

**FUNDING AGREEMENT
BETWEEN THE CITY OF BELLEVUE
AND PERFORMING ARTS CENTER EASTSIDE**

THIS FUNDING AGREEMENT (this “**Agreement**”) is entered into as of this ___ day of _____, 2016, by and between the CITY OF BELLEVUE, a municipal corporation of the State of Washington (the “**City**”) and PERFORMING ARTS CENTER EASTSIDE, a non-profit corporation organized under the laws of the State of Washington (“**PACE**”).

WHEREAS, PACE is authorized to design, develop, construct and operate a performing arts center for the purpose of providing a venue for the presentation of a variety of types of artistic performances, including music, theater and dance east of Lake Washington; and

WHEREAS, PACE has secured access to a site in downtown Bellevue and has embarked on a campaign to obtain substantial private contributions for the purpose of designing, developing, constructing and operating a performing arts center on such site; and

WHEREAS, by constructing and operating a public performing arts facility in downtown Bellevue, PACE will provide valuable public benefit to the City and its citizens by significantly increasing public access to the performing arts and contribute to the attractiveness and economic vitality of the City; and

WHEREAS, the City and PACE have previously entered into an agreement dated as of December 8, 2009 (“City-Pace Agreement”), pursuant to which the City provided \$2,000,000 to PACE for the design and planning of a performing arts facility in Bellevue subsequently named Tateuchi Center (the “**Project**”) in consideration of various promises by PACE, including with regard to the use of the Project for a period of twenty (20) years, and PACE granted a security interest in certain collateral as defined in the City-PACE Agreement; and

WHEREAS, the City has elected to contribute an additional \$20,000,000 to PACE to be used for the construction of the Project payable upon the Project’s substantial completion, in consideration of PACE’s agreement to raise the private funding needed for construction and to provide to the City other valuable consideration, including a restrictive covenant regarding the public use of the Project for a period of fifty (50) years which restrictive covenant shall be secured by a deed of trust on an easement on which a portion of the Project will be constructed; and

WHEREAS, by this Agreement the parties intend to set forth the understandings and conditions which will govern the provision of the City’s funds, their use by PACE and the operation of the Project; now, therefore,

IN CONSIDERATION OF THE MUTUAL PROMISES AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. City Investment. Subject to the terms of this Agreement, the City will provide \$20,000,000 (the “City Investment”) to PACE, which in combination with other cash and pledges, will enable PACE to pay for the construction of the Project pursuant to a guaranteed maximum price construction contract to be entered into by PACE and PACE’s construction contractor (“**GMP Contract**”).

Section 2. Project Scope. The Project shall be constructed with a scale and scope consistent with the Project description and capital cost estimates established by PACE in March, 2015, modified to reflect replacement of the cabaret space with an education center having a black box theater capability (the “**Education Center**”), modifications necessitated by changes in applicable codes enacted subsequent to the City’s approval of the original design of the Project, and any other modifications or adjustments reasonably proposed by PACE and approved by the City. The Project and the Education Center shall be configured substantially as depicted in Exhibit A hereto (“**Project Plans**”).

Section 3. No Future Support. The City makes no commitment and assumes no obligation for the support of PACE’s activities except as set forth in this Agreement. PACE’s business plan and pro-formas, as discussed herein, shall assume and the City relies upon the assumption, that no additional capital or operations funding will be provided by the City.

Section 4. Preconditions to Capital Investment. The City’s commitment to provide the City Investment is conditioned upon satisfaction of the following preconditions:

- a. Remaining Fundraising Accomplished by September 30, 2016. PACE must raise an amount in cash and pledges from sources other than the City by September 30, 2016, so that with the City Investment, PACE is in a position to negotiate a construction loan sufficient to pay for the estimated construction cost of the Project pursuant to the GMP Contract.
- b. Construction and Groundbreaking. PACE must meet the following schedule in proceeding with construction and groundbreaking:
 - i. PACE shall enter into the GMP Contract for construction of the Project and secure any necessary bank loans for such purpose and break ground on the Project no later than July 1, 2017.
 - ii. PACE shall reach Substantial Completion of the Project’s construction consistent with the Project Plans by October 1, 2019 (“Substantial Completion”), subject to delays due to *force majeure*. As used herein, the term “Substantial Completion” shall mean substantial completion of the Project as established and evidenced by the certificate of substantial completion issued by the Project architect.

- iii. PACE shall retain an independent project management and construction oversight firm (“Project Manager”) to help control costs and manage the Project schedule. The Project Manager shall be highly reputable and very experienced in managing significant, complex construction projects of comparable scope. Prior to engaging the Project Manager, PACE will consult with the City Manager or his designee concerning its proposed Project Manager and give good faith consideration to any concerns the City Manager or his designee may raise concerning the proposed Project Manager. The cost of such services shall be included in the Project’s capital costs.

c. Business Plan and Operating Pro Forma.

- i. No later than October 1, 2018 (twelve (12) months prior to the estimated date of Substantial Completion), PACE shall provide to the City, for review by the City’s independent consultant (B Squared Consulting or its successor chosen by the City) (the “**City’s Consultant**”), a business plan and operating pro forma for the Project, including consideration of affordable public access to non-profit groups (the “**Plan**”). The Plan shall demonstrate the operational sustainability of the Project and identify the experience and expertise of key individuals on the PACE Board and on its staff to implement the Plan. The assumptions in the Plan shall not reveal a substantial foreseeable risk that the Project will be financially unsustainable. The assumptions in the Plan shall be reasonable and generally consistent with the assumptions contained in PACE’s business plan and operating pro forma agreed upon between PACE and B Squared Consulting in March, 2015. PACE shall consult with the City’s Consultant prior to finalizing the Plan and give good faith consideration to any concerns the City’s Consultant may raise concerning the proposed Plan.
- ii. Since it is projected that a majority of the operating income for the Project will come from programming produced or presented by PACE, PACE will conduct a market assessment to help inform planning, marketing and producing a successful PACE programming mix. The study shall include community outreach efforts, e.g. town halls, focus groups, etc. to obtain input from residents regarding programming at the facility. The study shall be completed prior to completion of the Plan and shared with the City. The Plan shall be modified, as reasonable and appropriate, to incorporate significant findings from the study.

- d. Operating Reserve. Prior to Substantial Completion, PACE shall establish a segregated operating reserve sufficient to meet six (6) months of budgeted non-programming costs. Such reserve shall be maintained throughout the term of this Agreement. If funds are expended from the reserve, PACE shall employ its best efforts to replenish such reserve funds as soon as reasonably possible and any such expenditure of reserves shall be reported to the City.
- e. Fundraising Reports. Fundraising status reports shall be provided by PACE to the City Manager every six (6) months for the previous six-month period, within 45 days of the end of each such reporting period, beginning August 15, 2016 for the period from January 1, 2016 through June 30, 2016, and ending at such time as a final Certificate of Occupancy is issued for the Project. Such reports shall be made in writing to the City Manager without disclosing the names of donors and shall contain the beginning balance for the period and new contributions during the period, broken down by unrestricted gifts, grants and pledges, and conditional pledges with any contingencies and conditions identified.

Section 5. Payment. Provided that PACE is in compliance with the terms of this Agreement, the City will make payment of the City Investment to PACE upon sixty (60) days' written notice from PACE to the City and the occurrence of Substantial Completion; provided, however, that the City shall provide such reasonable assurances and sign such documentation consistent with this Agreement as may be required by PACE's construction lender(s) in order for PACE to pledge and such lenders(s) to accept the City's obligation under this Agreement (subject to the provisions herein, including satisfactory completion of all preconditions) to pay PACE the City Investment as collateral (valued at \$20,000,000) for such construction loans. At the time it gives notice to the City requesting funding, PACE shall provide documentation to the City which demonstrates the use of the City Investment for capital costs of the Project.

Section 6. Consideration for City Investment.

- a. Operation. The Project will operate as a non-profit, performing arts center, including an education center, for not fewer than fifty (50) years from the date of issuance of a final Certificate of Occupancy for the Project (the "**Term**"). For this period, PACE commits to providing public programming, discounted tickets for certain groups and patrons, and similar initiatives consistent with the operations of similar performing arts centers and educational facilities and comply with the following commitments contained in the City-PACE Agreement, set forth in Sections 8 through 10 thereof:
 - i. Performing Arts Services. Once the Project is operational and for the duration of the Term, PACE will provide services consistent with its mission as amended from time to time by its Board of Directors. These services may include but are not limited to the following activities:

- (a) Operation of the Project as the primary location for PACE operations consistent with national performing arts center standards, appropriate portions of which to be open to the public during regular business hours, subject to reasonable restrictions and admission standards.
- (b) Provision of education as a primary function through performances and programs.
- (c) Maintenance and operation of the Project as a center of learning and cultural enrichment in the community by provision of professional artistic and educational experiences of people of all ages.
- (d) Presentation of performances and programs to families, children and the general public that will increase their understanding of the artistic, aesthetic and cultural heritages of artists from different cultures and perspectives.
- (e) Cooperation with the Bellevue School District in providing, for example, teacher training, student workshops and special tours, and encouragement of extensive visitor participation in interpretive and educational programs through lectures, demonstrations, workshops and similar activities.
- (f) Cooperation with public organizations such as the Bellevue Department of Parks & Community Services, Bellevue College, Bellevue Convention Center Authority and the King County Public Library in conducting programs of popular interest.
- (g) Provision of meeting spaces in the Project for both private and public uses, as available and appropriate, for which reasonable fees may be charged.
- (h) Operating the Project for the public good for those residing or located in Bellevue, including providing special performances and educational opportunities, discounted tickets, tours, scholarships, classes, discounted space rental or other programs or benefits, as appropriate, for the poor, infirm, low income residents, youths, students, seniors, ethnic minorities, the disabled, other disadvantaged or at-risk groups, and non-profit community organizations (collectively, the “Underserved”).
- (i) Operation of the Facility as a high quality performing arts center worthy of public confidence and pride.

- ii. Access to Public. Once the Project is operational, performances open to the public shall occur in the performance space of the Project on a regular seasonal basis customary for similar performing arts centers in similar circumstances. PACE may restrict access to the Project and/or portions thereof as is necessary for safety and security purposes, to allow for load-in, load-out, set installation/removal, rehearsals, and privately rented spaces or events, and may temporarily close the Project or portions of the Project as is necessary due to force majeure or for installation, repairs, renovation, decoration, or remodeling, from time to time.
- iii. Public Good. Once the Project is operational, PACE will ensure access to performances and develop outreach and educational programs for the Underserved, such that the Project serves the public good and benefits the community. The fees charged for regular admission shall be reasonable and comparable to the fees charged by similar performing arts centers in similar circumstances. As referred to in Section 6(a)(i)(h) above, discounted admission fees, special performances and various outreach and educational programs and opportunities (“**Outreach Programs**”) shall regularly be offered to the Underserved in connection with operating the Project for the public good. In structuring and implementing Outreach Programs, PACE will provide both choice and access and create an environment that welcomes everyone, recognizes that different populations have different needs, and use its resources to identify and provide performing arts programs that address the cultural needs and desires of the Underserved in the community. PACE’s Outreach Programs will include some or all of the following:
 - (a) An Education & Outreach Department that will retain experiences, professional staff dedicated to the design, organization and delivery of the kinds of programs anticipated by Section 6(a)(i)(h). Some programs will be delivered off-site in partnership with agencies such as YES, YMCA, YWCA, Bellevue Schools, or the Bellevue public library. These might take the form of artists engaging young people directly in a “master class” or a conversational performance. On-site programs will include a series of free mini-performances and discussions for small groups of Underserved persons, designed to provide a context for those who are interested in dance or classical music or jazz, etc., but need an introduction; meet-and-greet opportunities between artists and patrons with the same ethnic background; technical seminars in lighting, staging, and sound for high school and Bellevue College students; backstage tours; displays of student digital art, etc.

- (b) Providing “rush” tickets (i.e., remaining, unsold day-of-performance tickets) to most performances at a significantly discounted rate for students with a valid student ID, and to adult and family patrons of partner institutions and social services organizations, such as the YWCA and Hopelink.
- (c) Obtaining sponsorship or underwriting of discounted tickets to performances for the Underserved.
- (d) Scheduling special matinees for senior audiences and families.
- (e) ASL-interpreted performances.
- (f) Audio-described performances.
- (g) Preview materials designed for teachers and coordinated with the Bellevue public school curriculum, including written and video materials.

iv. Public Programming Reports. Once the Project is operational:

- (a) PACE shall report on its public programming activities annually to the City, based on PACE’s performance season year, September 1 to June 30 (a PACE Year). At least sixty (60) days prior to the next PACE Year, PACE shall report about its proposed plan for meeting its public programming commitments in the following PACE Year. The City’s review of such plan shall be limited to the adequacy of the quantity and scope of programming proposed, not the content thereof. Within one hundred twenty (120) days after expiration of a PACE Year, PACE shall report to the City about its public programming activities in the prior PACE Year.
- (b) PACE will work with City staff to gain a better understanding of the “geography of need” in Bellevue in connection with planning its Outreach Programs. PACE will provide to the City, as a part of its Public Programming Report, a detailed report (“Annual Public Benefit Report”) describing the number and types of Outreach Programs it has made available to the Underserved in the community in the prior year, together with a description of the Outreach Programs and the types of Underserved that were eligible for or benefited by such Outreach Programs and the number of such persons who participated in each such Outreach Program. If, within ninety (90) days after PACE provides the City with the Annual Public Benefit Report, the City notifies PACE that it has determined that such Outreach Programs need

to be supplemented in order to better achieve the public benefit goal required by this Agreement, PACE and the City shall work together cooperatively, diligently and in good faith to reach agreement on appropriate supplementation of the Outreach Programs for the coming calendar year. PACE will cooperate with the City to ensure that sufficient access is granted to the Underserved so as to demonstrate a clear public benefit for the use of the Funds.

- b. Restrictive Covenant. Upon Substantial Completion and payment to PACE of the City Investment, the City will record a restrictive covenant against the property with respect to which the Project will be constructed (the “**Restrictive Covenant**”) requiring PACE to use the Project as a non-profit performing arts center and education center (or its equivalent) for the duration of the Term. The Restrictive Covenant will be in substantially the form attached hereto as Exhibit B.
- c. City’s Deed of Trust. PACE’s obligations under the Restrictive Covenant and this Agreement (as to which PACE will be entitled, after an event of default, to notice and reasonable cure periods as provided in the Restrictive Covenant and herein) will be secured by a deed of trust (the “**City’s Deed of Trust**”) covering PACE’s interests and rights under the Overhang Easement Agreement, as such term is defined in the Property Transfer and Donation Agreement between PACE and Bellevue Properties, LLC, Bellevue Place Office Building I Limited Partnership, and Bellevue Place Hotel, LLC (collectively, “**Donors**”) dated March 25, 2011 (the “**Property Donation Agreement**”). The City’s Deed of Trust will be in substantially the form attached hereto as Exhibit C. The Education Center will be located within the area created by the Overhang Easement Agreement. The Restrictive Covenant and the City Deed of Trust are collectively herein called the “**Property Interest**”.

The duration of the Property Interest shall be for the Term, but shall terminate and be released of record at such earlier time as PACE no longer operates the Project as a non-profit performing arts center and PACE pays the City the Unamortized Balance as defined herein. The Property Interest shall be subject and subordinate to the rights and interests of PACE’s construction lender(s) holding a security interest in the Project and to the rights and interest of Bellevue Properties, LLC under the ROFR Agreement and Deed of Trust (as such terms are defined in the Property Donation Agreement). The obligations of PACE and the City under this Agreement will be contingent on the Donors and PACE modifying the Property Donation Agreement (and applicable exhibit documents), on or before December 31, 2016, (i) to be consist with the fact that the Project will include the Education Center instead of a cabaret space; (ii) to permit PACE’s grant of the Property Interest and the exercise of the City’s rights under the Property Interest, but without subordination of Donors’ rights under the ROFR Agreement or Deed of Trust; and (iii) to require Bellevue Properties, LLC, as holder of the Deed of

Trust, to grant the City a non-disturbance agreement as to the Property Interest. This Agreement shall not be effective unless the Donors confirm in writing their good faith intent to timely negotiate such modifications to the Property Donation Agreement. The City shall not have any naming rights with respect to the Project or any portion thereof, including the Education Center.

- d. Repayment of City Investment. The City shall have the right to receive repayment of the City Investment if the Project is not used during the Term as a non-profit performing arts center and education center in accordance with the terms of the Property Interest and this Agreement, subject to force majeure and interruptions caused by large-scale renovation and/or repair or improvement projects. The amount of repayment will be based on a straight line amortization over the fifty (50) year period of the Term, commencing on the date the final Certificate of Occupancy is issued for the Project, the unamortized balance thereof being herein called the “**Unamortized Balance**”. If PACE pays the City the Unamortized Balance upon a substantial change in use of the Project, the Property Interest shall thereupon terminate, the City will promptly on demand sign and record such reconveyance, release and termination documents as PACE deems necessary to remove the Property Interest of record (“**Termination Documents**”), and the Term shall be deemed to have expired.
- e. Additional Consideration. For the duration of the City’s Property Interest in the Project:
 - i. Education Center and Concert Hall. The City and Pace shall coordinate use of the Education Center. While PACE will operate the Education Center as part of the Project, the City will have meaningful opportunity to consult on the use of the Education Center and its programming. For events open to the public, the City shall have rent-free use of the Education Center for five (5) days each year, and the Concert Hall for two (2) days each year. Such use is subject to PACE’s reasonable policies pertaining to reimbursement of direct expenses (i.e., stagehands, equipment rental, décor, food and beverage services, etc.) scheduling and programming, consistent with the operations of similar performing arts and education venues; provided, that the City shall not be required to use or pay for direct services not needed for its use of the facilities.
 - ii. Business Plan Review. PACE shall provide annual updates of the Plan (see Section 4.c.) to the City for its review to ensure that the budget for the Project, with reserves, is adequate to maintain its operation as a public performing arts venue, including the Education Center. Such updates shall be delivered to the City no later than December 31st of each year.

- iii. Insurance. PACE shall procure and maintain for the duration of the Term insurance as described in Exhibit D attached hereto and labeled as “Insurance Requirements.” From and after the date PACE receives a Certificate of Occupancy, PACE shall maintain in full force and effect All Risks property insurance covering all fixtures, improvements and equipment owned by PACE and installed or constructed or otherwise constituting part of the Project at the estimated value thereof, and shall provide the City with evidence that is maintaining said coverage on a continuing basis throughout the Term. Said property insurance shall include Earthquake and Flood coverage only if and to the extent PACE’s lender(s) so requires. PACE shall also maintain liability coverage and coverage against embezzlement and fraud with respect to PACE, the adequacy of which shall be subject to City’s approval, which shall not be unreasonably withheld.
- iv. Catastrophic Loss. In the event of catastrophic loss of the Project due to fire, earthquake or other causes, the City shall have a meaningful voice in the determination of whether the Project should be rebuilt or the insurance proceeds distributed to meet PACE’s obligation under Section 8 hereof, subject to the rights and interests of (i) PACE’s lender(s) holding a security interest in the Project and (ii) the Donors pursuant to the ROFR Agreement and the Deed of Trust.
- v. Limitations on commercial use of the Project. PACE may allow unlimited use of the Project by organizations which have been determined to be organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), with stated exempt purposes that are artistic, literary, musical, dance, dramatic or educational purposes and which are not “private foundations” within the meaning of Section 509(a) of the Code (“Exempt Organizations”). PACE may allow up to fifty (50) days’ of use (actual performances and meetings, but excluding load-in, set-up, rehearsal, take-down and load-out activities) of the Project or any portion thereof by organizations that are either (a) organizations other than Exempt Organizations, or (b) Exempt Organizations using the Project for something other than an exempt purpose of PACE, so long as no more than fifteen (15) days’ use each year (of the fifty (50) days above) is for financial gain or business promotion for the benefit of the renting organization.
- vi. Financial Statements. PACE shall submit financial statements to the City each calendar quarter and its annual audited financial statements within thirty (30) days of submission to the PACE Board of Directors for approval.

Section 7. Facilities Cooperation Framework. The City and PACE shall use their best efforts to enter into a Facilities Cooperation Framework with the Bellevue Convention

Center Authority (“BCCA”) prior to commencement of construction of the Project outlining the potential complementary and competing uses and programming of Tateuchi Center and Meydenbauer Center and identifying strategies to leverage opportunities for the sustained success of both facilities.

Section 8. Failure to Perform; Remedies.

- a. PACE and the City agree that after the Project is completed and open for operation, continued operation of the Project for the services contemplated herein during the 50-year period referred to in Section 6 hereof is a primary objective of both parties. Accordingly, should PACE or any successor-in-interest who owns the Project (other than PACE’s lender(s) or its respective successors or assigns) (the “**Project Owner**”) at any time during the Term cease to operate the Project as a performing arts center as herein provided (i.e., should the Project be closed down, “go dark” or not be used as a performing arts center) for more than one hundred twenty (120) consecutive days for reasons other than force majeure or construction, repair, renovation, remodeling, or similar activities, the City may give written notice to PACE or the Project Owner declaring it to be in default and specifying the basis thereof; provided, however, that the period during which a mortgagee owns title to the Project shall not be included in such 120 day period. If PACE or the Project Owner fails to re-commence operation of the Project as a performing arts center as herein provided within sixty (60) days after receiving such notice of default, the same shall constitute an “Event of Default.”
- b. Upon occurrence of an Event of Default, PACE or the Project Owner shall be obligated to repay the City the Unamortized Value of the City Investment within thirty (30) days. If the Unamortized Balance of the City Investment is not repaid to the City within thirty (30) days after an Event of Default, (i) such amount shall thereafter bear interest at the rate of twelve percent (12%) per annum until repaid in full and the City shall be entitled to recover its reasonable attorneys’ fees incurred in collecting the Unamortized Balance of the City Investment; and (ii) the City may foreclose on the City’s Deed of Trust and take action to ensure that the Project is used for a public purpose, commensurate with the City’s investment therein for the remaining duration of the Term. Prior to the foreclosure of the City’s Deed of Trust, PACE and any Project Owner will cooperate with the City in ensuring that this public purpose requirement is met.
- c. The repayment of the Unamortized Balance of the City Investment shall be the City’s sole and exclusive damage remedy for any default by PACE or any Project Owner under this Agreement or under the Project Interest. At such time as PACE or any Project Owner pays the City this Unamortized Balance of the City Investment (and any accrued interest and attorneys’ fees incurred in collecting the same), this Agreement and the Project Interest shall automatically terminate and neither party shall have any further rights or obligations hereunder except for any then-accrued indemnity and defense obligations arising under Section 13 hereof

and except for the City's obligation to sign and record the Termination Documents.

Section 9. Notices. Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the City Attorney and the Executive Director of PACE and PACE's legal counsel at the addresses set forth below, or at such other addresses as to which an addressee party may hereafter give notice to the other party.

If to the City:

Lori M. Riordan
City Attorney
City of Bellevue
PO Box 90012
Bellevue, WA 98009-9012
Telephone: (425) 452-6829
Facsimile: (425) 452-7256

If to PACE:

John Haynes
Executive Director
PACE
PO Box 828
Bellevue, WA 98009-0828
Telephone: (425) 462-0092
Facsimile: (425) 462-4295

With a copy to:

Davis Wright Tremaine LLP
Attn: Warren Koons, Esq.
777 – 108th Avenue NE, Suite 2300
Bellevue, WA 98004-5149

Section 10. Compliance with Laws. PACE shall comply will all zoning, land use, environmental and other laws applicable to the construction and operation of the Project and will all applicable state and federal laws and regulations regarding employment, minimum wages and hours, and discrimination in employment.

Section 11. Relationship of the Parties. In complying with its obligations under this Agreement, PACE shall determine the means of accomplishing the results contemplated by the Agreement, except as otherwise expressly stated in this Agreement. Neither PACE nor its officers, agents or employees are employees or agents of the City for any purpose. PACE is responsible for determining the compensation of its employees, for payment of such compensation, and for all federal and/or state tax, industrial insurance, and Social Security

liability that may result from the performance of and compensation for these services. PACE and its officers, agents and employees shall make no claim of career service or civil service rights which may accrue to a City employee under state or local law. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of PACE, its employees and/or others by reason of this Agreement. This Agreement does not empower, entitle or authorize the City to interfere with, control or restrict the performance or program offerings, education programs, services, space rentals or bookings for the Project, except as otherwise expressly stated in this Agreement.

Section 12. Resolving Disputes regarding Operating the Facility for the Public Good.
If at any time during the Term, the City determines that PACE is failing to operate the Project to provide the services described in this Agreement and the Restrictive Covenant or is otherwise in breach of any term of this Agreement or the Property Interest, the City shall give PACE written notice thereof specifying the basis for its determination, and the parties shall meet and confer in good faith to attempt to resolve any concerns or issues related to such determination. If the parties are not in good faith able to agree to a mutually acceptable resolution within sixty (60) days after such notice from the City, the matter shall be subjected to mediation with a neutral, mutually acceptable professional mediator in Seattle, Washington, with such mediation to be completed within sixty (60) days after the expiration of the 60-day good faith negotiation period. Each party shall bear one half of the cost of the mediator. The City shall not exercise any remedies or take any judicial or administrative action against PACE or the Project nor issue any public statements concerning its determination or any related issue nor shall PACE be in breach of this Agreement or the Property Interest during any such 60-day good faith negotiation period so long as PACE is negotiating in good faith or during the ensuing 60-day mediation period so long as PACE is cooperating with such mediation process. In the event of any conflict or inconsistency between this Section 12 and any other provision of this Agreement or the Property Interest, the terms of this Section 12 shall govern.

Section 13. Mutual Indemnity and Hold Harmless.

- a. To the extent allowed by law, PACE shall protect, defend, indemnify and save harmless the City and its officers, agents, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional tortious acts or omissions of PACE and its officers, agents and employees in connection with or in support of PACE's performance of this Agreement. PACE shall also defend, indemnify and save harmless the City and its officers, agents and employees from any and against any and all claims made by PACE's employees arising from their employment with PACE.
- b. To the extent allowed by law, the City shall protect, defend, indemnify and save harmless PACE and its officers, agents, directors, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional tortious acts or omissions of the City and its officers, agents and employees in connection with or in support of the City's performance of this Agreement.

Section 14. Governing Law and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Washington. Any mediation, arbitration or legal proceeding that arises out of or in connection with this Agreement will be initiated and maintained at all times in Seattle, Washington. Each party consents to jurisdiction and venue in such courts and in such place for any mediation or arbitration and waives the right to claim that any such court or place is an inconvenient forum.

Section 15. Entire Agreement and Modifications. This Agreement and the attached Exhibits supersede all prior understandings and agreements and constitute all of the understandings and agreements of any nature existing between the parties with respect to the City's commitment to provide and PACE's use of the City Investment. Unless otherwise provided for herein, no amendments, changes, extensions or modifications of this Agreement shall be effective unless they are in writing executed by the City and PACE.

Performing Arts Center Eastside,
a non-profit corporation

City of Bellevue,
a municipal corporation

By _____
John Haynes
Executive Director

By _____
Brad Miyake
City Manager

Approved as to form:

By _____
Alex Smith
Board Chairman

By _____
Lori M. Riordan
City Attorney
City of Bellevue

Exhibit A Project Plans
Exhibit B Restrictive Covenant
Exhibit C City's Deed of Trust
Exhibit D Insurance Requirements

When Recorded Return To:

City of Bellevue
P.O. Box 90012
Bellevue, Washington 98009
Attn: Lori Riordan

RESTRICTIVE COVENANT

Grantor (Borrower): Performing Arts Center Eastside, a Washington nonprofit corporation

Beneficiary (Lender): City of Bellevue, a municipal corporation under the laws of the State of Washington

Legal Description (abbreviated):

See Exhibit A for full legal description.

Assessor's Tax Parcel ID#:

Recording Nos. of Related Documents:

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (“**Agreement**”) is made this ____ day of _____, 201__ (“**Effective Date**”) by and between Performing Arts Center Eastside, a Washington nonprofit corporation (“**Grantor**”) and the City of Bellevue, a Washington municipal corporation (“**Grantee**”).

RECITALS:

A. Grantor owns the real property legally described in Exhibit A attached hereto (the “**Fee Property**”) and holds easement rights under the Overhang Easement Agreement dated as of _____, 201__, between Grantor, Bellevue Properties, LLC, a Washington limited liability company (“**Bellevue Properties**”), and Bellevue Place Hotel, LLC, a Washington limited liability company, recorded under King County Recording No. _____ (the “**Overhang Easement**”), covering the real property legally described on Exhibit B (the “**Overhang Easement Area**”, and together with the Fee Property, the “**Property**”);

B. Grantor has substantially completed construction of a performing arts center and education center on the Property (“**PACE Project**”);

C. Grantor and Grantee are parties to that certain Funding Agreement, dated _____ (as amended, restated, supplemented or otherwise modified, the “**Funding Agreement**”), pursuant to which the Grantee has agreed to make a grant to Grantor in the amount of \$20,000,000.00 (“**Grant**”), subject to the terms and conditions contained in the Funding Agreement;

D. Grantee has paid the Grant to Grantor;

E. Grantor’s obligations under this Agreement and the Funding Agreement are secured by that certain Deed of Trust from Grantor in favor of Grantee, dated of even date with this Agreement, covering Grantor’s rights and interests under the Overhang Easement (the “**City’s Deed of Trust**”); and

F. Pursuant to the terms of the Funding Agreement, Grantor has agreed to enter into this Agreement in favor of Grantee pursuant to which Grantor has agreed to restrict the use of the Property all as more particularly set forth herein.

NOW THEREFORE, Grantor and Grantee agree as follows:

1. Restrictive Covenant. During the Term (as defined below), Grantor hereby agrees that the PACE Project shall be operated as a non-profit performing arts center and education center (or its equivalent) (a “**Performing Arts Center**”). For purposes of this Agreement, “Term” shall mean the period of time commencing on the issuance of a final certificate of occupancy for the PACE Project and terminating on the fiftieth (50th) anniversary of such date.

2. Early Termination. This Agreement and the City's Deed of Trust shall be in effect for the Term; provided, however, Grantee agrees to terminate this Agreement and the City's Deed of Trust and enter into such documents as are necessary to release this Agreement and the City's Deed of Trust of record at such earlier time as Grantor no longer operates the PACE Project as a Performing Arts Center and Grantor has paid Grantee the Unamortized Balance (as that term is defined in the Funding Agreement).
3. Subordination. Without further action by Grantor or Grantee, this Agreement and the City's Deed of Trust are and shall be automatically subject and subordinate (i) to the rights and interests of Grantor's construction lenders(s) now or hereafter holding a security interest in the Property, the PACE Project or any portion thereof, including without limitation, the Deed of Trust, Security Agreement and Fixture Filing in favor of _____, dated as of _____ and recorded under King County Recording No. _____ (collectively, "**Lender Mortgages**") and (ii) to the rights and interests of Bellevue Properties under that certain Secured Right of First Refusal Agreement by and between Grantor and Bellevue Properties, dated as of _____ (the "**ROFR Agreement**") and that certain Deed of Trust executed by Grantor in favor of Bellevue Properties, dated as of _____ and recorded under King County Recording No. _____, which secures Grantor's obligations under the ROFR Agreement (the "**Bellevue Properties Deed of Trust**"). Notwithstanding the foregoing, if the holder of any Lender Mortgage or Bellevue Properties requests Grantee to sign any additional documents or instruments confirming such subordination, Grantee shall promptly sign and deliver any such documents or instruments which are reasonably acceptable to Grantee and such instruments may be recorded against the Property.
4. Miscellaneous.
 - a. **Binding Effect.** The benefits and burdens of this Agreement are appurtenant to and shall run with the Property and run in favor of Grantee and Grantor, respectively, shall be binding upon the respective successors and assigns of Grantee and Grantor, for the term hereof, and shall not be extinguished by nonuse or abandonment, or transfer of any interest in the properties affected.
 - b. **Attorneys' Fees.** If any suit or other proceeding is instituted by either party arising out of or pertaining to this Agreement, including, but not limited to, filing suit or requesting an arbitration (collectively "**Proceedings**"), and appeals and collateral actions relative to such Proceedings, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred relative to Proceedings from the substantially nonprevailing party, in addition to such other available relief available to the substantially nonprevailing party.
 - c. **Severability.** If any provision of this Agreement becomes illegal, null, or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining provisions will remain in full force and effect.

- d. Enforcement. In the event of a breach of any of the covenants or agreements set forth in this Agreement, the parties shall be entitled to any and all remedies available at law or in equity, including, but not limited to, the equitable remedies of specific performance or mandatory or prohibitory injunction issued by an arbitrator or by a court of appropriate jurisdiction.
- e. Funding Agreement Governs Disputes Arising from Grantor's Breach. If Grantor breaches any obligation under the Funding Agreement, this Agreement or the City's Deed of Trust, the exercise of Grantee's rights and remedies under this Agreement and the City's Deed of Trust are subject in each instance to the terms and conditions of Sections 8 and 12 of the Funding Agreement. In the event of any inconsistency between this Agreement and the City's Deed of Trust, the terms of this Agreement shall govern.
- f. Amendments. Any addition, variation, or modification to this Agreement shall be in writing and signed by Grantor and Grantee or their successors in interest.
- g. Applicable Law. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the state of Washington.

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

GRANTOR:

Performing Arts Center Eastside,
a Washington non-profit corporation

By: _____

Its: _____

GRANTEE:

City of Bellevue,
a municipal corporation

By: Brad Miyake, City Manager

Approved as to form:

Lori M. Riordan, City Attorney
City of Bellevue

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Performing Arts center Eastside, a Washington nonprofit corporation, to be the free and voluntary act and deed of such corporation for the uses and purposes mentioned in the instrument.

Date: _____

(seal or stamp)

Notary Public in and for the state of Washington,
residing at _____

My commission expires _____

Print Name _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Brad Miyake is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bellevue, a municipal corporation, to be the free and voluntary act and deed of such corporation for the uses and purposes mentioned in the instrument.

Date: _____

(seal or stamp)

Notary Public in and for the state of Washington,
residing at _____

My commission expires _____

Print Name _____

EXHIBIT A

Legal Description of Fee Property

EXHIBIT B

Legal Description of Overhang Easement Area

When Recorded Return To:

City of Bellevue
P.O. Box 90012
Bellevue, Washington 98009
Attn: Lori Riordan

DEED OF TRUST

Grantor (Borrower): Performing Arts Center Eastside, a Washington nonprofit corporation

Beneficiary (Lender): City of Bellevue, a municipal corporation under the laws of the State of Washington

Grantee (Trustee): First American Title Insurance Company

Legal Description (abbreviated): [Overhang Easement Area only]

See Exhibit A for full legal description.

Assessor's Tax Parcel ID#: [Overhang Easement Area only]

Recording Nos. of Related Documents: [reference recording numbers of Overhang Easement Agreement, Restrictive Covenant, Bellevue Properties Deed of Trust, and any construction Lender Mortgages]

DEED OF TRUST

THIS DEED OF TRUST is made this ____ day of ____, 201__ by Performing Arts Center Eastside, a Washington nonprofit corporation (“**Grantor**”), whose mailing address is 855 106th Avenue NE, Suite 150, Bellevue, Washington 98004; First American Title Insurance Company, as Trustee (“**Trustee**”) whose address is 818 Stewart Street, Suite 800, Seattle, Washington 98101; and the City of Bellevue, a Washington municipal corporation (“**Beneficiary**”), whose address is 450 110th Ave. NE, Bellevue, Washington 98004.

RECITALS:

A. Grantor and Beneficiary are parties to that certain Funding Agreement relating to City’s Grant to Grantor, dated as of _____ (as amended, restated, supplemented or otherwise modified, the “**Funding Agreement**”), pursuant to which the Beneficiary has agreed to make a grant to Grantor in the amount of \$20,000,000.00 (“**Grant**”), subject to the terms and conditions contained in the Funding Agreement;

B. Pursuant to the terms of the Funding Agreement, Grantor and Beneficiary have entered into that certain Restrictive Covenant, dated of even date with this Deed of Trust (as amended, restated, supplemented or otherwise modified, the “**Covenant**”) pursuant to which Grantor has agreed to restrict the use of the Property (as defined in the Covenant) all as more particularly set forth in the Covenant;

C. Beneficiary’s rights, interests and remedies under this Deed of Trust are subject to the terms and conditions set forth in the Covenant and the Funding Agreement;

D. Grantor has substantially completed construction of a performing arts center and education center on the Property (“**PACE Project**”);

E. Grantee has paid the Grant to Grantor; and

F. Pursuant to the Funding Agreement, Grantor has agreed to enter into this Deed of Trust to secure the obligations of Grantor under the Funding Agreement and the Covenant.

ARTICLE I

1. Grant. Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee in trust for the benefit of Beneficiary, with power of sale, all of Grantor’s estate, title and interest in and to the Overhang Easement Agreement dated as of _____, 201__, between Grantor, Bellevue Properties, LLC, a Washington limited liability company (“**Bellevue Properties**”), and Bellevue Place Hotel, LLC, a Washington limited liability company, recorded under King County Recording No. _____ (the “**Overhang Easement**”), covering the real property legally described on Exhibit A hereto (the “**Overhang Easement Area**”), together with the buildings, improvements and real property fixtures located on the Overhang Easement Area, and a non-exclusive right to use any access ways located on the Property that are reasonably necessary for purposes of accessing the Overhang Easement Area (collectively, the “**Overhang Easement Rights**”). Notwithstanding anything in this Deed

of Trust to the contrary, Beneficiary's rights, interests and remedies under this Deed of Trust are subject to the terms, limits, restrictions and conditions set forth in the Covenant and/or the Funding Agreement. By accepting this Deed of Trust, Beneficiary shall be deemed to have agreed to and confirmed the agreement to subordinate this Deed of Trust as set forth in the Covenant.

2. Obligations Secured. This Deed of Trust secures the full and timely performance of all the following liabilities and obligations (collectively, the "**Secured Obligations**"): all obligations and liabilities of Grantor under this Deed of Trust, the Funding Agreement and the Covenant.

ARTICLE II

1. Agricultural Use. The Property is not used principally for agricultural or farming purposes.

2. Performance of Obligations. The Grantor shall strictly comply with all terms and conditions of the Funding Agreement, this Deed of Trust and the Covenant.

3. Warranty of Title. The Grantor warrants that it has good and marketable title in the Overhang Easement Rights, subject to the Overhang Easement Agreement, the Bellevue Properties Deed of Trust, the ROFR Agreement (as defined in the Funding Agreement), any Lender Mortgages (as defined in the Covenant) and all other encumbrances of record and restrictions of record existing as of the date hereof (collectively, "**Permitted Encumbrances**"), but no other encumbrances, restrictions, mortgages, deeds of trust or security interests of any kind. The term "Permitted Encumbrances" shall include any Lender Mortgages that may hereafter be placed on the Overhang Easement Rights. By accepting this Deed of Trust, Beneficiary shall be deemed to have agreed to and confirmed that this Deed of Trust is and shall be subject and subordinate to the Permitted Encumbrances. The Grantor will defend the validity and priority of the lien of this Deed of Trust and the security interest granted herein against any claims.

4. Grantor's Defense of Collateral. The Grantor shall appear in and defend any action or proceeding which may affect the Overhang Easement Rights or the rights or powers of the Beneficiary or the Trustee under this Deed of Trust.

5. Beneficiary's Right to Protect Collateral. The Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Overhang Easement Rights or the rights or powers of the Beneficiary or Trustee under this Deed of Trust. The Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien, other than Permitted Encumbrances, which in its judgment appears to be prior to or superior to the lien of this Deed of Trust. If Grantor fails to do any act required under the Funding Agreement or Covenant (including this Deed of Trust), the Beneficiary, without any obligation to do so and without releasing the Grantor from any obligations under the Funding Agreement or Covenant, may make the payment or cause the act to be performed in such manner and to the extent as the Beneficiary may deem necessary to protect the Overhang Easement Rights. The Beneficiary is authorized to enter upon the Overhang Easement Area and any access ways included in Overhang Easement Rights for such purposes. In exercising any of those powers the Beneficiary may incur such expenses, in its reasonable discretion, it deems necessary. Notwithstanding the foregoing,

Beneficiary shall not have the right to take any action which breaches or violates any term, condition or provision in any of the Permitted Encumbrances.

6. Release of Parties or Collateral. Without affecting the obligations of any party under the Funding Agreement or the Covenant and without affecting the lien of the Deed of Trust and the Beneficiary's security interest in the Overhang Easement Rights, the Beneficiary may, without notice (a) release all or any other party now or hereafter liable for any of the Secured Obligations (including the Grantor); (b) release all or part of the Overhang Easement Rights; (c) subordinate the lien of this Deed of Trust or the beneficiary's security interest in the Overhang Easement Rights; (d) take and/or release any other security for or guarantees of the Secured Obligations; (e) grant an extension of time for performance of the Secured Obligations, (f) modify, waive, forbear, delay or fail to enforce any of the Secured Obligations; (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Overhang Easement Rights; (h) make advances pursuant to the Funding Agreement; and (i) if and only if requested by Grantor, join in the grant of any easement affecting the Overhang Easement Rights. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. The Grantor shall pay any trustee's, attorney's, title insurance, recording, inspection or other fees or expenses incurred in connection with the release of the Overhang Easement Rights or the grant of any such easement.

7. Condemnation. In the event any portion of the Overhang Easement Area is taken or damaged in an eminent domain proceeding to the extent that the remaining Overhang Easement Area can no longer be operated as part of a Performing Arts Center (as defined in the Covenant), then, subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary, the obligations of Grantor under the Permitted Encumbrances, any remaining portion of the award paid to Grantor for such taking of the Overhang Easement Area (but excluding any relocation award) shall be paid to Beneficiary to be applied to the Unamortized Balance.

8. Maintenance of Collateral. Grantor shall keep the Overhang Easement Area and buildings, improvements and real property fixtures thereon in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; subject to the limitations, conditions and terms of the Funding Agreement and any Permitted Encumbrance, to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Overhang Easement Rights.

9. Taxes. Grantor shall pay before delinquent all lawful taxes and assessments upon the Overhang Easement Area, subject to the terms, limitations, and conditions of the Overhang Easement Agreement; to keep the Overhang Easement Rights free and clear of all charges, liens or monetary encumbrances other than the Permitted Encumbrances. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the Overhang Easement Rights as hereinabove required, Beneficiary may pay the same, and the amount so paid, with interest at 12% per annum, shall be added to and become a part of the debt secured in this Deed of Trust.

ARTICLE 3

1. Insurance.

(a) The Grantor shall maintain such insurance on the Overhang Easement Area as may be required by the Funding Agreement.

(b) If the Grantor fails to maintain any insurance required of it by the Funding Agreement, or fails to pay any premiums with respect to such insurance, the Beneficiary may obtain such replacement insurance as it deems necessary or desirable, or pay the necessary premium on behalf of the Grantor, and any sums expended by the Beneficiary in so doing shall be added to the City investment under the Funding Agreement. Any such amounts shall be secured hereby.

(c) Subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary, and the obligations of Grantor under the Permitted Encumbrances, and to Section 6.e.iv. of the Funding Agreement, the amount collected under any insurance policy for any casualty damage to the Overhang Easement Area may be applied to the Unamortized Balance in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale, subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary and any such purchaser.

ARTICLE 4

1. Default; Remedies.

(a) The occurrence or happening of any one or more of the following shall constitute an **"Event of Default"** under this Deed of Trust:

(i) Any failure by Grantor to perform any of its obligations under the Funding Agreement, Covenant or this Deed of Trust which is not cured by Grantor within sixty (60) days after written notice from Beneficiary.

(ii) Any execution or attachment is levied against any of the Overhang Easement Rights, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

(iv) A default occurs under any other mortgage, deed of trust or security agreement covering the Overhang Easement Rights, which is not cured within the applicable cure period.

(b) If an Event of Default shall occur, subject to the terms, limitations and conditions of the Funding Agreement and/or the Covenant, the Beneficiary shall have all remedies provided by law including:

(i) the right to foreclose of this Deed of Trust judicially as a mortgage or non-judicially pursuant to the power of sale;

(ii) as a matter of right without bond and without regard to the adequacy of the security, and to the extent permitted by law without notice to Grantor, Beneficiary shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Overhang Easement Rights any and rents therefrom, and

(iii) all other remedies which may be available in law or equity.

The Beneficiary's exercise of any right, power or remedy shall in no event constitute a waiver of any Event of Default nor prejudice the right of the Beneficiary in the exercise of any right hereunder. The Beneficiary's failure to enforce any of its rights, powers or remedies upon the occurrence of an Event of Default shall not constitute a waiver of the default or any subsequent default of its rights and remedies with respect to such default. In the event of foreclosure, the cost of the title premium for the trustee's sale guaranty (or equivalent title policy or report) shall be paid for by the Grantor and shall be added to and be a part of the Secured Obligations. If either this Deed of Trust, the Covenant or the Funding Agreement is referred to an attorney for enforcement or for preservation of the Beneficiary's rights or remedies, and whether or not suit is filed or any proceedings are commenced, all of the Beneficiary's costs and expenses incurred in connection therewith including, without limitation, trustee's and attorneys' fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountants' fees, appraisal and internal appraisal review fees, inspection fees (including inspections for hazardous substances, asbestos containing materials, and compliance with building and land use codes and regulations), engineering fees, expert witness fees and costs of title reports, and any costs of foreclosure, shall be added to and be a part of the Secured Obligations.

2. Cumulative Remedies; No Election of Remedies. To the fullest extent allowed by law, all of the Beneficiary's and the Trustee's rights and remedies specified in the Covenant and Funding Agreement (including this Deed of Trust) are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law or in equity. Without waiving its rights in the Overhang Easement Rights, the Beneficiary may proceed against the Grantor, any other party obligated to perform the Secured Obligations or against any other security or guaranty for the Secured Obligations, in such order or manner as the Beneficiary may elect. Except where prohibited by applicable law, the commencement of proceedings to enforce a particular remedy shall not preclude the commencement of other proceedings to enforce a different remedy.

3. Foreclosure of Lessee's Rights; Subordination. The Beneficiary shall have the right, at its option, to foreclose this Deed of Trust. The Beneficiary's failure to foreclose against any lessee shall not be asserted as a claim against the Beneficiary or as a defense against any claim by the Beneficiary in any action or proceeding.

ARTICLE 5

1. Liability of Trustee. Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Covenant, Funding Agreement

or this Deed of Trust or the description, value or status of title to the Overhang Easement Rights. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful conduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Overhang Easement Rights or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Beneficiary, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Overhang Easement Rights following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Beneficiary.

2. Indemnification of Trustee. Grantor agrees to indemnify Trustee and to hold Trustee harmless from and against any and all claims and expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Overhang Easement Rights, the Covenant, this Deed of Trust, or the Funding Agreement, including but not limited to any claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Grantor or any other person in connection with the ownership, development, financing, operation or sale of the Overhang Easement Rights; provided, however, that Grantor shall not be obligated to indemnify Trustee with respect to any claim arising solely from the gross negligence or willful misconduct of Trustee; provided, further, that the foregoing indemnity shall be limited to the scope of the indemnity contained in Section 13 of the Funding Agreement. The agreements and indemnifications contained in this section shall apply to claims arising both before and after the satisfaction of the Secured Obligations and shall survive any foreclosure or deed in lieu thereof and any other action by Trustee to enforce the rights and remedies of Beneficiary or Trustee hereunder or under the Funding Agreement.

3. Substitution of Trustee; Multiple Trustees. Beneficiary shall have, and is hereby granted with warranty of further assurances, the irrevocable power to appoint a new or replacement or substitute Trustee. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a Notice of Substitution of Trustee. The power of appointment of a successor Trustee may be exercised as often as and whenever Beneficiary may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Notice of Substitution of Trustee, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Overhang Easement Rights and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder. Whenever in this Deed of Trust reference is made to Trustee, it shall be construed to mean each Person appointed as Trustee for the time being, whether original or successor in

trust. All title, estate, rights, powers, trusts and duties granted to Trustee shall be in each Person appointed as Trustee so that any action hereunder by any Person appointed as Trustee shall for all purposes be deemed to be, and as effective as, the action of all Trustees.

ARTICLE 6

1. Reconveyance. Upon written request of the Beneficiary stating that all obligations secured by this Deed of Trust have been satisfied in full, the Trustee shall reconvey, without warranty, the Overhang Easement Rights then subject to the lien of this Deed of Trust. The Grantor shall pay any costs, trustee's fees and recording fees incurred in so reconveying the Overhang Easement Rights.

2. Nonwaiver of Terms and Conditions. Time is of the essence with respect to performance of the obligations under the Funding Agreement and Covenant. The Beneficiary's failure to require prompt enforcement of any such obligation shall not constitute a waiver of the obligation or any subsequent required performance of the obligation. No term or condition of this Deed of Trust may be waived, modified or amended except by a written agreement signed by the Grantor and the Beneficiary. Any waiver of any term or condition of this Deed of Trust shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

3. Waivers and Agreements Regarding Remedies. To the full extent Grantor may do so, Grantor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any laws now or hereafter in force providing for any appraisal, valuation, stay, or extension, and waives and releases all rights of valuation, appraisal, stay of execution, extension and notice of election to accelerate the Secured Obligations;

(b) waives all rights to a marshalling of the assets of Grantor, including the Overhang Easement Rights, or to a sale in the inverse order of alienation in the event of a foreclosure of the Overhang Easement Rights, and agrees not to assert any right under any law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Overhang Easement Rights without any prior or different resort for collection, or the right of Beneficiary to the payment of the Secured Obligations out of the proceeds of sale of the Overhang Easement Rights in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Grantor may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties.

4. Notices. Any notice given by the Grantors or the Beneficiary shall be given in the manner prescribed for notices, and such notices shall be effective, as set forth in the Funding Agreement.

5. Other Agreements. The terms of this Deed of Trust are intended to supplement and not to replace the terms of the Funding Agreement and the Covenant, and the rights and remedies herein provided to the Beneficiary are intended to be cumulative of and in addition to all rights and remedies conferred by the Funding Agreement and the Covenant. Notwithstanding the foregoing, the rights and remedies of Beneficiary under this Deed of Trust and subject to the terms, limitations and conditions contained in the Covenant and/or Funding Agreement.

6. Severability. In case any one or more of the provisions contained in this Deed of Trust is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby. In the event of any conflict or inconsistency between one or more of the provisions contained in this Deed of Trust and one or more of the provisions contained in the Funding Agreement and/or Covenant, the provisions contained in the Funding Agreement and/or Covenant shall govern.

7. Rules of Construction. This Deed of Trust shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited partnerships, limited liability companies and other forms of entities. This Deed of Trust inures to the benefit of, and binds all parties named herein and their successors and assigns. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

8. Governing Law. This Deed of Trust shall be construed and enforced in accordance with the laws of the State of Washington, excluding its conflicts of laws rules.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT,
OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT
ENFORCEABLE UNDER WASHINGTON LAW.

WITNESS the hand and seal of the Grantor on the day and year first written above.

GRANTOR:

Performing Arts Center Eastside

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Performing Arts Center Eastside, a Washington nonprofit corporation, to be the free and voluntary act and deed of such corporation for the uses and purposes mentioned in the instrument.

Date: _____

(seal or stamp)

Notary Public in and for the state of Washington,
residing at _____

My commission expires _____

Print Name

EXHIBIT A

LEGAL DESCRIPTION OF OVERHANG EASEMENT AREA

When Recorded Return To:

City of Bellevue
P.O. Box 90012
Bellevue, Washington 98009
Attn: Lori Riordan

DEED OF TRUST

Grantor (Borrower): Performing Arts Center Eastside, a Washington nonprofit corporation

Beneficiary (Lender): City of Bellevue, a municipal corporation under the laws of the State of Washington

Grantee (Trustee): First American Title Insurance Company

Legal Description (abbreviated): [Overhang Easement Area only]

See Exhibit A for full legal description.

Assessor's Tax Parcel ID#: [Overhang Easement Area only]

Recording Nos. of Related Documents: [reference recording numbers of Overhang Easement Agreement, Restrictive Covenant, Bellevue Properties Deed of Trust, and any construction Lender Mortgages]

DEED OF TRUST

THIS DEED OF TRUST is made this ____ day of ____, 201__ by Performing Arts Center Eastside, a Washington nonprofit corporation (“**Grantor**”), whose mailing address is 855 106th Avenue NE, Suite 150, Bellevue, Washington 98004; First American Title Insurance Company, as Trustee (“**Trustee**”) whose address is 818 Stewart Street, Suite 800, Seattle, Washington 98101; and the City of Bellevue, a Washington municipal corporation (“**Beneficiary**”), whose address is 450 110th Ave. NE, Bellevue, Washington 98004.

RECITALS:

A. Grantor and Beneficiary are parties to that certain Funding Agreement relating to City’s Grant to Grantor, dated as of _____ (as amended, restated, supplemented or otherwise modified, the “**Funding Agreement**”), pursuant to which the Beneficiary has agreed to make a grant to Grantor in the amount of \$20,000,000.00 (“**Grant**”), subject to the terms and conditions contained in the Funding Agreement;

B. Pursuant to the terms of the Funding Agreement, Grantor and Beneficiary have entered into that certain Restrictive Covenant, dated of even date with this Deed of Trust (as amended, restated, supplemented or otherwise modified, the “**Covenant**”) pursuant to which Grantor has agreed to restrict the use of the Property (as defined in the Covenant) all as more particularly set forth in the Covenant;

C. Beneficiary’s rights, interests and remedies under this Deed of Trust are subject to the terms and conditions set forth in the Covenant and the Funding Agreement;

D. Grantor has substantially completed construction of a performing arts center and education center on the Property (“**PACE Project**”);

E. Grantee has paid the Grant to Grantor; and

F. Pursuant to the Funding Agreement, Grantor has agreed to enter into this Deed of Trust to secure the obligations of Grantor under the Funding Agreement and the Covenant.

ARTICLE I

1. Grant. Grantor hereby irrevocably grants, bargains, sells and conveys to Trustee in trust for the benefit of Beneficiary, with power of sale, all of Grantor’s estate, title and interest in and to the Overhang Easement Agreement dated as of _____, 201__, between Grantor, Bellevue Properties, LLC, a Washington limited liability company (“**Bellevue Properties**”), and Bellevue Place Hotel, LLC, a Washington limited liability company, recorded under King County Recording No. _____ (the “**Overhang Easement**”), covering the real property legally described on Exhibit A hereto (the “**Overhang Easement Area**”), together with the buildings, improvements and real property fixtures located on the Overhang Easement Area, and a non-exclusive right to use any access ways located on the Property that are reasonably necessary for purposes of accessing the Overhang Easement Area (collectively, the “**Overhang Easement Rights**”). Notwithstanding anything in this Deed

of Trust to the contrary, Beneficiary's rights, interests and remedies under this Deed of Trust are subject to the terms, limits, restrictions and conditions set forth in the Covenant and/or the Funding Agreement. By accepting this Deed of Trust, Beneficiary shall be deemed to have agreed to and confirmed the agreement to subordinate this Deed of Trust as set forth in the Covenant.

2. Obligations Secured. This Deed of Trust secures the full and timely performance of all the following liabilities and obligations (collectively, the "**Secured Obligations**"): all obligations and liabilities of Grantor under this Deed of Trust, the Funding Agreement and the Covenant.

ARTICLE II

1. Agricultural Use. The Property is not used principally for agricultural or farming purposes.

2. Performance of Obligations. The Grantor shall strictly comply with all terms and conditions of the Funding Agreement, this Deed of Trust and the Covenant.

3. Warranty of Title. The Grantor warrants that it has good and marketable title in the Overhang Easement Rights, subject to the Overhang Easement Agreement, the Bellevue Properties Deed of Trust, the ROFR Agreement (as defined in the Funding Agreement), any Lender Mortgages (as defined in the Covenant) and all other encumbrances of record and restrictions of record existing as of the date hereof (collectively, "**Permitted Encumbrances**"), but no other encumbrances, restrictions, mortgages, deeds of trust or security interests of any kind. The term "Permitted Encumbrances" shall include any Lender Mortgages that may hereafter be placed on the Overhang Easement Rights. By accepting this Deed of Trust, Beneficiary shall be deemed to have agreed to and confirmed that this Deed of Trust is and shall be subject and subordinate to the Permitted Encumbrances. The Grantor will defend the validity and priority of the lien of this Deed of Trust and the security interest granted herein against any claims.

4. Grantor's Defense of Collateral. The Grantor shall appear in and defend any action or proceeding which may affect the Overhang Easement Rights or the rights or powers of the Beneficiary or the Trustee under this Deed of Trust.

5. Beneficiary's Right to Protect Collateral. The Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Overhang Easement Rights or the rights or powers of the Beneficiary or Trustee under this Deed of Trust. The Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien, other than Permitted Encumbrances, which in its judgment appears to be prior to or superior to the lien of this Deed of Trust. If Grantor fails to do any act required under the Funding Agreement or Covenant (including this Deed of Trust), the Beneficiary, without any obligation to do so and without releasing the Grantor from any obligations under the Funding Agreement or Covenant, may make the payment or cause the act to be performed in such manner and to the extent as the Beneficiary may deem necessary to protect the Overhang Easement Rights. The Beneficiary is authorized to enter upon the Overhang Easement Area and any access ways included in Overhang Easement Rights for such purposes. In exercising any of those powers the Beneficiary may incur such expenses, in its reasonable discretion, it deems necessary. Notwithstanding the foregoing,

Beneficiary shall not have the right to take any action which breaches or violates any term, condition or provision in any of the Permitted Encumbrances.

6. Release of Parties or Collateral. Without affecting the obligations of any party under the Funding Agreement or the Covenant and without affecting the lien of the Deed of Trust and the Beneficiary's security interest in the Overhang Easement Rights, the Beneficiary may, without notice (a) release all or any other party now or hereafter liable for any of the Secured Obligations (including the Grantor); (b) release all or part of the Overhang Easement Rights; (c) subordinate the lien of this Deed of Trust or the beneficiary's security interest in the Overhang Easement Rights; (d) take and/or release any other security for or guarantees of the Secured Obligations; (e) grant an extension of time for performance of the Secured Obligations, (f) modify, waive, forbear, delay or fail to enforce any of the Secured Obligations; (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Overhang Easement Rights; (h) make advances pursuant to the Funding Agreement; and (i) if and only if requested by Grantor, join in the grant of any easement affecting the Overhang Easement Rights. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. The Grantor shall pay any trustee's, attorney's, title insurance, recording, inspection or other fees or expenses incurred in connection with the release of the Overhang Easement Rights or the grant of any such easement.

7. Condemnation. In the event any portion of the Overhang Easement Area is taken or damaged in an eminent domain proceeding to the extent that the remaining Overhang Easement Area can no longer be operated as part of a Performing Arts Center (as defined in the Covenant), then, subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary, the obligations of Grantor under the Permitted Encumbrances, any remaining portion of the award paid to Grantor for such taking of the Overhang Easement Area (but excluding any relocation award) shall be paid to Beneficiary to be applied to the Unamortized Balance.

8. Maintenance of Collateral. Grantor shall keep the Overhang Easement Area and buildings, improvements and real property fixtures thereon in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; subject to the limitations, conditions and terms of the Funding Agreement and any Permitted Encumbrance, to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Overhang Easement Rights.

9. Taxes. Grantor shall pay before delinquent all lawful taxes and assessments upon the Overhang Easement Area, subject to the terms, limitations, and conditions of the Overhang Easement Agreement; to keep the Overhang Easement Rights free and clear of all charges, liens or monetary encumbrances other than the Permitted Encumbrances. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the Overhang Easement Rights as hereinabove required, Beneficiary may pay the same, and the amount so paid, with interest at 12% per annum, shall be added to and become a part of the debt secured in this Deed of Trust.

ARTICLE 3

1. Insurance.

(a) The Grantor shall maintain such insurance on the Overhang Easement Area as may be required by the Funding Agreement.

(b) If the Grantor fails to maintain any insurance required of it by the Funding Agreement, or fails to pay any premiums with respect to such insurance, the Beneficiary may obtain such replacement insurance as it deems necessary or desirable, or pay the necessary premium on behalf of the Grantor, and any sums expended by the Beneficiary in so doing shall be added to the City investment under the Funding Agreement. Any such amounts shall be secured hereby.

(c) Subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary, and the obligations of Grantor under the Permitted Encumbrances, and to Section 6.e.iv. of the Funding Agreement, the amount collected under any insurance policy for any casualty damage to the Overhang Easement Area may be applied to the Unamortized Balance in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale, subject to the rights the holders of the Permitted Encumbrances, which shall be prior and superior to the rights of Beneficiary and any such purchaser.

ARTICLE 4

1. Default; Remedies.

(a) The occurrence or happening of any one or more of the following shall constitute an **"Event of Default"** under this Deed of Trust:

(i) Any failure by Grantor to perform any of its obligations under the Funding Agreement, Covenant or this Deed of Trust which is not cured by Grantor within sixty (60) days after written notice from Beneficiary.

(ii) Any execution or attachment is levied against any of the Overhang Easement Rights, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

(iv) A default occurs under any other mortgage, deed of trust or security agreement covering the Overhang Easement Rights, which is not cured within the applicable cure period.

(b) If an Event of Default shall occur, subject to the terms, limitations and conditions of the Funding Agreement and/or the Covenant, the Beneficiary shall have all remedies provided by law including:

(i) the right to foreclose of this Deed of Trust judicially as a mortgage or non-judicially pursuant to the power of sale;

(ii) as a matter of right without bond and without regard to the adequacy of the security, and to the extent permitted by law without notice to Grantor, Beneficiary shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Overhang Easement Rights any and rents therefrom, and

(iii) all other remedies which may be available in law or equity.

The Beneficiary's exercise of any right, power or remedy shall in no event constitute a waiver of any Event of Default nor prejudice the right of the Beneficiary in the exercise of any right hereunder. The Beneficiary's failure to enforce any of its rights, powers or remedies upon the occurrence of an Event of Default shall not constitute a waiver of the default or any subsequent default of its rights and remedies with respect to such default. In the event of foreclosure, the cost of the title premium for the trustee's sale guaranty (or equivalent title policy or report) shall be paid for by the Grantor and shall be added to and be a part of the Secured Obligations. If either this Deed of Trust, the Covenant or the Funding Agreement is referred to an attorney for enforcement or for preservation of the Beneficiary's rights or remedies, and whether or not suit is filed or any proceedings are commenced, all of the Beneficiary's costs and expenses incurred in connection therewith including, without limitation, trustee's and attorneys' fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountants' fees, appraisal and internal appraisal review fees, inspection fees (including inspections for hazardous substances, asbestos containing materials, and compliance with building and land use codes and regulations), engineering fees, expert witness fees and costs of title reports, and any costs of foreclosure, shall be added to and be a part of the Secured Obligations.

2. Cumulative Remedies; No Election of Remedies. To the fullest extent allowed by law, all of the Beneficiary's and the Trustee's rights and remedies specified in the Covenant and Funding Agreement (including this Deed of Trust) are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law or in equity. Without waiving its rights in the Overhang Easement Rights, the Beneficiary may proceed against the Grantor, any other party obligated to perform the Secured Obligations or against any other security or guaranty for the Secured Obligations, in such order or manner as the Beneficiary may elect. Except where prohibited by applicable law, the commencement of proceedings to enforce a particular remedy shall not preclude the commencement of other proceedings to enforce a different remedy.

3. Foreclosure of Lessee's Rights; Subordination. The Beneficiary shall have the right, at its option, to foreclose this Deed of Trust. The Beneficiary's failure to foreclose against any lessee shall not be asserted as a claim against the Beneficiary or as a defense against any claim by the Beneficiary in any action or proceeding.

ARTICLE 5

1. Liability of Trustee. Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Covenant, Funding Agreement

or this Deed of Trust or the description, value or status of title to the Overhang Easement Rights. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful conduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Overhang Easement Rights or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Beneficiary, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Overhang Easement Rights following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Beneficiary.

2. Indemnification of Trustee. Grantor agrees to indemnify Trustee and to hold Trustee harmless from and against any and all claims and expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Overhang Easement Rights, the Covenant, this Deed of Trust, or the Funding Agreement, including but not limited to any claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Grantor or any other person in connection with the ownership, development, financing, operation or sale of the Overhang Easement Rights; provided, however, that Grantor shall not be obligated to indemnify Trustee with respect to any claim arising solely from the gross negligence or willful misconduct of Trustee; provided, further, that the foregoing indemnity shall be limited to the scope of the indemnity contained in Section 13 of the Funding Agreement. The agreements and indemnifications contained in this section shall apply to claims arising both before and after the satisfaction of the Secured Obligations and shall survive any foreclosure or deed in lieu thereof and any other action by Trustee to enforce the rights and remedies of Beneficiary or Trustee hereunder or under the Funding Agreement.

3. Substitution of Trustee; Multiple Trustees. Beneficiary shall have, and is hereby granted with warranty of further assurances, the irrevocable power to appoint a new or replacement or substitute Trustee. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a Notice of Substitution of Trustee. The power of appointment of a successor Trustee may be exercised as often as and whenever Beneficiary may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Notice of Substitution of Trustee, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Overhang Easement Rights and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder. Whenever in this Deed of Trust reference is made to Trustee, it shall be construed to mean each Person appointed as Trustee for the time being, whether original or successor in

trust. All title, estate, rights, powers, trusts and duties granted to Trustee shall be in each Person appointed as Trustee so that any action hereunder by any Person appointed as Trustee shall for all purposes be deemed to be, and as effective as, the action of all Trustees.

ARTICLE 6

1. Reconveyance. Upon written request of the Beneficiary stating that all obligations secured by this Deed of Trust have been satisfied in full, the Trustee shall reconvey, without warranty, the Overhang Easement Rights then subject to the lien of this Deed of Trust. The Grantor shall pay any costs, trustee's fees and recording fees incurred in so reconveying the Overhang Easement Rights.

2. Nonwaiver of Terms and Conditions. Time is of the essence with respect to performance of the obligations under the Funding Agreement and Covenant. The Beneficiary's failure to require prompt enforcement of any such obligation shall not constitute a waiver of the obligation or any subsequent required performance of the obligation. No term or condition of this Deed of Trust may be waived, modified or amended except by a written agreement signed by the Grantor and the Beneficiary. Any waiver of any term or condition of this Deed of Trust shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

3. Waivers and Agreements Regarding Remedies. To the full extent Grantor may do so, Grantor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any laws now or hereafter in force providing for any appraisal, valuation, stay, or extension, and waives and releases all rights of valuation, appraisal, stay of execution, extension and notice of election to accelerate the Secured Obligations;

(b) waives all rights to a marshalling of the assets of Grantor, including the Overhang Easement Rights, or to a sale in the inverse order of alienation in the event of a foreclosure of the Overhang Easement Rights, and agrees not to assert any right under any law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Overhang Easement Rights without any prior or different resort for collection, or the right of Beneficiary to the payment of the Secured Obligations out of the proceeds of sale of the Overhang Easement Rights in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Grantor may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties.

4. Notices. Any notice given by the Grantors or the Beneficiary shall be given in the manner prescribed for notices, and such notices shall be effective, as set forth in the Funding Agreement.

5. Other Agreements. The terms of this Deed of Trust are intended to supplement and not to replace the terms of the Funding Agreement and the Covenant, and the rights and remedies herein provided to the Beneficiary are intended to be cumulative of and in addition to all rights and remedies conferred by the Funding Agreement and the Covenant. Notwithstanding the foregoing, the rights and remedies of Beneficiary under this Deed of Trust and subject to the terms, limitations and conditions contained in the Covenant and/or Funding Agreement.

6. Severability. In case any one or more of the provisions contained in this Deed of Trust is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby. In the event of any conflict or inconsistency between one or more of the provisions contained in this Deed of Trust and one or more of the provisions contained in the Funding Agreement and/or Covenant, the provisions contained in the Funding Agreement and/or Covenant shall govern.

7. Rules of Construction. This Deed of Trust shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited partnerships, limited liability companies and other forms of entities. This Deed of Trust inures to the benefit of, and binds all parties named herein and their successors and assigns. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

8. Governing Law. This Deed of Trust shall be construed and enforced in accordance with the laws of the State of Washington, excluding its conflicts of laws rules.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT,
OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT
ENFORCEABLE UNDER WASHINGTON LAW.

WITNESS the hand and seal of the Grantor on the day and year first written above.

GRANTOR:

Performing Arts Center Eastside

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Performing Arts Center Eastside, a Washington nonprofit corporation, to be the free and voluntary act and deed of such corporation for the uses and purposes mentioned in the instrument.

Date: _____

(seal or stamp)

Notary Public in and for the state of Washington,
residing at _____

My commission expires _____

Print Name

EXHIBIT A

LEGAL DESCRIPTION OF OVERHANG EASEMENT AREA