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STATE OF NORTH CAROLINA

COUNTY OF DURHAM

AGREEMENT

This Agreement is made and entered into as of the 1 of July, 2008, by and between the CITY OF DURHAM, a North Carolina municipal corporation (hereinafter "City"), and THE CAROLINA THEATRE OF DURHAM, INC., 309 W. Morgan Street, Durham, NC 27712, a non-profit corporation organized and existing under the laws of the State of North Carolina, (hereinafter "Carolina");

WITNESSETH:

WHEREAS, the City is the owner of the building at 309 West Morgan Street built as the Durham Civic Auditorium and known as The Carolina Theatre and further described as Durham County Tax Map 30, Block 5, Lot 1 (hereinafter "Theatre"); and

WHEREAS, the City and County of Durham renovated and restored the Theatre for the purpose of the revitalization of the downtown area by developing interest and support for the arts in the City and preserving and restoring the Theatre; and

WHEREAS, the City desires to provide for the professional management, programming and operation of the Theatre; and

WHEREAS, the Carolina has provided professional management, programming, and operation of the Theatre under a service contract that commenced on July 1, 1998, was renewed annually, and will conclude on June 30, 2008; and

WHEREAS, the City has been satisfied with that arrangement and the performance by the Carolina; and

WHEREAS, the Carolina and the City desire to extend the relationship under which the Theatre is managed and operated for the longer term benefit of the City and the general public; and

WHEREAS, the Carolina's management of this public asset has in the past fostered interest and growth in the arts by use of the Theatre as a place for producing, performing and exhibiting varied works in the performing arts; and

WHEREAS, the City and the Carolina have determined that this management agreement will enhance the ability of the Carolina to provide a variety of arts programs open to and for the benefit of the general public; and

WHEREAS, the City desires to have the Carolina manage and operate the Theatre and the Carolina desires to perform such services for the City on the terms and conditions herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITION OF TERMS

1.1 Definition of Terms. The following terms shall have the meanings indicated when used in this Agreement:

"Accounting Principles" means the then current generally accepted accounting principles consistently applied using the accrual method of accounting.

"Agreement" means this Agreement including any and all exhibits attached hereto.

"Annual Adjustment Factor" means the result derived by dividing the One Cent Equivalent for the upcoming Fiscal Year by the One Cent Equivalent for the current Fiscal Year. The foregoing definition may also be expressed by the following equation:

$$\text{Annual Adjustment Factor} = \frac{\text{One Cent Equivalent for Upcoming Fiscal Year}}{\text{One Cent Equivalent for Current Fiscal Year}}$$

Should a revaluation take place while this Agreement is in place, the Annual Adjustment Factor shall be calculated by the City's Budget and Management Services Department as though the revaluation had not taken place.

"Annual Operating Budget" means the budget adopted by the Carolina's Board of Trustees for the Fiscal Years covered under this Agreement.

"Audio-Visual Equipment" means all audio equipment and all visual projection equipment, whether fixed or moveable.

"Basic Management Fee" means the amount paid by the City to the Carolina pursuant to this Agreement for each Fiscal Year. For Fiscal Year 2008-09, that amount shall be the Initial Annualized Basic Management Fee multiplied by the Annual Adjustment Factor. For each subsequent year, it means the Basic Management Fee for the previous Fiscal Year multiplied by the Annual Adjustment Factor.

"Employees" shall mean employees of the Carolina.

"FF&E" means all fixtures, furnishings, furniture and equipment with a purchase price of at least \$1,000, which are purchased rather than leased, but not including

Inventories.

"First Class Municipal Arts Centers" shall mean facilities of the same or similar size, engaged in the same or similar operations in a metropolitan area that is similar in size to the City and County of Durham.

"Fiscal Year" (or FY) shall mean July 1 through June 30.

"Governmental Authority" means the United States of America, the State of

North Carolina, the City, the County of Durham and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Carolina, this transaction or the Theatre and improvements thereon or any portion thereof.

"Inventories" means stocks of supplies and resale items.

"Non-Routine Repairs and Maintenance" means those items of repair and maintenance that are not Routine Repairs and Maintenance as defined below.

"One Cent Equivalent" shall mean the amount of property tax revenue that the City expects to realize for each one cent of the City's property tax rate as included in the City's Annual Budget for that Fiscal Year.

"Owner" means the City of Durham.

"Public Accountant" shall be any Certified Public Accountant selected by the Carolina.

"Required Service Contracts" means service contracts for the minor repair and regular maintenance of:

- (a) elevators;
- (b) heating, ventilation and air conditioning; and
- (c) emergency systems

"Requirements" means all acts, laws, rules, orders, permits, ordinances, regulations, codes and executive orders of any Governmental Authority.

"Routine Repairs and Maintenance" means any repairs or maintenance of the Theatre that in the reasonable judgment of the City could be done by Employees

or which are covered by any Required Service Contract. Such Routine Repairs and Maintenance shall not exceed \$5,000 in aggregate during the Fiscal Year.

1.2 Interpretation

1.2.1 Gender and Plurality - Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

1.2.2 Persons - Words referring to persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, and legal entities, including public bodies, as well as individuals.

ARTICLE II BASIC SERVICES OF THE CAROLINA

2.1 Appointment The City appoints and contracts with the Carolina, and the Carolina hereby agrees, to supervise, direct, control, manage, program, and operate the Theatre for the term provided in Article III in accordance with the terms and conditions of this Agreement.

2.2 Supervisory and Management Services

2.2.1 The Carolina shall select, appoint, and supervise the Executive Director and such other personnel as are necessary for the proper operation, maintenance and security of the Theatre. The Executive Director and all personnel of the Theatre shall be Employees of the Carolina and the terms of their employment, including compensation, shall be at the sole discretion of the Carolina. The salaries and all additional costs of employment of the Employees shall be borne by the Carolina.

2.2.2 The Carolina agrees to operate the Theatre for the City in compliance with all Requirements and such rules and regulations. The Carolina agrees to operate the Theatre in accordance with the requirements of the carriers having insurance on the Theatre or any part thereof. Both the City and the Carolina shall have the right to contest requirements of an insurance carrier unless failure to comply promptly would or might expose either party to criminal liability or to civil penalty. The Carolina shall obtain and shall keep in force any and all licenses or permits necessary for the operation of the Theatre, the costs of which shall be borne by the Carolina. Where applicable, the Carolina will name the City as the Owner of the facility.

2.2.3 The Carolina shall collect, account for, and remit promptly to the proper Governmental Authority all applicable taxes or similar governmental charges collected at the Theatre directly from patrons or guests, or as part of the sales price of any goods, services, or displays, such as occupancy, gross receipts,

admission, cabaret or similar or equivalent taxes to the extent that such taxes are required to be paid by the City of the Carolina.

2.2.4 The Carolina warrants that it has established, implemented and supervised the accounting, inventory, and cost control systems necessary for the efficient operation and Routine Repair and Maintenance of the Theatre. The Carolina will maintain adequate control over any records of the Carolina regarding the acquisition and disposition of all FF & E and Inventories used in the operation of the Theatre. The cost of the aforesaid maintenance of records will be borne by the Carolina. The Carolina shall not dispose of any FF&E owned in part or in whole by the City unless it has received explicit written permission from the City as to the item to be disposed of and the method of disposition.

2.2.5 The Carolina is responsible for arranging for water, electricity, gas, pay phones, box office phone lines and any other necessary utilities to serve the Theatre, and for paying all bills relating to the consumption of such utilities on a timely basis. In addition, the Carolina will arrange and provide payment for housekeeping and Required Service Contracts necessary under this Agreement.

2.2.6 Except as otherwise expressly provided herein, the Carolina shall, at its sole cost and expense pay all the expenses of maintaining and operating the Theatre, including, but not limited to:

- (a) the cost of sales and rentals including Employee costs and material costs;
- (b) administrative, artistic and general expenses and the cost of Theatre advertising, business promotion and public relations;
- (c) the cost of Inventories consumed in the proper operation of the Theatre;
- (d) all costs and fees of the Public Accountant or any other third parties who perform services on behalf of the Carolina that are required to be performed under this Agreement;
- (e) the cost and expense of Routine Repairs and Maintenance to the extent that said expense does not exceed \$5,000 in aggregate in any Fiscal Year for each year of the term of this Agreement;
- (f) security, vermin extermination, cleaning, trash removal, Required Service Contracts and other necessary services for the proper operation of the Theatre; and
- (g) insurance premiums to be paid by the Carolina pursuant to Section 7.2 of this agreement.

2.2.7 The Carolina shall not violate any Requirements, including without limitation those with regard to discrimination against or segregation of any person, or group of persons on account of sex, sexual orientation, age, race, color, creed, religion, handicap, national origin or ancestry in employment at the Theatre, or in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Theatre, nor shall the Carolina or any person claiming under or through the Carolina establish or permit any such violation or practice of discrimination or segregation with reference to such employment or the selection, location, number, use or occupancy of guests, tenants, lessees, subtenants, sublessees or vendees of the Theatre. The City and the Carolina intend this section to bar rental of the Carolina to third parties which the Carolina knows or should have reasonably known intend to use the Theatre to espouse or implement discrimination or segregation on account of sex, sexual orientation, age, race, color, creed, religion, handicap, national origin or ancestry. Nothing in this section will require the Carolina to engage in censorship or to in any way limit free speech or freedom of expression in the Carolina's programming or in its selection of performers, artists or programs, so long as the Carolina shall exercise its best efforts to choose artists who do not espouse discrimination in violation of this section.

2.3 Advertising and Marketing The Carolina shall plan, prepare, supervise, produce, distribute and place such marketing, advertising, public relations and promotional programs or campaigns for the Theatre as it deems necessary or appropriate at its sole cost and expense.

2.4 Theatre Rentals and Reservations

2.4.1 The Carolina will, in its sole discretion, represent, promote and lease the Theatre to interested community, regional, national, and international groups. Such discretion shall be subject to Section 2.2.7. The City shall not interfere with the programming of the Theatre, nor for the marketing of that programming to the community, and shall not be liable for the programming or marketing decisions of the Carolina.

2.4.2 The Carolina may sublet or rent space in the Theatre to third parties.

2.4.3 The Carolina will set the rental rates and fees for services for third parties. The Carolina will waive all rental fees for meetings requested by the City provided that the City is the primary beneficiary of such meetings, and that the terms of Section 2.13 are met.

2.4.4 The Carolina will process space rental reservations for the Theatre through the Carolina's reservation system. The City agrees to honor all reservations made by the Carolina in the ordinary course of business so long as such reservations do not extend beyond the period of three years subsequent to the termination of this Agreement and the proposed third party renters comply with all of the provisions of the Carolina's Operating Policies and Lease Agreement.

2.4.5 The Carolina will institute a \$1.00 (one dollar) restoration fee on all paid tickets valued at \$15.01 (Fifteen Dollars and One Cent) or higher for all live events that are ticketed through the Carolina Theatre Box Office, whether the event is presented by the Carolina or by third parties.

2.4.6 At such time in the future as the Carolina chooses to raise its film ticket prices, the Carolina will also institute a twenty-five cent (\$.25) per ticket restoration fee for all paid tickets to film events ticketed through the Carolina Box Office. The Carolina assumes responsibility for notifying the City of such ticket price increases and of the implementation of the restoration fee provided for in this subsection.

2.4.7 The City and Carolina shall share equally all restoration fees collected pursuant to sections 2.4.5 and 2.4.6.

2.4.8 All payments due the City under this Section shall be made on a quarterly basis within thirty (30) days of coming due.

2.5 **Audio-Visual Equipment.** The Carolina shall lease to rental clients of the Theatre any Audio-Visual Equipment related to said client's use of the Theatre pursuant to a rental schedule and rules established by the Carolina. The Carolina shall be liable for any damage to the City's equipment which may occur during such use, reasonable wear and tear excepted. Any equipment so damaged shall be either repaired or replaced with new equipment, in the City's sole discretion.

2.6 **Programming** The Carolina shall have the sole and exclusive right to determine, the responsibility for determining, and shall bear all expenses for, the programming mix of all Carolina-sponsored events held in the Theatre. The Carolina will also have sole responsibility and bear all expenses for marketing said events.

2.7 **Box Office** The Carolina shall have the sole and exclusive right to establish, operate and manage the Theatre's ticket office and such off-site ticket outlets as may be deemed appropriate by the Carolina. The Carolina shall also establish procedures and facilities for phone sales as the Carolina deems appropriate.

2.8 **Audience Services** The Carolina shall be responsible for the orderly and professional operation of all audience services; including but not limited to: providing or causing to be provided printed programs, when necessary or expected; concessions services including food, beverage, gifts and souvenirs; ticket takers, ushers, ticket sellers, and, if required by law, security and/or emergency and medical services.

2.9 **Custodial Care, Phone Service and Stage Review** The Carolina shall be responsible for arranging and paying for the custodial care of the physical facilities; for interior equipment and supplies relating to all events; interior trash collection; and for conducting ongoing technical stage and facility reviews normally associated with a facility such as the Theatre, including, but not necessarily limited to, the sound

system; lighting and other associated systems.

2.10. Minimum Performance Standards

2.10.1 The Carolina shall use, operate, and maintain the Theatre in accordance with uses and standards prevailing in First Class Municipal Arts Centers of comparable size, class and standing. The Carolina shall apply sound administrative, accounting, budgeting, operational, sales, advertising, personnel and purchasing policies and practices, in compliance with the Carolina's obligations under the terms and conditions of this Agreement, and in such a manner as to maximize net revenues.

2.10.2 Without limitation the Carolina shall:

- (a) provide sufficient staffing to carry out all of the Carolina's responsibilities and obligations under this Agreement;
- (b) maintain all spaces and FF&E in good condition, and repair or replace such items, or cause such repair or replacement, promptly, so the Theatre remains in a neat, clean, attractive, good condition at all times, subject to the City's performance of its obligations set forth in Article V of this Agreement and subject to the limitations set forth in Section 2.2.6 (e), above;
- (c) develop, establish, and follow a resource conservation program to achieve the energy efficient management and use of Theatre utilities.
- (d) develop, establish, and follow a janitorial and cleaning program so as to keep the Theatre and its contents in a clean, sanitary and attractive condition.
- (e) remove all snow and ice promptly from the steps and loading dock of the Theatre; except that the City shall have responsibility for snow and ice removal from the Plaza, sidewalks and walking entrances adjacent to the Theatre;
- (f) properly, promptly and courteously process and endeavor to resolve all claims, problems, and complaints arising from the use and maintenance of the Theatre;
- (g) inspect periodically; maintain and repair as needed the floors and carpets of the Theatre, keeping them clean and evenly covered with the type of surface material originally installed or with such substitute as shall be in all respects reasonably equal or comparable in quality, appearance and durability, subject to the City's performance of its obligations set forth in Article V and subject to the limitations set forth in Section 2.2.6 (e), above. Carpets shall be vacuumed regularly and shampooed as necessary;
- (h) inspect, maintain, repair and clean all lights and lighting fixtures in the

Theatre, subject to the City's performance of its obligations set forth in Article V and subject to the limitations set forth in Section 2.2.6 (e), above:

(i) keep all elevators, elevator cabs and other mechanical systems and components in good operating order and in operation during all hours the Theatre is open except as necessary for repairs. Elevator cabs and lobbies shall be kept clean, and attractive and free of refuse, debris, and graffiti. The elevator cabs and lobbies shall be cleaned as necessary.

(j) inspect all public stairs on a daily basis and keep them in a clean, and attractive condition free of refuse and graffiti, and swept or vacuumed as necessary.

(k) regularly inspect all fire hoses, extinguishers and similar fire and emergency equipment including the emergency lighting generator and fire pump, and maintain them in good operating order and condition;

(l) keep all interior and exterior surfaces of the Theatre clean and attractive, and promptly remove all graffiti, posters, stickers and handbills; and

(m) repaint all peeling or blistered paint which requires touch up only

2.11 FF&E.

2.11.1 FF&E has been installed and purchased by both the City and the Carolina prior to the execution of this Agreement. A Schedule of City-owned FF&E detailing shall be attached to this Agreement as Exhibit A, incorporated herein and made a part hereof. Any FF&E owned by the Carolina shall be attached to the Agreement as Exhibit B, incorporated herein and made a part hereof. Exhibits A and B shall be reviewed and updated on an annual basis. Ownership will remain with the respective parties as detailed in Exhibits A and B.

2.11.2 The Carolina shall propose additions and/or replacements to FF&E to the City by March 1 of each year in preparation of the City's Repairs and Replacement Budget. In the case of extraordinary circumstances or any other purchase of FF&E with the City's approval, the Carolina shall submit the proposed entire order, with the specifications and number of items as the City may reasonably require, to the City for its approval and action. The City shall provide funds as necessary for the replacement of, and additions to, FF&E in accordance with the City's Repairs and Replacement Budget as defined in Section 5.2(b).

2.12 Inventories The Carolina shall at its sole cost and expense replace and make additions to Inventories. Inventories shall be purchased by the Carolina Theatre.

and remain the property of the Carolina.

2.13 City Use of Facilities The Carolina shall make space available to the City at the Theatre for events and functions sponsored by the City at no charge to the City provided that:

- (a) such space has not previously been committed to another user;
- (b) the request for such space be made in writing not more than sixty (60) days prior to the event or function, and
- (c) the City will cover the Carolina's out-of-pocket expenses, including but not limited to labor, set-up and clean up.

ARTICLE III TERM

3.1 Term The term of this Agreement shall commence on July 1, 2008 and shall continue through June 30, 2013, unless sooner terminated as herein provided (hereinafter "Initial Term").

3.2 Renewal Term Unless the City Council informs the Carolina in writing of its intent to terminate this Agreement, the Carolina shall have the option to renew this Agreement for an additional year on June 30, 2013. The Carolina's option to renew shall be automatic unless the Carolina advises the City in writing to the contrary prior to June 30 of each Fiscal Year. Notwithstanding the foregoing, the last renewal term under this Agreement shall conclude no later than June 30, 2016. As pre-conditions to exercise of its renewal option, the Carolina must:

- (a) have managed and operated the Theatre in such a manner that the Minimum Performance Standards have been maintained; and
- (b) must not be in default of any provisions of this Agreement at the time of the exercise of the option where such default has remained uncured for a period of thirty (30) days after notice thereof to the Carolina by the City.

3.3 Surrender of Premises. Upon termination of the Agreement, the Carolina covenants and agrees to yield and deliver peaceably to the City possession of the Theatre, including the City's FF&E and any alterations, additions, or improvements thereto promptly and in good condition, order and repair, except for reasonable wear and tear occurring subsequent to the last necessary repair, replacement, restoration or renewal of the Theatre made by the Carolina pursuant to the Carolina's obligations under this Agreement.

**ARTICLE IV
PAYMENTS AND REIMBURSEMENTS**

4.1 Basic Management Fee. The Carolina shall receive an annual fee of \$559,389 plus the annual adjustment factor for FY 2008-2009. The Basic Management Fee shall be adjusted by the Annual Adjustment Factor on June 30 for each successive Fiscal Year of the Agreement. For each Fiscal Year of the Agreement, the Basic Management Fee shall be paid to the Carolina pursuant to the payment schedule set forth below:

- (a) One-half by July 15 of each Fiscal Year.
- (b) One quarter by January 1 and the remaining by April 1 of each year.

4.2 Reimbursements Other than the payments stipulated in Section 4.1, any other payment or reimbursements due and payable from the City to the Carolina or from the Carolina to the City pursuant to this Agreement shall be paid within 15 days of the acceptance of the request for such payment or reimbursement by the other party.

4.3 Late Payment In the event that the Carolina or the City does not make payment in full on the date a payment is due and payable to the other party pursuant to this Agreement, interest on such delinquent payments shall accrue from the due date of such payment to the date payment is received at the rate of 8% based on a 360 day year.

**ARTICLE V
REPAIRS, MAINTENANCE AND REPLACEMENTS**

5.1 General Repairs and Maintenance by the Carolina and by the City

5.1.1 The Carolina shall provide all custodial and Routine Maintenance services to maintain the Theatre and FF&E, including Audio-Visual Equipment, and Theatrical Lighting and Sound, in good repair and condition and in conformity with all Requirements, and shall make or cause to be made Routine Repairs and Maintenance. The cost of such Routine Repairs and Maintenance shall be borne solely by the Carolina to the extent the aggregate cost of labor, supplies, parts and materials purchased by the Carolina do not exceed Five Thousand Dollars (\$5,000.00) in any one Fiscal Year. The City will reimburse the Carolina for said Routine Repairs and Maintenance in excess of Five Thousand Dollars (\$5,000.00) required in any fiscal year, subject to the limitations of Section 5.3 below.

5.1.2 The cost of Non-Routine Repairs and Maintenance, either to the Theatre or any FF&E owned by the City, shall be paid for by the City, except as provided for in Section 5.1.4, below.

5.1.3 In making all repairs or replacements, all work done by the Carolina or the City shall be of good quality in both materials and workmanship. All repairs will

be made in compliance with all Requirements.

5.1.4 In the event that the Carolina refuses or neglects to make any repairs required by this Agreement, or if the City is required to make any repairs necessitated by the negligent or willful acts or omissions of the Carolina, its employees, agents, servants, or licensees, City shall have the right, but shall not be obligated, to make such repairs on behalf of or for the Carolina upon prior written notice to the Carolina. In the event the City shall make such repairs, such work shall be paid for by the Carolina upon receipt of a statement therefore listing the amount of the City's costs plus an amount for overhead, as shall be determined from time to time by the City. Nothing herein contained shall prevent the City from determining that the failure of the Carolina to comply with the terms of this Section or any other term of this Agreement constitutes a material breach of this Agreement permitting the City to terminate this Agreement as herein provided.

5.1.5 Within thirty (30) days prior to the commencement of this Agreement, the Carolina and the City shall conduct an operational review of the Theatre to create a list of any operational equipment belonging to the City that may require repairs and any capital items needing repair or replacement or whose repair or replacement is contemplated during the term of this Agreement. Said list will be used to address such repairs and replacements in accordance with Section 5.2 of this Agreement.

5.2 City Repairs and Replacement Budget Not later than March 1 of each year, the Carolina shall prepare a requested budget for the following:

(a) Replacements and additions to the Theatre's FF&E for which the City is responsible; and

(b) Non-Routine Repairs and Maintenance needed to maintain the Theatre in good condition. The Carolina shall submit said requested budget to the City for review. Said requested budget will be subject to the City's budget approval process. Whatever portion, if any, of the requested budget is approved by the City in the City's sole discretion shall be the City's Repair and Replacement Budget. Payments or reimbursements will be made by the City upon vouchers or bills presented by the Carolina, which are in accordance with the City's Repair and Replacement Budget as approved by City Council for that Fiscal Year.

5.3 Minor Emergency Repairs

In the event the Carolina deems a repair necessary for the safety of its employees, agents and/or the general public and the cost of the repair is less than \$5,000, then the Carolina may perform the repair or maintenance or cause the repair or maintenance to be performed, without prior consent of the City, so long as the Carolina immediately notifies the City of the need to make the emergency repair and the Carolina retains a contractor or

vendor approved by the City.

The City will provide a list of approved contractors and vendors to the Carolina, including one or more general contractors, electricians, plumbers, heating and air conditioning contractors, structural engineers and mechanical engineers. The cost of any emergency repair or maintenance, set forth above, shall be reimbursed to the Carolina by the City in accordance with Section 4.4 of this Agreement.

If the cumulative amount of the emergency repair or maintenance exceeds \$5,000, the Carolina must receive prior approval from the City. The cost of such emergency repair or maintenance, if approved, shall be reimbursed to the Carolina by the City in accordance with Section 4.4 of this Agreement.

The Carolina shall make a report of all emergency repairs or maintenance performed in each fiscal year in the report to the City required in Section 5.7 below.

Nothing in this Section shall require the Carolina to make emergency repairs or shall obligate the Carolina to inspect the premises for safety concerns or for possible emergency repairs. The duties and obligations of the Carolina to make repairs and maintain the premises is set forth in other sections of this agreement.

5.4 Capital improvements

5.4.1 The Carolina shall make no major capital alterations, additions or improvements in or to the Theatre without the approval of the City.

5.4.2 The Carolina shall prepare an estimate of the cost for any capital improvement and shall submit such estimate to the City for its approval. The Carolina shall not make any capital expenditures requiring reimbursement by the City without the approval of the City.

5.4.3 The City, as Owner of the Theatre, shall have full control over architectural and interior design matters, including, without limitations, capital improvements, replacement of City owned FF&E and repairs, maintenance and alterations.

5.5 Salvage Value. The Carolina, subject to compliance with the General Statutes of North Carolina, as amended, and the Charter of the City of Durham, including all requirements as to the process of disposition, may sell FF&E owned by the City which are mutually determined by the Carolina and the City to be no longer necessary to the operation of the Theatre. Proceeds from such sales shall be paid in full to the City.

5.6 Annual Operating Budget and Reports By March 1 of each year, the Carolina will prepare and deliver to the City a proposed operating budget and plan for the upcoming Fiscal Year for the operations of the Theatre ("Annual Operating Budget"). The Annual Operating Budget will delineate what the Carolina projects to be the foreseeable costs and obligations to operate the Theatre in the upcoming

Fiscal year including, but not limited to, all fees to the Carolina, repairs, maintenance, and proposed capital improvements. The Carolina will respond fully to all requests for information and reporting to the City, including providing such information and fulfilling such other obligations as non-city agencies may from time to time be required to do.

5.7 Ownership of Replacements, Additions and Improvements All fixed alterations, improvements, additions or replacements to the Theatre made subsequent to the execution of this Agreement shall be the responsibility of the City and shall become the property of the City, and shall be subject to the approval of the City

ARTICLE VI FINANCIAL REPORTS

6.1 Books and Records The Carolina's services to the City shall include keeping complete and adequate books and records reflecting the operations of the Carolina in accordance with Accounting Principles. The Carolina shall at all times keep and maintain in the Theatre all records, books of account and other records relating to or reflecting the operations of the Carolina, including such records as the City may require the Carolina to maintain and any information required to be maintained pursuant to any provision of this Agreement. The Carolina shall preserve and make available to the City at all reasonable times for examination, audit or inspection and copying the aforesaid records, books of account, and other documents for a period of six (6) years following the end of the applicable Fiscal Year. However, if at the expiration of such six-year period, the Carolina is seeking to contest or is contesting any matter relating to such matters or any matters to which such records may be relevant, the Carolina shall preserve any records required hereunder until one (1) year after the final adjudication, settlement or other disposition of any such contest

6.2.1 The Carolina shall submit quarterly reports to the City on Theatre operations and achievements within thirty (30) days following the end of each quarter. The quarterly report shall be in whatever form the City requires.

6.2.2 The Carolina shall submit an audited financial statement of the Carolina's Fiscal Year to the City by October 31st of the following Fiscal Year. Said audited financial statement shall be prepared by an independent Public Accountant and performed in accordance with generally accepted auditing standards.

6.3 Inspection and Audit of Reports

6.3.1 In accordance with Section 6.1 hereof, the Carolina shall permit the City through its employees and/or representatives, to make inspections, audits, examination or abstracts of all records and books of account required to be maintained pursuant to this Agreement. It is further understood and agreed that any such inspections, audits or

examinations shall be conducted during the regular business hours of the Carolina and the Carolina will make all such records and account books available to the City at the Theatre.

6.3.2 Notwithstanding anything to the contrary contained in this Agreement, the City shall have the right to terminate this Agreement in the event any inspection or audit by the City or its agents discloses a discrepancy that the Carolina knew about or should have known about. In the event that any inspection or audit by the City or its agents discloses a discrepancy of which the Carolina or its representatives did not have knowledge, and that the City deems necessary to correct, then the Carolina shall take such actions as are necessary to correct the discrepancy and to avoid any further discrepancies within thirty (30) days of notification by the City.

6.3.3 The obligations of the Carolina under this Article shall survive the termination of this Agreement.

ARTICLE VII INSURANCE

7.1 Property and Liability Insurance The City at its own expense and in its sole discretion, from time to time, shall procure and maintain property and liability insurance and/or retain the risk for the Theatre and the City's FF&E and at the Theatre, as described below.

7.2 Insurance Provided by the Carolina

7.2.1 The Carolina, at its own cost, shall procure and maintain the following insurance:

(a) Workers' Compensation Insurance, during the period of this Agreement and Supplemental Agreements, and Employer's Liability Insurance with a limit of not less than \$1,000,000.

(b) Fidelity Bonds, with reasonable limits and deductibles to be mutually agreed upon by the Carolina and the City, covering employees in job classifications normally bonded in other first class performing arts facilities in the United States or as required by law, and comprehensive crime insurance to the extent that the Carolina and the City agree it is necessary for the Theatre.

(c) Commercial General Liability Insurance, covering premises / operations, products/completed operations, broad form property damage, contractual liability, independent contractors (if any), and XCU coverage (explosion, collapse, and underground) if any apply to the work of this contract. Such insurance shall provide, at a minimum, combined single limits of not less than \$1,000,000 per occurrence, with an annual aggregate of not less than \$3,000,000. The "City of Durham, North Carolina", its

officers, employees, and elected officials shall be named as additional insured. The additional insured coverage must be evidenced by either an original of the endorsement to effect the coverage, or, if blanket coverage is provided, then the agent shall indicate the form number in the proper section of the certificate of insurance.

(d) Vehicle Liability Insurance, covering the operation of automobiles, to protect the Carolina and CITY against liability from damages because of injuries, including death, suffered by any person or persons other than employees of the Carolina, and liability or damages to property, arising from or growing out of the Carolina's operations in connection with the performance of this Agreement and Supplemental Agreements. Such insurance shall cover owned, non-owned, rental/leased, and hired vehicles and shall provide combined single limits of not less than (\$1,000,000) per accident, with an annual aggregate of not less than \$3,000,000.

(e) Personal And Advertising Injury Liability, covering claims and related charges/sums that the Carolina becomes legally obligated to pay as damages due to "personal and advertising" injury caused by Contractor's offenses arising out of their operations or activities related to the performance of this contract. A limit of liability not less than \$1,000,000 per occurrence or, if an endorsement to a CGL policy, a \$1,000,000 combined single limit will be accepted.

(f) Insurance shall be provided by companies authorized to do underwrite such coverages in the State of North Carolina, with companies having a Best rating of A or better.

(g) Insurance shall be evidenced by a certificate, providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage, and certificates shall be addressed to:

City of Durham, North Carolina

Attention: Finance Director

101 City Hall Plaza

Durham, NC 27701

(h) Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

7.3 Coverage All insurance described in Sections 7.1 and 7.2 may be obtained by the Carolina or the City by endorsement or equivalent means under blanket insurance policies, provided that such blanket policies fulfill the requirements specified herein. All blanket insurance policies shall be in form and substance, with deductible limits and risk retentions as are acceptable to the City's Risk Manager.

7.4 Policies and Endorsements

7.4.1 All insurance provided by the Carolina shall name the Carolina as the Insured and the City as the Additional Insured. Insurance provided by renters using the Theatre shall name the renter as the Insured and the Carolina and the City as Additional Insureds. Insurance provided by the City shall name the City as the Insured and the Carolina as Additional Insured.

7.4.2 Upon request by the City, the Carolina shall provide proof of all insurance it has obtained in connection with its operation of the Theater.

7.4.3 The Carolina shall notify the City of any material changes, endorsements, or cancellations of the insurance hereunder within seven (7) business days of such changes, endorsements or cancellations.

7.5 Claims The Carolina and the City shall cooperate in a prompt manner in connection with the making and settlement of any claims and the collection of any insurance money that may be due, and shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance monies.

7.6 Failure to Obtain and Maintain Insurance If the Carolina fails to obtain and maintain the insurance required pursuant to this Article or, if any insurer cancels or modifies such insurance in a manner unacceptable to the City with respect to the coverages hereunder, the City may at its discretion, purchase said insurance and the Carolina shall reimburse the City for any premiums paid by City, as provided in Article IV. The Carolina shall not perform work during any period when any policy of insurance required hereunder is not in effect unless it gives evidence, to the reasonable satisfaction of the City, of the unavailability of such insurance.

ARTICLE VIII EMPLOYMENT

8.1 Employees

8.1.1 The Carolina shall at its sole cost and expense select and hire all of the personnel necessary or required for the operating, maintenance and security of the Theatre. Employees shall include such employees with such levels of expertise as the manager of a first class theater of similar size would have on staff for the smooth operation of such a facility.

8.1.2 All Employees shall be employees of the Carolina and not of the City. The City shall have no right to hire, fire, supervise or direct any such Employee.

8.1.3 The Carolina shall prepare and file punctually all forms, reports, and returns required by law relating to the Employees of the Carolina for the operation of the Theatre.

8.2 Small and Disadvantaged Business Enterprise Plan In providing its services and performing all other duties, obligations and responsibilities under this Agreement, the Carolina shall comply with the City's Small and Disadvantaged Business Enterprise Plan, as it is and as it may be amended from time to time.

8.3 Independent Contractor Relationship The City and the Carolina agree that with respect to the performance of the services by the Carolina to the City, with no limitation whatsoever, the Carolina shall be acting as an independent contractor. Nothing herein shall constitute, or be construed to be or create, a partnership, agency, joint venture, lease or landlord-tenant relationship between the Carolina and the City. The Carolina agrees that it will not make any representations that its relationship to the City is other than that of an independent contractor, and the Carolina and the City may so inform any parties with whom they deal and may take any other reasonable steps to carry out the intent of this subsection.

ARTICLE IX DAMAGE, CONDEMNATION AND REPAIR

9.1 Damage to or Destruction of the Theatre

9.1.1 In the event that the Theatre or any portion thereof shall be damaged or destroyed at any time or times during the Initial Term or any Renewal Terms, by fire, casualty or any other cause, the Carolina shall give prompt notice to the City and the City shall, to the extent of insurance, with due diligence, repair, rebuild or replace the same as that after such repairing, rebuilding or replacing, the Theatre shall be substantially the same as prior to such damage or destruction. If the City fails to undertake such work within one hundred eighty (180) days after notice of the fire or other casualty, or shall fail to complete same diligently, within a reasonable time period agreed to between the City and the Carolina, the Carolina may, at its option, terminate this Agreement by written notice to the City effective thirty (30) days after the date of such notice. Termination of this Agreement, in such instance, shall be the Carolina's sole remedy. Notwithstanding anything to the contrary contained herein, the City shall have no obligation for repair, rebuilding, or replacing the Theatre in the event all or a substantial portion of the Theatre shall be destroyed or damaged by fire or casualty.

9.1.2 Notwithstanding the forgoing, in the event that the City by reason of unavailability of supplies, strikes, walkouts, or other matters beyond the City's control, shall be unable to complete the repair or restoration within the time period agreed to, the

time period shall be extended accordingly.

9.1.3 In the event of any damage to or destruction of the Theatre, this Agreement shall remain in full force and effect until thirty (30) days after the City has provided written notice to the Carolina of its decision to not repair, or to demolish the Theatre.

9.2 **Condemnation.** In the event the Theatre, or such portion that renders the Theatre as a whole unusable for the purposes expressed herein, shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition, expropriation, or like proceeding by any competent authority, then, in any such event, this Agreement shall terminate as of the date of the taking and the Carolina shall not be entitled to participate in any award or compensation received for such a taking or condemnation. However, the Carolina shall be entitled to receive that portion of any award which provides compensation for property taken which was owned by the Carolina.

ARTICLE X TERMINATION, REMEDIES AND EXCULPATION

10.1 Termination

10.1.1 If at any time during the term of this Agreement, commencing on the date hereof, the City shall breach or fail to perform any term, covenant or condition contained in this Agreement, and shall fail to cure or to commence a reasonable undertaking to cure such breach or failure within thirty (30) days following notice thereof or shall thereafter fail to diligently pursue all necessary efforts to effect such cure, the Carolina may terminate this Agreement by giving written notice to the City. Termination of this Agreement shall be the sole remedy of the Carolina for any breach of this Agreement.

10.1.2 The City shall have the right to terminate this Agreement by Notice to the Carolina if any one or more of the following events occur:

(a) If at any time during the term of this Agreement, the Carolina shall apply for or consent to the appointment of a receiver, trustees or liquidator of all or a substantial part of its assets or make a general assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition seeking reorganization, composition, arrangement with creditors, liquidation or similar relief under any present or future statute, law or regulation, or file an answer admitting the material allegations of a petition filed against it in any proceeding under the bankruptcy or reorganization laws or to be adjudicated as bankrupt or insolvent.

(b) If any petition or complaint is filed without the application, approval or consent of the Carolina seeking reorganization, composition, arrangement with creditors,

liquidation or similar relief under any present or future statute, law or regulation with respect to the Carolina seeking appointment of a receiver, trustee or liquidator thereof of all or a substantial part of such party's assets, and such petition or complaint shall be pending and not withdrawn or dismissed for an aggregate of ninety (90) days (excluding any days during which such a petition would be stayed), whether or not consecutive.

(c) The Carolina shall fail to meet the Minimum Performance Standards as set forth in this Agreement and shall fail to cure within a reasonable time period to effectuate such cure with exercise of due diligence after notification by the City, but in no event greater than thirty (30) days.

(d) The Carolina shall breach or fail to perform any term, covenant or condition contained in this Agreement and shall fail to cure within a reasonable time period required to effectuate such cure with exercise of due diligence after notification by the City, but in no event greater than thirty (30) days.

10.1.3 The provisions in the Section 10.1 shall be cumulative with, and not in derogation of, any other provisions of this Agreement with respect to Termination, including without limitation the provisions of Section 11.4.

10.2 Remedies upon Termination

10.2.1 In the event this Agreement is terminated as provided in Section 10.1, the City shall, within thirty (30) days after the date of such termination, pay the Carolina all accrued and unpaid Basic Management Fee; provided that the obligation of the City to make such payment shall be subject to the right of offset in the event this Agreement is terminated by the City pursuant to any of the provisions of Section 10.1 or 11.4 or pursuant to any right to terminate at law or in equity. The Basic Management Fee shall be considered to have accrued only for such portion of the Fiscal Year as this Agreement is in effect prior to Termination, and any portions of the Basic Management Fee pre-paid by the City for portions of the Fiscal year when this Agreement is no longer in effect shall be refunded by the Carolina to the City.

10.2.2 In the event that this Agreement is terminated as provided in Section 10.1, the Carolina shall prepare or cause to be prepared financial statements in accordance with the applicable provisions of Section 6.2 for the period between the end of the last preceding Fiscal Year and the termination date, and the Carolina shall account to the City as of the termination date for all amounts due and payable specified in such financial statements. Such accounting shall be subject to post-termination adjustment to correct any errors in such statements. The obligation to make any such adjustment shall survive the expiration or the Termination date. In addition, as of the date of notice of the termination, the Carolina will take all necessary measures to effectuate the orderly and prompt termination of the relationship contemplated by this Agreement and the orderly and prompt transfer of operations, so that it can be complete as of the date of termination.

10.2.3 In the event this Agreement is terminated by the mutual agreement of the parties, neither party shall be liable to the other for any damages, costs or expenses arising out of such Termination except as may be expressly provided in any separate agreements or amendments now or hereafter executed by the parties with respect to such liability.

ARTICLE XI ASSIGNMENT

11.1 Assignment by the Carolina

11.1.1 The Carolina shall have no right to assign any of its rights, or interests under this Agreement to any other party.

11.1.2 The Carolina shall have the right to lease the premises for short term and occasional use to third parties wishing to hold events at the Theatre. All such uses will require a Lease form executed between the user and the Carolina, subject to the insurance requirements set forth in this Agreement and rental fees shall be charged according to a schedule that is from time to time reviewed and approved by the Carolina in its sole discretion.

11.2 **Assignment by the City** Subject to the rights of the Carolina set forth in this Agreement, the City shall have the right to assign any of its rights or interests under this Agreement or to delegate any of its duties hereunder at any time to any third party or parties, provided that such third party shall expressly agree to be bound by the provisions and agreements herein contained. To the extent permitted by law, the City may not assign this Agreement to a person or entity whose principal business activity is the ownership or management of theatrical facilities competitive with the Carolina. The City makes no representation as to the authority of the City to comply with the restrictions contained in the preceding sentence.

11.3 **Notice of Assignment** The City shall give prompt notice to the Carolina in writing specifying the terms and conditions of such transfer, the parties thereto and the expected effective date of such transfer.

11.4 **Unauthorized Assignment** Any assignment, in part or in whole, by the Carolina shall be both null and void and a default permitting the City to terminate this Agreement.

ARTICLE XII TAXES, IMPOSITIONS AND LIENS

12.1 **Taxes and Impositions** All taxes, levies, assessments, utilities and

similar charges on or relating to the Theatre, and not exempted through the Carolina's not-for-profit status, or otherwise provided for in this Agreement (hereinafter "Impositions") shall be paid by the Carolina before it becomes delinquent or any fine, penalty, or interest is added thereto to the extent that such Impositions do not exceed the Basic Management Fee for that year. The City shall have no obligations for payment for any Impositions attributable to or allocable to the Carolina's presentations or programming.

12.2 Liens The Carolina shall prevent any liens from being filed against the Theatre which arise from any maintenance, repairs, alterations, improvements, additions or replacements in or to the Theatre or any other acts or omissions of the Carolina. The Carolina shall act for itself and the City in this regard unless the City directs otherwise, and if any liens are filed, the Carolina shall prevent any liens from becoming delinquent. The cost thereof, if the lien was not occasioned by the fault of either party, shall be treated the same as the cost of the matter to which it relates. If the lien arises as a result of the fault of one party, then the party at fault shall bear the out-of-pocket cost of obtaining the lien release.

ARTICLE XIII SALE OF THEATRE

13.1 Sale of the Theatre

The City shall have the right to sell the Theatre to any bona fide third party purchaser without approval of the Carolina,

ARTICLE XIV MISCELLANEOUS

14.1 Right to Inspect Premises As the owner of the building, the City has the right to enter the Theatre and its premises, for the purpose of conducting inspections and for the repair or replacement of items required under the terms of this Agreement.

14.2 Indemnification

14.2.1 To the extent allowed by law, the Carolina shall defend, indemnify and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of the errors, omissions or negligent acts of the Carolina or subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection, Carolina shall at its sole expense defend Indemnities with legal counsel reasonably acceptable to City.

14.2.2 Definitions. As used in subsections 14.2.1 above and 14.2.3 below.

"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item).

"City" means the City of Durham

"Carolina" means all parties to this contract other than the City, as well as parties hired by or used by the Carolina to perform services.

"Indemnities" means City and its officers, officials, independent contractors, agents, and employees.

14.2.3 Nothing in subsections 14.2.1 or 14.2.2 above shall affect any warranties in favor of the City that are otherwise provided under this Contract. This Section is in addition to and shall be construed separately from any other indemnification provisions that may apply to this Contract.

14.2.4 If any claim, action or proceeding is made or brought against any Indemnitee by reason of any event as to which the Carolina is indemnifying any Indemnitee pursuant to this Article, then upon demand by such Indemnitee, the Carolina, by and through the attorneys for the Carolina's insurance carrier shall resist or defend such claim, action or proceeding in such Indemnitee's name, if such claim, action or proceeding is covered by insurance, otherwise by such attorneys as the City shall approve. The City agrees that in the event that the City is named as party to an action, the City will reasonably cooperate with the Carolina in the conduct of the proceedings. Notwithstanding the foregoing, the City may engage its own attorneys to defend it or to assist in its defense of such claim, action or proceeding and, except for attorneys' fees and disbursements incurred by the City in connection with the defense of claims, actions or proceedings based solely upon the negligence of the City or in connection with the City's use of the Theatre, the Carolina shall pay all reasonable fees and disbursement of such attorneys.

The Carolina shall not represent the existence of an obligation on the part of the City to any third person, without the City's prior written consent, nor shall the Carolina, in the name of or on behalf of the City, borrow, any money or execute any promissory note, bill of exchange, or other obligation or mortgage or other encumbrance, and the Carolina hereby agrees to indemnify the City against any claims, including costs and expenses incident thereto, by reason of any such action.

14.2.5 Claims against the Carolina due to actions of Third Parties or Parties under Direct control of the City. In the event any act or omission of Indemnities is the sole cause of the Carolina to be subject to the claims of third parties for breach of contract, then the City will reimburse the Carolina for uncontested portions of said loss within ten (10) days of being presented with documentation of said loss. The Carolina's obligation to

indemnify shall not apply to Charges caused by the negligence, acts or omissions of Indemnities.

14.2.6 The Carolina agrees to comply with the operation and maintenance standards and instructions found in any warranty or Required Service Contract relating to the Theatre of which it has received a copy. In the event that a repair or maintenance is required which is covered by such warranty or Required Service Contract and such warranty or Required Service Contract is not honored due to failure by the Carolina to operate and maintain in accordance with the terms of the warranty or the Required Service Contract, notwithstanding anything to the contrary contained in this Agreement, the Carolina shall make such repair and replacement as necessary or do such maintenance work with no contribution by the City regardless of whether or not it is deemed a Non-Routine Repair and Maintenance item.

14.3 Public Bidding Requirement Notwithstanding any other provision of this Agreement, a precondition for payment or reimbursement by the City of any costs incurred or expenditures made by the Carolina pursuant to this Agreement is that the Carolina incur such costs or make such expenditures in compliance with City Purchasing guidelines and bidding requirements.

14.4 This Agreement shall be construed under and shall be governed by the laws of the State of North Carolina.

14.5 Headings Headings of Articles and Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles, Sections or subsections to which they refer.

14.6 Notices

14.6.1 All notices, demands and other communications required or permitted under this Agreement shall be in writing, sent by hand delivery or by first class mail, postage pre-paid to the following addresses:

As to the City:

General Services Director

101 City Hall Plaza

Durham, NC 27701

As to the Carolina:

The Carolina Theatre of Durham, Inc.

309 West Morgan Street

Durham, NC 27701

Attn: Executive Director

Either party to this Agreement may change its address or the person to whom the notice shall be sent by giving the other party written notice of its new address as herein provided.

14.6.2 Any notice of specific obligations (monetary or otherwise) received by the Carolina from any insurance carrier or any governmental agency with which the Theatre, the Carolina or the City must comply, and notices of non-compliance with any such obligations, shall be immediately forwarded by the Carolina to the City.

14.7 Successors and Assigns This Agreement shall be binding upon the successors of the parties hereto, provided that this provision shall not be deemed to authorize the assignment or other transfer of this Agreement which may only be accomplished as expressly provided in this Agreement.

14.8 Waiver The failure of either party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing signed by such party.

14.9 Performance of Governmental Functions Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way estop, limit or impair the City from exercising or performing any regulatory, policing or other authority it may possess with respect to the Theatre.

14.10 Partial Invalidity If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent or for any reason be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

14.11 Counterparts This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute a single instrument.

14.12 Entire Agreement The Agreement and the Exhibits hereto, together with

any instruments to be executed and delivered pursuant to this Agreement, contain all the promises, agreements, conditions, inducements and

understandings between the City and the Carolina as to the matter contained herein and covered hereby. There are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, express or implied, between them other than as herein set forth, or other than as may be expressly contained in this written agreement executed by the parties hereto or instruments executed by one party hereto and accepted by the other party hereto. All previously existing agreements, notes, conditions, inducements and understandings are replaced by this Agreement.

In an effort to heighten public awareness of the City's investment in downtown culture, specifically in preserving, maintaining and operating the historic landmark Carolina Theatre as a cultural resource for civic groups, private citizens and numerous arts organizations, the Carolina Theatre shall administer the following:

- The Carolina Theatre shall include advertising (3/4 page at minimum) in every edition of Curtain Call, the Carolina Theatre playbill.
- The Carolina Theatre shall, at its own expense, display an outdoor banner during February of each year with the City logo and with the phrase "City of Durham, preserving a landmark February 1926." The Public Affairs office of the City has the right to approve the design.
- The City reserves the right to affix its logo onto the facility at any location, thereby increasing awareness that the Carolina Theatre is City property.

Nothing in this section shall require the Carolina Theatre to identify the City as a donor or to represent the relationship between the City and the Carolina Theatre as anything other than that of a vendor-client, fee-for-service relationship as set forth in Article 8.3 of this Agreement."

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY OF DURHAM:
DURHAM, INC.

CAROLINA THEATRE OF

By: [Signature] 5/14/08
(SEAL)

By: [Signature]

_____ City Manager

_____ President/CEO



ATTEST:

ATTEST:

[Signature]

[Signature]

Deputy City Clerk

Carolina Theatre Corporate Secretary

(Please affix corporate seal.)

NORTH
DURHAM COUNTY

CAROLINA

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

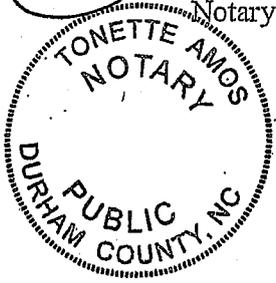
[Signature] 5/22/08
FINANCE OFFICER DATE

I, Tonette Amos, a Notary Public for the County and State aforesaid, do hereby certify that Linda E. Gratcher personally appeared before me this day and acknowledged that she is City Clerk for the City of Durham, and that by authority duly given, the foregoing agreement was signed in its name by its City Manager, sealed with its corporate seal and attested by her as its City Clerk. Witness my hand and official seal, this 15th day of May, 2008.

~~_____~~
~~_____~~

~~_____~~
Tonette Amos
Notary Public

My Commission Expires 7-17-2012



NORTH
DURHAM COUNTY

CAROLINA

I,

Cara Bryant, a Notary Public for the County and state aforesaid, do hereby certify that Christy Simmons personally appeared before me this day and acknowledged that he/she is the Corporate Secretary of Carolina Theatre of Durham, Inc., a not for profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Executive Director, sealed with its corporate seal and attested by him/her as its Carolina Theatre Corporate Secretary. Witness my hand and official seal this 8th day of May, 2008.

My Cara Bryant commission

expires: April 30, 2013

Notary Public