

1 **SECOND AMENDMENT TO DPAC OPERATING AGREEMENT TO**  
2 **PUT INTO EFFECT CERTAIN DUTIES REQUIRED BY NAMING**  
3 **RIGHTS AGREEMENT WITH ROBERT D. TEER, JR.**

4  
5 This contract amendment ("Amendment No. 2") is dated, made and entered into as of the  
6 7<sup>th</sup> day of October, <sup>2009</sup>~~2008~~, by and among the CITY OF DURHAM  
7 ("City"), DURHAM PERFORMING ARTS LLC, a Delaware limited liability company  
8 (the "Operator") with offices at 220 Weybosset Street, Providence, Rhode Island, and JN  
9 WORLDWIDE LLC, a Delaware limited liability company ("JN") with offices at 14450  
10 Broadway, 6<sup>th</sup> Floor, New York, New York, and PROFESSIONAL FACILITIES  
11 MANAGEMENT, INC., a Rhode Island corporation ("PFM") with offices at 220  
12 Weybosset Street, Rhode Island. JN and PFM are collectively hereinafter referred to as  
13 the "Guarantors," while the City and the Operator are collectively hereinafter referred to  
14 as the "Parties."

15  
16 **BACKGROUND**

17  
18 The City and the Operator entered into a contract titled "DPAC Operating Agreement by  
19 and between the City of Durham, North Carolina and Durham Performing Arts LLC and  
20 JN Worldwide LLC, and Professional Facilities management, Inc.," dated, by signature  
21 of the City Manager, April 29, 2007. That contract is referred to as the "Original  
22 Contract." Pursuant to the Original Contract, the Parties agreed to the establishment of  
23 certain "Naming Rights Sponsorships" whereby a sponsor's name would be incorporated  
24 into the title of the DPAC name or various components of the DPAC physical facilities,  
25 such as the DPAC building, plaza, atrium, theater, stage, etc. The naming right  
26 sponsorships are beneficial to both Parties as the revenues from such sponsorship  
27 agreements provide for enhanced upgrades to the DPAC facility. In order to implement  
28 the various obligations and duties prescribed by such naming rights agreements, the City  
29 and Operator have agreed to amend the Original Contract as necessary to delineate the  
30 roles and responsibilities of the Parties and to ensure effective implementation of the  
31 naming rights agreements. By an instrument titled "Amendment to DPAC Operating  
32 Agreement to put into Effect Certain Duties Required by Naming Rights Agreement with  
33 BCBSNC" dated March 7, 2008 ("Amendment No. 1"), the Original Contract was  
34 amended to implement the various obligations and duties prescribed by the BCBSNC  
35 Naming Rights Agreement entered into between the City and BCBSNC.

36  
37 This Amendment No. 2 is made pursuant to a contract for naming rights sponsorship for  
38 the DPAC Stage with Robert D. Teer, Jr. ("TEER" or "Sponser"). As both the Sponsor  
39 and the City benefit from the existence of such TEER sponsorship agreement  
40 (hereinafter, "TEER Sponsorship Agreement"), the Sponsor and City agree to cooperate  
41 with each other as necessary to effectuate the negotiated terms of the TEER Sponsorship  
42 Agreement by ensuring that certain obligations of the City under the TEER Sponsorship  
43 Agreement are carried out by the Operator under the authority given the Operator in the  
44 Original Contract. In this Amendment No. 2, capitalized terms shall carry the meanings  
45 assigned to such terms in the TEER Sponsorship Agreement, unless the context requires  
46 otherwise.

49 **TERMS AND CONDITIONS**

50  
51 In consideration of the mutual promises, covenants and conditions contained herein,  
52 receipt and adequacy of which the Original Contract is hereby amended as follows:  
53

54 **1. Naming of Stage.** The Operator shall assist the City in complying with Section 5A of  
55 the TEER Sponsorship Agreement in naming the Stage the “Mildred & Dillard Teer,”  
56 (hereinafter, the “Teer Family Name”). During the Benefit Period, the Operator agrees to  
57 allow use of only that name, as the exclusive name of the Stage. After the Benefit Period,  
58 the City may, in its sole discretion, use a new name that it selects.  
59

60 **2. Signage.** The Operator shall assist the City in complying with Section 5B of the  
61 TEER Sponsorship Agreement by cooperating with the City with the installation, prior to  
62 the beginning of the Benefit Period, and keeping in good repair during the Benefit Period,  
63 permanent signs displaying the Stage Name at the following locations:

- 64 (a) One sign at the entrance to the performance hall on the lobby  
65 side at the Mezzanine Level;
- 66 (b) One sign at the entrance to the performance hall on the lobby  
67 side at the Orchestra Level;
- 68 (c) One sign at the entrance to the performance hall on the lobby  
69 side at the Entry Level;
- 70 (d) One stage-right and one stage-left sign on either side of the  
71 performance hall stage; and
- 72 (e) One monument sign exterior to the Center.  
73

74 The City shall be responsible for the cost of the signage installation. The size, design,  
75 appearance and materials used for the signage shall be determined by the City or its  
76 designee with consultation, input, and approval from TEER and the Operator, which shall  
77 not be unreasonably withheld. Upon expiration of the Benefit Period, the Operator shall  
78 assist the City in removing the signs, or changing the signs to remove the name of TEER  
79 at the City’s sole cost and expense.  
80

81 **3. Use of Center Logo and Name.** The Operator shall assist the City in complying with  
82 Sections 5C and 5D of the TEER Sponsorship Agreement during the Benefit Period, by  
83 allowing TEER to use the logo used by the City for the Center as part of TEER’s  
84 marketing and promotions. The Operator shall furthermore identify and use the Teer  
85 Family Name as follows:

86 **3.1 Website Link** -- the Operator shall create and maintain a website for  
87 the Center. On the website there shall be a page acknowledging Center naming  
88 sponsors. The Teer Family Name, supplied by TEER to the Operator, will be  
89 displayed on that sponsor page, and the name will link to the Teer Family or  
90 TEER’s business website;

91 **3.2 Group Sponsor Acknowledgment** – where the Center naming rights  
92 sponsors are acknowledged as a group in select Center advertising that is under  
93 the control of the City or the Operator, the Teer Family Name will receive  
94 recognition in such advertising; and

95                   **3.3 Facility Guides and Information Packets** – where the City or the  
96 Operator issues Center facility guides or information packets depicting the  
97 orientation of the Center and facilities, the Stage Name will be identified.  
98

99                   **4. TEER Advertising in Program Books.** The Operator shall assist the City in  
100 complying with Section 5E of the TEER Sponsorship Agreement during the Benefit  
101 Period, for each Performance where program books are distributed, by providing TEER  
102 one-half page of advertising in the program book to be paid for by the City. TEER will  
103 bear all other costs related to this advertising, including but not limited to the cost of  
104 producing the advertising to the point of making it camera-ready and delivering it to the  
105 program book coordinator.  
106

107                   **5. Sponsorship Rights in the Land Development Category.** The Operator shall assist  
108 the City in providing for TEER advertising rights during the Benefit Period, by giving  
109 TEER the right of first sponsorship offers and proposals in the area of land development  
110 for any Performance subject to the restrictions described in Section 7 (Right of First Offer  
111 for Programming Sponsorship for Events Presented by the Operator) of the TEER  
112 Sponsorship Agreement and subject to applicable advertising deadlines and reasonable  
113 requirements established by the City or the Operator.  
114

115                   **6. Use of Mailing Lists.** The Operator shall assist the City in complying with Section  
116 5G of the TEER Sponsorship Agreement during the Benefit Period by maintaining  
117 mailing lists and contact information for Center ticket purchases to be used by TEER.  
118 During the Benefit Period, TEER may do mailings for TEER promotions and marketing,  
119 to be sent to any mailing lists maintained by the Operator, subject to approval of such  
120 mailings by the Operator, such approval not to be unreasonably withheld. However,  
121 unless the Operator consents otherwise, that number of mailings shall be no greater than  
122 one per fiscal year of the Operator. If the mailing is to be done through the Postal  
123 Service, TEER must provide the materials to be mailed to the Operator, ready for mailing  
124 except for address labels, and the Operator shall process the mailing, all at TEER's cost.  
125 If the mailing is to be done by electronic means, such as email, TEER and the Operator  
126 shall cooperate so that the addresses and contact information of the recipients is kept  
127 confidential and the costs of arranging for transmission, as well as the transmission itself,  
128 will all be at TEER's cost. Without limiting the foregoing provision of this Section 6, the  
129 Operator may require that TEER pay reasonable compensation to the Operator for the use  
130 of the Operator's personnel, equipment, and facilities in order to carry out this Section 6  
131 as mutually agreed by the parties in writing.  
132

133                   **7. VIP Tickets.** The Operator shall assist the City in complying with Section 5H of the  
134 TEER Sponsorship Agreement during the Benefit Period, During the Benefit Period, by  
135 providing the following to TEER, with sufficient advance notice of ticket selection given  
136 by TEER at the beginning of each Year:

137                   (i) During each Year of the Benefit Period, TEER shall receive six (6)  
138 VIP tickets for one Performance of each different Stage Production at the Center for up to  
139 forty (40) Performances. The City shall pay the Operator the cost of these VIP tickets  
140 given to TEER not to exceed standard VIP ticket prices;

141 (ii) During each Year of the Benefit Period, TEER shall receive up to 24  
142 total additional VIP tickets for Stage Productions of its choice, however, no more than  
143 eight (8) of the additional twenty four (24) VIP tickets may be used for any one, single  
144 Performance. The City shall pay the Operator the cost of these VIP tickets given to  
145 TEER not to exceed standard VIP ticket prices.  
146

147 **8. Use of Center Meeting Rooms and Atrium.** The Operator shall assist the City in  
148 complying with Section 5J of the TEER Sponsorship Agreement during the Benefit  
149 Period, by allowing TEER to, without payment of the usual meeting room usage charge,  
150 book and use a meeting room or the Atrium in the Center, subject to availability, with  
151 TEER behind the other Center sponsors in order of priority usage rights as determined by  
152 the City and managed by the Operator consistent with the level of such sponsorship.  
153 With respect to use of the Atrium, usage must be at time and on dates that do not conflict  
154 with Performances. TEER shall be responsible for all related usage costs, including, but  
155 not limited to setup and breakdown costs, catering and cleaning. The Operator may  
156 impose reasonable deadlines for reserving meeting rooms or the Atrium, after which  
157 TEER and other sponsors shall no longer have priority. Once a reservation for a meeting  
158 room or the Atrium has been confirmed by the Operator, such reservation shall be non-  
159 cancellable. In the event of conflicting requests for reservations, TEER understands that  
160 priority shall be given in direct relationship to the level of sponsorship of the Center.  
161 This Section 8 does not exempt TEER from other requirements placed on users of the  
162 meeting room or Atrium.  
163

164 **9. Use of Center for Special Events.** The Operator shall assist the City in complying  
165 with Section 5K of the TEER Sponsorship Agreement during the Benefit Period by  
166 allowing TEER to book and use, up to and including four times per Year, at its expense,  
167 for special events the areas of the Center normally offered for special events, subject to  
168 availability, on a priority basis, with TEER behind the other Center sponsors in order of  
169 priority usage rights as determined by the City and managed by the Operator consistent  
170 with the level of such sponsorship. Once a reservation for a special event has been  
171 confirmed by the Operator, such reservation shall be non-cancellable. In the event of  
172 conflicting requests for reservations, priority shall be given in direct relationship to the  
173 level of sponsorship of the Center. This Section does not exempt TEER from other  
174 requirements placed on users of those areas of the Center, such as paying standard rates  
175 for special events usage.  
176

177 **10. Catering Functions Discount.** The Operator shall assist the City in complying with  
178 Section 5L of the TEER Sponsorship Agreement during the Benefit Period by providing  
179 to TEER or see that TEER receives a discount of five (5%) percent off all TEER catering  
180 using Center catering services.  
181

182 **11. Booth Display.** The Operator shall assist the City in complying with Section 5N of  
183 the TEER Sponsorship Agreement during the Benefit Period by providing once each  
184 Year, and for one Stage Production only, the opportunity for TEER to setup a display or  
185 booth relating to the Teer family or family business. The appearance, location and size of  
186 the booth or display shall be subject to the review and approval of the City and the

187 Operator. TEER shall be responsible for all expenses and costs associated with  
188 installation, maintenance and breakdown of the booth or display.

189  
190 **12. Opportunity for Discounts on Tickets to TEER Employees.** The Operator shall  
191 assist the City in complying with Section 50 of the TEER Sponsorship Agreement during  
192 the Benefit Period by arranging with TEER appropriate discounts and/or offers on tickets  
193 to select Performances for TEER employees whenever possible and allowed by the  
194 Producer/Artist.

195  
196 **13. Right of First Offer for Programming Sponsorship in the Health Care**  
197 **Insurance Category for Events Presented by the Operator.** When during the Benefit  
198 Period, parts A, B, C, and D occur,

199 A. a Producer/Artist allows the Operator to obtain a Programming Sponsor in  
200 connection with specific Performance(s),

201 B. the Operator decides to pursue a Programming Sponsor in connection with  
202 that specific Performance(s),

203 C. the proposed sponsorship is proposed to be by a Person that is a Competitor of  
204 an Excluded Service,

205 D. a reasonable person would likely perceive the names to be promoted by the  
206 proposed Programming Sponsor to be associated with an Excluded Service, then:

207 i. The City may require the Operator to provide to TEER, pursuant to  
208 Section 13.A (Notice), a written proposal for such sponsorship.

209 ii. If the proposed sponsorship is proposed to be season-long, TEER  
210 shall have 30 days in which to accept the proposal.

211 iii. If the proposed sponsorship is proposed to be for a Performance,  
212 TEER shall have 5 Business Days in which to accept the proposal.

213 iv. If TEER does not accept the proposal during the 30-day or 5-  
214 Business Day period, whichever applies, the City or the Operator will have the right to  
215 enter into an agreement that is materially the same as what was offered to TEER,  
216 provided that the terms of any such agreement shall not infringe upon TEER's rights as  
217 specifically provided elsewhere in the TEER Sponsorship Agreement.

218 v. If the terms of a proposed sponsorship agreement with a third party  
219 are materially different than that which was offered to TEER, then the City may require  
220 the Operator to, re-offer those materially different terms to TEER, which terms TEER  
221 shall have the right to accept within the deadlines provided above. For the purpose of the  
222 preceding sentence only, the terms of a proposed agreement would be deemed materially  
223 different if the value of the consideration offered by the City, the Operator, or the third  
224 party sponsor is greater than or less than ten (10%) percent of the original proposal for  
225 sponsorship.

226 vi. If TEER does not exercise said right to accept any proposal to  
227 TEER that either the City or the Operator may provide pursuant to this Section 13, that  
228 failure to exercise does not waive TEER's rights under this Section 13 with respect to a  
229 different health care insurance category sponsorship agreement that may be proposed  
230 thereafter.

231 vii. TEER's right of first offer rights under this Section 13 will not  
232 apply to a Performance that is staged and promoted by an entity other than the City or the  
233 Operator pursuant to a Rental Agreement. For the purposes of this Section 13(vii), a

*DPAC Operator Amend.2 10/14/08-fl*

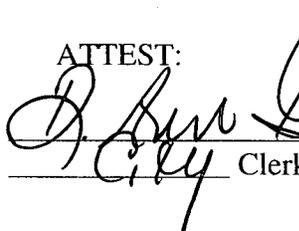
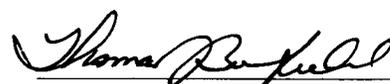
234 "Rental Agreement" shall mean an agreement pursuant to which an entity other than the  
235 City or the Operator has the right to stage or produce a Performance in the performance  
236 hall and either (i) the City and the Operator do not have responsibility for the act that is  
237 staged or produced, or (ii) the City and the Operator do not assume the financial risk of  
238 the act that is staged or produced. An agreement under which the Operator receives rent  
239 or other payment that varies, depending on such factors as ticket sales, revenue received  
240 by the renter, and/or the size of the audience, does not mean that the agreement is not  
241 necessarily a Rental Agreement as long as the Operator has no financial responsibility for  
242 any of the expenses associated with the performance. The Operator's responsibility for  
243 the costs of operating the Center will not be pertinent to whether there is a Rental  
244 Agreement.

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246 **14. Exclusivity.** Except to the extent provided in this Amendment No. 2, this  
247 Amendment No. 2 does not restrict the City or the Operator from making arrangements,  
248 by signage or otherwise, that promote any businesses of any Competitors.  
249

250 **15. Renewal.** If the City and TEER enter into an extension of the TEER Sponsorship  
251 Agreement, the Operator agrees to cooperate with the City in effectuating such renewal.  
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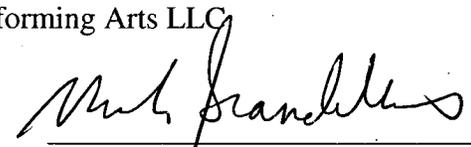
253 **16. Effect of Amendment.** The terms of the Original Contract not added to, amended or  
254 altered by this Amendment No. 2 shall remain in full force and effect.  
255

256 IN WITNESS WHEREOF, the Parties and the Guarantors have caused this  
257 Agreement to be executed themselves or by their respective duly authorized agents or  
258 officers.

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262 ATTEST:  CITY OF DURHAM  
263  Clerk By:   
264 \_\_\_\_\_ City Manager  
265  
266  
267  
268

269 **DURHAM PERFORMING ARTS LLC**

270  
271 By JN America LLC, a Delaware limited liability company, manager of Durham  
272 Performing Arts LLC

273  
274 By:   
275 \_\_\_\_\_  
276 Nicholas Scandalios, manager of JN America LLC  
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**DURHAM PERFORMING ARTS LLC**

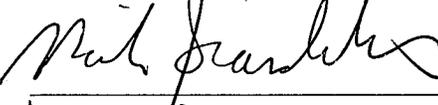
By Professional Facilities Operartions, LLC, a Rhode Island limited liability company,  
manager of Durham Performing Arts LLC

By:   
James Lynn Singleton, manager of Professional Facilities Operations, LLC

**PROFESSIONAL FACILITIES MANAGEMENT INC.**

By:   
James Lynn Singleton, President of Professional Facilities Management inc.

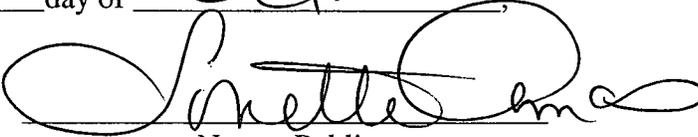
**JN WORLDWIDE LLC**

By:   
Nicolas Scandalics manager

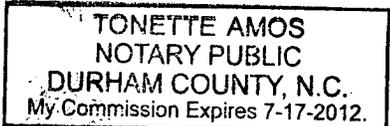
NORTH CAROLINA ACKNOWLEDGMENT BY CITY OF DURHAM

COUNTY of Durham

I, a Notary Public in and for the aforesaid County and State certify that  
D. Ann Gray personally appeared before me this  
day, and acknowledged that he or she is the            City Clerk of the City of  
Durham, a municipal corporation, and that by authority duly given and as the act of the  
City, the foregoing AMENDMENT was signed in its corporate name by its  
           City Manager, sealed with its corporate seal, and attested by its said City  
Clerk or Deputy City Clerk. This the 1<sup>st</sup> day of Oct.  
2009.

  
Notary Public

My commission expires:  
\_\_\_\_\_



Second Amendment to DPAC Operating Agreement to put into effect certain  
Duties Required by Naming Rights Agreement with Robert D. Teer, Jr.

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State of NY

ACKNOWLEDGMENT BY  
DURHAM PERFORMING ARTS LLC

County of NY

I, CERTIFY THAT Nicholas Scandalios personally appeared before me this day in the aforesaid county and state acknowledging to me that (1) he is a manager of JN America LLC; (2) JN America LLC is a duly organized and existing Delaware limited liability company; (3) JN America LLC is a manager of Durham Performing Arts LLC; (4) Durham Performing Arts LLC is a dully organized and existing Delaware Limited Liability Company; (5) he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 17TH day of SEPT., 2009.

My commission expires:

  
\_\_\_\_\_  
Notary Public

11-30-10

TERESA MALINOWSKI  
Notary Public, State of New York  
No. 41-4630868  
Qualified in New York County  
Term Expires Nov. 30, 2010

349 State of \_\_\_\_\_

ACKNOWLEDGMENT BY  
JN WORLDWIDE LLC

350  
351 County of \_\_\_\_\_  
352

353 I, CERTIFY THAT Nicholas Scandalios personally appeared before me this day in the  
354 aforesaid county and state acknowledging to me that (1) he is a manager of JN  
355 WORLDWIDE LLC; (2) JN WORLDWIDE LLC is a duly organized and existing  
356 Delaware limited liability company; (3) he voluntarily signed the foregoing document for  
357 the purpose stated therein and in the capacity indicated.

358  
359 This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

360  
361 My commission expires: \_\_\_\_\_

Notary Public

362  
363 \_\_\_\_\_  
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365  
366  
367 State of RHODE ISLAND

ACKNOWLEDGMENT BY  
DURHAM PERFORMING ARTS LLC

368  
369 County of PROVIDENCE  
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371  
372 I, CERTIFY THAT James Lynn Singleton personally appeared before me this day in the  
373 aforesaid county and state acknowledging to me that (1) he is a manager of Professional  
374 Facilities Operations, LLC; (2) Professional Facilities Operations, LLC is a duly  
375 organized and existing Rhode Island limited liability company; (3) Professional Facilities  
376 Operations, LLC is a manager of Durham Performing Arts LLC; (4) Durham Performing  
377 Arts LLC is a dully organized and existing Delaware Limited Liability Company; (5) he  
378 voluntarily signed the foregoing document for the purpose stated therein and in the  
379 capacity indicated.

380  
381 This the 17 day of AUGUST, 2009.

382  
383 My commission expires:

Rosemary A. Seiber  
Notary Public

384  
385 10/2/09  
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Second Amendment to DPAC Operating Agreement to put into effect certain  
Duties Required by Naming Rights Agreement with Robert D. Teer, Jr.

390 State of RHODE ISLAND ACKNOWLEDGMENT BY  
391 PROFESSIONAL FACILITIES  
392 County of PROVIDENCE MANAGEMENT INC.  
393

394 I, CERTIFY THAT James Lynn Singleton personally appeared before me this day in the  
395 aforesaid county and state acknowledging to me that (1) he is President of  
396 PROFESSIONAL FACILITIES MANAGEMENT, INC.; (2) PROFESSIONAL  
397 FACILITIES MANAGEMENT, INC. is a duly organized and existing Rhode Island  
398 corporation; (3) he voluntarily signed the foregoing document for the purpose stated  
399 therein and in the capacity indicated.

400  
401 This the 17 day of AUGUST, 2009.

402  
403 My commission expires: Rosemary A. Herber  
404 Notary Public  
405 10/2/09

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