

ARENA OPERATING AGREEMENT

among

GREENVILLE ARENA DISTRICT

and

CITY OF GREENVILLE, SOUTH CAROLINA

and

GREENVILLE COUNTY, SOUTH CAROLINA

Dated as of _____

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Definitions	1
ARTICLE II	
APPOINTMENT OF MANAGER; TERM	
Section 2.1 General	2
Section 2.2 Contracts	2
Section 2.3 Deposit of Revenues	2
Section 2.4 Contract Standards	2
Section 2.5 Public Bodies	2
Section 2.6 Participation by City and County	3
ARTICLE III	
BOOKS, RECORDS AND REPORTS	
Section 3.1 Maintenance of Records	3
Section 3.2 Access	3
Section 3.3 Periodic Reports	3
ARTICLE IV	
ANNUAL BUDGET	
Section 4.1 Operating Budget	3
Section 4.2 Capital Improvement Budget	4
ARTICLE V	
INSURANCE	
Section 5.1 Owner's Insurance	4
Section 5.2 Review of Insurance Coverage	4
ARTICLE VI	
TERMINATION	
Section 6.1 Final Accounting	4
Section 6.2 Other Remedies	5

ARTICLE VII
MISCELLANEOUS

Section 7.1 Severability 5
Section 7.2 Attorney Fees and Expenses 5
Section 7.3 Waivers and Consents..... 5
Section 7.4 Governing Law 5
Section 7.5 Entire Agreement 5
Section 7.6 Notices 5
Section 7.7 Assignment; Successor Bound..... 6
Section 7.8 Captions 6
Section 7.9 Interpretation..... 6
Section 7.10 Addresses 6
Section 7.11 Third Party Beneficiary 6
Section 7.12 Effective Date 6

Signatures..... 7

ARENA OPERATING AGREEMENT

THIS ARENA OPERATING AGREEMENT (hereinafter called the “*Agreement*”) is made as of the first day of September, 2011, by and among GREENVILLE ARENA DISTRICT, formerly known as Greenville Memorial Auditorium District, a political subdivision of the State of South Carolina (“*Owner*”); the CITY OF GREENVILLE, SOUTH CAROLINA (“*City*”); and GREENVILLE COUNTY, SOUTH CAROLINA (“*County*”) (Owner, City and County are sometimes herein referred to collectively as the “*Public Bodies*” or individually as the “Public Body”)

RECITALS

WHEREAS, the Owner is the owner of a certain parcel of land (the “*Site*”) located in the City of Greenville, South Carolina, on which is located the facilities presently known as the BI-LO Center; and

WHEREAS, the Public Bodies wish to provide for the operation of the Arena (as defined below) and establish certain reporting obligations of the Owner to the City and the County.

Now, therefore, in consideration of the mutual covenants, promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

As used herein and in the recitals above, the terms in this Article I shall have the following meanings:

“*Arena*” shall mean the Site, together with that certain indoor arena constructed on the Site, together with all related facilities on the Site, such as plazas, walkways, sidewalks, landscaped areas and parking lots. The term “*Arena*” shall also include all fixtures and equipment owned or leased by Owner and used or usable in connection with the operation of the aforesaid facility.

“*City*” is defined in the caption of this Agreement.

“*County*” is defined in the caption of this Agreement.

“*District Seat Charge*” shall mean those seat and use charges as authorized by Act No. 762 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina (Regular Session 1971).

“Enabling Act” shall mean Act No. 1210 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Regular Session 1940, as amended and supplemented by acts of the General Assembly.

“Fiscal Year” or **“Year”** means each 12-month period ending June 30 (or if applicable law requires Owner to change its fiscal year, the fiscal year required by such law).

“Operating Budget” is defined in Section 4.1.

“Owner” is defined in the caption of this Agreement.

“Public Bodies” is defined in the caption of this Agreement.

“SC Code” shall mean the 1976 Code of Laws of South Carolina, as amended.

“Term” shall mean June 30, 2040.

ARTICLE II

THE AUTHORITY OF OWNER

2.1 General. The Owner is the sole and exclusive manager of the Arena and shall exercise such powers as may be necessary and appropriate for the management of the Arena as are consistent with the terms and conditions set forth in this Agreement and the Enabling Act.

2.2 Contracts. The Owner shall have full responsibility for the operation, maintenance and improvement of the Arena.

2.3 Deposit of Revenues. The Owner shall have custody of all revenues generated by the Arena or that otherwise are collected by or transferred to the Owner.

2.4 Contract Standards. No contract for the procurement of goods and services shall be entered into by the Owner except in compliance with Owner’s procurement regulations then in effect. It is acknowledged that the procurement regulations in effect as of the date hereof are those attached hereto. If such procurement regulations are amended, the Owner shall furnish a copy to the City Manager and the County Administrator within thirty days of the adoption of such amendment.

2.5 Public Bodies.

(a) Certain Owner Obligations.

District Seat Charge. Owner agrees that the District Seat Charge imposed by Owner as in effect on July 15, 1996, and to be collected and deposited by the Owner, will not be repealed without the prior written consent of the City and the County.

(b) Ad Valorem Taxes on Arena. Each Public Body agrees that, if at any time ad valorem taxes become payable with respect to all or part of the Arena and such Public Body receives all of part of such taxes, such Public Body shall, as soon as is practicable, deposit such taxes so received into the operating account of the Owner.

2.6 Participation by City and County. The County Administrator and City Manager are each entitled to serve as ex officio, non-voting representatives to the Owner's governing body ("Board"). Except as stated herein concerning the right to vote and concerning any executive session of the Board that relates to contractual negotiations with the City or County or involve receipt of legal advice where the City or County may be adverse to a position of the Owner ("Executive Session"), the County Administrator and City Manager shall have all rights of a member of the Board, including the right to notice of and attendance at Board meetings and receipt of all information made available to Board members outside of an Executive Session. Nothing herein will prevent the Board from going into a properly called Executive Session without the County Administrator and City Manger in attendance.

ARTICLE III

BOOKS, RECORDS AND REPORTS

3.1 Maintenance of Records. Owner shall maintain accurate and complete books and records of account for the Arena in accord with generally accepted business practices. All material matters relating to the Arena and to the business and affairs of Owner that are customarily included in such books and records of account, including all income, expenditures, assets and liabilities thereof, shall be entered on such books and records. The books and records of account shall be maintained consistent with generally accepted accounting principles in such manner as to provide all financial information required by Owner to satisfy financial reporting obligations. Such books and records shall be the property of Owner.

3.2 Access. The City, the County and their authorized representatives and agents shall have access at all reasonable times and upon reasonable notice to the books and records and to all vouchers, files, checks and other materials maintained by the Owner pertaining to the Arena and this Agreement. Such items shall be kept in a safe place. The City, the County and their representatives and agents shall have the right at all reasonable times upon reasonable notice to examine such books and records.

3.3 Periodic Reports. Within twenty days after the end of each quarter during the Term, except for the twelfth month of each Fiscal Year, the Owner shall prepare and forward to the City and the County a written report summarizing the operations of the Arena for such quarter, such report to include current financial information for such quarter (e.g., balance sheets, profit and loss statements and other similar information as the City or County may reasonably request). On or before 60 days after the end of each Fiscal Year, the Owner shall prepare and forward to the City and the County a report summarizing the operations of the Arena with respect to the Fiscal Year then ended. All of the foregoing reports shall be unaudited. Upon approval of the annual audit, the Owner shall transmit such audited financial statements to the City and the County within fifteen days of their receipt by the Owner. At the request of the City Manager and County Administrator, the Owner shall provide quarterly briefings to the City Council and County Council, respectively.

ARTICLE IV
ANNUAL BUDGET

4.1 Operating Budget. No later than the June 30 preceding each Fiscal Year commencing June 30, 2012, the Owner shall deliver to the City and the County the operating budget (an “Operating Budget”) for the next Fiscal Year.

4.2 Capital Improvement Budget. No later than the June 30 preceding each Fiscal Year commencing June 30, 2012, the Owner shall deliver to the City and the County the capital improvement budget for the next Fiscal Year.

ARTICLE V
INSURANCE

5.1 Owner’s Insurance.

(a) Throughout the Term, the Owner shall arrange for and maintain all insurance coverage that is required for comparable facilities.

(b) Such insurance shall be placed with the South Carolina Insurance Reserve Fund or with reputable insurance companies licensed or authorized to do business in the State of South Carolina with a minimum Best’s rating of A-VI.

(c) The Owner shall obtain such additional or other insurance as Owner reasonably deems appropriate.

5.2 Review of Insurance Coverage. The Owner shall retain an insurance consultant to review and make recommendations on the proper amount and types of insurance coverage which such consultant feels should be obtained for the Arena and Owner.

ARTICLE VI
TERMINATION

6.1 Final Accounting. The Owner shall deliver to the City and the County, as soon as practicable but in any event no later than thirty (30) days after the expiration or earlier termination of this Agreement, all of the following items:

(a) A final accounting which reflects all operating revenues and district seat taxes received and all expenses paid for the Arena through the date of termination and a report containing all of the information required to be included in the quarterly reports pursuant to Section 3.3 hereof; and

(b) all written data and materials belonging to Owner, including all records, contracts, leases, receipts, unpaid bills, insurance policies and certificates, correspondence and all other documents and records that pertain to or deal with the business of the Arena and Owner and are the property of Owner.

6.2 Other Remedies. The unavailability of termination as a remedy for a breach of this Agreement shall not impair the right of a party hereto to seek and obtain such other relief at law or in equity to which such party may be entitled under applicable law, subject, however, to the terms of this Agreement.

ARTICLE VII

MISCELLANEOUS

7.1 Severability. Each provision of this Agreement is intended to be severable from any other provision of this Agreement. If any provision of this Agreement or the application thereof is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the agreements contained herein is not affected in any manner adverse to any party. Upon such determination that any provision or the application thereof is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the agreements contained herein may be performed as originally contemplated to the fullest extent possible.

7.2 Attorney Fees and Expenses. In the event that any of the parties to this Agreement shall institute any action or proceeding against any of the other parties relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its expenses and reasonable attorney's fees incurred in connection therewith.

7.3 Waivers and Consents. No consent or waiver given by any party under this Agreement to or of the performance of a duty or obligation of another party shall be construed as a continuing waiver or consent as to any further or subsequent breach of a duty or obligation. Failure to object to a continuing breach or delay in asserting a right shall not constitute waiver of such breach or right. Waivers and consents shall only be effective if they are in writing and signed by the party against which the waiver or consent is to be enforced.

7.4 Governing Law. This Agreement shall be construed in accordance with the laws of the State of South Carolina.

7.5 Entire Agreement. This Agreement, together with the other agreements referred to herein, embodies the entire understanding of the parties, and there are no prior agreements that remain in effect, further agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. Any modification or amendment of this Agreement to be effective must be in writing and signed by all parties to this Agreement.

7.6 Notices. Whenever any notice, consent, approval, waiver, demand or other communication is required under this Agreement, it shall be in writing and shall be deemed given upon

(a) actual receipt of personal delivery to an officer or agent of a party, (b) three (3) business days after mailing by United States Mail, postage prepaid, certified mail return receipt requested, or (c) delivery by nationally recognized overnight courier service to the party. A party may waive notice by a writing.

7.7 Assignment; Successor Bound. This Agreement may not be assigned by any party hereto without the prior written consent of all the other parties. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and, to the extent permitted herein, assigns. Owner's obligations under this Agreement shall apply regardless of whether Owner's interest in the Arena's operations arises by reason of its lease or ownership of the Arena.

7.8 Captions. The headings of this Agreement are inserted only for the purpose of convenience for reference and shall not affect in any manner the construction or meaning of anything herein or govern the rights, duties, obligations or liabilities of the parties.

7.9 Interpretation. Whenever the context requires, all words used in the singular in this Agreement shall be deemed to include the plural and vice versa. Words of each gender shall include the other gender.

7.10 Addresses. Until notified in writing of a different address, the following are the addresses of the parties and all notices, consents, waivers, approvals, demands, correspondence and other communications shall be directed to:

To Owner: Greenville Arena District
401 East North Street
Greenville, South Carolina 29601
Attention: Chairman of the Board

To City: City of Greenville
206 South Main Street
P.O. Box 2207
Greenville, South Carolina 29602-2207
Attention: City Manager

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

7.11 Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto.

7.12 Effective Date. This Agreement is being dated as of September 1, 2012, and shall be effective as of September 1, 2012.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GREENVILLE ARENA DISTRICT

WITNESSES:

By: _____
Title: Chairman of the Board

Attest: _____
Title: Secretary of the Board

CITY OF GREENVILLE, SOUTH CAROLINA

By: _____
Title: City Manager

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Title: Chairman, County Council

By: _____
Title: County Administrator

Attest: _____ (SEAL)
Title: Clerk of County Council

[Signature page to Arena Operating Agreement]