Statement "final" for purposes of S.E.C. Rule 15c2-12 under the Securities and Exchange Act of 1934, as amended. The County Administrator is hereby authorized to approve the form of the final Official Statement pertaining to the sale of the Series 2014 Certificates by the Underwriter and is further authorized and directed to execute copies of the Official Statement and deliver them to the Underwriter, which execution and delivery shall be conclusive evidence of the approval of any modifications.

Section 7. Trustee, Registrar and Paying Agent. The County hereby consents to the appointment of U.S. Bank National Association as Trustee, Registrar and Paying Agent under the terms and conditions provided in the Trust Agreement.

Section 8. Authorization. The Chairman of Council, the County Administrator, the Deputy County Administrator, the Finance Director, the Clerk to Council and the County Attorney, for and on behalf of the County, are fully empowered and authorized, acting jointly or individually, to take such further action and to execute and deliver such additional documents, including a continuing disclosure undertaking and accepting a municipal bond insurance policy commitment and/or a surety bond commitment from a bond insurer, as may be reasonably requested by the Corporation to effect the delivery of the Second Supplement to Lease in accordance with the terms and conditions herein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Chairman of Council and the County Administrator shall approve, is hereby fully authorized. The Chairman of Council and the County Administrator are hereby authorized to accept the offer of the Underwriter to purchase the Series 2014 Certificates, provided the net interest rate does not exceed 6.0%. The County Administrator is hereby authorized to approve the repayment schedule, provided (i) the aggregate principal amount of the Series 2014 Certificates does not exceed \$29,300,000, and (ii) maturity of the Series 2014 Certificates issued under the Trust Agreement does not exceed 25 years from the date of closing of the Series 2014 Certificates. The County Administrator is authorized to approve the purchase of bond insurance or a surety bond, provided the Underwriter or financial advisor to the County provides evidence that a reduction in the interest rate will occur as a result of such bond insurance or surety bond.

The Council further authorizes the Chairman of Council and the County Administrator, upon advice of the County's Financial Advisor, to execute and deliver any amendment, modification or termination of leases or investment agreements related to any of the Certificates or funds related to the Certificates in conjunction with either the defeasance and refunding of the Refunded Certificates or the issuance of the Series 2014 Certificates, which amendment, modification or termination may occur prior to, on, or subsequent to the closing date of the Series 2014 Certificates. The Council further authorizes the Chairman of Council and the County Administrator, upon advice of the County's Financial Advisor, from time to time to execute and deliver (i) any amendment, modification or termination of leases or investment agreements or (ii) any new investment agreements related to any of the Certificates where such amendment, modification or termination or such new investment agreement would be in the County's best interest.

Section 9. Severability. The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 10. Arbitrage Covenant. The County agrees and covenants that it will comply with all applicable portions of the Internal Revenue Code of 1986, as amended, as in effect or hereafter amended, including Sections 103 and 141 through 150 thereof, and the regulations of the Treasury Department thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest components of the Base Rent (as defined in the Lease) under the Lease pursuant to the terms of the Series 2014 Certificates, including without limitation the proper use and expenditure of proceeds of the Series 2014 Certificates, the filing of information reports with the Internal Revenue Service and the rebate of certain arbitrage earnings on such proceeds to the United States Government.

Section 11. Power to Revise the Form of Documents. Notwithstanding any other provision of this Ordinance, the Chairman of Council and the County Administrator, acting jointly or individually, are each hereby authorized (with the advice of the County Attorney) to make or approve such revisions, changes,

additions and deletions in the form of the documents referred to in this Ordinance as may be approved by such officer and as the Special Tax Counsel for the Series 2014 Certificates may determine are necessary or convenient to carry out or assist in carrying out the purposes of this Ordinance.

Section 12. Repeal of Conflicting Ordinance. All ordinances, resolutions, orders and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE in meeting duly assembled, this ____ day of _____, 2014.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman, County Council
Greenville County, South Carolina

County Administrator
Greenville County, South Carolina

(SEAL)

Attest:

Clerk to County Council
Greenville County, South Carolina

First reading: May 6, 2014
Second reading: _____, 2014
Public hearing: _____, 2014
Third reading: _____, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

CERTIFICATE OF ORDINANCE

I, the undersigned, Clerk to County Council (the "*Council*") of Greenville County, South Carolina, **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance which was given three readings on three separate days, with an interval of not less than seven days between the second and third readings. The original of this Ordinance is duly entered in the permanent records of minutes of meetings of the Council, in my custody as such Clerk.

That each of said meetings was duly called, and all members of the Council were notified of the same; that a quorum of the membership remained throughout the proceedings incident to the adoption of this Ordinance.

IN WITNESS WHEREOF, I have hereunto set my Hand this ____ day of _____, 2014.

GREENVILLE COUNTY, SOUTH CAROLINA

Clerk to County Council of
Greenville County, South Carolina

First reading: May 6, 2014
Second reading: _____, 2014
Public Hearing: _____, 2014
Third reading: _____, 2014

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