

ADMINISTRATIVE ACTION FORM

Contact Person: Mary Feighny, Deputy City Attorney Date: 01-16-2014

Document: Contract/Agreement Document # 43396

Second Party/Subject: Topeka Performing Arts Center, Inc. Project #:

Originating Department: Legal - ATTY CIP Project:

Category/Subcategory: 007 Contracts and Amendments / 018 Other

Requested Action:

Approve and Execute Document

Financial Implications: Contract provides for funding to Topeka Performing Arts Center as determined by the governing body through the budget process.

Description: The City contracts with TPAC to operate the performing arts center. The last contract expired in July of 2013 and was renewed until 12/31/13. This contract essentially continues the relationship by authorizing TPAC to operate the center pursuant to the contract terms. This contract expires on 12/31/2018, with 2 3-year renewal periods.

JAN 24 2014

Approval/Action Routing: (See Routing Instructions on Sheet 2).

Approved by:	<u>MF</u>	Date:	<u>1-16-14</u>
Approved by:	<u>Brenda Younger</u> Legal City Clerk	Date:	<u>1-16-14</u>
Approved by:	<u></u> City Manager	Date:	<u></u>
Approved by:	<u></u>	Date:	<u></u>
Approved by:	<u></u>	Date:	<u></u>
Approved by:	<u></u>	Date:	<u></u>
Return to:	<u>Mary Feighny/Legal</u>	Date:	<u></u>

CITY OF TOPEKA CONTRACT NO. 43396

THIS AGREEMENT is entered into this 21st day of January 2014, by and between the City of Topeka, hereinafter referred to as "City," and Topeka Performing Arts Center, Inc., hereinafter referred to as "TPAC."

WHEREAS, the City is a municipality duly organized and existing under the laws of the State of Kansas, with full lawful power and authority to enter into this Agreement by and through its governing body, and

WHEREAS, TPAC is a not-for-profit corporation organized pursuant to the laws of the State of Kansas, and

WHEREAS, the City and TPAC recognize the need for a performing arts center to provide for the advancement, promotion, and development of the arts within the City of Topeka, and

WHEREAS, the City, in furtherance of the purposes and pursuant to the provisions of Charter Ordinance No. 68 and City of Topeka Ordinance No. 15833, and in order to provide for the general welfare of the City of Topeka, previously entered into City of Topeka Contract No. 31887 with TPAC on April 8, 2002, which provides for TPAC to operate and manage the Performing Arts Center; and

WHEREAS, City of Topeka Contract No. 31887 provided for an initial five (5) year term commencing on July 1, 2002, with the option of two (2) additional renewal terms of three (3) years each, the second and final of which expired on June 30, 2013; and

WHEREAS, on July 1, 2013, the parties extended City of Topeka Contract No. 31887 until December 31, 2013 in order to allow the parties sufficient time to prepare and execute a new agreement; and

WHEREAS, the City and TPAC desire to enter into this Agreement for the continued operation and management of the Performing Arts Center; and

NOW THEREFORE, in consideration of the premises, mutual covenants and agreements herein set forth, the City and TPAC do hereby covenant and agree as follows:

ARTICLE I

Name, Facility, Funding, and Support

A. Name. In continued recognition of the contribution and testamentary bequest made by Georgia Neese Gray and Andrew J. Gray for the Performing Arts Center, the parties agree to maintain the name of the main performance hall as the "Georgia Neese Gray Performance Hall." The parties further agree that TPAC may enter into one or more agreements

with third party sponsors and supporters concerning the naming rights to the Facility and any or all of the spaces, fixtures and equipment therein, so long as the "Topeka Performing Arts Center" shall be and remain a part of the Facility's name. Any such agreements shall be approved by the City in accordance with City of Topeka Resolution No. 7698.

B. Description of Property, This agreement between the City and TPAC shall apply to the areas contained within the building commonly known as "The Topeka Municipal Auditorium." The area assigned to TPAC is shown by shaded outlining on Exhibit 1, attached hereto and made a part hereof. The area so allocated to TPAC is referred to herein as the "Performing Arts Center" or the "Facility."

C. Operational Funding.

1. The City may provide operational funding to assist TPAC in its management of the Performing Arts Center during the term of this Agreement. Pursuant to the State of Kansas Cash Basis law, K.S.A. 10-1101 et seq., the City is only obligated to provide operational funding from funds budgeted and appropriated by the City Council during the current budget year. Operational funding for each subsequent year of this Agreement shall be subject to the availability of funds budgeted each year for this purpose.

2. TPAC shall, subject to the limitations and conditions herein, submit its request for supplemental operational funding by the first day of April for funding during the next budget year. This budget request shall be submitted to the City Manager of the City of Topeka or the City Manager's designee who shall include that request as part of development of the proposed City budget for the ensuing year. Approval of this request shall be made by the City Council, whose decision is final and binding on the parties.

3. The amount of supplemental operational funding to be requested by TPAC shall be developed with consideration given to the following factors when determining an appropriate level of supplemental operational funding:

a. The anticipated level of revenues available to TPAC from Performing Arts Center activities and events.

b. The anticipated level of expenses reasonably related to TPAC's operation of the Performing Arts Center. These expenses may include, but are not limited to: professional management services, salaries, promotional expenses, artists' fees, event set up and clean up, daily maintenance and janitorial services, insurance premiums, and general office expenses.

c. The anticipated need by TPAC for funding of special projects or expenses not generally addressed by this Agreement.

d. The anticipated use by the City of the Performing Arts Center for City activities or events.

e. The City's recognition of the services provided by TPAC as an important and vital contribution to the economic and cultural health of the City of Topeka, and of the tangible and intangible returns the City receives from its investment in TPAC.

4. The failure of the City Council to approve TPAC's request for funding shall not constitute a default under this Agreement and shall not entitle TPAC to seek or obtain a judgment requiring the City's specific performance or to pursue any other legal remedy which seeks to compel the City to appropriate and budget supplemental operational funds for TPAC. However, the failure of the City Council to approve TPAC's request for funding shall constitute a basis for termination of this Agreement by TPAC, in accordance with Article III hereof.

D. Event and Concession Revenues.

1. All receipts from ticket sales, facility usage fees, concession sales, and other-revenues associated with TPAC's management of the Performing Arts Center shall be the sole property of TPAC. TPAC shall keep accurate records of all receipts. These records shall be subject to review and audit by the City Manager or designee.

2. TPAC shall be responsible for all sales and other tax obligations resulting from the operation of the Performing Arts Center. TPAC shall be entitled to all tax benefits accruing from TPAC's participation in this Agreement. TPAC shall not be entitled to any tax benefits created solely by the City's participation in this Agreement.

E. Financial Statements. During the entire term of this Agreement, an annual independently audited financial statement will be prepared and provided by TPAC to the City. This audit report is due within 90 days of the end of each of the City's fiscal years.

ARTICLE II

Management and Maintenance

A. Management. TPAC shall, subject to the limitations and conditions herein, be responsible for and assume the costs for the day to day operations and management of the Facility. These responsibilities shall include, but are not limited to:

1. Coordinating the usage of the Topeka Performing Arts Center, including scheduling and promotion of all events and activities in the Facility.

2. Publicizing the availability of the Topeka Performing Arts Center.
3. Establishing all ticket and concession operations and providing proper management and record-keeping for these functions.
4. Evaluating all proposed usages of the facilities and determining which usage is most compatible with the intended purpose of the Topeka Performing Arts Center and the needs and desires of the community at large.
5. Entering into contracts with groups, organizations, or individuals for use of the Facility.
6. Providing general set-up and clean-up services for all events and activities in the Topeka Performing Arts Center.
7. Providing accurate, timely and complete records of all activities, revenues and expenditures associated with TPAC's management of the Topeka Performing Arts Center.
8. Cooperating with the City Manager or designee in reviewing all records, financial and otherwise, relating to the provisions of this article.

B. Maintenance and Repairs. The executive director of TPAC will provide a schedule of general maintenance and repair tasks to the City at the commencement of each of the City's fiscal years during the term and any extensions of this Agreement. In the event that the Performing Arts Center's portion of the building should become in need of repairs, TPAC shall give immediate written notice thereof to the City. The City shall be responsible for informing TPAC of the City's intentions to make the requested repairs within ten (10) days of receipt of TPAC's notice.

C. Performance Objectives. In conducting its management activities under this agreement, TPAC agrees to adhere to the following performance objectives:

1. TPAC will endeavor to annually raise funds to support operations in an amount equal to or exceeding the amount of operating support provided by the City of Topeka, pursuant to Article I, section C, above.
2. TPAC will present an annual program of professional touring events, which serves the diverse interests and patronage of the community.

3. TPAC will produce, present, or otherwise operate at least four youth arts-education programs each year.

4. TPAC will provide youth-group discounted ticket programs for school groups and educational groups to attend TPAC shows, where appropriate.

5. TPAC will make the Performing Arts Center's facilities available to local arts organizations at reduced rental fees and support the presentation of their arts with staffing and services.

6. On or before January 1 of each year, TPAC shall provide the City Council with its preliminary budget for the following calendar year. The budget shall show projected revenue and projected expenses including, but not limited to, salaries, advertising or other promotions, operating and capital expenditures.

7. TPAC shall provide quarterly financial reports to the City Council within thirty (30) days after the close of each calendar quarter. The reports shall detail all revenue including ticket sales and donations and expenditures including, but not limited to, advertising or other promotional activities, operating and capital expenditures.

D. Usage of Facility.

1. Intended Use. In accordance with those provisions found in paragraph A of this Article and elsewhere in this agreement, the Facility shall be used predominantly as a cultural entertainment and educational facility which fosters excellence of the performing and visual arts. TPAC will not allow the center to be used for purposes either illegal or incompatible with:

- i) the intended use of the facility;
- ii) TPAC's educational and charitable purposes;
- iii) the facility's status as a publicly owned building; or
- iv) the facility's proximity to City offices and services.

TPAC and the City will make every reasonable effort to resolve and prevent any actual or potential violations of this section.

2. City Use of Facility. TPAC agrees to allow the City to use the Performing Arts Center and its facilities when no scheduling conflicts exist with other usages. City usage of the facilities will be subject to all reasonable rules and regulations imposed by TPAC on all users. TPAC agrees that no user charge will be made or assessed against the City for City activities or events which relate to the governmental activities of the City of Topeka. If TPAC has received no annual funding or the event was not anticipated when

determining the level of City provided operational funding, the City shall pay a negotiated user fee. Notwithstanding the above, the City will reimburse the costs incurred by TPAC in supporting the use of the Facility by the City, including but not limited to staffing the event, janitorial services, equipment, and consumable supplies.

3. City Access. TPAC and the City recognize that the Performing Arts Center is located in a public building owned by the City which houses many of the operational departments and functions of City government. Given this recognition, TPAC will allow the City access to all areas of the Performing Arts Center unless such access unreasonably and actually impairs the intended usage of the Performing Arts Center, the ability of TPAC to effectively manage the Facility or the security of scheduled Performing Arts Center activities or participants in those activities. Any objection to the presence of City personnel in the Performing Arts Center shall be made in writing to the City's designee. The refusal or inability of the City to cure a violation of this section may be considered, by TPAC, an Event of Default by the City.

4. Security. City and TPAC shall abide by the security plan set forth in City of Topeka Contract No. 41495, as amended or replaced by subsequent agreement of the parties, in order to insure personal safety and the security of Facility and its contents to prevent unauthorized persons from gaining access to the Facility or to City Hall. Areas of primary concern include the main mechanical room and any and all portions of City Hall.

5. Utilities and Energy Conservation. Throughout the term of this Agreement, the City shall provide, at its expense, water, electrical, gas and waste management services to the Facility. City and TPAC shall abide by the comprehensive energy conservation plan for the Facility set forth in City of Topeka Contract No. 41495, as amended or replaced by subsequent agreement of the parties, to reduce energy consumption and eliminate all unnecessary energy consumption.

6. Storage and Egress. City and TPAC shall abide by the provisions of City of Topeka Contract No. 41495, as amended or replaced by subsequent agreement of the parties, concerning storage and maintenance of clear emergency egress paths on the lower level of the Facility.

7. Fire Safety. City and TPAC shall abide by the plan to test the fire alarm system for the Facility, as well as fire drills and routine inspection of Life Safety Code equipment, set forth in City of Topeka Contract No. 41495, as amended or replaced by subsequent agreement of the parties.

8. Emergency/Nonemergency Call. TPAC shall reimburse the City for actual costs incurred by the City to respond to a nonemergency call. TPAC shall not be responsible for reimbursing the City for responses to emergency calls. For the purpose of

this section, emergency shall be defined as any situation that, if not resolved immediately, could present an imminent threat of property loss or damage to the Facility or its contents, threat of injury or harm to Facility occupants, or adversely affect the comfort level to a majority of Facility occupants. Total loss of HVAC, utilities or flooding due to water line breaks will always constitute an emergency situation.

9. Damages. TPAC shall be solely responsible for the repair of any damage to the Facility directly caused by the negligent or intentional acts or omissions of TPAC's employees, agents, licensees or invitees. Further, TPAC staff shall promptly notify the City of any damage to the Facility along with an estimate of the date by which the repairs shall be completed. If TPAC shall fail to make the repairs after notice and an opportunity to cure as specified in this Agreement, the City shall have the right to make such repairs and submit an invoice to TPAC for the costs thereof.

10. Indemnification. TPAC covenants and agrees to indemnify and hold harmless the City from and against any and all claims, demands, liabilities and costs, including reasonable attorney's fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons occurring or allegedly occurring in, on, or about the Facility, or arising from the negligent or intentional acts or omissions of TPAC, its employees, agents, contractors, licensees or invitees. Provided, however, TPAC has no duty or responsibility to indemnify, protect, defend and save the City harmless from and against any and all claims, demands, liabilities and costs arising from the negligent or intentional acts or omissions of the City, its employees or agents.

ARTICLE III

Term of Agreement

A. Length. This agreement shall commence on January 1, 2014 and shall continue thereafter for a term of five (5) years through December 31, 2018, unless sooner terminated as provided in Sections C or D of this Article III.

B. Renewal. TPAC may renew this agreement for two (2) additional terms of three (3) years each upon service of a written request to the City at least ninety (90) days prior to the expiration of either the initial term or any renewal term. The City shall inform TPAC of its intent to either approve or deny the renewal request, within 30 days of receipt of the request. The City shall not unreasonably and without sufficient justification withhold or deny a renewal request. Sufficient justification shall include, but not be limited to, the failure of TPAC to either comply with a material provision of this Agreement or to perform in a manner that conforms with the purpose and intent of this Agreement.

C. Termination. This Agreement shall automatically terminate on the date stated above or on any date agreed to by the parties, either as a result of renewal agreement or otherwise. The parties may agree in a writing of equal formality to terminate this Agreement and any of its provisions at any time. The termination of this Agreement shall not release either party from any obligation to the other party, financial or otherwise, which has accrued or is due and owing as of the termination date. In the event this Agreement is terminated by the City, the City shall retake possession of the Facility and TPAC shall assign all its rights and obligations relating to its management of the Facility to the City.

D. Termination for Lack of Funding. TPAC agrees that if there are not sufficient funds for the City to continue appropriations to meet its obligations under this Agreement, the City may terminate this Agreement at the end of its then current fiscal year. City shall give written notice of termination to TPAC at least ninety (90) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year to the extent it is able to do so. The City agrees that if TPAC is unable to continue its management of the Facility due to a lack of funding, TPAC may terminate this Agreement at the end of its then current fiscal year. TPAC shall give written notice of termination to the City at least ninety (90) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year to the extent it is able to do so. Termination of the Agreement under this paragraph by either party shall not be considered a breach of the Agreement and shall not cause any penalty or other damages to be assessed against the terminating party.

E. Fixtures and Equipment. All additions of fixtures and permanent improvements made or placed by TPAC to or upon the Facility shall immediately become and be the property of City and shall remain upon and be surrendered with the Facility as a part thereof, upon termination of this Agreement or any extension thereof; and TPAC will not make any alterations in or additions to the Facility, without obtaining the prior written consent of City. Notwithstanding the foregoing, those items of personal property and equipment set out in Exhibit 2, attached hereto and made a part hereof, as well as all replacements thereof or additions thereto, are and will remain the sole property of TPAC.

ARTICLE IV

A. Insurance.

1. TPAC will at all times during the term of this Agreement maintain Commercial General Liability insurance coverage to afford protection for damage occurring upon the Facility. Such insurance shall be in the amount of One Million Dollars (\$1,000,000.00), per occurrence for liability, with an annual aggregate limit per policy period of no less than Five Million Dollars (\$5,000,000.00).

2. TPAC will maintain fire and extended coverage insurance in an amount adequate to replace all items of personal property, equipment, and fixtures owned by TPAC and maintained within the Topeka Performing Arts Center during the period of TPAC's occupancy and management.

3. City will maintain fire and extended coverage insurance on the Facility, either through voluntary insurance market products or through self-insurance or a combination of both, during the period of TPAC's occupancy and management of the Facility. City may choose to not repair or replace the Facility in the event a casualty loss or losses make usage of the Facility impracticable, in which case this Agreement shall be terminated with no further obligation on the part of either party.

4. At the end of each of the City's fiscal years occurring during this Agreement, the City and TPAC will review the insurance coverage maintained by each party to this Agreement and each agrees by this provision to maintain such coverage as has heretofore been described and to immediately cure any deficiencies in coverage found to exist. Both parties agree to cooperate with the other in effecting the annual review of coverage contemplated by this provision and, to the extent that one party fails to provide evidence of insurance, the affected party may secure such required insurance and charge the other party the amount of the premium paid.

B. Hold-harmless. Except as provided in Article II, (D)(10), neither party agrees to indemnify or hold the other harmless from any and all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against either party that result from the performance of this Agreement or operation of the Facility. Additionally, both parties agree to waive the right of subrogation against the other for all property and casualty insurance losses.

ARTICLE V

A. Default By TPAC. Upon the occurrence of any of the events of default described below, the City may give TPAC written notice specifically stating the default and advise TPAC that if the default is not cured within ninety (90) days, the City may either commence legal action requiring specific performance or terminate the Agreement. If TPAC cures the default during the cure period of ninety (90) days from the date the notice is received to the satisfaction of the City, the notice of termination shall lapse and be of no further effect. However, if the event of default has not been cured, the City may either commence legal action for specific performance or terminate this Agreement. The following shall be deemed events of default ("Events of Default") by TPAC hereunder:

1. TPAC shall, during the Term, (a) become insolvent, (b) make an assignment for the benefit of creditors, (c) call a meeting of creditors for the composition of debts, or (d) there shall be filed by or against TPAC a petition in bankruptcy or for the reorganization or if a custodian, receiver or agent is appointed or authorized to take charge of any of the properties of TPAC; or

2. TPAC shall fail to perform any covenant or agreement herein contained. Upon termination of this Agreement, TPAC's rights to possession and management of the

Performing Arts Center shall cease and the City shall take possession of the Performing Arts Center for the remainder of the Term. The City shall have such other rights and remedies as may be provided under Kansas Law and equity.

B. Default By City. Upon the occurrence of any of the events of default described below, TPAC may give the City written notice specifically stating the default and advise the City that if the default is not cured within Ninety (90) days, TPAC may commence legal action requiring specific performance or terminate the Agreement. If the City cures the default during the cure period of Ninety (90) days from the date the notice is received to the satisfaction of TPAC, the notice of termination shall lapse and be of no further effect. However, if the event of default has not been cured, TPAC may either commence legal action for specific performance or terminate this Agreement. The following shall be deemed events of default ("Events of Default") by the City hereunder:

1. The City shall become insolvent or file or have filed against it, a petition in bankruptcy or for reorganization; or
2. The City shall fail to perform any covenant or agreement herein contained.

Upon such an Event of Default, TPAC shall have the rights and remedies available under applicable law and equity and shall be entitled to obtain a judgment requiring the City's specific performance hereof, time being of the essence.

ARTICLE VI

A. Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes (a) upon City, if delivered in person to its duly appointed, qualified and acting City Manager or Clerk, or if a copy thereof is mailed by certified or registered mail, postage prepaid, addressed to City, c/o the City Manager, 215 E. 7th Street, Topeka, Kansas 66603, or at such other place as City from time to time may designate in writing to TPAC, and (b) upon TPAC, if delivered in person to any executive officer of TPAC or if a copy thereof be mailed by certified or registered mail, postage prepaid, addressed to TPAC at 214 S.E. 8th Avenue, Topeka, Kansas 66603, or at such other place as TPAC from time to time may designate in writing to City. All notices sent by certified or registered mail as aforesaid shall be deemed duly given three business days after they are so mailed.

B. Rights and Remedies. The rights and remedies reserved by City and TPAC hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Unless otherwise provided within this Agreement, City and TPAC shall each be entitled to specific performance, and injunctive or other equitable relief for any breach or threatened breach of any

of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

C. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement. In case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it. This Agreement shall be construed against any such implicit waiver or renunciation of right after breach.

D. City and TPAC Shall Not Unreasonably Withhold Consents And Approvals - Manner Of Consents. Wherever in this Agreement it is provided that the City or TPAC shall, may, or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the City or TPAC shall not unreasonably, arbitrarily or unnecessarily withhold, delay or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules. In the case of the City, its consent shall be obtained as follows:

TPAC shall give notice to the City. The City Manager, or his designee, shall take such action as may be necessary to consent or withhold consent as the case may be. In the event the City Manager withholds or delays consent, then TPAC shall have the right within ten (10) days to appeal such refusal to the City Council, and the City Council shall take action at its next regularly held meeting concerning the appeal. Unless otherwise provided herein, if the City Council unreasonably withholds or delays its consent, TPAC may seek a determination from a Court of appropriate jurisdiction that the City is unreasonably withholding or delaying such consent.

E. Quiet Enjoyment. The City covenants that unless an Event of Default has occurred with respect to TPAC, TPAC shall not be in default under this Agreement, TPAC shall and may peaceably and quietly operate and manage the Performing Arts Center and that City will defend TPAC's rights hereunder against all parties; and the City will not disturb TPAC's possession and operation of the Performing Arts Center.

F. Due Organization of City. City covenants that it is a municipal corporation duly organized and existing under the laws of the State of Kansas, with lawful power and authority to enter into this Agreement, acting by and through its duly authorized officials.

G. Additional Covenants of TPAC. TPAC covenants that it is a nonprofit corporation duly organized and existing under the laws of the State of Kansas, with lawful power and authority to enter into this Agreement, acting by and through its duly authorized officers. The

execution of this Agreement and the performance of the terms of this Agreement by TPAC will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which TPAC is a party or by which it or any of its property is bound, or TPAC's Articles of Incorporation or Bylaws, or any order, rule or regulation applicable to TPAC or its property or any court or other governmental body.

H. Amendments. This Agreement shall only be amended, changed or modified in writing executed by City and TPAC, with the same formalities as this Agreement.

I. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of Kansas. Wherever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

J. Invalidity of Provisions of Agreement. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

K. No Third Party Beneficiaries. The parties hereto expressly agree that no party other than TPAC or the City is intended to obtain any right or interest pursuant to this Agreement and no such third party shall be entitled to make any claim or obtain any relief on the basis of this Agreement.

L. Paragraph Headings. The paragraph headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

M. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

N. Complete Agreement. This Agreement and the Exhibits and Schedules hereto set forth all promises, covenants, agreements, conditions, and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior contemporaneous agreements and understandings, letter agreements, inducements, or conditions, express or implied, orally or written, except as herein contained.

O. No Partnerships or Agency. Nothing herein contained shall be construed or held to make the City a partner, joint-venturer or associate of TPAC in the conduct of its business, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

P. Other Agreements or Instruments. TPAC and the City agree to execute and deliver such other documents, agreements or instruments as may be necessary or convenient to effect the purposes of this Agreement and to comply with any of the terms hereof.

Q. Covenant of Good Faith. Every duty, right, or obligation contained in this Agreement imposes an obligation of good faith in its performance or enforcement. For the purposes of the Agreement, "good faith" dealing means honesty in fact in the conduct or the transaction concerned.

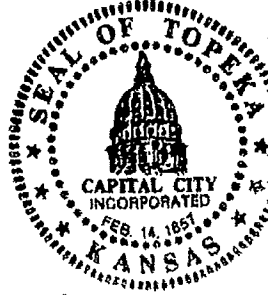
R. Assignment. Neither the City nor TPAC shall in any manner assign, mortgage, pledge, sell or in any manner transfer, convey or dispose of this Agreement or any interest therein or part thereof.

S. Encumbrances. TPAC shall not do or suffer anything to be done whereby the Performing Arts Center, or any part thereof, may be encumbered by a mechanics lien or similar lien, or mortgage. Further, TPAC shall not similarly encumber or pledge any benefits due it under this Agreement.

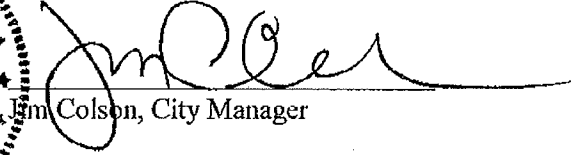
T. Non-Discrimination. TPAC will not unlawfully discriminate against any person because of race, religion, creed, color, age, sex, disability, national origin or ancestry in the execution and fulfillment of this Agreement. In the event the City is required to enter into a voluntary compliance plan to resolve a discrimination investigation, suit, or other such proceeding, TPAC and the City will jointly work together to comply with the requirements contained in that plan.

V. Termination for Loss of Property Tax Exemption. This Agreement shall terminate immediately if the use of the Facility by TPAC under this Agreement would cause the City to lose its property tax exemption under K.S.A.79-201a.

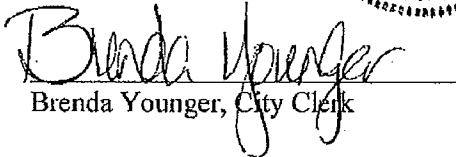
IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.



CITY OF TOPEKA, KANSAS


Jim Colson, City Manager

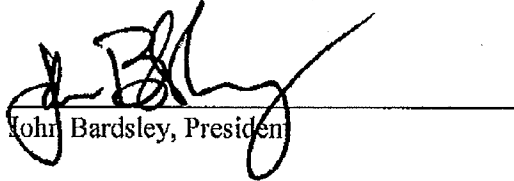
ATTEST:


Brenda Younger, City Clerk

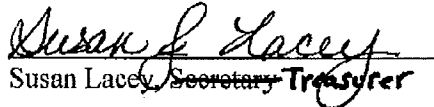
APPROVED AS TO FORM AND LEGALITY

DATE 1/16/14 BY MP

TOPEKA PERFORMING ARTS CENTER, INC.


John Bardsley, President

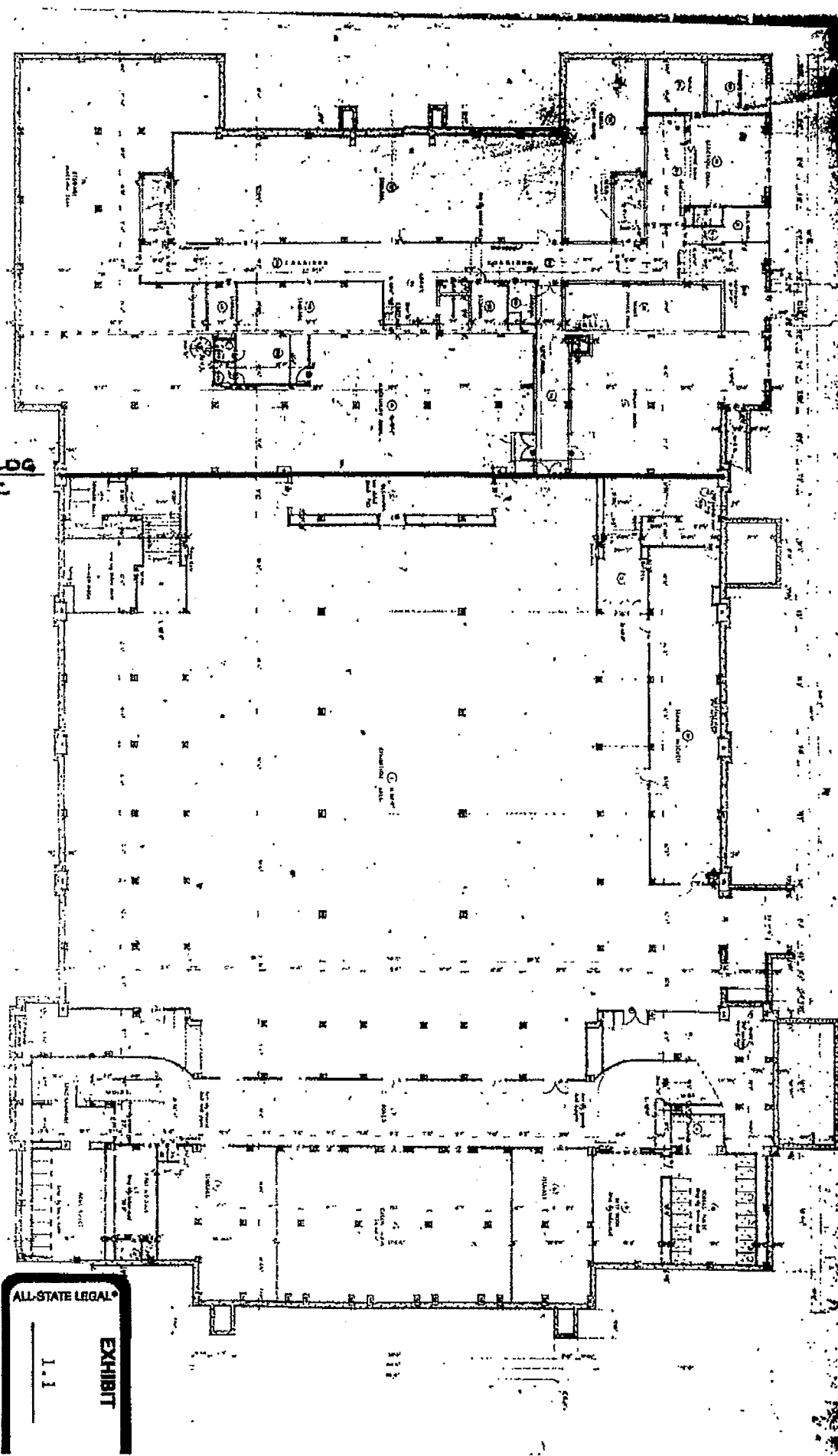
ATTEST:


Susan Lacey, ~~Secretary~~ Treasurer

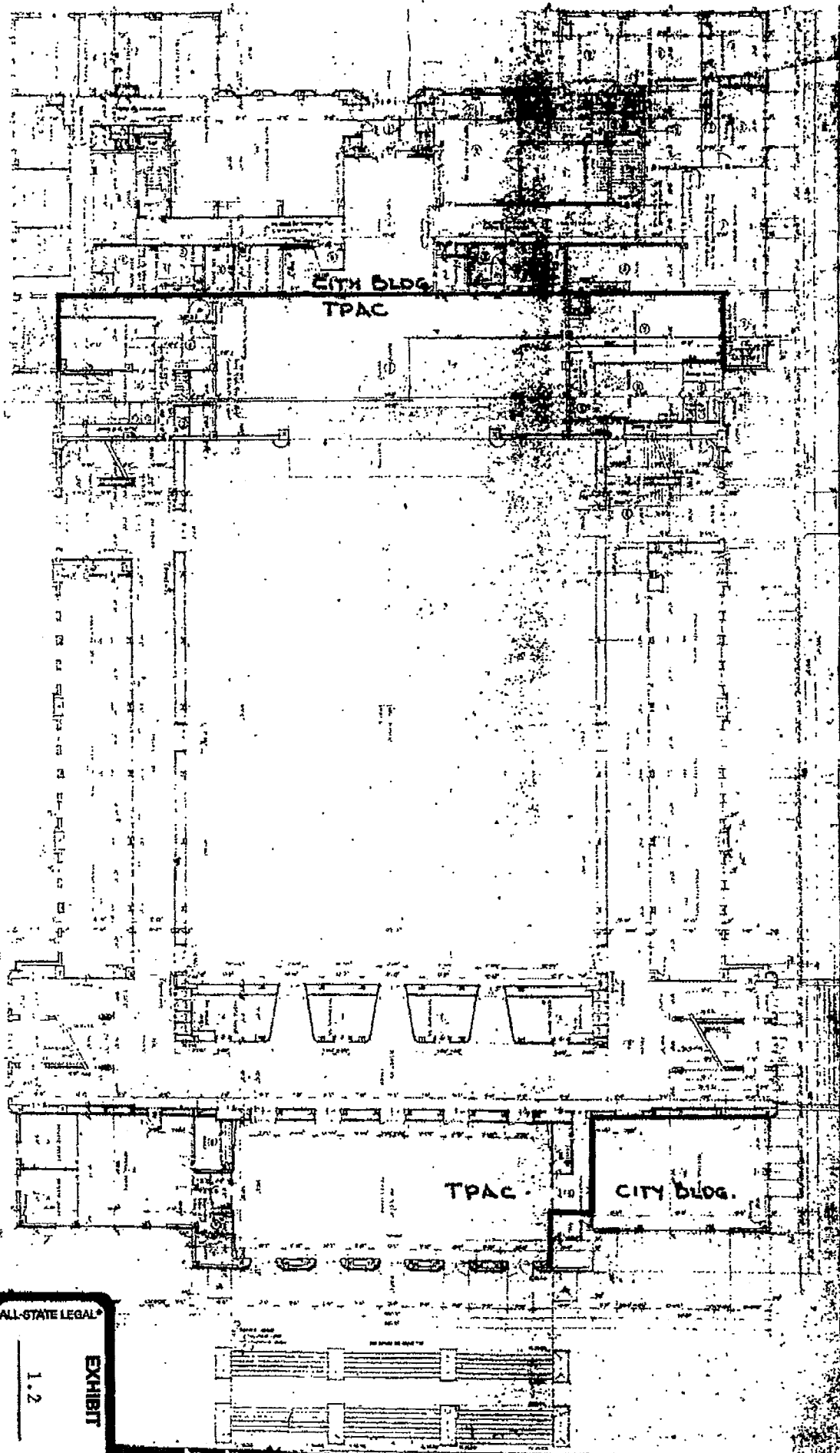
CITY BLDG
TPAC

MEETING ROOM PLAN

ALL-STATE LEGAL®
EXHIBIT
1.1



First Floor Plan



ALL-STATE LEGAL
EXHIBIT
1.2

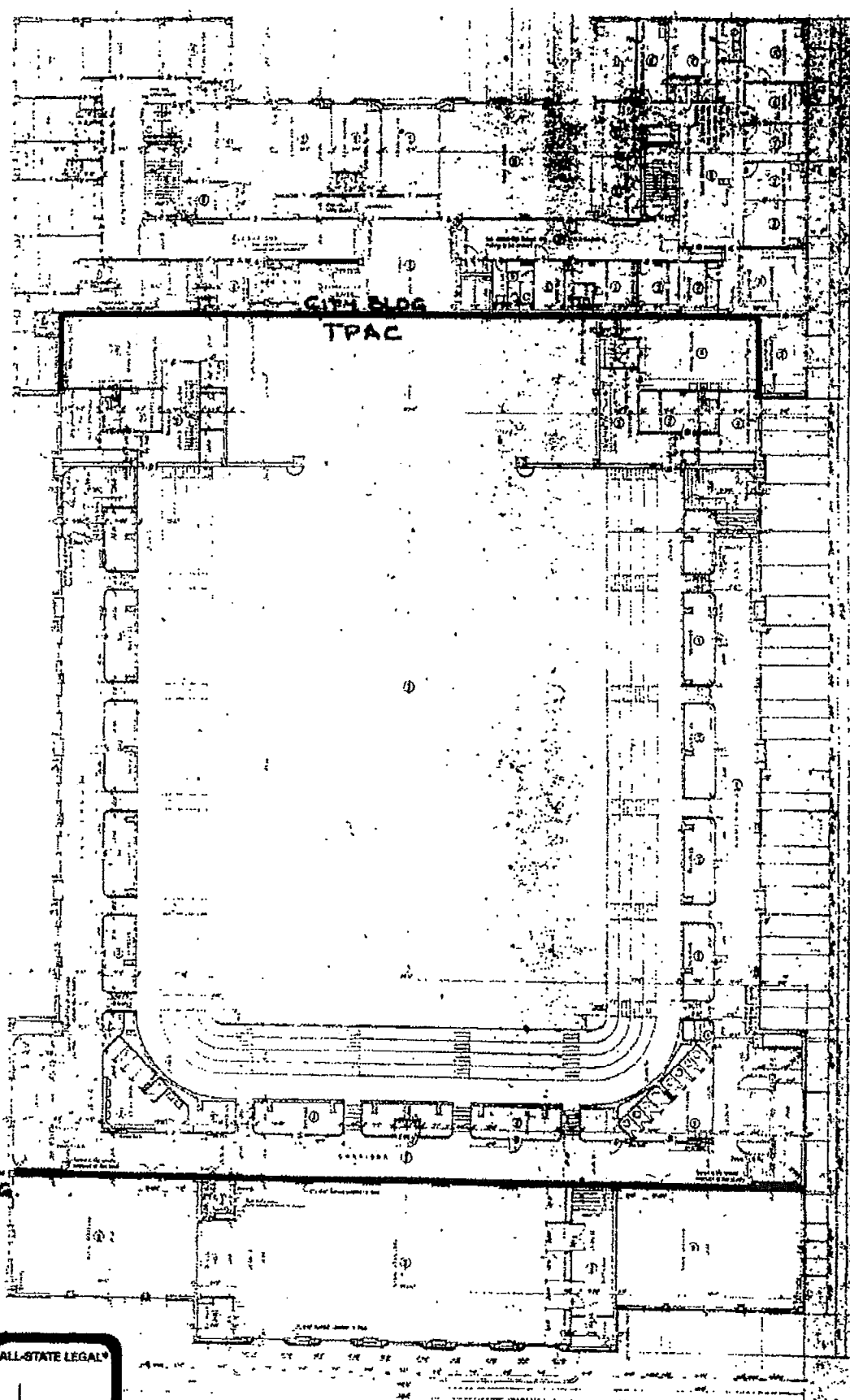
SECOND FLOOR PLAN

TPAC
CITY BLDG.

ALL-STATE LEGAL®

1.3

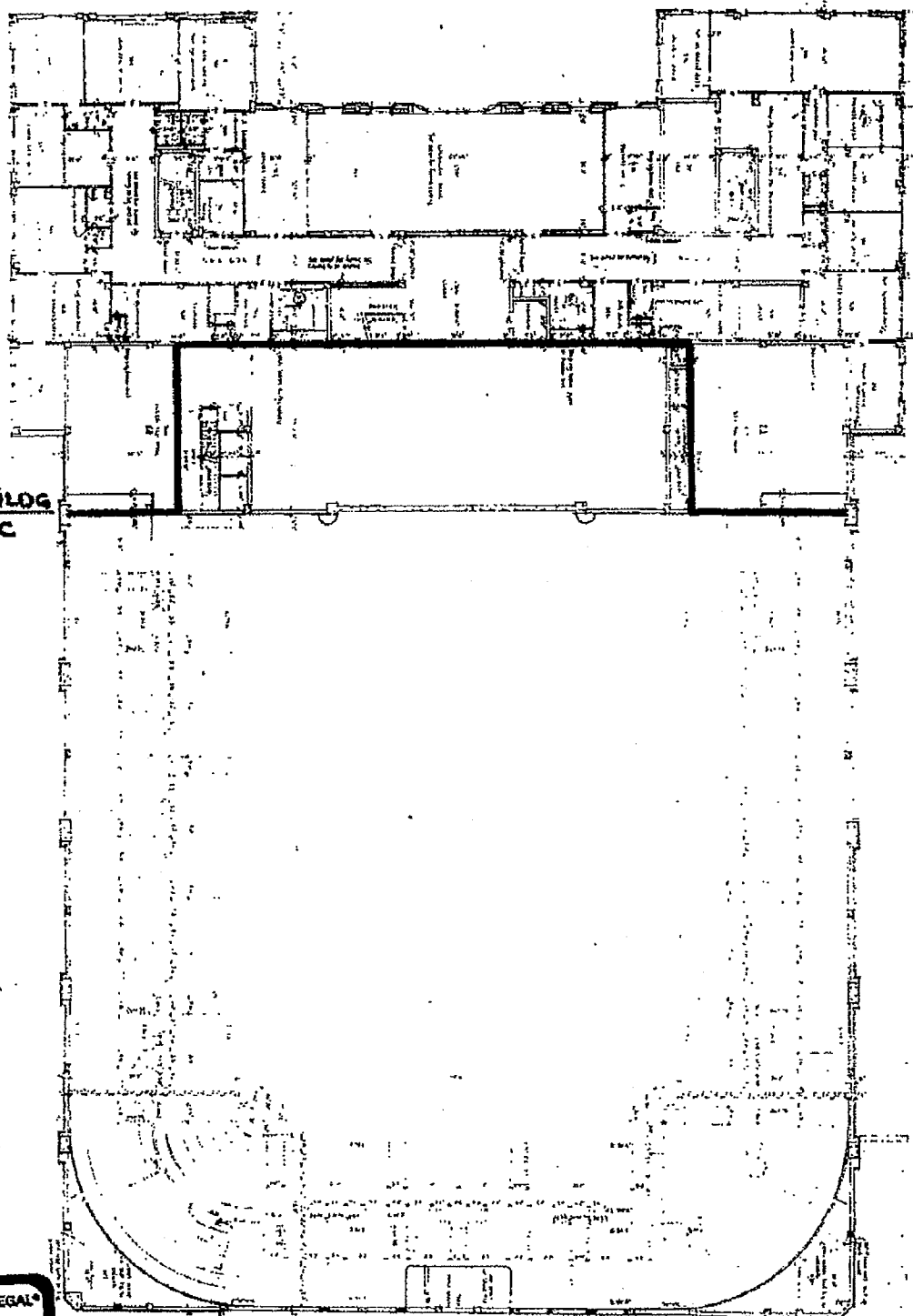
EXHIBIT



CITY BLOG
TPAC

THIRD FLOOR PLAN

ALL-STATE LEGAL®
EXHIBIT
1.4



Room	Area	Notes
101	100	Office
102	100	Office
103	100	Office
104	100	Office
105	100	Office
106	100	Office
107	100	Office
108	100	Office
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196	100	Office
197	100	Office
198	100	Office
199	100	Office
200	100	Office

Topeka Performing Arts Center - Inventory

Dept No	TPAC #	Description	Date	Life	Amount
6	030	Software	Jun-88	5	\$ 490.00
6	050	Cable Attachment	Jun-88	5	\$ 25.00
5	110	Computer Upgrade	Oct-88	5	\$ 3,006.00
5	160	Microlynx	Dec-88	5	\$ 5,123.00
5	180	Computer System	Sep-89	5	\$ 17,764.84
5	190	Prologue Software	Sep-90	5	\$ 32,000.00
5	200	Office Furniture	Oct-90	5	\$ 7,893.75
6	070	Furniture	Jan-91	7	\$ 1,850.00
5	220	Jenkins Music - Piano	Feb-91	20	\$ 15,000.00
5	230	Window Cover - Blinds	Feb-91	7	\$ 3,384.00
5	240	Freight	Feb-91	6	\$ 81.50
5	250	Vargas - Furniture	Feb-91	7	\$ 441.00
5	260	Ed Marlins - Furniture	Feb-91	7	\$ 884.00
5	270	Linda Lee - Chairs	Feb-91	7	\$ 17,603.07
5	280	Equipment Kitchen	Feb-91	10	\$ 23,903.05
5	290	Connecting Point - TERMNL	Feb-91	5	\$ 321.53
5	300	Pennsylvania House - FURN	Feb-91	7	\$ 1,386.14
5	310	Window Cover - Drapes	Feb-91	7	\$ 1,961.75
5	330	Freight	Mar-91	5	\$ 813.60
5	340	Flagline America	Mar-91	10	\$ 343.27
5	350	Piano Dolly	Mar-91	5	\$ 394.00
5	360	Irwin Seating - Theater Chairs	Mar-91	7	\$ 500.00
5	370	Topeka Lumber	Mar-91	20	\$ 675.47
5	380	Vacum Sweepers	Mar-91	5	\$ 981.75
5	390	Bob Florence Construction	Mar-91	20	\$ 1,054.00
5	400	Builders Express	Mar-91	20	\$ 1,310.26
5	410	Dressing Room Furniture	Mar-91	7	\$ 1,460.87
5	420	Music Stands - 54	Mar-91	10	\$ 1,725.00
5	430	AV Equipment	Mar-91	5	\$ 4,248.26
5	440	Hardister Paint	Mar-91	20	\$ 7,346.00
5	450	Carpeting	Mar-91	20	\$ 8,418.45
5	460	Equipment Kitchen, Bars, concessions	Mar-91	10	\$ 11,237.52
5	470	Equipment Kitchen, Bars, concessions	Mar-91	10	\$ 18,322.78
5	480	Card Tables	Mar-91	5	\$ 126.30
5	490	Blower Motor	Mar-91	5	\$ 706.58
5	500	Creative Signs	Apr-91	5	\$ 82.00
5	510	Carpeting	Apr-91	20	\$ 110.44
5	520	Davis Paint	Apr-91	20	\$ 450.78
5	530	Capital City Office	Apr-91	7	\$ 1,778.73
5	540	Window Covers - Drapes	Apr-91	10	\$ 1,961.75
5	550	Portable lift	Apr-91	20	\$ 3,900.00
5	560	Furniture	Apr-91	7	\$ 4,244.00
5	570	Kitchen Sinks	Apr-91	10	\$ 4,692.81
5	580	Cardinal	Apr-91	5	\$ 340.80
5	590	Wolfes	Apr-91	5	\$ 552.57
5	600	Connecting Point - TERMNL	Apr-91	5	\$ 829.32
5	610	Window Cover	Apr-91	5	\$ 3,667.01
5	620	ABF Freight	May-91	5	\$ 52.31
5	630	Lamps	May-91	7	\$ 252.54
5	640	Cardinal - trash cans	May-91	5	\$ 267.12
5	650	Topeka FM	May-91	5	\$ 413.20
5	660	Printer Stand	May-91	5	\$ 419.48
5	670	Podium	May-91	7	\$ 749.40
5	680	DL Smith Electrical	May-91	20	\$ 908.00
5	690	Graphic Impression	May-91	5	\$ 973.56
5	700	SW Bell Installation	May-91	5	\$ 263.39
5	710	Fans	Jun-91	5	\$ 80.75

Topeka Performing Arts Center - Inventory

Dept No	TPAC #	Description	Date	Life	Amount
5	720	Cocktail Tables	Jun-91	7	\$ 298.35
5	730	DL Smith - Dressing Rooms	Jun-91	7	\$ 590.64
5	750	Elect Identification Sign	Jul-91	5	\$ 31,949.00
5	760	Wolfes Camera	Jul-91	5	\$ 875.73
5	770	Furniture - CAP CY OFF PR	Jul-91	7	\$ 7,078.06
5	930	Signs	Jul-91	5	\$ 2,304.58
5	780	Love Seat - CAP CY OFF PR	Aug-91	7	\$ 1,989.23
5	790	Linda Lee Design	Aug-91	7	\$ 4,391.27
5	800	Laminator - Luggage Slot	Aug-91	7	\$ 61.78
5	810	Laminator	Sep-91	7	\$ 415.74
5	820	Table Caddy	Oct-91	7	\$ 862.74
5	740 & 830	Xenon Followspots & 500 W Quartz Lamps	Nov-91	5	\$ 8,400.40
5	840	Window Cover	Nov-91	7	\$ 82.10
5	850	Creative Signs	Nov-91	5	\$ 285.60
5	860	Equipment Marketing	Nov-91	10	\$ 938.25
5	870	Welding Cable & Receptacl	Nov-91	5	\$ 3,205.33
5	880	Topeka FM - Dividers	Jan-92	5	\$ 720.00
5	890	Topeka FM - P50 4 Watt 2 CH	Feb-92	5	\$ 1,055.66
5	900	Computer Cart	Apr-92	5	\$ 112.43
5	910	Prologue Program - Software	Jun-92	5	\$ 23,074.00
5	940	Storage Cabinet	Jul-92	7	\$ 402.31
5	960	Desks	Jul-92	7	\$ 3,098.57
5	970	Heating & AC Units	Aug-92	7	\$ 6,630.00
5	980	Computer Cart	Aug-92	5	\$ 675.64
5	990	SWB Telephone Lines	Aug-92	7	\$ 4,455.16
5	1000	MAS 90 Software	Aug-92	5	\$ 2,180.66
5	1010	Desks and Floor Mats	Sep-92	7	\$ 1,083.99
5	1020	Filing Cabinet & Chairs	Sep-92	7	\$ 656.32
5	1040	Ceiling Fan	Oct-92	7	\$ 273.00
5	1050	Computer Tables	Oct-92	7	\$ 296.52
5	1080	Piano Bench	Oct-92	7	\$ 344.18
5	1090	Music Stand & Lights	Oct-92	7	\$ 450.00
5	1070	Computer Tables	Dec-92	7	\$ 148.26
5	1100	Wireless Microphones	Dec-92	7	\$ 5,938.45
5	1110	Banquet Tables	Mar-93	7	\$ 666.44
5	1120	Dance Floor	May-93	20	\$ 1,596.34
5	1130	NEC Computer	May-93	5	\$ 3,326.32
5	1150	Sound Boards	Jun-93	7	\$ 15,800.28
5	1160	Leko Lights	Jun-93	7	\$ 2,412.00
5	1170	Lamp Bars, Truss, Connector	Jun-93	7	\$ 12,110.23
5	1180	Ashley Power AMPS, Limiter	Jun-93	7	\$ 10,261.01
5	1190	Sound/Light	Jun-93	7	\$ 3,572.75
5	1200	IBM-Box Office Main Disks	Jun-93	5	\$ 140.85
5	1210	Lights	Jun-93	7	\$ 2,165.53
5	1230	IBM PPSII Printer	Jul-93	5	\$ 569.74
5	1240	NP4 Laserjet Printer	Jul-93	5	\$ 2,378.82
5	1250	IBM PS/1 Computer	Oct-93	5	\$ 1,710.27
5	1260	AIX Software Upgrade	Jan-94	5	\$ 1,710.27
5	1270	Harddrive for AIX Machine	Jan-94	5	\$ 10,520.14
5	1280	Metal Signs	Apr-94	7	\$ 1,017.00
5	1290	Meridan Telephone	Apr-94	5	\$ 421.34
5	1300	IBM 486 / DX	May-94	5	\$ 3,440.69
5	1310	Desk Unit w/ Files	May-94	7	\$ 1,948.17
5	1330	Box Office Wide Printer	May-94	7	\$ 783.66
5	1320	Electrical Wiring In/Out	Jun-94	7	\$ 2,933.83
5	1325	Wiring	Jul-94	7	\$ 244.77
5	1340	CT 800 Crown AMP	Aug-94	5	\$ 1,345.46

Topeka Performing Arts Center - Inventory

Dept No	TPAC #	Description	Date	Life	Amount
5	1350	Laserjet 4+ Printer IBM	Aug-94	5	\$ 1,778.06
5	1430	Various Indoor Signs	Aug-94	7	\$ 783.66
5	1360	30 30x96 Tables	Sep-94	7	\$ 3,996.00
5	1370	20 30x72 Tables	Sep-94	7	\$ 2,466.00
5	1380	35 24x72 Tables	Sep-94	7	\$ 3,969.00
5	1390	15 Round 5 Ft Tables	Sep-94	7	\$ 2,295.00
5	1400	5 Round 6 ft Tables	Sep-94	7	\$ 1,064.25
5	1410	10 Round 30" Tables	Sep-94	7	\$ 1,183.00
5	1420	Burgandy/Black Chair	Oct-94	7	\$ 169.39
5	1440	8 10x20 Signs-No Beverage	Nov-94	7	\$ 338.88
5	1450	20 Maroon Tablecloths	Nov-94	7	\$ 2,045.22
5	1460	Strand LBX Control Desk (Light Board)	Dec-94	5	\$ 10,455.78
5	1470	F9 For Windows Software	Jan-95	5	\$ 143.68
5	1480	Table Cloths	Oct-95	7	\$ 3,638.49
5	1540	Orchestra Shell	Oct-95	7	\$ 1,801.09
5	1500	8 MG RAM CHIP	Jan-96	5	\$ 405.49
5	1510	Hard Drive-Cindy's Comp.	Feb-96	5	\$ 350.28
5	1520	Power Supply-Box Off. Comp.	Apr-96	5	\$ 437.55
5	1530	Coat Racks	May-96	7	\$ 251.76
5	1570	Event Sched Software	May-96	5	\$ 2,000.00
5	1560	Gateway Comp-Bus MGR	Aug-96	5	\$ 2,693.83
5	1580	MAS 90 for Windows	Aug-96	5	\$ 1,800.52
5	1590	HP Laserjet 1600c	Sep-96	5	\$ 1,459.56
5	1600	File Cabinets Midwest	Oct-96	7	\$ 944.74
5	1610	File Cabinets Midwest	Oct-96	7	\$ 631.60
5	1630	HP 700 Fax Machine	Nov-96	5	\$ 530.75
5	1640	HON 30x60 Desk & Chairs	Jan-97	7	\$ 1,401.03
5	1680	Washer and Dryer	Mar-97	7	\$ 100.00
5	1650	CPE Gate	Apr-97	5	\$ 1,781.20
5	1660	Monitor Box Offices	Apr-97	5	\$ 214.00
5	1670	Adjust Aluminum Easel	Apr-97	7	\$ 159.21
5	1690	Office Furniture	Jul-97	7	\$ 402.26
5	1730	Gateway 233MHZ Computer	Aug-97	5	\$ 2,142.80
5	1740	Gateway 200MHZ Computers-2	Aug-97	5	\$ 3,997.44
5	1700	Filing Cabinet	Sep-97	7	\$ 631.59
5	1710	F9 Program Software	Sep-97	3	\$ 220.79
5	1760	Office Accelerator Software	Aug-98	3	\$ 496.70
5	1780	Fileserver/4 Workstations	Aug-98	5	\$ 18,948.31
5	1800	Tables - 4 rounds	Aug-98	7	\$ 985.82
5	1860	Wire and Connectors	Aug-98	5	\$ 1,507.62
5	080	Computer Model 50	Sep-98	5	\$ 2,150.00
5	090	Software	Sep-98	5	\$ 30.00
5	100	IBM Quietwriter	Oct-98	5	\$ 916.00
5	1810	Telephone set	Oct-98	5	\$ 342.20
5	1820	Office Furniture	Nov-98	7	\$ 132.69
5	320	Crowd Control Rope & Stations	Feb-99	10	\$ 2,748.80
5	1830	Refrigerator - Stainless 4 door	Feb-99	7	\$ 1,000.00
5	1840	Officer Furniture	Apr-99	7	\$ 130.87
5	1870	Organizer	Aug-99	3	\$ 395.15
5	1890	Silverware	Aug-99	7	\$ 999.81
5	1900	Haunted House Set & Costumes (partial owner)	Oct-99	3	\$ 1,905.31
5	1910	Small Oven	Nov-99	7	\$ 369.00
5	1920	Refrigerator / Freezer	Nov-99	7	\$ 1,116.06
5	1930	Table - Rolling Counter	Nov-99	7	\$ 1,293.38
5	1940	Refrigerator - Perlick Beer Unit	Jan-00	7	\$ 972.95
5	1960	Computer	Jan-00	5	\$ 2,585.78
5	1980	HP Printer 4050	Jul-00	5	\$ 1,892.59

Topeka Performing Arts Center - Inventory

Dept No	TPAC #	Description	Date	Life	Amount
5	1990	Stage Floor Cover	Sep-00	5	\$ 1,086.84
5	2000	Phones/Charger	Oct-00	5	\$ 544.66
5	2010	Carpetriever - vacuum	Nov-00	5	\$ 1,785.23
5	2030	Ice Machine	Nov-00	5	\$ 4,187.18
5	2020	Aquaclean Classic - (carpet shampoo machine)	Dec-00	5	\$ 1,550.05
5	2040	Office Furniture (partition system)	Feb-01	5	\$ 160.00
5	2050	Computer	Mar-01	5	\$ 2,443.14
		Dell Optiplex Tower Computer w/Monitor	Feb-05		\$ 1,710.40
		Dell Optiplex Tower Computer w/Monitor	Feb-05		\$ 1,710.40
		Wenger Orchester Shell	May-01		\$ 6,000.00
		Motorola Radius CP200 Two-Way Radios (8)	Jan-07		\$ 3,277.25
		Quickbooks 2006 Pro Computer Program	Jan-07		\$ 193.40
		Used Lighting Equipment	Jan-07		\$ 1,289.40
		9' Carriage Bar	Jan-07		\$ 449.84
		Motorola Radius CP200 Two-Way Radios (4)	Feb-07		\$ 1,508.61
		Adobe Suite Computer Program	Feb-07		\$ 140.00
		Daktronic Electronic Sign	Mar-07		\$ 28,622.53
		Sound Equipment	Jun-07		\$ 9,643.64
		Under Counter Cash Boxes - Bars (4)	Aug-07		\$ 832.87
		Sound Console MH2-40	Oct-07		\$ 14,749.66
		Sunbeam Bakers Mixer	Oct-07		\$ 279.20
		Muslin Curtain	Nov-07		\$ 1,039.98
		Hearing Aid Devices	Jan-08		\$ 775.79
		Reciprocating Saw	Jan-08		\$ 216.12
		Chef Baker Coffee Urns (3)	Feb-08		\$ 231.03
		Lighting Console	Feb-08		\$ 17,192.00
		Wireless Mic System	May-08		\$ 599.99
		Tru Glass Refrigerator	Jun-08		\$ 1,241.05
		Dell Laptops(3), Monitors (4), Computer (2)	Oct-08		\$ 7,747.99
		Cash Register (2)	Nov-08		\$ 430.76
		Aiden chairs (4)	Dec-08		\$ 1,628.94
		Optiplex Dell Computers	Dec-08		\$ 704.88
		Motorola Radius CP200 Two-Way Radios (4)	Dec-08		\$ 1,507.34
		Blue "Pepsi" Texas Icers (4)	Dec-08		\$ 1,319.98
		Brun Coffee Brewer	Feb-09		\$ 235.03
		24' x 24' Dance Floor	Mar-09		\$ 3,389.51
		Auction Items	May-09		\$ 2,795.75
		Hon 2 Drawer File Cabinet	May-09		\$ 369.90
		Omni Vx510le CC Terminal	Jul-09		\$ 268.63
		Great American 8 oz. Popcorn Machine	Jul-09		\$ 190.19
		Dell Omniplex 360 Desktop Computer w/Monitor	Sep-09		\$ 639.32
		Dell Omniplex 360 Desktop Computer w/Monitor	Oct-09		\$ 639.32
		DeWalt hammer/impact Driver	Nov-09		\$ 322.77
		Maytag neptune Washer/Dryer Combo	Dec-09		\$ 881.70
		Dell Computers - Used from Dynamic	Dec-09		\$ 383.22
		Dell 2330D Monochrome laser printer	Jan-10		\$ 160.85
		StTRONG - Super Trouper Ballasts (2)	Apr-10		\$ 4,889.90
		Lasko - 42" Belt Drive Drum Fan	Jun-10		\$ 246.60
		Omni Vx510le CC Terminal	Aug-10		\$ 269.88
		Dell Optiplex 380 Desktop w/Monitor	Sep-10		\$ 587.24
		Dell Optiplex 380 Desktop w/Monitor	Oct-10		\$ 587.24
		Dell Optiplex 380 Desktop w/Monitor	Nov-10		\$ 587.24
		Euroclean 16" ReliaVac Vacuum	Sep-10		\$ 314.87
		Pizza/Food Display Warmer	Mar-11		\$ 280.00
		Gold Medal #2388 8oz. Popcorn Popper	Oct-11		\$ 618.43
		HP Proliant Server Serial #MXQ2210255	Mar-12		\$ 8,729.24
		(4) SMH-310 Single Muff Earphones w/ Intercom Beltpaks	May-12		\$ 645.80

Topeka Performing Arts Center - Inventory

Dept No	TPAC #	Description	Date	Life	Amount
		Double Glass Door Cooler - Model#GDM45 (used)	Jun-12		\$ 610.12
		Watchguard Firewall XTM 26 Serial #70A606105-E3EF	Dec-12		\$ 757.21
		(6) TRUFORM-High Back Multi Tiler Chairs w/ Arms Black	Jun-13		\$ 2,219.88
		(4) Motorola Xoom 32Gb 10" Tablets (used)	Jul-13		\$ 835.28
		(3) Wireless Access Points & ethernet Injector	Jul-13		\$ 2,137.28