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**FIFTH AMENDMENT TO
DPAC OPERATING AGREEMENT**

17 This contract amendment ("Amendment No. 5" or "Fifth Amendment") is dated, made
18 and entered into as of the 15th day of July, 2010, by and among the
19 CITY OF DURHAM ("City"), DURHAM PERFORMING ARTS LLC, a Delaware
20 limited liability company (the "Operator") with offices at 220 Weybosset Street,
21 Providence, Rhode Island, and JN WORLDWIDE LLC, a Delaware limited liability
22 company ("JN") with offices at 14450 Broadway, 6th Floor, New York, New York, and
23 PROFESSIONAL FACILITIES MANAGEMENT, INC., a Rhode Island corporation
24 ("PFM") with offices at 220 Weybosset Street, Rhode Island. JN and PFM are
25 collectively hereinafter referred to as the "Guarantors," while the City and the Operator
26 are collectively hereinafter referred to as the "Parties."

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BACKGROUND

48 The City and the Operator entered into a contract titled "DPAC Operating Agreement by
49 and between the City of Durham, North Carolina and Durham Performing Arts LLC and
50 JN Worldwide LLC, and Professional Facilities management, Inc.," dated, by signature
51 of the City Manager, April 29, 2007. That contract is referred to as the "Original
52 Contract." The Parties have made the following amendments to the Original Contract:

53 (1) By an instrument titled "Amendment to DPAC Operating Agreement to put into
54 Effect Certain Duties Required by Naming Rights Agreement with BCBSNC" dated
55 March 7, 2008 ("Amendment No. 1"), the Original Contract was amended to implement
56 the various City and Operator obligations and duties prescribed by the BCBSC Naming
57 Rights Agreement entered into between the City and BCBSNC; and

58 (2) By an instrument titled "Second Amendment to DPAC Operating Agreement to put
59 into Effect Certain Duties Required by Naming Rights Agreement with Robert D. Teer,
60 Jr." dated October 7, 2009 ("Amendment No. 2"), the Original Contract was amended to
61 implement the various City and Operator obligations and duties prescribed by the Robert
62 D. Teer, Jr. Naming Rights Agreement entered into between the City and Mr. Teer.

63 (3) By an instrument titled "Third Amendment to DPAC Operating Agreement" dated
64 March 17, 2009 ("Amendment No. 3"), the Original Contract was amendment to modify
65 prior pre-opening budget terms and require the Operator to assume certain operating
66 responsibilities for the DPAC Light Sculpture designed by Jaume Plensa and installed in
67 the DPAC Plaza.

68 (4) By an instrument titled "Fourth Amendment to DPAC Operating Agreement for
69 Parking Voucher Program and Operation of City Volunteer Program" dated October 7,
70 2009 ("Amendment No. 4"), the Original Contract was amended to authorized the
71 Operator to generate parking vouchers for DPAC season ticket holders for City garages
72 and to implement a city volunteer program at the DPAC.

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TERMS AND CONDITIONS

The defined terms of the Original Contract, including the amendments and naming rights sponsor agreements (according to context), shall have the same meaning in this Fifth Amendment. The Parties agree to further amend the Original Contract as follows:

1. Modifications to BCBSNC Naming Rights Implementation – Amendment No. 1

In Amendment No. 1, under Section 7 “VIP Tickets,” delete all the text after the section heading, including subparagraphs (i) and (ii), and replace with the following:

Effective as of November 30, 2009 the Operator shall assist the City in complying with Section 5.H. of the BCBSMNC Sponsorship Agreement during the Benefit Period by providing to BCBSNC, with sufficient advanced notice of ticket selection given by BCBSNC at the beginning of each Year, up to eight (8) VIP tickets for any single Performance up to a total of 264 VIP tickets for each Year of the Benefit Period. The City shall pay the Operator the cost of these VIP tickets given to BSBSNC not to exceed standard VIP ticket prices.

2. Modifications to Robert D. Teer, Jr. Naming Rights Implementation— Amendment No. 2

In Amendment No. 2, under Section 8, titled “Use of Meeting Rooms and Atrium” delete the word “Atrium” throughout the entire section, including the heading, and replace with “Stage”.

3. Duke University Sponsored Events at the DPAC

Subject to availability as determined by, and in the discretion of, the Operator, and for up to 3 Days per Year, the Operator shall allow Duke University to use the DPAC for Duke University sponsored and ticketed Event(s) free of the basic Facility Rental fee normally charged by the Operator. The term “ticketed Event(s)” means Event(s) for which the general public or others must pay for a ticket to attend the subject Event. The Operator shall assume all ticketing responsibilities for the subject Duke University sponsored Event(s). The Operator shall coordinate with Duke University regarding ticket issuance and distribution requirements. The 3 Days of use may be divided into separate Days for separate Events, provided that all necessary Event set-up, breakdown and performances for all proposed Event(s) does not extend beyond the 3 Days allocated for use by Duke University. In other words, if a particular Event requires 1 day for set up, 1 day for breakdown and 1 day for the performance, all 3 allotted Days shall be used.

In addition to the basic Facility Rental fee, the Operator may charge Duke University for other administrative and operating expenses normally charged to holders of Events at the DPAC, including, but not limited to, equipment rental, usher and concessions operations and DPAC ticketing operations.

91 **4. Annual Cap on Repair and Maintenance Costs**

92 Section 4.6.1 of the Original Contract is modified by adding the following to the
93 end of Section 4.6.1:

94
95 Notwithstanding the foregoing, if the aggregate cost of Repair and Maintenance in
96 any Fiscal Year exceeds the Annual Cap on Repair and Maintenance, any such
97 excessive costs will not be treated as an Expense in determining Operating Profit,
98 but shall instead be paid by City. For the purpose of this Section, the term
99 "Annual Cap on Repair and Maintenance" means Thirty Five Thousand and
100 No/100 Dollars (\$35,000.00).

101
102 **5. "Improvement" Defined**

103 Add a new Section 2.58 to the Defined Terms section, which shall read as
104 follows:

105
106 **2.57 Improvement.** "Improvement" shall mean a capital expenditure or FF&E
107 addition or modification to the DPAC Real Property and distinguished from
108 Capital Expenditures or Repair and Maintenance as defined under Sections 2.9
109 and 2.54, respectively, and that satisfies the following criteria: (i) it was not part
110 of the original Plans and Specifications (as amended) as of the Effective Date of
111 Amendment No. 5, and (ii) it is necessary or customary to the operation of a First
112 Class performing arts venue providing similar programming to the Operator-
113 provided programming at the DPAC. The charge or cost of an Improvement shall
114 not be considered an Expense as defined under Section 2.24. Improvements are
115 technically not considered part of the Capital Expenditure Budget presented by
116 the Operator to the Owner; however, suggested Improvements must be submitted
117 at the same time as the Capital Expenditure Budget by the Operator and
118 separately listed from Capital Expenditure Budget items.

119
120
121 **6. City Reserve Fund**

122 Add a new Section 5.11 to the Original Contract, which shall read as follows:

123
124 **5.11 City Reserve Fund.** City shall contribute City's share of the Facility Fee
125 into a reserve account (the "City Reserve Fund"). The funds in the City Reserve
126 Fund at all times shall be owned by City. The City shall allow such funds to
127 accumulate in the City Reserve Fund for use as permitted by this Agreement or
128 until the termination of the Operating Agreement. The funds in the City Reserve
129 Fund shall be reserved for Repair and Maintenance for which the City is
130 obligated, Capital Expenditures and for Improvements to the DPAC Real
131 Property.

132

133 **7. Capital Expenditures**

134 Section 4.6.2 shall be replaced in its entirety with the following:

135

136 City shall make all Capital Expenditures to the DPAC Real Property that are
137 necessary in order not to interfere with Operator's abilities (i) to comply with the
138 Operating Standards and (ii) to safely operate the DPAC. The City represents and
139 warrants that any Capital Expenditure shall be completed in compliance with all
140 Legal Requirements. During each calendar year of this Agreement, Operator
141 shall submit to City no later than January 15 a proposed Capital Expenditures
142 Budget and its suggestions for Improvements for the next Fiscal Year. The
143 Operator shall separately list those times it believes are Improvements as opposed
144 to Capital Expenditures. In preparing and submitting the Capital Expenditures
145 Budget, Operator shall provide details requested by the City and any supporting
146 documentation necessary and reasonably requested by the City to establish the
147 need for the Capital Expenditure and any suggested Improvements and Operator's
148 estimate of its cost, including all estimated soft costs, design fees, construction,
149 permitting, fees, allowances, overhead and contingencies. If the amount of funds
150 in the City Reserve Fund is sufficient to pay for all or some of the Capital
151 Expenditures or Improvements suggested by Operator, the City shall have until
152 March 15 to review and approve those items on Operator's proposed Capital
153 Expenditures Budget and suggested Improvements for which funds in the Reserve
154 Fund are sufficient, giving priority to Capital Expenditures over Improvements,
155 such approval not to be unreasonably withheld with respect to Capital
156 Expenditures or Improvements that are required, in Operator's reasonable
157 judgment, to keep the DPAC in compliance with the Operating Standards. If the
158 funds in the City Reserve Fund are not sufficient to pay for all or some of the
159 Capital Expenditures and/or Improvements suggested by Operator, then City shall
160 have until June 30 to review and approve such Capital Expenditures Budget
161 and/or Improvements that the City recommends. If City disapproves any Capital
162 Expenditures Budget and/or suggested Improvements or any portion thereof, City
163 will promptly provide Operator in writing with specific reasons for its
164 disapproval. Thereafter, the Parties will attempt to resolve in good faith any
165 objections so specified by City. City shall proceed with implementation of any
166 portion of such Capital Expenditures Budget and/or Improvement that are not in
167 dispute, subject to Section 4.6.3. If City refuses to make any Capital
168 Expenditures that it is required by this Agreement to make, then City shall assume
169 the liability, if any, caused by that refusal. If City disapproves any Capital
170 Expenditures and/or Improvements because sufficient funds are not available,
171 Operator shall be entitled to renew its request when sufficient funds become
172 available.

173

174 In addition, Section 4.6.3 shall be replaced in its entirety with the following:

175

176 The Parties acknowledge and agree that the implementation of approved Capital
177 Expenditures or Improvements may take months or even years to complete,
178 depending upon the available funding and the activities taking place at the DPAC.

*Fifth Amendment to DPAC Operating Agreement to Implement Modifications to
Naming Rights Agreements*

179 The Parties agree to work diligently and in good faith to arrange a reasonable
180 schedule for the completion of the Capital Expenditures or Improvements that
181 accommodates City's funding schedule and minimizes disruption to DPAC
182 activities. The City shall be responsible for the procurement of contractors for
183 City-approved Capital Expenditures or Improvements, provided that City may, in
184 its discretion, use its own forces instead of or in addition to contractors for such
185 work.

186
187 In addition, Section 4.6.4(a) shall be replaced in its entirety with the following:
188

189 Except as otherwise permitted by this Agreement, Operator shall make no Capital
190 Expenditures or Improvements without the express written approval of City. City
191 may, in its sole discretion, delegate authority to Operator to undertake any of the
192 activities contemplated in undertaking a Capital Expenditure or Improvement, on
193 such terms and conditions as are mutually acceptable to the Parties. If the
194 Operator contracts for any such Capital Expenditures or Improvements, either the
195 City shall make funds available from the City Reserve Fund to pay for the Capital
196 Expenditures or Improvements, Operator shall pay for the Capital Expenditures or
197 Improvements and the City shall reimburse Operator from the City Reserve Fund,
198 or, after first obtaining written authorization from the City, Operator may be
199 entitled to deduct such costs from the amount paid to City for the City's share of
200 the Facility Fee or City's share of Operating Profit. In the event that a Capital
201 Expenditure must be undertaken which has not been provided for in the Capital
202 Expenditures Budget, including in an emergency situation, Operator shall notify
203 the City General Services Department of such needed Capital Expenditure. Upon
204 notice, City shall promptly and diligently take such actions as are reasonably
205 necessary to complete such Capital Expenditure as quickly as reasonably possible,
206 funding and DPAC schedule permitting. If (i) the failure to complete such Capital
207 Expenditure within a given period of time would necessitate the cancellation of
208 the next Event scheduled after Operator notifies City of such needed Capital
209 Expenditure; and (ii) the Capital Expenditure should reasonably be able to be
210 completed within that period of time, then City shall be required to complete such
211 Capital Expenditure within that period of time.

212
213 **8. Operator Financial Reporting**
214 The Agreement shall be modified to add a new Section 5.12, which shall read as
215 follows:
216

217 **5.12 Operator Financial Reporting.** Operator shall provide to the City by
218 August 10 of each calendar year an unaudited profit and loss statement for the
219 previous Fiscal Year. City recognizes and acknowledges that any such report will
220 be preliminary in nature and likely will require adjustment in the ensuing weeks
221 as Operator compiles and delivers to City the audited financial report.
222

Fifth Amendment to DPAC Operating Agreement to Implement Modifications to Naming Rights Agreements

223 **9. State or Local Taxes on the Sale of Tickets**

224 The Agreement shall be modified to add a new Section 5.13, which shall read as
225 follows:

226
227 **5.13 State or Local Taxes on the Sale of Tickets.** After the effective date of this
228 Amendment No. 5, if either the State of North Carolina or any local government
229 assesses one or more types of tax that applies to the sale of tickets to DPAC
230 performances by Operator (e.g. sales tax) (hereinafter referred to as the "Ticket
231 Tax Assessment"), and if City receives all or any portion of the revenue generated
232 by the Ticket Tax Assessment, then Operator shall be entitled to reduce any
233 amounts owed to City from City's share of Operating Profit by an amount equal to
234 fifty percent (50%) of the amount received by City from City's portion of the
235 Ticket Tax Assessment. The foregoing sentence shall not apply unless the amount
236 of any Ticket Tax Assessments, either individually or in the aggregate, exceeds
237 three percent (3%). The Facility Fee described in Section 5.6 shall not be
238 considered a Ticket Tax Assessment.
239

240 **10. Effect of Amendment.** The terms of the Original Contract not added to, amended or
241 altered by this Amendment shall remain in full force and effect.
242

243 **11. Effective Date of Amendment**

244 This Fifth Amendment shall take effect on July 1, 2010.
245

246 IN WITNESS WHEREOF, the Parties and the Guarantors have caused this
247 Agreement No. 5 to be executed themselves or by their respective duly authorized agents
248 or officers.
249
250

251
252 ATTEST: CITY OF DURHAM
253 *Attest:*  *Thomas J. Bonfield*
254 *D. Ann Gray* Thomas J. Bonfield
255 City Clerk City Manager
256
257

259 **DURHAM PERFORMING ARTS LLC**

260
261 By JN America LLC, a Delaware limited liability company, manager of Durham
262 Performing Arts LLC

263
264 By: *Nicholas Scandalios*
265 _____
266 Nicholas Scandalios, manager of JN America LLC
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This instrument has been pre-audited in a manner required by the Local Government Budget and Fiscal Control Act.
Joseph W. Clark
Joseph W. Clark, Finance Officer

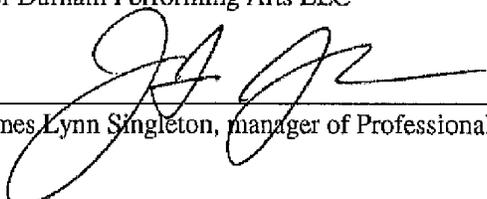
*Fifth Amendment to DPAC Operating Agreement to Implement Modifications to
Naming Rights Agreements*

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DURHAM PERFORMING ARTS LLC

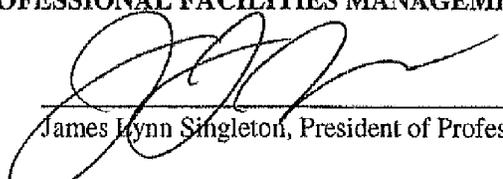
By Professional Facilities Operations, LLC, a Rhode Island limited liability company,
manager of Durham Performing Arts LLC

By:


James Lynn Singleton, manager of Professional Facilities Operations, LLC

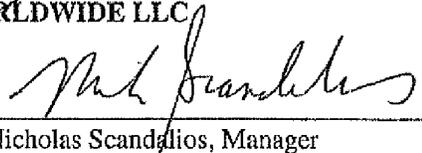
PROFESSIONAL FACILITIES MANAGEMENT INC.

By:


James Lynn Singleton, President of Professional Facilities Management Inc.

JN WORLDWIDE LLC

By:


Nicholas Scandlios, Manager

Fifth Amendment to DPAC Operating Agreement to Implement Modifications to
Naming Rights Agreements

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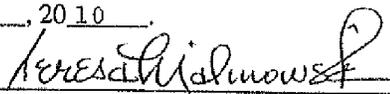
State of New York
County of New York

ACKNOWLEDGMENT BY
DURHAM PERFORMING ARTS LLC

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 20th day of October, 2010.

My commission expires:
11-30-10


Notary Public

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

State of New York
County of New York

ACKNOWLEDGMENT BY
JN WORLDWIDE LLC

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 WORLDWIDE LLC; (2) JN WORLDWIDE LLC is a duly organized and existing Delaware limited liability company; (3) he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 20th day of October, 2010.

My commission expires:
11-30-10


Notary Public

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

Fifth Amendment to DPAC Operating Agreement to Implement Modifications to
Naming Rights Agreements

353 State of RHODE ISLAND ACKNOWLEDGMENT BY
354 DURHAM PERFORMING ARTS LLC
355 County of Providence

356
357 I, CERTIFY THAT James Lynn Singleton personally appeared before me this day in the
358 aforesaid county and state acknowledging to me that (1) he is a manager of Professional
359 Facilities Operations, LLC; (2) Professional Facilities Operations, LLC is a duly
360 organized and existing Rhode Island limited liability company; (3) Professional Facilities
361 Operations, LLC is a manager of Durham Performing Arts LLC; (4) Durham Performing
362 Arts LLC is a dully organized and existing Delaware Limited Liability Company; (5) he
363 voluntarily signed the foregoing document for the purpose stated therein and in the
364 capacity indicated.

365
366 This the 13 day of October, 2010.

367
368 My commission expires: Rosemary A. Araki
369 9/2/13 Notary Public

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Fifth Amendment to DPAC Operating Agreement to Implement Modifications to
Naming Rights Agreements

375 State of RHODE ISLAND ACKNOWLEDGMENT BY
376 PROFESSIONAL FACILITIES
377 County of PROVIDENCE MANAGEMENT INC.
378

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

385
386 This the 13 day of October, 2010.

387
388 My commission expires:

389 9/2/13
390
391
392
393
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Rosemary A. Fisher
Notary Public