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2013013967

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY  
 AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is executed as of February 6, 2013, by OMAHA PERFORMING ARTS SOCIETY, a Nebraska non-profit corporation ("Trustor"), to FIRST NATIONAL BANK OF OMAHA ("Trustee"), for the benefit of FIRST NATIONAL BANK OF OMAHA ("Beneficiary").

**ARTICLE I. GRANT IN TRUST**

For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, Trustor's interest in: (a) that real property located in Douglas County, Nebraska, and legally described on Exhibit A attached hereto; (b) all easements, rights-of-way and rights used in connection with or as a means of access to any portion of said real property; (c) all tenements, hereditaments and appurtenances thereof and thereto; (d) all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining said real property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with said real property; (e) all buildings, improvements and landscaping now or hereafter erected or located on said real property; (f) all fixtures, appliances, machinery, and equipment of any nature whatsoever, and other articles of property (real, personal or mixed) at any time now or hereafter installed in, attached to or situated in or upon said real property or any portion thereof, or other real property described above or the buildings and improvements to be erected thereon, or used or intended to be used in connection with said real property, or any portion thereof, or in the operation of the buildings and improvements, plant, business or dwelling situated thereon, whether or not the said buildings and improvements are or shall be affixed thereto, including, without limiting the generality of the foregoing, all building materials, fixtures, building machinery and building equipment delivered to said real property, or any portion thereof during the course of, or in connection with, any construction of any buildings and improvements, and all furniture, fixtures, and equipment hereafter located on the real property by way of replacement, substitution, addition, or otherwise; (g) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, said real property; (h) all mineral rights, oil and gas rights, air rights, water or water rights, including without limitation, all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with said real property, whether decreed or undeclared, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in

any water, canal, ditch or reservoir company, and all well permits, water service contracts, drainage rights and other evidences of any such rights; and (i) all interest or estate which Trustor now has or may hereafter acquire in said real property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of said real property by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said real property (collectively, the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE II. OBLIGATIONS SECURED

Trustor makes this grant and assignment for the purpose of securing the following obligations, without duplication (each, a "Secured Obligation" and collectively, the "Secured Obligations"):

(a) all sums owing by Trustor to Beneficiary pursuant to that Term Note, in the original principal amount of Four Hundred Thousand Dollars (\$400,000), dated as of the date hereof, together with all modifications, renewals, extensions and substitutions thereof;

(b) all other sums at any time owing by, and performance of all other obligations of, Trustor arising under that certain Amended and Restated Credit Agreement, dated as of the November 1, 2011, by and among the Beneficiary, the Trustor and OPAS Foundation, as the same may be amended, modified, supplemented and restated from time to time (the "Credit Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement), and the other Credit Documents; and

(c) payment and performance of all obligations of Trustor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor; and

(d) performance and compliance with every obligation, covenant and agreement of Trustor contained in any other Credit Document; and

(e) payment to Beneficiary of all liabilities, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with Beneficiary in connection with any Secured Obligation; and

(f) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(g) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

### ARTICLE III. ASSIGNMENT OF RENTS

3.1 Assignment. For the purposes and upon the terms and conditions set forth herein, Trustor irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under all leases, licenses, rental agreements and other agreements of any kind relating to the use or occupancy of any of the Subject Property, whether existing as of the date hereof or at any time hereafter entered into, together with all guarantees of and security for any tenant's or lessee's performance thereunder, and all amendments, extensions, renewals and modifications thereto (each, a "Lease" and collectively, the "Leases"), together with any and all other rents, issues and profits of the Subject Property (collectively, "Rents"). This assignment shall not impose upon Beneficiary any duty to produce Rents from the Subject Property, nor cause Beneficiary to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; or (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property. Subject to Section 3.3, this is an absolute assignment, not an assignment for security only, and Beneficiary's right to Rents is not contingent upon and may be exercised without taking possession of the Subject Property. Trustor agrees to execute and deliver to Beneficiary, within five (5) days of Beneficiary's written request, such additional documents as Beneficiary or Trustee may reasonably request to further evidence the assignment to Beneficiary of any and all Leases and Rents. Beneficiary or Trustee, at Beneficiary's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents.

3.2 Protection of Security. To protect the security of this assignment, Trustor agrees:

(a) at Trustor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Trustor assigns to Beneficiary all of Trustor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Trustor to exercise any such rights or powers without Beneficiary's prior written consent shall be a breach of the terms hereof;

(b) at Trustor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all reasonable costs of Beneficiary or Trustee, including reasonable attorneys' fees, in any such action in which Beneficiary or Trustee may appear;

(c) that, should Trustor fail to do any act required to be done by Trustor under a Lease, then Beneficiary or Trustee, but without obligation to do so and without notice to Trustor and without releasing Trustor from any obligation hereunder, may make or do the same in such manner and to such extent as Beneficiary or Trustee deems necessary to protect the security hereof, and, in exercising such powers, Beneficiary or Trustee may employ attorneys and other agents, and Trustor shall pay necessary costs and reasonable attorneys' fees incurred by Beneficiary or Trustee, or their agents, in the exercise of the powers granted herein. Trustor shall give prompt notice to Beneficiary of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Trustor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof; and

(d) to pay to Beneficiary immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Secured Obligation, and the same, at Beneficiary's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 License. Beneficiary confers upon Trustor a license ("License") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Event of Default (as defined herein). Upon the occurrence of any Event of Default, the License shall be automatically revoked, and Beneficiary or Trustee may, at Beneficiary's option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter, take possession of, manage and operate the Subject Property or any part thereof; (b) make, cancel, enforce or modify any Lease; (c) obtain and evict tenants, fix or modify Rents, and do any acts which Beneficiary or Trustee deems proper to protect the security hereof; and (d) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Deed of Trust. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Event of Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Beneficiary or Trustee the right to possession, except as provided in this Deed of Trust.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 Definition of UCC. For purposes of this Deed of Trust, the "UCC" means the Uniform Commercial Code of the State of Nebraska or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of Nebraska, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

##### 4.2 Security Interest in Personal Property.

(a) This Deed of Trust shall constitute a security agreement pursuant to the UCC for any portion of the Subject Property that, under applicable law, may be subject to a security interest pursuant to the UCC (collectively, "Personal Property") and Trustor hereby grants to Beneficiary a security interest in such Personal Property.

(b) Trustor hereby authorizes Beneficiary to file any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust, all in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its agent and attorney-in-fact to execute and file all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect such lien. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable out of pocket costs and expenses of any record searches for financing statements as Beneficiary may reasonably require.

4.3 Fixture Filing. To the extent permitted by law, Trustor and Beneficiary agree that with respect to all items of Personal Property that are or will become fixtures (as defined in the UCC) on the real property covered by this Deed of Trust, this Deed of Trust, upon recording or

registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the UCC. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of Trustor set forth on the first page of this Deed of Trust, and the name of the secured party for purposes of this financing statement is the name of Beneficiary set forth on the first page of this Deed of Trust. The mailing address of the debtor is the address of Trustor set forth on the signature page to this Deed of Trust. The mailing address of the secured party from which information concerning the security interest hereunder may be obtained is set forth in Section 7.4 hereto.

#### ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

5.1 Title. Trustor warrants that, except as disclosed to Beneficiary prior to the date hereof in a writing which refers to this warranty, Trustor lawfully possesses and holds fee simple title to the Subject Property without limitation on the right to encumber, as herein provided, and that this Deed of Trust is a valid lien on the Subject Property and all of Trustor's interest therein.

5.2 Taxes and Assessments. Subject to the right, if any, of Trustor to contest payment of the following pursuant to any other agreement between Trustor and Beneficiary, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, that Trustor shall have no obligation to pay any income taxes of Beneficiary. Promptly upon request by Beneficiary, Trustor shall furnish to Beneficiary satisfactory evidence of the payment of all of the foregoing. Beneficiary is hereby authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any of the foregoing.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation when due.

5.4 Liens, Encumbrances and Charges. Trustor shall immediately discharge any lien on the Subject Property not approved by Beneficiary in writing. Except as otherwise provided in any Secured Obligation or other agreement with Beneficiary, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

5.5 Insurance. Trustor will at all times keep the Subject Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which Beneficiary may require, provided that, in any case, Trustor shall maintain: (a) physical hazard insurance on an "all risks" basis in an amount not less than one hundred percent (100%) of the full replacement cost of the Subject Property; (b) flood insurance if and as required by applicable federal law and as otherwise required by the Beneficiary; and (c) comprehensive commercial general liability insurance. All policies regarding such insurance shall be issued by companies licensed to do business in the State of Nebraska, provide deductible amounts accepted to Beneficiary, name Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least thirty days' prior written notice to Beneficiary. Trustor will furnish to Beneficiary upon request such

original policies, certificates of insurance or other evidence of the foregoing as are acceptable to Beneficiary.

**5.6 Tax and Insurance Impounds.** Upon the occurrence of an Event of Default, at Beneficiary's option and upon its written demand, Trustor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for insurance next due. If Beneficiary determines that amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amount required for the payment thereof when due, and Trustor shall pay to Beneficiary such additional amount within thirty (30) days after notice from Beneficiary. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. Upon payment thereof by Trustor to Beneficiary, Beneficiary shall be responsible for the payment of such funds to the appropriate third party. Trustor hereby grants and transfers to Beneficiary a security interest in all amounts so paid and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Beneficiary in its discretion may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor, and no other party shall have any right of claim thereto.

**5.7 Damages; Insurance and Condemnation Proceeds.**

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting the Subject Property; (ii) all other claims and awards for damages to or decrease in value of the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Beneficiary. At the absolute discretion of Beneficiary, whether or not its security is or may be impaired, but subject to applicable law if any, and without regard to any requirement contained in any other Section hereof, Beneficiary may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order, and release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided however, that in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

(b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may impose any conditions on such use as Beneficiary deems necessary.

5.8 Maintenance and Preservation of Subject Property. Subject to the provisions of any Secured Obligation, Trustor covenants:

- (a) to keep the Subject Property in good condition and repair;
- (b) except with Beneficiary's prior written consent, not to remove or demolish any material portion of the Subject Property, nor alter, restore or add to any material portion of the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;
- (c) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed, unless Beneficiary requires that such portion of the insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.7 hereof and as a result thereof such proceeds are not available to restore the Subject Property;
- (d) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;
- (e) not to commit or permit waste of the Subject Property; and
- (f) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

5.9 Hazardous Substances; Environmental Provisions. Trustor represents and warrants to Beneficiary as follows:

- (a) Except as disclosed to Beneficiary in writing prior to the date hereof, the Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances" "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").
- (b) To the best of Trustor's knowledge, the Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "Hazardous Materials Laws"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.
- (c) There are no claims or actions pending or, to the best of Trustor's knowledge, threatened against Trustor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including without limitation, attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of Hazardous Materials in, on, under or about the Subject Property. Trustor shall pay to Beneficiary immediately upon demand any amounts owing under this indemnity, together with interest from the date of demand until paid in full at the highest rate of interest applicable to any Secured Obligation. TRUSTOR'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THIS DEED OF TRUST.

(e) Trustor shall immediately advise Beneficiary in writing upon Trustor's discovery of any occurrence or condition on the Subject Property or on any real property adjoining or in the vicinity of the Subject Property that does or could cause all or any part of the Subject Property to be contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

5.10 Protection of Security. Trustor shall, at Trustor's sole expense: (a) protect, preserve and defend the Subject Property and Trustor's title and right to possession of the Subject Property against all adverse claims; (b) if Trustor's interest in the Subject Property is a leasehold interest or estate, pay and perform in a timely manner all obligations to be paid and/or performed by the lessee or tenant under the lease or other agreement creating such leasehold interest or estate; and (c) protect, preserve and defend the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee under this Deed of Trust against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property and, if Trustor's interest in the Subject Property is a leasehold interest or estate, of any notice of default or demand for performance under the lease or other agreement pursuant to which such leasehold interest or estate was created or exists.

5.11 Acceptance of Trust; Powers and Duties of Trustee. Trustee accepts this trust when this Deed of Trust is executed. From time to time, upon written request of Beneficiary and, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Secured Obligations, Beneficiary, or Trustee at Beneficiary's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Subject Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Trustor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is



requested in writing and Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

#### 5.12 Compensation; Exculpation; Indemnification.

(a) Trustor shall pay all reasonable Trustee's fees and reimburse Trustee for all reasonable expenses in the administration of this trust, including reasonable attorneys' fees. Trustor shall pay Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under this Deed of Trust or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Trustor or any third party as a result of Beneficiary's failure to lease the Subject Property after any Event of Default or from any other act or omission of Beneficiary in managing the Subject Property after any Event of Default unless such loss is caused by the willful misconduct or gross negligence of Beneficiary; and no such liability shall be asserted or enforced against Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) Trustor shall indemnify Trustee and Beneficiary against, and hold them harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking of Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Trustor under this Deed of Trust; provided Trustor shall have no obligation to indemnify Trustee or Beneficiary hereunder as a result of any loss, damage or liability arising from or relating to the gross negligence or willful misconduct by Trustee, Beneficiary or their respective officers, directors, employees or agents. Trustor's duty to indemnify Trustee and Beneficiary shall survive the payment, discharge or cancellation of the Secured Obligations and the release or reconveyance, in whole or in part, of this Deed of Trust.

(c) Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary, together with interest thereon from the date such indebtedness arises at the highest rate per annum payable under any Secured Obligation. Beneficiary may, at its option, add any such indebtedness to any Secured Obligation.

5.13 Substitution of Trustees. From time to time, by a writing signed and acknowledged by Beneficiary and recorded in each office in which this Deed of Trust is recorded, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth the recordation date and any recording or other information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new Trustee.

5.14 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under any Secured Obligation (each, an “Interested Party”), Beneficiary may, from time to time, release any Interested Party from liability for the payment of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of this Deed of Trust upon the Subject Property.

5.15 Reconveyance. Upon Trustor’s indefeasible payment in full of all Secured Obligations, Beneficiary shall request that Trustee, and Trustee shall, reconvey, without warranty, the Subject Property, or that portion thereof then covered hereby, from the lien of this Deed of Trust. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as “the person or persons legally entitled thereto.” Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future Rents and all other rights under Article III hereof to the person or persons legally entitled thereto. Upon Beneficiary’s demand, Trustor shall pay all costs and expenses incurred by Beneficiary in connection with any reconveyance.

5.16 Subrogation. Beneficiary shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any Secured Obligation.

## ARTICLE VI. DEFAULT PROVISIONS

6.1 Event of Default. Any defined “event of default” under any provisions of the Credit Agreement or any other Credit Document or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation, shall constitute an “Event of Default” under this Deed of Trust.

6.2 Rights and Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, Beneficiary and Trustee shall have all the following rights and remedies:

(a) Upon written notice, without releasing Trustor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Event of Default of Trustor and, in connection therewith: (i) to enter upon the Subject Property and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(b) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Trustor under this Deed of Trust, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Trustor waives the defenses of laches and any applicable statute of limitations.

(c) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Trustor consents to such appointment.

(d) To take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(e) To execute or cause Trustee to execute a written notice of such Event of Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. Trustee shall notify Trustor in writing and shall give and record such other notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor, except as otherwise required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Trustor nor any other person or entity shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may postpone any sale of the Subject Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary, may purchase at such sale.

(f) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance with Section 6.3 hereof, all in such order and manner as Beneficiary shall determine in its sole discretion.

(g) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of

structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Trustor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Trustor and Beneficiary or previously discussed by Trustor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

(h) Beneficiary may exercise in respect of the Personal Property, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Personal Property).

6.3 Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of Trustee, and of this trust, including costs of evidence of title and attorneys' fees in connection with a sale, all proceeds of any sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in such order and amounts as Beneficiary in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Application of Other Sums. All Rents or other sums received by Beneficiary or any agent or receiver hereunder, less all costs and expenses incurred by Beneficiary or such agent or receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 No Cure or Waiver. Neither Beneficiary's, Trustee's or any receiver's entry upon and taking possession of the Subject Property, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary, Trustee or any receiver shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Event of Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Trustor has cured all other Events of Default), or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Deed of Trust.

6.6 Costs, Expenses and Attorneys' Fees. Trustor agrees to pay to Beneficiary immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Beneficiary's in-house counsel), expended or incurred by Trustee or

Beneficiary pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) relating to Trustor or in any way affecting any of the Subject Property or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Trustor with interest from the date of demand until paid in full at the highest rate per annum payable under any Secured Obligation.

6.7 Power to File Notices and Cure Defaults. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as Trustor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute an Event of Default, to perform any obligation of Trustor hereunder; provided however, that Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary, and Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Beneficiary and Trustee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Trustor and Beneficiary. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy.

#### ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 No Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary specifically consents to a merger in writing.

7.2 Execution of Documents. Trustor agrees, upon demand by Beneficiary or Trustee, to execute any and all documents and instruments required to effectuate the provisions hereof.

7.3 Right of Inspection. Beneficiary or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

7.4 Notices, Requests for Notice. All notices, requests and demands which Trustor or Beneficiary is required or may desire to give to the other party must be in writing, delivered to Beneficiary at the following address:

FIRST NATIONAL BANK OF OMAHA  
1620 Dodge St., Stop 1029  
Omaha, NE 68197  
Attn: Donald Erikson  
Fax: (402) 938-7499

and to Trustor at its address set forth at the signature lines below, or at such other address as either party shall designate by written notice to the other party in accordance with the provisions hereof. Trustor hereby requests that a copy of any notice of default or notice of sale hereunder be delivered in writing to the Trustor at its address designated pursuant to this Section 7.4.

**7.5 Successors; Assignment.** This Deed of Trust shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto. Beneficiary reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Beneficiary's rights and benefits under the Credit Agreement, any other Credit Documents, any and all other Secured Obligations and this Deed of Trust. In connection therewith, Beneficiary may disclose all documents and information which Beneficiary now has or hereafter acquires relating to the Subject Property, all or any of the Secured Obligations and/or Trustor and, as applicable, any partners, joint venturers or members of Trustor, whether furnished by any Trustor or otherwise.

**7.6 Rules of Construction.** (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine, or neuter or both, and the singular number includes the plural; (b) the term "Subject Property" means all and any part of or interest in the Subject Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Deed of Trust, and shall be disregarded in the interpretation of any portion of this Deed of Trust; (d) if more than one person or entity has executed this Deed of Trust as "Trustor" the obligations of all such Trustors hereunder shall be joint and several; and (e) all terms of Exhibit A, and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Deed of Trust by this reference.

**7.7 Severability of Provisions.** If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust.

**7.8 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Nebraska.

[signature page follows]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

OMAHA PERFORMING ARTS SOCIETY

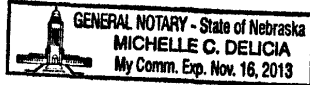
By: [Signature]  
 Name: Joan H. Squires  
 Title: President

Address:

1200 Douglas Street  
 Omaha, Nebraska 68102

STATE OF NEBRASKA     )  
   ) ss.  
 COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 8 day of February, 2013, by JOAN H. SQUIRES, the PRESIDENT of Omaha Performing Arts Society, a Nebraska non-profit corporation, on behalf of said entity.



[Signature]  
 Notary Public  
 My Commission Expires: 11/16/13

**EXHIBIT A**  
**(Description of Property)**

Lots 7 and 8, in Block 147, Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska, except that portion of Lot 8 taken by the City of Omaha and described in Report of Appraisers recorded May 31, 2002, in Book 1442, Page 490, and more particularly described as follows:

Beginning at the Northeast corner of said Lot 8; thence South 00°00'00" West along the East line of said Lot, a distance of 35.00 feet; thence Northwesterly along a curve to the left having a radius of 35.00 feet and a central angle of 90°00'00", an arc distance of 54.98 feet (chord = 49.50' chord bearing = N 45°00'00" W) to a point on the North line of said Lot 8; thence North 90°00'00" East along said North line of Lot 8, a distance of 35.00 feet to the point of beginning.

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