

AN ORDINANCE PROVIDING FOR THE PAYMENT OF A PORTION OF THE ACCOMMODATIONS FEES FOR TRANSIENTS WITHIN CHARLESTON COUNTY AS COLLECTED TO THE PAYMENT OF THE FINANCING OF CERTAIN TRANSPORTATION, PARKING AND RECREATIONAL FACILITIES TO BE CONSTRUCTED BY THE CITY OF NORTH CHARLESTON; PROVIDING FOR THE EXECUTION AND DELIVERY BY CHARLESTON COUNTY OF A RESTATED AND EXTENDED INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF NORTH CHARLESTON AND OF A RESTATED AND EXTENDED ESCROW AGREEMENT WITH THE CITY OF NORTH CHARLESTON AND U.S. BANK NATIONAL ASSOCIATION, SUCCESSOR IN TRUST TO FIRST UNION NATION BANK, AS TRUSTEE; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the County Council of Charleston County (“County Council”), the governing body of Charleston County, South Carolina (the “County”), has previously enacted Ordinance No. 910 of 1993 (the “County Ordinance”) which provided for the establishment and collection of accommodations fees of 2% of gross receipts (the “Accommodations Fees”) of businesses engaged in providing accommodations for transients within Charleston County, and other matters related thereto; and

WHEREAS, the Accommodations Fees have been levied and collected by the appropriate County personnel pursuant to the County Ordinance since April 1, 1994; and

WHEREAS, by ordinance enacted September 2, 1997 (the “1997 Ordinance”), County Council approved an Intergovernmental Agreement, dated as of September 15, 1997 (the “Intergovernmental Agreement”), between the County and the City of North Charleston (the “City”) pursuant to which a portion of the Accommodations Fees have been allocated to defray a portion of the costs of financing the construction of a new convention center and performing arts center and related ancillary facilities located in the City (the “1997 Project”), and used for a public purpose, including use in support of tourism and tourist services; and

WHEREAS, County Council has determined that the Intergovernmental Agreement shall be restated and its term extended in order to provide that a portion of the Accommodation Fees be used to defray a portion of the costs of financing the construction of tourism-related improvements within the City, consisting of parking facilities to support the convention center and performing arts center (the “2017 Project” and, together with the 1997 Project, the “Project”), to be used for a public purpose in support of tourism and tourist services; and

WHEREAS, in exercising its proprietary powers, County Council has determined that it is necessary and advantageous to the citizens of Charleston County that the County Council agree with the City and U.S. Bank National Association, successor in trust to First Union Nation Bank (the “Trustee”), the trustee with respect to the financing of the Project, that a portion of the Accommodations Fees shall be made available and pledged to pay a portion of the costs of the Project during the entire term of the financing of the Project without the need for annual appropriations by County Council; and

WHEREAS, the acquisition, construction, operation, and financing of the Project constitutes a capital project in support of tourism and tourist services; and

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Section 4-9-41 (A) of the Code of Laws of South Carolina 1976, as amended, County Council may provide for the joint administration of any function in the exercise of any powers and sharing the costs thereof with any other incorporated municipality or other political subdivision of the State of South Carolina; and

WHEREAS, County Council has determined to restate and extend the Intergovernmental Agreement with the City to provide for the sharing of financing and related costs of the Project; and

WHEREAS, pursuant to the 1997 Ordinance, County Council entered into an Escrow Agreement (the "Escrow Agreement") to provide for the pledge and application of a portion of the Accommodation Fees to the financing of the 1997 Project; and

WHEREAS, County Council has determined to restate and extend the Escrow Agreement to provide for the pledge and application of a portion of the Accommodation Fees to the financing of the 2017 Project;

NOW THEREFORE, BE IT ORDAINED by the County Council of Charleston County in meeting duly assembled as follows:

Section 1. Approval of Financing of Project: Approval of Restated and Extended Intergovernmental Agreement; Execution of Restated and Extended Intergovernmental Agreement.

In order to facilitate the financing of the Project, the restated and extended Intergovernmental Agreement (the "Restated Intergovernmental Agreement") as submitted herewith as Exhibit A is hereby approved and the financing of the Project is hereby confirmed and ratified. The Chairman of County Council is hereby authorized and directed to execute and deliver the Restated Intergovernmental Agreement, with any changes, insertions, and omissions as may be approved by the Chairman of County Council with the advice of the County Attorney, his execution being conclusive evidence of his approval; and the Clerk of County Council is hereby authorized and directed to affix the corporate seal of the County to the Restated Intergovernmental Agreement and to attest the same.

Section 2. Pledge and Application of Accommodation Fees; Approval of Restated and Extended Escrow Agreement; Execution of Restated and Extended Escrow Agreement.

The pledge and application of a portion of the Accommodation Fees on the dates and in the amounts set forth in the Restated Intergovernmental Agreement, to the Trustee for the benefit of the holders of (i) certain certificates of participation previously issued by the City to finance or refinance the 1997 Project and further described in the Restated Intergovernmental Agreement and the Restated Escrow Agreement defined below (collectively, the "Certificates) and (ii) the City of North Charleston Limited Obligation Bonds (Hospitality Fee Pledge), Tax-Exempt Series

2017A and Taxable Series 2017B (collectively, the “Bonds”) is hereby authorized and directed. To facilitate the pledge and application of the Accommodation Fees, the restated and extended Escrow Agreement (the “Restated Escrow Agreement”) as submitted herewith as Exhibit B is hereby approved. The Chairman of County Council is hereby authorized and directed to execute and deliver the Restated Escrow Agreement, with any changes, insertions, and omissions as may be approved by the Chairman of County Council with the advice of the County Attorney, his execution being conclusive evidence of his approval; and the Clerk of County Council is hereby authorized and directed to affix the corporate seal of the County to the Restated Escrow Agreement and to attest the same.

Section 3. Authorization.

The Chairman of County Council and the County Administrator shall be authorized to enter into any other agreements necessary or required, upon advise of the County Attorney, to carry out the County's interests and intent under the Restated Intergovernmental Agreement.

Section 4. Miscellaneous.

(a) The County Ordinance may not be amended in any manner which would impair the collection of Accommodation Fees to the detriment of the holders of the Certificates or the Bonds.

(b) The provisions of the County Ordinance and of this Ordinance shall inure to the benefit of the Trustee, its successors and assigns in trust, and the holders of the Certificates and the Bonds.

(c) This Ordinance shall be construed and interpreted in accordance with the Jaws of the State of South Carolina.

(d) This Ordinance shall become effective immediately after third reading and passage by the County Council without any need for publication.

CHARLESTON, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, County Council of
Charleston County

ATTEST:

Clerk, County Council of
Charleston County

RESTATED INTERGOVERNMENTAL AGREEMENT

This **RESTATED INTERGOVERNMENTAL AGREEMENT**, dated as of January 1, 2017, by and between Charleston County, a body corporate and politic and a political subdivision of the State of South Carolina (the “County”), and the City of North Charleston, a body politic and corporate and a municipal corporation organized under the laws of the State of South Carolina (the “City”).

WITNESSETH:

WHEREAS, the County Council of the County (the “County Council”), the governing body of the County, has previously enacted Ordinance No. 910 of 1993 (the “County Ordinance”) which provides for the establishment and collection of accommodations fees of 2% of gross receipts (the “Accommodations Fees”) of businesses engaged in providing accommodations for transients within the boundaries of Charleston County and other matters related thereto; and

WHEREAS, the County Council and the City Council of the City have determined and found that the acquisition, construction, and operation of the Project (as defined below) constitutes a capital project in support of tourism and tourist services; and

WHEREAS, South Carolina Constitution Article VIII, Section 13 and Section 4-9-41(A) of the Code of Laws of South Carolina 1976, as amended, provide that any county, incorporated municipality, special purpose district, or other political subdivision may provide for the joint administration of any function and exercise of powers and the sharing of the costs thereof; and

WHEREAS, by ordinance enacted September 2, 1997 (the “1997 Ordinance”), County Council approved an Intergovernmental Agreement, dated as of September 15, 1997 (the “Intergovernmental Agreement”), between the County and the City of North Charleston (the “City”) pursuant to which a portion of the Accommodations Fees have been allocated to defray a portion of the costs of financing the construction of a new convention center and performing arts center and related ancillary facilities located in the City (the “1997 Project”), and used for a public purpose, including use in support of tourism and tourist services; and

WHEREAS, County Council has determined that the Intergovernmental Agreement shall be restated and its term extended in order to provide that a portion of the Accommodation Fees be used to defray a portion of the costs of financing the construction of tourism-related improvements within the City, consisting of parking facilities to support the convention center and performing arts center (the “2017 Project” and, together with the 1997 Project, the “Project”), to be used for a public purpose in support of tourism and tourist services; and

WHEREAS, the County Council has determined that it is necessary and advantageous that a portion of the Accommodations Fees shall be made available to pay a portion of the cost of acquiring the Project during the entire term of the financing of the Project.

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

Section 1. Definitions. The following words, terms, or phrases, when used in this Intergovernmental Agreement, have the following meanings respectively, unless the context clearly indicates a different meaning.

“2005 Certificates” means the City’s North Charleston Public Facilities Corporation Refunding Certificates of Participation (Convention Center Complex Projects), Series 2005, the proceeds of which were used to refinance a portion of the 1997 Project.

“2008 Certificates” means the City’s North Charleston Public Facilities Corporation Refunding and Improvement Certificates of Participation (North Charleston Convention Center Complex Projects), Series 2008, a portion of the proceeds of which were used to refinance a portion of the 1997 Project.

“2005 Facilities Lease Agreement” means the Facilities Lease Agreement, dated as of September 15, 1997, between the Corporation and the City and Supplement No. 1 to the Facilities Lease Agreement dated as of January 1, 2005.

“2008 Facilities Lease Agreement” means the Restated and Amended Facilities Lease Agreement, dated as of September 1, 2008, between the Corporation and the City.

“1997 Project” means the North Charleston convention center and performing arts center and related ancillary facilities.

“2017 Project” means the construction of tourism-related improvements within the City, consisting of parking facilities to support the convention center and performing arts center.

“2005 Trust Agreement” means the Trust Agreement, dated as of September 15, 1997, between the Corporation and Wachovia Bank, National Association, predecessor in trust to U.S. Bank National Association, as trustee, and the First Supplemental Trust Agreement dated as of January 1, 2005.

“2008 Trust Agreement” means the Restated and Amended Trust Agreement, dated as of September 1, 2008, between the Corporation and U.S. Bank National Association, as trustee.

“Accommodations Fees” means the Accommodations Fees collected by the County pursuant to the County Ordinance.

“Agreement” means this Restated Intergovernmental Agreement and any amendments or supplements hereto.

“Bond Ordinance” means Ordinance No. 2016-045 of the City, enacted November 10, 2016, authorizing the issuance of the Bonds.

“Bonds” means, collectively, the City’s Limited Obligation Bonds (Hospitality Fee Pledge) Tax-Exempt Series 2017A and Taxable Series 2017B, the proceeds of which are being used to finance the 2017 Project.

“Certificates” means, collectively, the 2005 Certificates and the 2008 Certificates.

“City” means the City of North Charleston, South Carolina, its successors and assigns.

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

“Collateral Assignment” means the Collateral Assignment dated as of the date hereof, by the City to the Trustee.

“Corporation” means North Charleston Public Facilities Corporation, a nonprofit corporation organized and existing under the laws of the State of South Carolina, its successors and assigns.

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

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

“County Ordinance” means Ordinance No. 910 of 1993, enacted by the County.

“Escrow Agent” means U.S. Bank National Association, successor in trust to First Union National Bank, as escrow agent pursuant to the terms of the Escrow Agreement, and its successors as escrow agent thereunder.

“Escrow Agreement” means the Restated Escrow Agreement, dated of even date herewith, between the County and the Escrow Agent, as amended from time to time.

“Escrow Fund” means the fund by that name created in the Escrow Agreement.

“Event of Default” means one or more events of default as defined in Section 4 of this Agreement.

“Facilities Lease Agreement” means collectively, the 2005 Facilities Lease Agreement and the 2008 Facilities Lease Agreement.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials or any civil or military authority; insurrection, riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes, or

canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Lease Rentals” means payments payable by the City as lease rental pursuant to the Facilities Lease Agreement.

“Project” means, collectively, the 1997 Project and the 2017 Project.

“Term” means the term of this Agreement.

“Trust Agreement” means, collectively, the 2005 Trust Agreement and the 2008 Trust Agreement.

“Trustee” means U.S. Bank National Association, a national banking association, as successor in trust to First Union National Bank.

Section 2. Representations, Warranties, and Covenants.

(a) The County represents and warrants that:

(i) it has full legal right, power, and authority to levy and collect the Accommodations Fees pursuant to the terms of the County Ordinance and apply a portion of such Accommodations Fees for the purpose of financing a portion of the cost of the Project and related ancillary facilities; and has full legal right, power, and authority to enter into this Agreement and carry out and consummate all other transactions contemplated by this Agreement.

(ii) it has duly authorized the execution, delivery, and performance of its obligations under this Agreement and the taking of any and all actions as may be required on the part of the County to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(iii) this Agreement constitutes a legal, valid, and binding obligation of the County, enforceable in accordance with its terms.

(iv) there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board, or body, pending or, to the best of the knowledge of the County, threatened against the County, nor to the best of the knowledge of the County is there any basis therefor, which in any manner questions the validity of the County Ordinance, the powers of the County referred to in paragraph (i) above, or the validity of any proceedings taken by the County Council in connection with this Agreement or wherein any unfavorable decision, ruling, or finding could materially adversely affect the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of the County Ordinance or this Agreement (or of any other instrument required or contemplated for use in consummating the transactions contemplated thereby and hereby).

(b) The City represents and warrants that:

(i) it has full legal right, power, and authority to apply the Accommodations Fees received from the County pursuant to the terms of this Agreement for the purpose of financing a portion of the cost of the Project and related ancillary facilities; and has full legal right, power, and authority to enter into this Agreement and carry out and consummate all other transactions contemplated by this Agreement.

(ii) the Project will be used during the entire term of the Trust Agreement for a public purpose, which purpose includes use in connection with the tourism industry and economic development.

(iii) it has duly authorized the execution, delivery, and performance of its obligations under this Agreement and the taking of any and all actions as may be required on the part of the City to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(iv) this Agreement constitutes a legal obligation of the City, enforceable in accordance with its terms.

(v) there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board, or body, pending or, to the best of the knowledge of the City, threatened against the City, nor to the best of the knowledge of the City is there any basis therefor, which in any manner questions the powers of the City referred to in paragraph (i) above, or the validity of any proceedings taken by the City Council in connection with this Agreement or wherein any unfavorable decision, ruling, or finding could materially adversely affect the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement (or of any other instrument required or contemplated for use in consummating the transactions contemplated thereby and hereby).

Section 3. Accommodations Fees.

(a) Upon the terms and conditions of this Agreement, the Collateral Assignment, and the Escrow Agreement, the County agrees to pay or cause to be paid to the Escrow Agent, on or before the 25th day of each month during the entire Term hereof from Accommodations Fees collected pursuant to the County Ordinance, the sum of \$119,580, less any interest credited to the Escrow Fund. All Accommodations Fees paid to the Escrow Agent in accordance with the terms of this Agreement shall be used solely to defray the costs of a portion of acquisition and construction of the Project to be used for a public purpose, including use in support of tourism and tourist services, and shall be held and applied in accordance with the provisions of the Escrow Agreement.

(b) The obligations of the County to make payments of Accommodations Fees in each fiscal year are subject to the County's ability to collect Accommodation Fees and are

limited to the collection of Accommodations Fees in each fiscal year less any amount used by the County in collecting such Accommodations Fees.

(c) The City hereby expressly acknowledges that, upon payment by the County of Accommodations Fees to the Escrow Agent and the deposit thereof into the Escrow Fund, the City will have no interest in such Accommodation Fees and that such Accommodations Fees shall be subject to the trust established under the Escrow Agreement with respect to the Escrow Fund, for the benefit of the owners of the Certificates, and the Bonds.

(d) The obligation of the County to pay Accommodation Fees pursuant to this Agreement is separate and independent of the City's obligations under the Facilities Lease Agreement and the Bond Ordinance and shall terminate only upon the earlier of the following:

(i) Satisfaction and discharge, pursuant to the terms thereof, of (i) the Corporation's obligations under the Trust Agreement and (ii) the City's obligations under the Bond Ordinance.

(ii) Termination of this Agreement pursuant to Section 5(a) hereof.

(e) No provision of this Agreement shall be construed to restrict in any way the County's right, in its sole discretion, to satisfy its obligation to make payments in any fiscal year as required under this Section 3 from any other moneys legally available to the County for such purpose, pursuant to authorization by the County Council in any such fiscal year.

Section 4. Events of Default.

(a) Each of the following shall be an Event of Default:

(i) Either the County or the City shall fail to observe and perform any agreement, term, or condition contained in this Agreement, and the continuation of the failure for a period of thirty (30) days after written notice thereof shall have been given to such party by any other party hereto; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected, but not within the applicable period, that failure shall not constitute an Event of Default so long as such party institutes curative action within the applicable period and diligently pursues that action to completion.

(ii) Either the County or the City shall: (a) admit in writing its inability to pay its debts generally as they become due; (b) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect; (c) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization, or similar law, or have such a proceeding commenced against it and, in the case of an involuntary proceeding, either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days; (d) make an assignment for the benefit of creditors; or (e) have a receiver or trustee appointed for it or for the whole or any substantial part of its property.

(iii) There shall occur an “Event of Default” pursuant to the terms of the Trust Agreement, or the Facilities Lease Agreement.

(iv) There shall occur an “Event of Nonappropriation” pursuant to the terms of the Facilities Lease Agreement.

(v) Any other event shall occur which results in the termination of the Facilities Lease Agreement.

(vi) There shall occur after September 1, 2019, an Event of Default under the Bond Ordinance.

(b) Notwithstanding the foregoing, if, by reason of Force Majeure, the defaulting party is unable to perform or observe any agreement, term, or condition hereof which would give rise to an Event of Default under paragraph (a) hereof, provided the inability to perform is other than the payment of money, that party shall not be deemed in default during the continuance of that inability. That party, however, shall promptly give notice to the other parties hereto of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within that party’s discretion.

Section 5. Remedies on Default. Whenever an Event of Default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) If the Event of Default is one described in Section 4(a)(iv) or 4(a)(vi) above, the County may immediately terminate this Agreement. In no other circumstance, except as provided in Section 3(d)(i) hereof, may the County or the City terminate all or part of this Agreement.

(b) Any of the parties hereto may have access to, inspect, examine, and make copies of the books, records, accounts, and financial data of the defaulting party pertaining to the Project.

(c) The non-defaulting parties hereto may seek injunction or order of specific performance to collect all amounts and to enforce all obligations then due and thereafter to become due under this Agreement; provided, however, that no remedy against the City may affect the financial obligations, revenues, expenses, liabilities, or prospects of the Project; and provided further that any remedies against the City or County shall be limited to Accommodations Fees received by or for the account of the City.

Section 6. Miscellaneous.

(a) All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either hand delivered or 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:

Charleston County
2 Courthouse Square
Charleston, South Carolina 29401
Attention: County Administrator

If to the City:

City of North Charleston
2500 City Hall Lane
North Charleston, South Carolina 29419
Attention: Mayor

A duplicate copy of each notice, certificate, request, or other communication given hereunder to the County, the City, the Trustee, or the Escrow Agent, shall also be given to the others. The County, the City, the Trustee, 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 or the City, in any other than his official capacity, and neither the members of the County Council or the City Council, nor any official executing this 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 or the City contained in this Agreement.

(c) This Agreement shall enure to the benefit of and shall be binding in accordance with its terms upon the County, the City, and their respective successors and assigns. The parties expressly acknowledge that the City has simultaneously herewith collaterally assigned its rights to receive Accommodation Fees pursuant to this Agreement to the Trustee pursuant to the terms of the Collateral Assignment.

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

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

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

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____

Its: _____

CITY OF NORTH CHARLESTON, SOUTH CAROLINA

By: _____

Its: _____

RESTATED ESCROW AGREEMENT

This **RESTATED ESCROW AGREEMENT**, dated as of January 1, 2017, by and between Charleston County, a body corporate and politic and a political subdivision of the State of South Carolina (the “County”), and U.S. Bank National Association, successor in trust to First Union National Bank and a national banking organization organized and existing under the laws of the United States of America, as escrow agent (the “Escrow Agent”).

WHEREAS, the County Council of Charleston County (“County Council”), the governing body of the County, has previously enacted Ordinance No. 910 of 1993, which provides for the establishment and collection of an accommodations fee of 2% of gross receipts (the “Accommodations Fees”) of businesses engaged in providing accommodations for transients within the boundaries of Charleston County, and other matters related thereto; and

WHEREAS, by ordinance enacted September 2, 1997 (the “1997 Ordinance”), County Council approved an Intergovernmental Agreement, dated as of September 15, 1997 (the “Intergovernmental Agreement”), between the County and the City of North Charleston (the “City”) pursuant to which a portion of the Accommodations Fees have been allocated to defray a portion of the costs of financing the construction of a new convention center and performing arts center and related ancillary facilities located in the City (the “1997 Project”), and used for a public purpose, including use in support of tourism and tourist services; and

WHEREAS, County Council has determined that the Intergovernmental Agreement shall be restated and its term extended in order to provide that a portion of the Accommodation Fees be used to defray a portion of the costs of financing the construction of tourism-related improvements within the City, consisting of parking facilities to support the convention center and performing arts center (the “2017 Project” and, together with the 1997 Project, the “Project”), to be used for a public purpose in support of tourism and tourist services; and

WHEREAS, the City intends to assign its rights to the Intergovernmental Agreement and its rights to receive Accommodation Fees thereunder from the County to the Trustee; and

WHEREAS, pursuant to the 1997 Ordinance, County Council entered into an Escrow Agreement (the “Escrow Agreement”) to provide for the pledge and application of a portion of the Accommodation Fees to the financing of the 1997 Project; and

WHEREAS, County Council has determined to restate and extend the Escrow Agreement to provide for the pledge and application of a portion of the Accommodation Fees to the financing of the 2017 Project;

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

Section 1. Definitions. The following words, terms, or phrases, when used in this Restated Escrow Agreement, have the following meanings respectively, unless the context clearly indicates a different meaning.

“2005 Certificates” means the City’s North Charleston Public Facilities Corporation Refunding Certificates of Participation (Convention Center Complex Projects), Series 2005, the proceeds of which were used to refinance a portion of the 1997 Project.

“2008 Certificates” means the City’s North Charleston Public Facilities Corporation Refunding and Improvement Certificates of Participation (North Charleston Convention Center Complex Projects), Series 2008, a portion of the proceeds of which were used to refinance a portion of the 1997 Project.

“2005 Facilities Lease Agreement” means the Facilities Lease Agreement, dated as of September 15, 1997, between the Corporation and the City and Supplement No. 1 to the Facilities Lease Agreement dated as of January 1, 2005.

“2008 Facilities Lease Agreement” means the Restated and Amended Facilities Lease Agreement, dated as of September 1, 2008, between the Corporation and the City.

“1997 Project” means the North Charleston convention center and performing arts center and related ancillary facilities.

“2017 Project” means the construction of tourism-related improvements within the City, consisting of parking facilities to support the convention center and performing arts center.

“2005 Trust Agreement” means the Trust Agreement, dated as of September 15, 1997, between the Corporation and Wachovia Bank, National Association, predecessor in trust to U.S. Bank National Association, as trustee, and the First Supplemental Trust Agreement dated as of January 1, 2005.

“2008 Trust Agreement” means the Restated and Amended Trust Agreement, dated as of September 1, 2008, between the Corporation and U.S. Bank National Association, as trustee.

“Accommodations Fees” means the Accommodations Fees collected by the County pursuant to the County Ordinance.

“Bond Ordinance” means Ordinance No. 2016-045 of the City, enacted November 10, 2016, authorizing the issuance of the Bonds.

“Bonds” means, collectively, the City’s Limited Obligation Bonds (Hospitality Fee Pledge) Tax-Exempt Series 2017A and Taxable Series 2017B, the proceeds of which are being used to finance the 2017 Project.

“Certificates” means, collectively, the 2005 Certificates and the 2008 Certificates.

“City” means the City of North Charleston, South Carolina, its successors and assigns.

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

“Collateral Assignment” means the Collateral Assignment dated as of the date hereof, by the City to the Trustee.

“Corporation” means North Charleston Public Facilities Corporation, a nonprofit corporation organized and existing under the laws of the State of South Carolina, its successors and assigns.

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

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

“County Ordinance” means Ordinance No. 910 of 1993, enacted by the County.

“Escrow Agent” means U.S. Bank National Association, successor in trust to First Union National Bank, as escrow agent pursuant to the terms of the Escrow Agreement, and its successors as escrow agent thereunder.

“Escrow Agreement” means this Restated Escrow Agreement as amended from time to time.

“Escrow Fund” means the fund by that name created hereunder.

“Event of Default” means one or more events of default as defined in Section 4 of this Agreement.

“Facilities Lease Agreement” means collectively, the 2005 Facilities Lease Agreement and the 2008 Facilities Lease Agreement.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials or any civil or military authority; insurrection, riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes, or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Lease Rentals” means payments payable by the City as lease rental pursuant to the Facilities Lease Agreement.

“Permitted Investments” means any of the following and to the extent permitted by South ta law:

- (a) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of Treasury of the United States of America;

- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: Export - Import Bank; Farm Credit System Financial Assistance Corporation; Farmers Home Administration; General Services Administration; U. S. Maritime Administration; Small Business Administration; Government National Mortgage Association (GNMA); U. S. Department of Housing & Urban Development (PHA's); and Federal Housing Administration;
- (c) bonds, notes or other evidences of indebtedness rated "AAA" by S&P and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
- (d) U. S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);
- (e) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;
- (f) investments in a money market fund rated "AAAm" or "AAAm--G" or better by S&P;
- (g) pre-refunded municipal obligations defined as follows:

Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of S&P and Moody's or any successors thereto; or (B)(i) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (a) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or

dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate; and

- (h) repurchase agreements fully collateralized by the obligations described in (a) or (b) above.

“Project” means, collectively, the 1997 Project and the 2017 Project.

“Public Body Representative” means the person or persons at the time designated to act on behalf of 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.

“Restated Intergovernmental Agreement” means the Restated Intergovernmental Agreement of even date herewith between the County and the City and any amendments or supplements hereto.

“Term” means the term of this Escrow Agreement.

“Trust Agreement” means, collectively, the 2005 Trust Agreement and the 2008 Trust Agreement.

“Trustee” means U.S. Bank National Association, a national banking association, as successor in trust to First Union National Bank.

Section 2. Accommodations Fees and Escrow Fund.

(a) Upon the term and conditions of the Restated Intergovernmental Agreement, the County agrees to pay, or cause to be paid, to the Escrow Agent on or before the 25th day of each month for the entire term of the Restated Intergovernmental Agreement, from Accommodations Fees collected pursuant to the County Ordinance, the sum of \$119,580, less any interest credited to the Escrow Fund.

(b) A special fund is hereby established or continued with the Escrow Agent to be designated “North Charleston Convention Center Escrow Fund” (the “Accommodation Fees Fund”), which shall be expended in accordance with paragraph (c) of this section 2. Upon receipt by the Escrow Agent of any Accommodations Fees from the County pursuant to paragraph (a) of this section 2, the same shall be deposited immediately into the Escrow Fund.

(c) Moneys in the Escrow Fund shall be withdrawn by the Escrow Agent and transferred to the Trustee on the business day preceding (i) each Interest Payment Date under the Trust Agreement, and (ii) when the Certificates have been retired, each Interest Payment Date, under the Bond Ordinance.

(d) 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 such 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 the Trustee shall value funds held under the Trust Agreement.

Section 3. Creation of Lien. The County hereby acknowledges 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 Certificates and the Bonds, subject, however, to the terms of this Agreement.

Section 4. 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 5. 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 wilful misconduct.

Section 6. Resignation 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 County not less than sixty days before the date the resignation shall take effect. The resignation 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 and no appointment of a Successor Escrow Agent shall be made pursuant to the provisions of Section 8 hereof within sixty days of the date of resignation of the Escrow Agent, then the Escrow Agent, the County or the Trustee 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 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 7. 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 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, *ipso facto*, 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 8. 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 County by an instrument executed and signed by the duly authorized officer of each.

Section 9. Miscellaneous.

(a) All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when either hand delivered or 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:

Charleston County
2 Courthouse Square
Charleston, SC 29401
Attention: County Administrator

If to the Escrow Agent:

U.S. Bank National Association
1441 Main Street, Suite 775
Columbia, South Carolina 29201

A duplicate copy of each notice, certificate, request, or other communication given hereunder to the County or the Escrow Agent shall also be given to the other. The County 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 or the Escrow Agent, in any other than his official capacity, and neither the members of the County 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 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, 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 of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina.

(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 Trustee for disposition by the Trustee pursuant to the terms of the Trust Agreement.

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

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____

Its: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its: _____