DPAC Operating Agreement

By and Between

The City of Durham, North Carolina

and

DURHAM PERFORMING ARTS LLC
a Delaware Limited Liability Company

and

JN WORLDWIDE LLC,
a Delaware Limited Liability Company

and

PROFESSIONAL FACILITIES MANAGEMENT, INC.,
a Rhode Island Corporation

Dated: January __, 2007

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DPAC Operating Agreement by and between the City of Durham, Durham Performing Arts LLC, JN Worldwide LLC and Professional Facilities Management, Inc.

7.1 Subject to the rights and obligations of Operator under this section 7.1 shall be subject and subordinate to the liens of all deeds of trust affecting title to the DPAC, and to all deeds of trust and liens imposed to provide security for debt incurred for the financing of the construction of the DPAC and for any and all refinancings of that debt that do not extend the final maturity of the debt.

7.2 Continuation of Agreement after Sale of DPAC. If the DPAC is conveyed to any Person other than Operator, or if for any reason City ceases to be the DPAC’s owner and Operator does not become the owner, this Agreement shall continue in effect, so that Operator shall continue to perform under the Agreement, and the new owner(s) shall have the rights and obligations of City under the Agreement that accrue after the transfer of title in the DPAC. City shall not be liable for any obligations of operator that accrue after the transfer of title in the DPAC, but any obligations of City that accrued before the transfer of title shall remain City’s obligations. Where this Agreement specifies that the City Council or City Manager has a particular function but that function is intended only in order to carry out the City’s position as owner of the DPAC, the new owner will assign such functions to the persons, entities, or agencies as it deems appropriate.

7.3 No Assignment without City Consent. The Operating Agreement and the Operator’s rights or obligations under it shall not be assignable, or pledged as security for any debt, by Operator except at the discretion of the City. An assignment of the Operating Agreement shall be deemed to occur in the event Operator transfers 50% or more of its ownership.

7.4 Radius Restriction. Neither the City nor Operator may develop or operate a competing theater of between 2000 – 3500 seats within a 50-mile radius of the DPAC.

8. MISCELLANEOUS PROVISIONS

8.1 Oversight Committee. The City Council will appoint a five-person advisory Oversight Committee to monitor the implementation of the Operating Agreement with the Operator. The City Administration will provide staff to the Oversight Committee. The committee will possess professional skills in the key areas of arts and culture, business, finance, facility management and community relations. One member of the Committee shall be a member of the Cultural Master Plan Advisory Committee. Operator shall report in person to the Oversight Committee at least once every six months on the status of DPAC operations. The Oversight Committee will provide a written report to the City after each such presentation by the Operator. The Oversight Committee will have the following responsibilities and will report on them per the above requirement:

8.1.1 Whether the Operator is meeting the provisions in this Agreement.

8.1.2 The areas of this Agreement that are not being met, the reasons for that non-compliance, and the committee’s recommendations to satisfy those provisions in the future.

8.1.3 Recommendations for improvement in the operation of the DPAC.

8.1.4 Recommendations for improvements in the coordination with other cultural facilities and organizations in Durham, including the Carolina Theater, the Arts Council and St. Joseph’s Foundation.

8.2 Operator Internship Program. Operator shall make best efforts to work with the Colleges of Arts and Sciences at Duke University and North Carolina Central University through their respective theater departments to provide opportunities for their students to gain valuable job experiences through the Operator’s internship program focusing in the areas of theater technical, operations, marketing, box office and administrative services.