

Preliminary Audit Report - Saratoga Performing Arts Center, Inc.

November 22, 2004

Mr. Charles E. Mather III  
Chairman  
Saratoga Performing Arts Center, Inc.  
Drawer B  
Saratoga Springs, New York 12866

Dear Mr. Mather:

Enclosed please find a copy of our draft report concerning the audit of the Saratoga Performing Arts Center, Inc. performed by the NYS Office of Parks, Recreation, and Historic Preservation, with the support of the Bonadio Group.

We request a written response to the issues contained herein by December 23, 2004 so that we may resolve any questions of fact and consider your views when preparing our Final Audit report.

Please send your response to the following address:

Mr. Paul J. Laudato  
Chief Counsel  
New York State Office of Parks, Recreation and Historic Preservation  
Agency #1  
Empire State Plaza  
Albany, New York 12238

We appreciate the cooperation and courtesies extended to our audit team during the course of our audit.

Very truly yours,

Paul J. Laudato  
Chief Counsel

**PRELIMINARY AUDIT REPORT**

**Audit of the Saratoga Performing Arts Center, Inc.**

**by the New York State Office of Parks, Recreation and Historic Preservation**

**November 22, 2004**

**EXECUTIVE SUMMARY**

**Overview**

On February 27, 2004, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) commenced an audit of the Saratoga Performing Arts Center, Inc. (SPAC), as authorized by the State's current lease agreement with SPAC. A preliminary investigation was conducted by the agency's Internal Audit Bureau, with the assistance of other agency staff experts. This was supplemented by audit services provided by The Bonadio Group, a Rochester, NY accounting, auditing and financial consulting firm. This review commenced July 1, 2004.

The audit's findings and recommendations are based on the work products of both the agency's review and the more comprehensive review by Bonadio's auditors. As SPAC already has its own outside auditor, UHY Advisors (formerly Urbach, Kahn and Werlin) of Albany, which conducts annual financial audits of SPAC, the focus of the Bonadio review and the agency's investigations has been on SPAC's financial management and related practices. As a firm, Bonadio has been pre-qualified by the state's Office of General Services to conduct both financial and management audits on behalf of state agencies. The initial scope of Bonadio's review was for the period from April 1, 1997 to March 31, 2004; this was extended through November 15, 2004.

Fundamental to the agency's 2004 audit of SPAC was the decision, on February 12, 2004, by the Board of Directors of SPAC to end its contractual relationship with the New York City Ballet (NYCB) after the 2005 season. NYCB was one of the original core performing arts organizations in residence at SPAC in a contractual relationship which was a central feature in the founding of SPAC as an organization. The presentation of music and dance programs is fundamental to SPAC's original 100-year rent-free lease from the state and its own corporate by-laws. In addition, while SPAC is a private, non-profit entity, it is unique in that it enjoys a significant asset at public expense in the form of its rent-free license for its premises. It is dependent on the state's ownership and responsibility for SPAC's capital facilities and SPAC receives both direct and indirect publicly-funded support for its purposes and programs. In light of this long-standing partnership between SPAC and OPRHP, and the fact that SPAC's patrons are also patrons of Saratoga Spa State Park make the continued and future success a matter of considerable public interest and investment.

This 2004 audit, therefore, is primarily concerned with the decision to end the NYCB's residency, the fiscal challenges facing SPAC which led up to that decision, how that decision was made and how it was communicated to the public, possible alternative courses of action, and how the public's confidence and support for SPAC and its programs can be increased to ensure

the continued presence of the fine arts, both the ballet and the orchestra, at SPAC. Future audits may focus on other aspects of SPAC's mission and performance.

### **Findings and Recommendations**

**1. SPAC's financial difficulties are the result of inadequate fundraising and outside support.**

SPAC has relied too heavily on ticket sales to generate the income needed to support its ongoing operations. In comparison with other performing arts organizations, SPAC depends on ticket sales for 55% of operating income as opposed to an industry average of 40%. SPAC needs to improve the quality of its development efforts, increase its endowment (and the earnings derived from it), and expand the level of support for its program within the communities it serves. SPAC needs to recommit to its development program, expand its fundraising efforts, and provide the staff resources necessary to be successful. SPAC also needs to develop and adopt a long-range strategic business plan (incorporating plans for development, membership, marketing and so on). The audit did not uncover any instances of fraud which might account for SPAC's financial difficulties.

**2. The decision to eliminate the New York City Ballet was flawed and was presented based on inaccurate and incomplete information.**

SPAC's decision to eliminate the residency of the New York City Ballet after the 2005 season was based on financial information which was inaccurately and incompletely presented. The \$900,000 "accounting gap" between ticket sale revenues and production costs did not portray the complete financial condition of the ballet program as it did not include directed gifts in support of the ballet program (as identified in SPAC's own financial records) nor were nearly identical balance sheet gaps by the Philadelphia Orchestra, the other principle summer tenant, disclosed to the public. Moreover, the audit found that the NYCB's commitment to its Saratoga residency included a \$700,000 subsidy of its own (made up from NYCB's own development efforts) and that the average attendance at a ballet performance at SPAC was higher than per-performance attendance at the NYCB's Lincoln Center home (excluding "The Nutcracker").

**3. The President, an employee of SPAC, does not perform at the level commensurate with his compensation. The duties of the SPAC President and its Director of Development should be clearly defined, performance goals established, and compensation awarded based on attainment of those goals, commensurate with similar positions in like organizations.**

The duties of SPAC's President include management and administrative tasks but are focused on fundraising and development. Notwithstanding these assignments, the position of Director of Development was likewise charged with development duties. This overlap is confusing and illogical, especially when viewed in the context of the two positions being currently occupied by spouses and, together, the two positions constitute the two highest paid positions in the corporation. SPAC's development program does not

measure up to those of similarly situated performance arts related non-profit organizations yet SPAC's President is compensated well above the standard for similar positions in comparable organizations. As of 2004, SPAC had no strategic plan for increasing its development program notwithstanding that the President was specifically tasked with that project by the Board in 1999. The compensation of the President is at the higher end of the spectrum for performance arts related non-profits and it included questionable loan and performance bonus arrangements, poorly defined expense account access and other practices that warrant review.

**4. SPAC needs to reaffirm its mission and commitment to the fine arts.**

The fundamental purpose for SPAC is centered on its music and dance residencies, the Philadelphia Orchestra and the New York City Ballet. These two internationally-renowned cultural organizations are much more than tenants that occupy space at the performing arts center during the summer months, they are true partners with SPAC and have been at the core of its mission since its inception. SPAC's successful partnership arrangement with Clear Channel Entertainment, Inc., which produces and promotes its popular music series, must be more fully leveraged to better support its principal mission and focus. Without the presence of the NYCB, the foundation of the state's 100-year rent-free lease would be called into question, still further jeopardizing the future of SPAC.

**5. The Board of Directors needs to expand its oversight and management roles in the operation of SPAC and reach out to its community of patrons, members, and supporters.**

The SPAC Board needs to take a more active, independent, and public role in SPAC's day-to-day management and decision-making. Board committees in such areas as executive compensation need to be continued and new committees added to better address key areas of SPAC's operations. SPAC's Board needs to become the public face of SPAC and reach out to its wider audience of its members and patrons and the community at-large, making the work more transparent and open to the public, providing opportunities for input and involvement, and reaching out in partnership to its landlord (the state) and other outside entities. The size of the Board itself should be expanded as part of this effort, including provision for a member at-large representing the general membership and patrons of SPAC.

**6. The Severance Agreement for SPAC's President, as approved by the Board of Directors on November 15, 2004, is excessive and should be reconsidered.**

The President's original employment agreement was to end on October 31, 2006. On November 15, 2004 the SPAC Board of Directors approved a Separation Agreement which had the effect of ending that employment one year early (October 31, 2005) and which contains incentives and bonuses payable after October 31, 2005. The value of these incentives and bonuses is more than what he would have made had he continued his employment with SPAC to its conclusion and could exceed \$400,000. This compensation

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package appears to be excessive and may be illegal under New York State Non-Profit Law and both Federal and state tax guidelines. Given the actual job performance of the President, the reduction in his duties and responsibilities since 1999, and the current financial condition of the organization, the payment of additional performance-based bonuses is highly questionable. If SPAC is to successfully increase its fundraising and development efforts and its support from within its community of patrons and members and continue to survive in the long-term, the integrity of its financial decision-making – and its continued tax exempt status – must be above reproach. The severance package being provided to the outgoing President should be reconsidered by the Board or, at minimum, it should undergo independent review by the appropriate governmental entities to assure the public of its legality.

A copy of this Preliminary Report is being provided to the Board of Directors and management of SPAC for their review and comments. The Board's response will be included in the Final Report, to be issued in 30-60 days.

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**INTRODUCTION**

**Audit Purpose**

The contractual relationship between the Saratoga Performing Arts Center, Inc. (SPAC) and the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) gives authority to OPRHP to inspect and audit SPAC's books and records. The contract also acknowledges SPAC's obligation to provide advancement of the Arts and the cultural enrichment resulting from opportunities to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits and the performing and fine arts. The February 12, 2004 decision by SPAC's Board of Directors to eliminate the New York City Ballet, which has been a constant in the SPAC repertoire since its founding, from the performance schedule after 2005 indicated a need for a State audit to determine the fiscal relevancies and to review the management processes leading up to this critical decision.

SPAC has never been audited by the State of New York. Instead, OPRHP has relied on the certification of financial statements performed by SPAC's independent accountants which are provided annually to the agency. Financial statement audits provide reasonable assurance that the financial statements present the financial position, results of financial operations, and cash flows or changes in financial position in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations for those transactions and events that may have a material effect upon the financial statements.

The potential loss of the New York City Ballet, however, indicated a need for OPRHP to initiate a management audit of SPAC. Management audits provide an independent assessment of the performance of an organization, program or activity in order to provide useful information to improve public accountability and decision-making. Patrons of SPAC are also patrons of OPRHP and an obligation exists to protect their interests under this contract. There is also a need to restore the public confidence in SPAC, to ensure that patrons are satisfied that sound management policies are being employed and supported and that any state funds expended in support of SPAC are being spent wisely.

This initial agency audit survey addressed the following key questions:

- How was the decision made to eliminate the New York City Ballet?

- Were the operating losses attributed to NYCB, on which the ballet decision was based, accurate?
- What is SPAC's financial condition and what are its causes?
- Does SPAC spend its resources in an economical and efficient manner?
- Were there any material financial matters which required further investigation?

### **Audit Scope, Objectives and Methodology (Initial Agency Audit Survey Process)**

An agency audit team was assembled, with representatives from audit, legal, and finance bureaus, and the state's audit commenced on February 27, 2004. The initial effort consisted of a survey of financial and internal control processes and records at SPAC for the years 1997 to 2003. An audit survey is a preliminary review of structure, data, and systems to identify the operational areas with a high potential for risk and to determine areas where more substantive investigations may be needed. The objective of any audit survey is to develop a more complete understanding of the organization and the areas to be audited. The process may include interviews with staff and requests for samples of relevant documents and data.

For its initial audit survey, the agency audit team

- met with SPAC management and staff, including the Executive Director and Director of Business Affairs;
- reviewed the security system for protecting both hard copy and electronic records;
- inventoried all records kept on-site;
- reviewed daily financial operations;
- reviewed meeting minutes of the Board of Directors;
- reviewed procurement procedures;
- reviewed expense account data;
- sampled expenditures and procurement records;
- reviewed financial and accounting data;
- obtained copies of selected current contracts;
- reviewed Box Office procedures; and
- gathered information in the areas of executive compensation, endowments, investments, as well as development activities.

The agency audit team also met with representatives from SPAC's certified public accounting firm, Urbach, Kahn & Werlin (currently UHY Advisors), to discuss its annual financial audit, reviewed their annual audit report and financial statements, reviewed past audits of SPAC, and noted the results of these audits.

During the course of this initial survey work, the agency audit team identified areas, items and processes requiring further investigation. These preliminary areas of survey and the areas in question are highlighted below.

#### **1. Record Keeping and Security**

The agency audit team spent considerable time with SPAC's Director of Business Affairs (DBA) and staff and discussed the security over the financial and membership records. These consisted of an alarm system, and locked cabinets and closets. Electronic records were protected

by passwords. A copy of the computer backup was taken off-site to the home of the DBA or that of his assistant, on a weekly basis as a precaution for disaster recovery. We discussed the types of records housed on-site and the various retention dates. Most records are currently retained for a seven year period (1996 to the present). Prior years' records are destroyed by shredding or burning under a contract with a waste removal company which certifies the destruction of records. The audit team conducted a physical walk through of the premises and inventoried the locations of records stored on-site.

- ✓ *Improvements could be made to security over records since we were told that passwords were not changed regularly and there were no written policies concerning use of the computer system or the internet.*

## **2. Staff and Organization**

Further discussion involved SPAC personnel. The audit team was provided an overview and a simple organization chart with a brief description of employee's responsibilities and introduced to those present in the building. We requested but were not given access to detailed job descriptions or resumes of employed individuals. We could not determine the content or completeness of these records from our initial survey.

- ✓ *Clear duties descriptions for staff with clear delineations of tasks, responsibilities and qualifications are essential to any business. This is an area requiring further investigation.*

## **3. Financial Management Practices**

As part of the initial audit survey, the audit team also discussed financial practices and day to day operations. The Executive Director has an American Express card for travel and procurement with no set limit on expenditures. The Director of Business Affairs has an American Express card for incidental expenses. All other employees who incur travel or miscellaneous expenses are reimbursed. Travel is pre-approved and expenses are receipted. SPAC operates with a petty cash fund of \$200 authorized for expenditures with a limit of \$50. Most checking accounts require two signatures – the President and the Director of Business Affairs. We were told that the President approved his own expenses and signed his own reimbursement checks.

- ✓ *Separation of duties in the handling of financial transactions is a basic principle of financial management. This is a potential area of risk.*

## **4. Minutes of Meetings of the Board of Directors**

The agency audit survey team was given access to the meeting minutes of the Board of Directors and the various Board committees. A general review of the minutes revealed that they did not reflect details regarding the substantive discussion among board members over major issues, in particular, the discontinuance of the NYC Ballet. They also lacked a tally of votes taken as part of a formal approval process. Without the benefit of notes on detailed

discussion, absent board members are at a disadvantage and reference for future discussion is severely limited.

- ✓ *Improvements should be made to the Board's meeting and communications processes, including improved advanced meeting notice process and the recording and distribution of minutes.*

## **5. Procurement – Payments to/for Individuals**

The State of New York has stringent procedures to ensure that a service or commodity is obtained at the best price. Although these same rules are not required of not-for-profit organizations, good business practice would incorporate such procedures (or their equivalent).

To assess risk in SPAC's procurement practice, we reviewed the expenditure ledger for 2000, selected sample transactions at random, and every item over \$1,000 in the 2003 ledger was noted. Although these expenditures may be legitimate or reimbursed to SPAC by employees or others, the following expenditures represent a sample of the types of expenditures that may warrant further review:

- \$100 donation to the American Heart Society in memory of an associate's mother
- \$250 expenditure to College of St. Rose for a polo match
- \$602.50 total to Dehn's Flowers for various occasions i.e. thank you's, illness, birthdays, etc.
- \$200 to Community Hospice
- \$700 to Proctor's Theater
- \$250 to Saratoga ARC
- \$160 to United Way of New York
- \$300 for the US Airways Club

- ✓ *Payments made on behalf of individual SPAC employees with SPAC funds should be reviewed to ensure that they are being made to the benefit of SPAC and its corporate mission, not to the benefit of individuals. These transactions should be investigated further.*

## **6. Competitive Bidding and Best Value Procurement**

Also of interest to the OPRHP audit team were procurement practices regarding competitive bidding and best value. For example, several different printing companies were used for brochures, invitations, and so on, rather than a single consolidated purchase. Seasonal landscaping services were secured through a single vendor at a cost of \$9,012.50 per month (April, May, June, July, August, September, October, and November) for SPAC and \$1,390.50 for the National Museum of Dance. However, this did not include additional costs for related services such as repair of winter damage, concert damage and roof snow removal. SPAC dropped the incumbent insurance provider in favor of one owned by a Board member. Although SPAC officials claimed to have conducted a closed bid process for this procurement, no documentation of such was provided.

- ✓ *SPAC should reevaluate its procurement practices to consider greater use of consolidated purchasing, more use of competitive bidding for services and supplies, and establish conflict-of-interest standards when doing business with firms associated with Board members, staff and other associates.*

## **7. SPAC President's Expense Account**

SPAC pays all the President's expenses in connection with his duties including but not limited to expenses of public transportation and subsistence, in addition to providing an automobile (and all associated costs) for his personal and business use. A review of the expenditures indicated that among other expenses a significant number of meals were claimed, some with Board members, some with undetermined guests; some with receipts, and some without receipts.

- Dining costs, as claimed by the President, totaled \$48,193 for the period from 1997 to 2003.
  - \$30,809 was spent on hotels for the President for the period from 1997 to 2003. We also noted that trips were made to California and Florida in years when Clear Channel was responsible by contract for booking events.
  - Expense account payments on behalf of the Executive Director totaled \$122,829 for the period from 1997 to 2003, an average of \$17,500 per year, with a peak expense of \$22,974 in 1998.
  - In 2003, \$1,650 reimbursed to the President from SPAC funds for attending various charitable events such as :
    - Polo by Twilight (\$300)
    - April in Paris Gala (\$400)
    - Dressage Black Tie Gala (\$300)
    - Cinderella's Ball (\$300)
    - Saratoga Stages Benefit (\$350)
  - For the period from 1997 to 2003, \$1,530 was spent for credit card memberships and \$835 was spent for gifts for others.
  - The President's American Express card bill included a charge of \$560 for two airline tickets in November 2003 for flights to West Palm Beach, Florida, to visit a Board officer who had resigned the previous July.
- ✓ *The Executive Director (or any staff member) should only be reimbursed for expenses relative to advancing SPAC's mission and purpose. Organization funds should not be used for personal expenses. Payments for charitable contributions made in the name of an employee cannot be claimed as tax exempt contributions by the employee. From the records provided, we could not determine whether this occurred in these instances.*

## **8. Duties and Compensation of the President of SPAC**

The SPAC President's compensation contract was renegotiated in 1998. While that contract provided for a 29 % increase in the overall compensation package (with 5% annual cost of living adjustments), the contract was not approved by the full Board as required by New York State law. The salary decision was based on a compensation study that compared the President's proposed compensation with the compensation levels of executive personnel at other venues. Closer analysis of this study revealed that the venues relied upon were not truly comparable to SPAC in terms of overall budget and scope of management duties. Shortly after the current compensation contract was in place, Clear Channel Entertainment contracted with SPAC to book and stage all touring and professional groups (rock and pop concerts), at their sole risk, thereby substantially reducing the level of responsibilities for the President.

Notwithstanding this substantial reduction in his responsibilities, the President's compensation package was not adjusted accordingly. Rather, he pledged publicly to devote more time to "development" and to "refocus" efforts on "signature classical programming" (Capital District Business Review, 2/18/00). According to Board meeting minutes, he also was tasked by the Board to prepare a long range strategic business plan. The audit team could find no evidence that such a long range business plan was in fact prepared or implemented. The lack of a long-range strategic business plan can be directly linked to the Board's decision regarding terminating the residency of the Ballet: had a strategic business plan been developed and implemented in 1999, SPAC's financial condition might have been very different in 2004 and the Board may have been presented with much more favorable scenarios for SPAC's long term financial viability.

- ✓ *During the period of time reviewed under this audit, the salary and other compensation of the President rose substantially as his job responsibilities were reduced markedly, while at the same time he failed to devise and implement a strategic plan or otherwise successfully deal with the deteriorating financial condition of SPAC.*

## **9. Decision-Making and Accountability to the Public**

The decision to terminate the residency of the NYCB was made at a February 12, 2004 Board meeting, the minutes of which reflect that only ten (10) members were in attendance. They had no advance notice that the elimination of such a key component of SPAC's core mission was contemplated. These ten members represent less than 50% of the 23 member Board of Directors (the SPAC by-laws allow for a maximum of 36 board members). These facts caused the audit team to question the process by which SPAC makes key decisions.

Similarly it was noted that no prior public announcements regarding concerns for the Ballet's future had been given, nor were members of OPRHP management or elected officials made aware that such a proposal would be made, notwithstanding the substantial public investments that have been made to support SPAC's mission. In 2003, attendance for the New York City Ballet at SPAC was up 8% from 2002 and revenues grew by 13%, which the SPAC President publicly called "gratifying" (Capital District Business Review, 7/29/03 citing a SPAC press release). In a March 3, 2004 article in the Albany Times Union, based on meeting between SPAC representatives and the paper's editorial board, it was reported that the decision to end the

residency for the ballet “was the result of years of discussion between [SPAC President] Chesbrough and the board.” This assertion could not be verified from either SPAC Board meeting minutes or public announcements and is in fact inconsistent with the Board discussion that is documented by minutes of the relevant meeting.

There is an historic and close relationship between SPAC and the State. SPAC is situated within the historic Saratoga Spa State Park and was constructed with the intent of bringing classical performing arts to upstate New York within a State Park setting. The organization is dependent on the OPRHP for capital improvements to the performing arts center and enjoys a significant asset at public expense in the form of a rent free, 100 year lease to operate throughout the summer months. The value of this lease subsidy, for the SPAC amphitheater and grounds alone, has been estimated at \$1 million annually. In addition, SPAC has received funds from the OPRHP budget and from the Legislature for capital projects and indirect operating support. Overall, the State has invested over \$5 million in capital improvements at SPAC over the ten-year period from 1995 to 2004.

- ✓ *Due to the past and continuing investment of public funds in SPAC, it would be appropriate for the public to have a greater voice in the operation of the corporate affairs of SPAC. SPAC’s current by-laws provide for the inclusion of two commissioners of the Saratoga-Capital State Park and Recreation Commission to serve on its Board. The role of these two public representatives should be expanded to include established membership on key committees, including the Executive Committee, the Nominating Committee, the Compensation Committee and the Budget/Finance Committee. In the event of the creation of a Committee to select future critical personnel, OPRHP representatives should be on that committee as well. In all Board actions, the OPRHP representatives should have full voting power.*
- ✓ *As indicated, substantial public funds are invested in SPAC every year. The public would be served by having SPAC be open and inclusive in its own budget process through an “open meetings” process and with State Parks having the opportunity to review and comment upon SPAC’s proposed budget prior to its adoption. To safeguard the continuing public investment in SPAC, SPAC should retain an outside audit firm, satisfactory to State Parks, that has no ties to SPAC or its Board of Directors.*

## **10. Financial Data Used in Support of the Ballet Decision**

In February 2004, SPAC voted to sever its contractual relationship with the NYCB, beginning with the 2006 season. The rationale for this decision, as presented to the public, is summarized as follows:

- Troy Times Record, 2/14/04: “SPAC pays NYC Ballet a direct company fee of \$2 million. Plus there are considerable related costs on top of that, [Executive Director Herb Chesbrough] said. Last year box office revenue was \$1.2 million, meaning the ballet cost SPAC in excess of \$1 million.”
- New York Times, 2/16/04: “ ‘It was a cost-cutting measure,’ Herb Chesbrough said...Revenue from the ballet rose by 12.9 percent to \$1.24 million in 2003, with attendance rising 7.6 percent. There was a decline in revenue and attendance

during the same period for the Philadelphia Orchestra, the center's other classical resident since 1966, which has a contract through 2005. Both companies operate at a deficit, but Mr. Chesbrough described the orchestra loss as significantly less."

- Albany Times Union, 2/24/04: "SPAC lost more than \$900,000 annually on City Ballet residencies in 2002 and 2003, Chesbrough said. The dance company charged SPAC \$1.8 million to maintain its performances last summer. Other costs as varied as \$12,000 for custodians and \$85,000 for advertising pushed SPAC's total ballet expense to \$2.16 million, he said, versus ticket income of just over \$1.25 million."

A preliminary review of SPAC's own financial records for 2003 indicated that the balance sheet for the ballet showed an annual operating loss of \$754,375 and an operating loss for the orchestra of \$732,149. This financial data is inconsistent with the information presented to the public regarding the decision to sever SPAC's 38-year relationship with the ballet. Moreover, SPAC's internal financial reports for 2003 document that ticket sales support 55% of direct production expenses while those of the orchestra total 46%.

- ✓ *Any major decision, such as the one to eliminate the ballet from SPAC's program, should be made based on full and complete financial information. This is an area requiring further investigation.*

## 11. **Annual Financial Statements**

The Albany-based accounting firm of Urbach Kahn & Werlin (UKW, currently UHY Advisors), audits SPAC's financial records annually and certifies the adequacy of the processes involved and the associated internal controls. They prepare SPAC's annual financial statement and filings required for federal and other regulators. Agency audit survey team members visited their offices and met with a partner in the firm to discuss their SPAC engagement, which started in 1995. UKW issued an unqualified opinion for fiscal year 2003 and did not report any deficiencies in SPAC's internal controls.

The UKW representative noted that, for 2003, SPAC changed its fiscal year to a calendar year basis, which makes some year-to-year comparisons difficult (the prior fiscal period had ended October 31<sup>st</sup>). He also stated that related party transactions now require full disclosure in the audit report.

- ✓ *SPAC needs to continue to use independent, outside auditors. SPAC should expand the number and types of audits, to include performance audits encompassing different program areas.*

## 12. **Board Independence**

The UKW audit file indicated the names of board members past and present who had conducted business with SPAC in the areas of insurance, tent cleaning, banking, rental space, financial advisement, advertising, and computer services.

During our review we noted the Ayco Company as an example of a Board related company which had a significant impact on the SPAC operations. The CEO of Ayco was an

officer on SPAC's Board. Ayco advised SPAC on investment policies, investment vehicles, and compensation issues for the SPAC President. An Ayco employee was a financial advisor to the Compensation Committee and reviewed the terms of the President's compensation contract with SPAC.

As noted in July 16, 2003 issue of The Business Review, the "CEO of the Albany, NY based Ayco Co. LP has resigned as vice chairman of the board of directors of the Saratoga Performing Arts Center. As part of this move, [he] created the Herb Chesbrough Scholarship in the Arts at Siena College, and funded it with a \$500,000 gift to the Loudonville School."

- ✓ *Board members need to provide independent oversight of SPAC's operations and finances. Board members (and their companies) who do business with SPAC, who advise the SPAC board on issues of executive compensation, and members who have close personal relationships with SPAC staff create a potential for conflicts of interest (or the appearance of such). These types of relationships are to be avoided.*

### **13. Box Office Practices**

Although covered by the accounting firm's annual review and certification, an area of interest to the OPRHP audit team was the flow of money through the box office and into SPAC's accounts. A review of the documented process was performed: ticket sale receipts were traced through the Box Office system via the various cashier daily, weekly, monthly, and annual summary reports, compared to Ticketmaster reports, and then traced to entries in the General Ledger.

During this review we found evidence of large checks made payable to the Director of Business Affairs. He explained that some touring and performing artists contractually required their payments in cash. The DBA would draw these checks and then cash them in order to provide payment to the artist. This was SPAC's method of accounting for such cash payments.

- ✓ *Continued vigilance is required, including frequent and regular reviews, where cash handling is involved.*

### **14. Fundraising Events**

The OPRHP audit team's preliminary survey found that major fundraising events often did not break even, that they cost more to hold and actually lost money for SPAC. According to IRS Forms 990, reported contributions from the 1998 New York City Ballet Gala totaled \$118,848 and in 1999 Ballet Gala contributions totaled \$99,315. In 2000, it was reported that all special fundraising events, including the Ballet Gala, generated \$73,486 but at a cost of \$126,646 – a loss of \$53,150. In 2001, SPAC reported that the loss on its special fundraising events increased from \$53,150 to \$93,926, including gross revenues from the Ballet Gala of only \$18,545 versus expenses of \$55,351.

- ✓ *The performance of SPAC's fundraising and development program requires further investigation.*

**Need for Assistance and Additional Expertise**

After this extensive survey was conducted and numerous questions raised, it was determined that significant expertise was needed to properly review items associated with the operation of a not-for-profit arts organization. These include:

- a) fundraising, development and membership activities
- b) management of the endowment and other restricted funds
- c) investment policies and strategies
- d) compensation packages for executive staff and
- e) the relationship of SPAC with comparable performing arts organizations (in terms of budget, management, fundraising and endowment, staff compensation)

At that time an independent certified public accounting firm with significant experience in the audit of not-for-profit organizations and arts- affiliated -organizations was located and contracted to perform these audit services and to fully explore the materiality of questions initially raised by the OPRHP audit team.

The Bonadio Group, from Rochester, NY, was engaged by OPRHP to conduct this more detailed assessment of SPAC's management and finances. This audit commenced on July 1, 2004.

**Managerial Review of Saratoga Performing Arts Center, Inc.**

**for the New York State Office of Parks, Recreation and Historic Preservation**

**AUDIT FIRM BACKGROUND AND ORGANIZATION**

The Bonadio Group (Bonadio) was founded in 1978 in Rochester, NY, with two partners and one part-time employee. Today, we are the largest independent provider of accounting, business advisory, and financial services in Upstate New York.

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) engaged our services from July, 2004 thru November, 2004 to support and assist in their audit of the Saratoga Performing Arts Center (SPAC). Specifically, we were tasked to perform a management audit and to prepare a report of findings, based upon our expertise in conducting similar types of projects and our experience with performing arts organizations ranging from theaters to operatic associations to philharmonic orchestras.

Our operational and financial audit expertise is complemented by our experience in performing executive compensation studies for both not-for-profit and private companies.

Another factor in our selection was the fact that we are an approved vendor for the New York State Office of General Services (OGS), and are now one of a select group of CPA firms qualified by OGS to provide financial and operational audits for New York State (State or the State) and municipal government, authorities, and programs. Currently, we audit or deliver consulting services to the Counties of Monroe and Ontario, municipalities like Pittsford and Greece, NY, school districts, industrial development agencies, and State authorities.

To supplement our expertise, we engaged the Association of Arts Presenters (Arts Presenters) to provide experience and statistics on performing arts centers in the country. The membership of Arts Presenters is comprised of some of the most successful presenting organizations in the country and abroad. They range in budget size and mission as broad as the mind can imagine. Currently, Arts Presenters has approximately 1,200 presenting organizations in its membership.

**SCOPE OF SERVICES**

The objective of this engagement is to support and assist OPRHP staff in conducting a management audit of SPAC. Specific services required include:

1. Review of SPAC's business management, budget, and accounting practices
2. Review of SPAC's fundraising, development, and membership programs in relation to similar organizations
3. Review of SPAC's staffing, compensation, and benefits including executive compensation and private insurance packages and review of SPAC Board actions to affect same
4. Review of SPAC's economy and efficiency in the deployment of staff resources

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5. Review of SPAC's management of its endowment and other restricted funds for the benefit of its primary mission
6. Review of external revenue and expense contracts entered into by SPAC to determine the appropriateness of contractual relationships and benefits of the agreements
7. Review of board governance and identification of financial, organizational, governance, contractual and other factors which inhibit optimum performance by SPAC

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**BENCHMARKING**

We utilized the expertise of Arts Presenters to develop the database for the benchmarking used in this study. From their database of members, Arts Presenters regularly survey the field to gain insight into their budget, artistic, and management trends. One of the complications of making comparisons in the presenting field is that organizations are often “hosted” by another institution that may have multiple missions and budgets such as performing arts centers that are part of universities. While the “hosted” organization scenario complicates data gathering, Arts Presenters has developed a survey that has become fairly standardized for many to benchmark their activity against others around the country (SPAC is not “hosted”). In addition to its field-specific work, Arts Presenters is also a leading participant in the Performing Arts Research Coalition, which is a partnership of five leading arts associations to standardize data collection and audience trends in the performing arts. It is with this foundation of information, in addition to independent research, from which we have drawn the following conclusions about the scope of this project.

We have spent a great deal of time reviewing the mission and artistic activity of SPAC. With this information, coupled with the organizational budget data, we searched the field of performing arts centers nationally to determine what group of presenting organizations they should be best compared with. Our review of similar organizations considered mission/artistic activity, community wealth, and budget size.

**Artistic Activity**

SPAC supports two significant summer residencies-The New York City Ballet (the ballet) and The Philadelphia Orchestra (the orchestra). In addition, SPAC contracts with Clear Channel Entertainment, Inc. (Clear Channel) who has complete responsibility for contracting national touring professional artists.

There are hundreds of organizations with a similar mission and artistic activity. We further qualified our search to include organizations that host a major symphony or dance ensemble as a resident company.

**Community Wealth**

SPAC is supported by the greater Albany Capital district region, including Saratoga Springs and its summer residents and visitors. In an effort to replicate the Saratoga Springs influx of summer arts patrons, we reviewed a number of performing arts centers and festivals that are located in high-wealth areas of the country or regions where wealthy arts patrons reside during the summer.

**Budget Size**

The most meaningful comparison would be with organizations that have a combination of these factors as well as a similar budget size. In this consideration, a number of hosted institutions (presenting organizations at universities primarily) come into play. We opted for a broader group to allow for the chance to consider growth or reduction at SPAC.

In making budget comparisons, it must be recognized that SPAC’s actual annual revenues totaled \$5.1 million in 2003. To make proper comparisons, however, we included rock and pop concert ticket sales (\$6.8 million in 2003 which are paid to Clear Channel and which return approximately \$1 million in profit annually to SPAC) as if they were a part of SPAC’s revenue. SPAC does not, however, have the added expense of producing or promoting these popular music acts (as these are borne by Clear Channel),

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nor does SPAC have the expense of paying rent for its facilities or the cost of capital facility improvement (as these are part of the state subsidy under SPAC's lease).

### Data Set

With this in mind, we compared SPAC to a core data set that includes the following 19 organizations:

1. Cincinnati Arts Association (OH)
2. Hancher Auditorium/University of Iowa (IA)
3. Jacob's Pillow Dance (MA)
4. La Jolla Music Festival (CA)
5. Lied Center for the Performing Arts (NE)
6. Maui Arts & Cultural Center (HI)
7. Music Association of Aspen (CO)
8. North Shore Community Arts Foundation (MA)
9. Omaha Performing Arts Center (NE)
10. Peace Center Foundation (SC)
11. Performing Arts Center/University of Texas (TX)
12. Ravinia (IL)
13. Raymond Kravis Center for the Performing Arts (FL)
14. Scottsdale Center for the Arts (AZ)
15. Strathmore Hall (MD)
16. Tennessee Performing Arts Center (TN)
17. UA presents/University of Arizona (AZ)
18. University Musical Society/University of Michigan (MI)
19. Wolftrap (VA)

This data set of organizations (see Exhibit I and II) includes those with similar sized budgets, similar missions, and similar community wealth characteristics as SPAC's, with two exceptions. Both Wolftrap and Ravinia are performing arts organizations which well exceed SPAC in these areas. They were included in our sample as they have been included in past investigations and comparisons, as conducted by the Board and management of SPAC.

This original sample was expanded for the purpose of benchmarking compensations (See Exhibit IV). The expanded list of venues was then stratified into three groups based on budget size. We believe that executive compensation should be correlated with the organizational budget that the President and Executive Director (President) is responsible for. The first group is comprised of venues with operating budgets of \$0 through \$5 million. The second group, which includes SPAC, is comprised of venues with operating budgets from \$5 to \$15 million. The third group is comprised of venues with operating budgets of \$15 million and above. Our full data set was expanded to include 55 performing arts organizations, as follows:

1. American Conservatory Theater Foundation
2. Blossom Music Festival
3. Boston Ballet
4. Boston Conservatory of Music
5. Boston Symphony Orchestra
6. Brooklyn Academy of Music, Inc.
7. Cincinnati Arts Association\*
8. City Center 55<sup>th</sup> Street Theater
9. Columbus Association for the PA

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**BENCHMARKING (Continued)**

10. Denver Center for the PA
11. Grand Teton Music Festival
12. Hancher Auditorium/University of Iowa \*
13. Horace Bushnell Memorial Hall Corp
14. Jacob's Pillow Dance \*
15. Jazz at Lincoln Center
16. JFK Center for the PA
17. La Jolla Music Society \*
18. Lied Center for the Performing Arts \*
19. Los Angeles Philharmonic Association
20. Miami City Ballet
21. Maui Arts & Cultural Center \*
22. McCarter Theater
23. Midland Center for the Arts
24. Music Association of Aspen \*
25. Nantucket Arts Council/Nantucket Musical Arts Society
26. New Jersey PAC
27. New York City Ballet, Inc.
28. New York City Opera, Inc.
29. North Shore Community Arts Foundation \*
30. Omaha Performing Arts Center \*
31. Orange County PAC
32. Park City Chamber Music Society
33. Peace Center Foundation\*
34. Performing Arts Center of LA
35. Performing Arts Center/University of Texas \*
36. Philadelphia Orchestra Association
37. Pittsburgh Trust for Cultural Resources
38. Ravinia \*
39. Raymond Kravis Center for the PA \*
40. Santa Fe Music Festival
41. Scottsdale Cultural Council \*
42. Society of Four Arts
43. Stamford Center for the Arts
44. Strathmore Hall \*
45. Tampa Bay PAC
46. Tennessee Performing Arts Center \*
47. UA Presents/University of Arizona \*
48. University Musical Society/U of Michigan \*
49. Victoria Theatre Association
50. Virginia Arts Festival
51. Wang PAC
52. Weidner Centers for the PA/University of Wisconsin
53. Wolftrap \*
54. Woodruff Center
55. Yerba Buena Festival

\* Core data set

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**FINDINGS AND RECOMMENDATIONS**

**1. FINANCIAL CONDITION**

Saratoga Performing Arts Center, Inc. (SPAC) is a tax-exempt organization under Section 501(c)3 of the Internal Revenue Code. SPAC's mission and its tax-exempt status are tied to educating the public and developing their understanding of the performing arts. For the last 38 years, SPAC has brought this mission to life by providing summer residence to both the ballet and the orchestra. SPAC also hosts an annual jazz festival. Classical events are subsidized, in part, through revenues generated by hosting popular music and performing acts, under a contractual agreement with Clear Channel.

In the 1960's the SPAC amphitheater was constructed on State lands through contributions from the Rockefeller Brothers Fund, community support and the State Title was transferred to the State in exchange for exclusive use of the amphitheater during the months of June through September each year. SPAC does not pay any rent for the use of its facilities nor is SPAC responsible for the capital improvements to its physical plant (which includes the amphitheater, grounds and parking lots, the Hall of Springs and the Spa Little Theater). The original lease expires in 2019; SPAC has the right to renew the license another 50 years (through 2069). Repairs, maintenance, grounds and security costs are also subsidized by the State.

SPAC is required by its lease to provide the State with a copy of its certified annual financial statement, which is audited by a Certified Public Accountant. As a 501(c)3 non-profit, SPAC also is required to file Form 990 (Return of Organization Exempt from Income Tax) with the IRS annually and NYS Form 497 (Annual Financial Report) with the State. At the present time, SPAC's external auditor is the firm of UHY Advisors (formerly Urbach, Kahn and Werlin (UK&W)) of Albany.

SPAC's external auditors expressed an unqualified opinion on the financial statements for the years ended December 31, 1997 through December 31, 2003. In addition, UK&W noted no significant internal control or other deficiencies in their management letters. Nothing came to our attention, as a result of our review of information provided to the audit committee or as a result of our conversations with UK&W, that would lead us to believe that there were significant accounting issues noted or that there were significant internal accounting control deficiencies.

In October of 1997, SPAC's net assets totaled \$10.6 million. Net assets had declined to \$4 million by the end of 2003, due to a trend of operating losses and insufficient revenues from fundraising and endowment to cover these losses. Donor restrictions limit the use of \$2.6 million of this \$4 million to purposes specified by the respective donors.

SPAC's investment portfolio has decreased from \$10.1 million at October 31, 1997 to \$6.6 million at December 31, 2003 due, in part, to market losses and, in part, to the invasion of investment principal to subsidize continued operating losses. Cash flows from operations have been negative for the last seven years, since 1997. SPAC's current ratio (i.e. current assets over current liabilities) at December 31, 2003 is .227, causing further concern about SPAC's cash flow.

In 2003, SPAC reported operating income of \$5.1 million and expenses of \$7.8 million and had a net operating deficit of \$2.7 million. This operating deficit includes approximately \$750,000 related to the ballet and \$730,000 related to the orchestra. Non-operating revenues including unrestricted gifts and market growth on endowment funds totaled \$2.8 million in 2003 and SPAC netted approximately \$100,000, showing a surplus for the first time since 1997.

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**FINDINGS AND RECOMMENDATIONS**

**1. FINANCIAL CONDITION (Continued)**

It is clear that SPAC must put an end to its ongoing financial losses in order to ensure financial stability. If SPAC continues to lose money at the rate that it has over the last 5 years (\$1,055,113 average loss per year, see Exhibit III), the organization will deplete its endowment fund in 6.25 years.

- *We recommend that SPAC improve its financial position by increasing and enhancing fundraising activities (see section on Fundraising and Endowment), decreasing expenses (see section on Executive Compensation), and improving long term planning (see section on Mission and Strategic Planning).*

**2. MISSION AND STRATEGIC BUSINESS PLAN**

*While SPAC remains committed to providing classical performances to the Saratoga community, the decision to terminate the ballet reflects a fundamental change in the degree and nature of their commitment and a fundamental change in mission.*

SPAC was incorporated for the purpose of sponsoring, cultivating and developing among its members and the community-at-large an appreciation and understanding of the performing arts. For the past 38 years, SPAC has brought this mission to life by providing summer residency to two of the country's premier ensembles in the fields of music and dance. It is clear that the membership, the community and the State view these residencies as core components of SPAC's mission. It is unclear at this time, however, if SPAC is committed to partnering with these ensembles, and in particular, with the ballet to the degree that it has in the past.

While SPAC remains committed to providing classical performances to the Saratoga community, the decision to terminate the ballet reflects a fundamental change in the degree and nature of their commitment. This change should be viewed as an elemental change in mission and it needs to be revisited before a strategic business plan can be developed and before major business decisions (i.e. terminating the ballet's contract) can be made. This decision should not be made outside of the context of the mission and cannot be made in a vacuum.

SPAC is financially dependent on its membership, its donors and the State, and the input of these constituents is critical to SPAC's continued viability and success. Given the long standing relationship that SPAC has with the ballet and the orchestra, it seems reasonable that their feedback and cooperation would be solicited as well before a final determination is made. A great deal can be gained by greater collaboration between the parties involved.

- *We recommend that decisions involving SPAC's elemental mission not be made prior to soliciting appropriate feedback and cooperation from those parties that support and subsidize the organization. SPAC is supported by its membership and subsidized by the ballet, the orchestra, and the State.*

Supporting two significant fine arts residencies is a financial challenge and requires significant financial support through grants, donations and endowment earnings. Ticket sales alone are not sufficient. A strategic plan that incorporates a business plan and a development plan must be developed and implemented. It is important to recognize that the Clear Channel contract is a critical component of this model as well.

## 2. MISSION AND STRATEGIC BUSINESS PLAN (Continued)

A business plan will help solidify the organization's goals and objectives and lay out a course of action for achieving these goals and objectives in a specified time frame. The process of completing a plan provides the Board and the staff an opportunity to look at the organization's strengths, weaknesses, opportunities, and challenges with a long term perspective. The Board can then set the direction and priorities for the organization. This process diminishes the potential for major organizational changes such as the elimination of the ballet's residency being made without significant prior discussion and long-term analysis.

*Through discussions with Board Members, and reading of Board meeting minutes, we know the Board has discussed the need for a strategic plan. When SPAC's staff was asked for a copy of any long-range plans, they provided a draft copy of "A Plan of Action" that was completed in 1999. This report was discussed at the May 20, 1999 Board Meeting. We could find no formal approval of the plan, and no update to the plan over the past five years despite the organization's significant changes including completing the Clear Channel deal, and the continued deterioration of the organization's financial position.*

*A five year business plan is essential if SPAC is to remain financially viable.*

The business plan should recognize the cost inherent in the mission and include appropriate goals for fundraising, long term giving and earnings on investments. The business office should assist in developing the plan. It is critical, however, that the plan be approved by the Board and the Board takes ownership of the final product. The business plan should be the basis for setting individual goals for members of the management team. Compensation and bonus should be tied to achieving these goals.

➤ *We recommend that SPAC develop a five year business plan.*

*The annual budget should be tied to the business plan.*

The budget is developed by the staff and management of SPAC and approved by the Board. The business office tracks variances from budget. It is critical that the budget be tied to the five year plan and that appropriate members of management be held responsible for budget variances. Again, this can be achieved by tying financial goals to management compensation.

➤ *We recommend that the annual budget be tied to the business plan. We also recommend that management's incentive compensation be contingent on attaining the predetermined goals reflected in the annual budget.*

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**3. PRESIDENT 'S COMPENSATION PACKAGE**

The current SPAC President has an eight-year employment agreement with SPAC, which commenced on November 1, 1998 and terminates on October 31, 2006. His compensation package includes an annual base salary that has an automatic 5% per year increase plus an inflation factor that is triggered anytime that the Consumer Price Index increases by 4% or more over a 24-month period.

The President 's contract includes the following additional benefits:

- Four weeks vacation
- 2 weeks sick leave
- A two month sabbatical during the contract period
- Disability premiums that provide coverage up to \$130,000 a year
- Health insurance for the President and his wife (who also is a management employee of SPAC) up until the time they are eligible for Medicare, regardless of their employment status
- A \$1,000,000 variable life split dollar insurance policy
- A \$20,000 annual interest free loan for premium payments into an irrevocable trust in the name of the President
- A \$20,000 annual enhancement paid into an irrevocable trust established by the President
- Annual funding of a deferred compensation plan of \$35,000
- All automobile and related expenses
- A \$200,000 term note at 4.71% interest with principal payments of \$25,000 due each year. The note was to be forgiven by SPAC as long as employment was in effect. (The term note was repaid in full in 2004 upon increased scrutiny by the NYS Attorney General. At the same time, the Board of Directors voted to supplement the President 's compensation with a \$25,000 annual bonus).

The President also has the benefit of an expense account for travel, entertainment and related expenses.

During the fiscal year 2003, the President 's base salary was \$272,525. The total cost of the President 's annual compensation for 2003 was \$335,065. (To date, the President has not taken the scheduled 5% salary increase, the \$35,000 funding of deferred compensation nor the \$25,000 bonus scheduled for October 31, 2004. He also has not yet taken advantage of the provision for a sabbatical.)

There are no specific goals or performance expectations stated for the annual increases.

*The President's compensation is high compared to the comparable venues used in the Benchmarking study.*

In this study, we benchmarked similar organizations with expenses ranging from \$5 to \$15 million. SPAC's President's compensation was 45% higher than the average of the executive compensation for the venues selected, which averaged \$233,051. The SPAC compensation was the second highest behind the CEO for Wang PAC in Boston (See Exhibit IV).

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**FINDINGS AND RECOMMENDATIONS (Continued)**

*The President's responsibilities have been reduced, however, the compensation continued to increase over the years.*

**3. PRESIDENT'S COMPENSATION PACKAGE (Continued)**

The President's job description (see Exhibit V) identifies his areas of responsibility as:

- Program Development
- Fundraising
- Administration
- Public Relations and Marketing

It should be noted that, unlike many other comparable performing arts organizations, the SPAC President is not responsible for the booking of acts and production of shows, nor is he responsible for improvements to physical plant and facilities and the fundraising required normally to pay for such improvements.

In 2000, SPAC entered into a contractual agreement with SFX, Inc. (which later became Clear Channel) giving Clear Channel the responsibility for the concerts featuring any national touring professional artists, as defined in the contract. This contract with Clear Channel has dramatically reduced the number of individual artist contracts that SPAC's President needs to manage. Despite this significant reduction in his responsibilities, the President's compensation contract was not adjusted, and until this year, he continued to receive a 5% annual increase plus an adjustment when the inflation threshold was met.

- *We recommend the Board provide compensation tied to specific goals and performance expectations that are clearly defined at the beginning of each fiscal year.*

*Any future compensation studies by SPAC need to utilize appropriate venues for benchmarking.*

In determining the President's salary, the Board used salary compensation studies conducted by the firm AYCO (which also was responsible for managing SPAC's investments and endowment). In 2004, the search committee for a new President asked Mercer Human Resource Consulting (Mercer), to review the compensation of the President. The benchmarks utilized in these reviews included venues that are substantially larger than SPAC and were, therefore, inappropriate.

- *We encourage the Board to continue to use outside sources for compensation advice, but recommend the Board review the comparable venues and utilize statistics of venues that more closely resemble SPAC in size of budget, number of performances, geographic area and artist offering.*

*New York State Not-for-Profit Laws must be followed.*

The employment agreement with the President was placed into effect without the proper approval of the SPAC Board. While the contract was approved by a majority of the quorum present at the February 1999 Board meeting, according to NYS law, the contract required approval by a majority of the entire Board of Directors. Concurrent with the State's audit, the contract was retroactively approved by a majority of the Board of Directors at a special meeting in March 2004.

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**3. PRESIDENT 'S COMPENSATION PACKAGE (Continued)**

At the time of its original approval by the Board, the President's employment agreement included a \$200,000 term note at 4.71% interest with principal payments of \$25,000 due each year. This note was to be forgiven by SPAC as long as employment was in effect. New York State Law prohibits low interest loans to officers and directors of the organization. When the NYS Attorney General informed SPAC's Board of this situation, the provision was eliminated. At the same time, the Board of Directors voted to supplement the President's compensation with a \$25,000 annual bonus. There are no goals or performance expectations required for this bonus.

*SPAC donations to other not-for-profit organizations should be limited and there should be proper acknowledgment for the donations.*

There were a number of donations to other area not-for-profit organizations that were not properly attributed to SPAC. We noted a number of instances in 2001 and 2002 where SPAC funds were used to support not-for-profits events in the area, but the donation was credited to the President personally. In these instances, the not-for-profit organizations asked for attendance to an event. SPAC's donation was large enough to warrant mention in the event's brochure and the donation was accompanied by the instructions to include the President's name rather than SPAC in the brochure.

- *We recommend that SPAC permanently discontinue the practice of crediting its employees rather than the organization for SPAC's donations to other not-for-profit organizations. Additionally, the organization needs to investigate the benefit of providing funding to these organizations and to ensure that they are consistent with SPAC's mission.*

*SPAC should establish a policy that addresses issues related to nepotism.*

The current Development Director for SPAC is the spouse of the President. Under present practice, the Board does not approve the salaries of individual staff members (other than the President). The annual budget for staff salaries is developed by the President and is presented to the Board of Directors for approval. We found no evidence that the Board looked at the compensation for the Development Director separately. It should be noted that the Director of Development is the highest paid position on the SPAC staff (after the President).

- *We recommend that the Development Director's salary be approved by the Board. We also recommend the Board establish a policy on nepotism with respect to hiring, firing, contracting, compensation and other similar matters to help ensure that the organization's resources are being used appropriately.*

*On November 15, 2003, the Board of Directors approved a separation agreement with the President with a termination date of October 31, 2005.*

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**3. PRESIDENT 'S COMPENSATION PACKAGE (Continued)**

In addition to severance pay of one year's base salary of \$276,000, the package includes:

- Deferred compensation of \$35,000
- Estate enhancement contribution of \$20,000
- Post retirement medical coverage of \$6,438 per year
- Final premium payment on split-dollar life of \$55,588 (interest free loan)
- One month sabbatical valued at \$23,000
- Complimentary tickets and parking through 2009 for all events and through 2014 for classical events with an estimated value of approximately \$43,000
- Forgiveness on pledge outstanding of \$25,000

There is no mention in the termination agreement of a bonus for years 2004 and 2005. The President had previously agreed to waive his bonus for 2004.

In addition, if the President terminates prior to October 31, 2005, his salary and benefits will continue per the 1998 Employment Agreement. Consequentially, the value of the package will increase if he terminates at an earlier date.

This severance package is worth approximately \$400,000, assuming that the President remains employed through October 2005. Again, the value of the package will increase if the President terminates employment early but remains on the payroll through October 2005.

The Board relied, in part, on a consulting study performed by Mercer, dated November 4, 2004, as justification for this severance package and as protection of the Board from "charges of excess compensation". Mercer, in the conclusion of their study, refers to the legal notion of a "rebuttable presumption of reasonableness" of compensation and notes that certain steps are required in order to establish such a presumption. One of these steps is: "The Board or Committee obtain and rely upon appropriate data as to comparability prior to making its determination (i.e., compensation paid by similarly-situated organizations for positions of similar scope of responsibility.)

Once again, we do not believe that the Board has used appropriate venues for benchmarking in any of their compensation studies. The venues differed markedly in size from SPAC and the President's responsibilities were markedly different. There are also critical differences in terms of the financial position of the venues benchmarked. The Board has failed to acknowledge, in their handling of executive compensation, the dire financial situation at SPAC and the deterioration of SPAC's financial position under the watch of the President. In a year when the Board has voted to terminate the ballet and in doing so, has negatively affected public perception regarding its commitment to the arts, the Board has offered up a severance package that could potentially subsidize the ballet for another season.

- *We recommend the Board of Director's revisit their decision regarding the severance package in light of their fiduciary responsibilities to SPAC.*

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**3. PRESIDENT 'S COMPENSATION PACKAGE (Continued)**

Per the separation agreement, the President continues to have the authority to approve any change in the employment status of employees on the SPAC permanent staff through the revised termination date. Again, SPAC should appropriately address issues related to nepotism.

➤ *We recommend that any decisions pertaining to the employment of the wife of the President be approved by the Board.*

**4. STRATEGIC RELATIONSHIPS**

SPAC has carried out its mission through its affiliation with three strategic partners: the ballet, the orchestra, and beginning in 2000, Clear Channel. In the past, SPAC has often operated in an insular manner and has not taken full advantage of the relationships and the capacity within partner organizations to support SPAC's mission and goals. Additional supporting contractual relationships exist between SPAC and the Museum of Dance, the Hall of Springs and Ticketmaster.

SPAC's partnership with the State and the OPRHP is fundamental to achieving its mission, as well.

**New York City Ballet**

**The ballet subsidizes their summer residency at SPAC.**

The fees that the ballet receives from SPAC, including participation fees, are significantly less than the direct costs incurred by the ballet for their summer residency. Direct costs, including compensation and travel, exceeded fees by approximately \$800,000 and \$400,000 in 2003 and 2002, respectively. The ballet is estimating the 2004 deficit at approximately \$800,000.

*Average ticket sales per performance at SPAC are greater than average ticket sales per performance in New York City.*

The ballet sold, on average, 2,094 tickets per performance over their two most recent repertory seasons (not including the Nutcracker) in New York City. This compares with tickets per performance of 2,759 and 2,640 for the 2004 and 2003 residency at SPAC. While it is certainly possible to increase attendance, it is also fair to say that the ballet is well attended, relative to recent benchmarks.

SPAC incurs significant program deficits for both the ballet and the orchestra.

The deficit incurred for the ballet amounted to approximately \$750,000 and \$1,000,000 in 2003 and 2002, respectively. (See Exhibit VI) The deficit incurred by the orchestra amounted to approximately \$730,000 and \$820,000 in 2003 and 2002, respectively. These amounts include restricted contributions, but do not include any overhead allocations. The ballet performs 21 times over a three week period whereas the orchestra performs 12 times over a two week period. It is unclear why management chose to end the ballet's summer residency and not the orchestra's.

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**4. STRATEGIC RELATIONSHIPS (Continued)**

*The ballet has defrayed its losses from operations through public support and endowment earnings. SPAC, on the other hand, has not been able to fully subsidize operating deficits with public support and investments. SPAC has an opportunity to leverage their relationship with the ballet in order to enhance fundraising and development.*

*Although the ballet incurs significant losses from operations, it has successfully defrayed the losses through fundraising efforts. According to the ballet's 2003 audited financial statements, the Company incurred losses from operations amounting to approximately \$17,681,000 and \$17,773,000 in 2003 and 2002, respectively. The Company's operating (deficit) surplus after public support amounted to approximately (\$106,000) and \$1,512,000 in 2003 and 2002.*

*SPAC, by comparison, lost approximately \$3,339,000 from October 2000 to December 2003, according to their audited financial statements. SPAC has not leveraged their relationship with the ballet and has not taken advantage of the expertise and the resources that the ballet has in the areas of fundraising and development. Opportunities for joint fundraising and development have not been effectively explored.*

Alternative scheduling has not been satisfactorily explored.

*The ballet's residency is comprised of 21 performances in a three-week period in July. The ballet's residency (July 6 through July 24<sup>th</sup> in 2004) does not overlap with the August racing season (July 28<sup>th</sup> through September 6<sup>th</sup> in 2004). Scheduling options such as splitting the weeks have not been fully explored. In this way, the ballet can broaden their audience and SPAC can widen its donor base.*

*Minor reductions in the ballet performance schedule may provide opportunities for SPAC to enhance Clear Channel revenues. For example, by reducing duplicative repertoires and limiting performances to six days per week, SPAC could add three additional Clear Channel events for the purpose of maximizing Clear Channel revenue.*

***Philadelphia Orchestra Association***

The orchestra, like the ballet, subsidizes their summer residency.

*Expenses including salaries and travel exceeded fees paid by SPAC by approximately \$700,000 in 2004.*

*The orchestra and SPAC have had some limited success with joint fundraising and development but an opportunity exists for increased collaboration in this area.*

*The orchestra has an operating budget of approximately \$40 million, and like the ballet, defrays a significant portion of their costs through fundraising and endowment funds. The Orchestra raised \$16,000,000 in contributions, gifts and support in 2003. SPAC could benefit from increased collaboration with the orchestra for the purpose of enhancing fundraising and development.*

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**4. STRATEGIC RELATIONSHIPS (Continued)**

*Clear Channel*

SPAC partially subsidizes its operating losses incurred in its classical programming through its Clear Channel contract.

*SPAC has recognized revenues of approximately \$1,011,000, \$900,000, \$885,000 and \$900,000 in the years 2003, 2002, 2001 and 2000 respectively, through its Clear Channel contract. Prior to hiring Clear Channel, SPAC lost \$192,000 in 1999, on special events including the jazz festival, when SPAC had difficulty competing with the summer festival at Woodstock. The Clear Channel contract minimizes risk in an increasingly risky business and frees SPAC staff, and in particular, its President to focus efforts elsewhere.*

SPAC should continue to work with Clear Channel in order to maximize revenue.

*Through increased collaboration and cross marketing efforts such as joint endorsements, preferential seating packages and some scheduling changes, SPAC can enhance and maximize Clear Channel revenues.*

*The Clear Channel contract and SPAC's contract with the State should be amended in order to facilitate the scheduling of preseason and postseason events, in those instances where it is deemed appropriate.*

*The approval process for hosting pre and postseason events is currently cumbersome and the process has hindered the scheduling of these events in certain instances. SPAC could enhance revenues, in some instances, if the Clear Channel contract and SPAC's contract with the State were modified to facilitate scheduling pre and post-season events.*

- **We recommend SPAC work to enhance and improve its relationship with its major partners. Improved communication and increased collaboration are necessary in order to ensure financial viability and to improve public perception. SPAC can better leverage these important relationships for improved fundraising, marketing, and development. In addition, creative alternatives to the existing performance schedule should be explored as a means to enhance revenue.**

*Museum of Dance*

*The Museum of Dance (the Museum) lost approximately \$100,000 per year over the last several years.*

*Although SPAC's affiliation with the Museum may be appropriate relative to SPAC's mission and geography, the Museum is a financial drain on SPAC.*

- **We recommend that a business plan be put together for the Museum. Management and the Board should assess the financial viability of the Museum and reassess its affiliation with SPAC.**

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**5. FUNDRAISING AND ENDOWMENT**

*SPAC is disproportionately dependent on ticket sales and on Clear Channel and needs to revitalize its Endowment Committee.*

SPAC management has emphasized a need for an increase in attendance at the ballet in order to improve its financial situation. The cultural arts, however, are not sustainable by ticket sales alone. These sales must be supplemented by additional forms of revenue. SPAC currently utilizes three other methods for generating income: the contract with Clear Channel to bring in rock and pop events that are financially successful, donations from patrons, and endowment income. SPAC management needs to concentrate on these three areas, particularly, increasing the endowment and the income it generates.

In order to compare SPAC with our benchmarking group, we adjusted SPAC's operating revenue to include ticket sales from Clear Channel events. None of the venues in the core benchmark group use Clear Channel for rock and pop events.

SPAC realized 71% and 77% of its adjusted operating revenues from ticket sales in 2003 and 2002, respectively. This is compared to 41% for the benchmark group. (See Exhibit VII).

SPAC needs to focus its efforts on fundraising and on increasing the organization's endowment funds. We encourage the continued marketing of tickets for events, but we do not believe that management's goals for attendance are realistic. Attendance revenue must be supplemented with fundraising and endowment income.

At the August 1999, Board of Director's meeting, the Chairman confirmed there would be an endowment fund drive. At the time, an endowment fund goal of \$15 million was established. At the October 1999 meeting, a Committee Chair was announced, and at the May 2000 board meeting, a one-year campaign with a \$10 million goal was agreed to by the Board. As of the August 2001 Board Meeting, approximately \$1.2 million of new money had been raised, largely from several Board members and the donor restrictions on a \$3.5 million endowment had been lifted. It was noted at the time that the next group to be solicited was the SPAC Board of Directors, followed by a public campaign. We found no evidence of a major public campaign. The campaign never reached its goal.

- **We recommend SPAC increase its focus on raising endowment funds and donations to the organization by revitalizing the endowment fundraising committee.**

*SPAC should hire an experienced fundraiser.*

SPAC is fortunate to be located in an area that attracts numerous wealthy patrons each summer, particularly during the racing season. Some of these people have served on the SPAC Board of Directors, attended its fundraisers and/ or are current members of SPAC. Despite this environment, SPAC has not been successful in increasing endowment funds over the past eight years.

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**5. FUNDRAISING AND ENDOWMENT (Continued)**

SPAC management and staff believe the Board is responsible for soliciting endowment gifts. The SPAC staff also believes their fundraising goals are “to continue to increase revenue each year through expanded fundraising events, such as the Wine and Food Festival, and increase memberships, both individual and corporate.” While SPAC has a staff member who carries the title of Director of Development, this person has no responsibility for growing the endowment. No member of SPAC’s staff considers themselves to be responsible for endowment gifts.

The Director of Development (or similarly-titled future employee) should be responsible for developing a fundraising program that includes increased support from the business community and from the body of members and SPAC patrons and less reliance on gifts from individual board members. In 2003 and 2002, respectively, 49% and 73% of contributions in excess of \$5,000 came from Board members or their related companies. (See Exhibit VIII).

- We recommend SPAC hire an experienced full time staff member who is responsible for endowment giving along with fundraising events. This person must have a successful track record in soliciting large personal and corporate gifts. We recommend that this person be held accountable for successfully meeting pre-established goals.

*SPAC has no fundraising plan to encourage long term giving.*

SPAC’s fundraising plans are focused on annual galas and festivals. A fundraising plan that highlights the advantages in giving to a 501(c)3 organization could enhance current and future campaigns. For example, we found no evidence of SPAC marketing split-interest gift vehicles, such as charitable lead trusts and remainder trusts, to its current and potential benefactors.

Management believes the biggest obstacle in raising endowment funds is the fact that “many in our region are reluctant to fund an organization that they believe should be funded by their tax dollars.” This answer reflects the organization’s inability to relay to its current and future benefactors the nature of SPAC’s mission and situation. It also demonstrates the staff’s inability to understand the methods needed to pursue large endowment gifts such as personal attention utilizing estate and tax planning vehicles.

- *We recommend that SPAC develop a fundraising plan featuring the SPAC mission statement and utilizing split interest gifts to encourage long term giving.*

*The current Investment Policy for SPAC’s endowment funds supports a moderate approach.*

The endowment funds have shrunk from \$10.1 million at the end of the fiscal year 1997 to \$6.6 million at the end of 2003. Over this period of time, the investment portfolio has depreciated by nearly \$1million.

The current Investment Policy calls for the endowment to be invested with moderate risk tolerance. The targeted goals are 50% equity, 35% fixed income, 5% cash equivalents and 10% hedge funds. The Investment Policy also defines allowable ranges for each of these investment groups (equity, fixed income, etc.).

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**5. FUNDRAISING AND ENDOWMENT (Continued)**

The investment committee has changed the investment managers over time. Since 2000, almost every investment manager has been replaced. At the end of 2003, the portfolio was diversified over seven different money managers based on the investment strategies of those managers. The portfolio investments are stratified into Large Cap (27.8% and 3 funds), Small Cap (16.2% and 2 funds), International (12.1% in 1 fund) and Fixed Income Funds (43.9% in 2 funds) Each manager has their own targets and style, such as growth or value, and their own choices of stocks within their category.

The Investment Policy requires periodic performance reviews of all investment managers. A manager that has underperformed its relevant benchmark for more than 4 to 6 quarters is to be placed on probation. There is not definition of probation or a required action after a specific underperformance period.

- ***We recommend the Investment Policy be formalized to include the policy of replacing a fund manager after no more than 6 periods of underperformance.***

*SPAC does not have an investment spending policy*

We were informed by SPAC management that the organization does not have a spending policy for its endowment funds. Although it is not a requirement, we believe establishing and adhering to a spending policy would constitute best practice. This should further assist in successful endowment fundraising.

- ***We recommend SPAC's Board establish an investment spending policy.***

*Management should analyze fundraising expenses.*

Fundraising expense, as reported on IRS Form 990, is unusually low and does not include an appropriate allocation of salary expense. It is critical that fundraising expenses be analyzed both for the purpose of reporting on Form 990 and for benchmarking the ratio of dollars raised to expenses incurred. As fundraising is critical to SPAC's success, management needs to gain a better understanding of what it spends on fundraising.

- ***We recommend that SPAC analyze fundraising expenses on an annual basis and that they benchmark their dollars raised to expenses incurred.***

*In 2003, SPAC received approximately \$625,000 in restricted gifts.*

We reviewed a random sample of these gifts and found that these gifts had been properly used for the designated purpose.

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**FINDINGS AND RECOMMENDATIONS (Continued)**

**6. BOARD GOVERNANCE**

The By Laws of SPAC provides for a Board of Directors. It designates “Directors of the Corporation to have full power over the affairs of the Corporation.” Also included in the By Laws is the following language: “The Board will consist of up to 36 members elected by the members of SPAC. The Board may select an Executive Committee consisting of the Chair, Vice Chair, The President, the Secretary, the Treasurer and up to ten other members of the Board. The Executive Committee shall have and may exercise all the powers of the Board in the management of the business and affairs of the Corporation.”

SPAC’s Board of Directors is comprised of highly qualified individuals who donate their efforts to the organization. The Board has a number of long term and short term committees established to address a myriad of issues. The organization is very fortunate to have these individuals as resources. There are certain changes, however, which should be considered in order to increase the effectiveness of the Board and the transparency of it’s actions.

*SPAC should consider adjusting the size of the Board of Directors.*

As of the February, 2004 Board meeting, there were 23 members of the Board of Directors. The By Laws of SPAC allow for thirty-six members. The members of the Board of Directors are important for the guidance they give to the SPAC staff, the communication they provide to SPAC members and constituents and the assistance they provided in fundraising. A larger board will increase the types of experiences Board members can bring to the organization and potentially increase the reach of the organization’s fund raising activities. The average size of the Board of Directors from the core group of venues we benchmarked in this study was 42 with a high level board of 109. SPAC should also consider such items as at-large members, term limits and rotating committee assignments.

- ***We recommend SPAC consider increasing the size of the Board of Directors and explore items such as members at large, term limits and rotating committee assignments.***

*SPAC should consider increasing the quorum necessary for passing resolutions.*

A quorum for the full Board of Directors is defined in the By Laws as “the presence of at least 5 directors plus one additional director for every ten directors (or fraction thereof) in excess of fifteen. With the twenty-two members, there is a quorum when 6 members are present, or 27% of the Board.

- ***We recommend consideration be given to changing a quorum to be at least one third of the members of the Board.***

*SPAC should give sufficient notice of major decisions or agenda items prior to a Board Meeting.*

The February 12, 2004 Board meeting was attended by only ten of SPAC’s Board members. During this meeting, the Board decided to approve the President’s plan to discontinue the ballet’s residency at SPAC. At the Special meeting called on February 26, 2004, one of the Board members “expressed procedural concern that the board members did not have advance notice or something in

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writing about the momentous decision that might come out of this meeting.” (Board Minutes February 26, 2004).

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**FINDINGS AND RECOMMENDATIONS (Continued)**

- *We recommend Board members be provided with a complete agenda, all relative reports, and have prior access to any significant discussion items, including pertinent background information, well in advance of any Board Meeting.*

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**Exhibit I**

Venues used for Benchmarking Studies

***Cincinnati Arts Association***

The Cincinnati Arts Association manages and operates three separate venues: the Aronoff Center for the Arts, Music Hall and Memorial Hall. All three venues are located within a few blocks of each other in downtown Cincinnati. Each contains several auditoriums, theaters, meeting halls and large rooms, giving the CAA nearly a dozen total options for housing events. The two largest auditoriums can seat approximately 3,000 people and are used mostly for Cincinnati's orchestra, opera, touring concerts and plays. The other areas are smaller (under 1,000 capacity) and are used mostly for small audience performances, business meetings, wedding receptions, etc.

The CAA has 13 major performance companies with which it is associated. These include the Cincinnati Orchestra, Cincinnati Opera, and several smaller theater and music companies. The CAA offers these companies a home for their performances as well as supports them with their promotion and fundraising.

**Hancher Auditorium (University of Iowa)**

Hancher Auditorium is located on the campus of the University of Iowa in Iowa City. It seats approximately 2,500. Hancher houses mainly plays, ballet and orchestral performances. It also features special interest performances such as acrobats, speakers and pop music concerts.

**Jacob's Pillow Dance (MA)**

Jacob's Pillow Dance is an outdoor dance festival that runs for 10 weeks during the summer months in Becket, MA. The festival is located in a rural area near the New York/Massachusetts border. The festival relies mostly on patrons traveling from areas all over the northeast.

The festival consists almost exclusively of dance performances. The festival site contains two stages that require tickets and one performance area that is free to the public. The Ted Shawn Theatre is the main theater and has 620 reserved seats. The Doris Duke Studio Theatre is more informal with 220 general admission seats.

IV. **La Jolla Music Society (CA)**

La Jolla Music Society sponsors and promotes many musical performances at various locations in the San Diego, CA area. Traditionally, the society puts on classical music concerts, although they also present dances and jazz artists. Mostly large concerts take place at the 2500-seat Copley Symphony Hall. The society also puts on the annual SummerFest chamber music festival and supports many community and outreach programs.

V. **Lied Center for the Performing Arts (NE)**

Located on the campus of the University of Nebraska in Lincoln, the Lied Center can seat 2,200 spectators. The Lied offers a variety of genres including musical theater, dance, pop music

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concerts, ballet and orchestral concerts. The center serves the college and its students as well as the larger community in Lincoln.

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**Exhibit I**

Venues used for Benchmarking Studies  
(Continued)

VI. Maui Arts & Cultural Center (HI)

The Maui Arts and Cultural Center offers an extensive variety of events. The center is home to pop concerts, dances, ballet, orchestral performances, and many other special interest events. The Alexander Baldwin Amphitheater is a large outdoor theater at over a 5,000 capacity and is home to most of the center's national touring concerts. With a capacity of 1,200, the Castle Theater houses a variety of cultural and community events. The McCoy Studio Theater seats 300 and is used primarily for small acts or rented to the public for various events.

VII. Music Association of Aspen (Aspen Music Festival and School) (CO)

The Aspen Music Festival and School is a classical music festival that presents classical music in a small-town setting. The festival goes for one month in July and August and has performances throughout Aspen. The main stage is the 2,050-seat Benedict Music Tent that houses the larger orchestral performances. Many of the smaller venues offer free concerts.

VIII. North Shore Music Theatre at Dunham Woods (MA)

North Shore Music Theatre (NSMT) is a year round, 1,800-seat theater located on the 26-acre Dunham Woods campus. NSMT annually produces seven musical production, one Shakespeare production, 24 celebrity concerts, and 10 children's shows.

IX. Omaha Performing Arts Society (NE)

The 2,600-seat Orpheum Theater serves as the home of Opera Omaha and the Omaha Symphony. The season also includes presentations by other local groups and Broadway shows presented by Broadway in Omaha. Currently the society is building the new Holland Performing Arts Center, as the society has had to turn acts away due to the busy schedule and limited capacity of the Orpheum. The new theater will contain a 2,000-seat concert hall and a 450-seat recital hall.

X. Peace Center Foundation (SC)

Located in downtown Greenville, South Carolina, the Peace Center is the product of an urban renewal project that was completed in 1990. The 2,100-seat Peace Concert Hall is the largest of the foundation's facilities. It houses a variety of events including Broadway touring shows, dance, classical and popular music, and family oriented performances. The Peace Center also has two smaller theaters of 1,000 seats and 400 seats. The foundation holds over 300 events annually.

XI. Performing Arts Center/University of Texas (TX)

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Located on campus at the University of Texas at Austin, UTPAC holds a variety of events from ballet to pop concerts. The center contains six separate theaters, the largest seating approximately 2,500. The center is operated by the University's College of Fine Arts and serves the campus as well as most of central Texas.

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**Exhibit I**

Venues used for Benchmarking Studies

**(Continued)**

XII. Raymond Kravis Center for the Performing Arts (FL)

The center houses four separate venues for performances. Dreyfoos Hall, the Center's main performance venue seats 2,200 patrons. The hall offers mostly music concerts and dance performances and had 568 events last year alone. The Michael and Andrew Gosman Amphitheatre is an outdoor venue that can hold 1,400 spectators and is used mostly for outdoor concerts. The center also has two other smaller venues including a small, intimate playhouse used for a variety of events. Finally, the center has a banquet hall available for rental to the public.

XIII. Ravinia (IL)

Ravinia is a summer concert series located in Chicago, IL. The festival is the oldest outdoor music festival in America and draws on its rich history to attract top performers. The festival attracts about 600,000 listeners to some 120 to 150 events that span all genres from classical music to jazz to music theater over each three-month summer season.

XIV. Scottsdale Center for the Arts (AZ)

The Scottsdale Center for the Arts is a three-venue facility operated by the Scottsdale Cultural Society. The largest of the three performance spaces is the 838-seat Virginia G. Piper Theater. The other two spaces are smaller and more suitable for business seminars, film screenings or rental to the public.

The center offers a variety of performances that include traveling comedy troupes, pop music concerts, solo instrumentalists, speakers etc. The venue also stages five different special events and art festivals throughout the year for members of the society and the general public. Also offered are education and outreach programs including a kids camp.

XV. Strathmore Hall (MD)

Strathmore hall is located outside Washington, DC in North Bethesda, Maryland. Strathmore provides affordable, accessible, multi-disciplinary arts programming year round.

Founded and operated since 1981 by the Strathmore Hall Foundation, Inc., the arts center presents a lively and diverse program of art exhibitions, performing arts programs, such as recitals and concerts, and literary lectures and events. They are currently completing construction on a new music center that will house 1,950 concert goers and include an educational center.

XVI. Tennessee Performing Arts Center (TN)

Located in downtown Nashville, TPAC encompasses four separate venues: Andrew Jackson Hall (2,472 seats), James K. Polk Theater (1,075), Andrew Johnson Theater (256) and War Memorial Auditorium (1,661). TPAC presents a series of Broadway shows and special engagements as well as a variety of concerts. The center is also home to five independent performance companies including the Nashville Ballet and Nashville Opera.

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**Exhibit I**

Venues used for Benchmarking Studies  
(Continued)

XVII. UA Presents/University of Arizona (AZ)

UA Presents is a performance series put on by the University of Arizona at its on-campus Centennial Hall. The series provides virtually every genre of performance to the college, its students and the general public throughout the year. Centennial Hall can house approximately 2,000 people. UA Presents also sponsors festivals for the college and community as well as provides education facilities.

XVIII. University Musical Society/University of Michigan (MI)

UMS serves diverse audiences through multi-disciplinary performing arts programs in three areas: presentation, creation, and education. UMS hosts approximately 75 performances and 150 free educational activities each season. UMS uses a dozen venues for its events, all of which are located in Ann Arbor. The largest of these venues is a 3,500-seat theater used for large concerts.

UMS is housed at and affiliated with the University of Michigan. However, UMS is a separate not-for-profit organization that supports itself from ticket sales, corporate and individual contributions, foundation and government grants, special project support from the University of Michigan, and endowment income.

XIX. Wolf Trap Foundation for the Performing Arts (VA)

WTFPA is located in the Virginia suburbs of Washington, D.C. A typical season at Wolf Trap includes performances ranging from pop, country, folk and blues to orchestra, dance, theater and opera, as well as performance art and multimedia presentations. The Filene Center is the main venue and is an outdoor amphitheater with 4,000 covered seats and approximately 3,000 lawn seats. Its season runs from the end of May to the beginning of September with an average of 90 performances each year. Wolftrap also offers a smaller indoor venue for year round performances and for the Wolftrap Opera Company.

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**Prepared by SPAC Management**

**Exhibit V**

*President and Executive Director*

**Job Description**

**DUTIES**

The duties of the President and Executive Director as outlined in the SPAC Bylaws:

- Carry out the directions of the Chairman.
- Supervise and manage the day-to-day affairs of SPAC.
- Negotiate and sign contracts with administrative personnel, resident companies, trade unions, artists and other persons and entities necessary to the business and operations of the Center.
- Maintain liaison with officers, the directors and members of the Center.

**AREAS OF RESPONSIBILITIES**

Program Development

- Be fully-informed of the work being done in the fields of classical music, dance, opera, chamber music, jazz, contemporary music, theatre, museums and arts management.
- Maintain professional and personal relationship with artist management and artist.
- From this knowledge, select and contract with individual artists, performing companies, music directors, conductors, choreographer and others to work at the Center.
- Work with artists and performers to develop the best program that the Center can afford that will maintain the Center's stature as one of the top three summer festivals in the U.S.
- Plan for succession in all areas of artistic endeavor, understanding that commitments of artists are usually short-term.

Fundraising

- Establish with the Development Office the goals for membership and fundraising for the year.
- Develop all collateral material and a direct-mail campaign to maximize returns.
- Personally meet and spend time with each member at Patron's Club level or higher once in every three-year cycle.

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- Maintain regular contact by mail and telephone with membership.
- Guarantee that membership privileges are carefully managed by Center staff.
- Create and attend events to attract new members.

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#### **Exhibit V**

#### ***President and Executive Director***

#### **Job Description (Continued)**

##### Administration

- Establish procedures to select and train all full-time and part-time personnel.
- Maintain regular contact with staff members to assure they have the support needed to succeed in their tasks.
- Negotiate contracts with union personnel as required.
- Negotiate contracts for outside services, i.e., Clear Channel, USI, Aramark, NYS Parks and Recreation, landscaping service, sound and lights, parking and concessions.
- Prepare annual budget for approval by Center's Board of Directors.
- Assure the competency and adequacy of the Center's Board of Directors.
- Oversee all events at the Center, i.e., ballet, orchestra, jazz, chamber music, contemporary concerts, museum events, fundraising events, wine and food festival and free events. Personal attendance at each is a requirement.

##### Public Relations and Marketing

- Plan for overall sales effort, i.e., direct mail campaign, advertising, press release schedule, artist appearances in media, box office and remote.
- Be available for speaking engagements in community.
- Represent the Center at all public events, especially when chaired by or honoring a SPAC member.
- Maintain relationships with government officials and government agencies.
- Entertain artists and members or potential members as necessary.

##### Other

- Coordinate the activities of standing committees of the SPAC Board of Directors.
- Oversee the National Museum of Dance operations.
- Carry out special projects as instructed by the Chairman.

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**Exhibit V**

***Development Director***

**Job Description**

- Plan the fundraising campaign for each year with the President.
- Organize the various steps to achieve goals for membership, sponsorships, and other unearned income for the coming year.
- Oversee the development of the membership campaign, including collateral materials, mailing plans, mailing lists, membership rewards and timing and style of the renewal program.
- Plan for personal visits with large donors throughout the year with the President.
- Represent the Center at all important social functions, particularly if they honor donors or prospective donors to the Center.
- Be totally familiar with every aspect of the Center's programming so when questions are received from member we have the answer.
- Produce the Wine and Food Festival.
- Work with the Women's Committee to obtain needed sponsorships for their events.
- Train and supervise the Development Office staff.
- Work with volunteers on phonations, theatre solicitation of memberships, and other fundraising ventures that use their services.

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**Exhibit V**

*Director of Marketing and Public Relations*

Job Description

- Strategic marketing, positioning, promotions and public relations planning.
- Writing (releases, print and broadcast ads, brochures, letters with multiple constituency audiences, development and membership materials).
- Establish and oversee freelance relationships, and direct freelance design for all publications (ads, brochures, flyers, invitations).
- Work with Box Office to develop strategies to sell tickets.
- Develop strategies for targeting direct mailings (research and recommend new mailing lists and arrange purchase and mailing).
- Place print and broadcast media, track insertions.
- Media and public relations.
- Develop promotional trade and give-away agreements with media.
- Oversee recording of Radio and TV ads.
- Oversee student interns and summer assistance in marketing.
- Write website content.
- Work with group sales to develop strategies and materials.
- Work with area vendors merchants, lodging, Chambers, etc. to develop packages with performance tickets.
- Research, recommend and oversee trades with area media.
- Build network of relationships with media and related vendors.
- Meet with merchant constituencies or other hospitality-industry groups (chambers, merchants' associations, etc.) to discuss promotions, and provide materials for their promotions, on request.

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- Work with marketing/PR staffs of visiting artists to coordinate promotional activities.
- Write, distribute and analyze RFPs for marketing materials, and make recommendations: identify appropriate vendors to ensure SPAC's network is freshened, oversee implementation and fulfillment.
- Oversee of National Museum of Dance published materials and public relations releases.
- Write supplements for other publications (Hudson Valley Magazine, Saratogian (jazz), etc.).
- Read and clip newspapers daily to create archive of SPAC's news, previews and reviews.

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**Exhibit V**

***Box Office Manager***

**Job Description**

- Oversee all box office functions of the Center.
- Program each event and each seat on Ticketmaster for all SPAC. Lake George Open and Clear Channel events.
- Maintain proper relationship with Ticketmaster and their staff to insure prompt and adequate service throughout the year.
- Solicit, interview, train and supervise the seasonal Box Office Staff.
- Responsible for customer relations at the ticket windows and over the telephone. Training and supervision on a daily basis to insure professional behavior in the important areas.
- Responsible for cash accounting in the box office.
- Create a detailed and accurate box office report that ties in daily sales journals for every event that SPAC manages.
- Other duties as assigned by the President.

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**Exhibit V**

*Assistant to the President*

**Job Description**

- Provide administrative assistance to the President and maintain the records for that office in an efficient and professional manner.
- Maintain Board of Director files and record and distribute notices of meeting and minutes from meetings of the Board.
- Develop plan of action for the Women's committee of SPAC and attend all their meetings. Coordinate the operation of the annual gala.
- Work with classical agents to obtain contracts for soloists for the Philadelphia Orchestra and Chamber Music Festival under the President's direction.
- Obtain necessary housing and negotiate transportation for these same artists.
- Communicate the decisions of the President and the Board of Directors to the appropriate staff.
- Coordinate the annual Christmas fundraising event.
- Other duties as assigned by the President or the Board of Directors.

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**Exhibit V**

*Director of Business Affairs*

**Job Description**

- Responsible for the financial operations of the Center.
- Hire, train and supervise the accounting, accounts payable, accounts receivable, payroll and gate admissions staff for the Center.
- With the Board and the President, develop the detailed budget for the Center.
- Create monthly financial statements for the President and the Board Showing budget variances.
- Oversee the internal control procedures used at the Center to insure confidence in the records and books maintained by the Center.
- Work with the Center's outside auditors to insure that they can function in an efficient manner.
- Negotiate major service contracts for the Center with emphasis on the bid process to be certain that prices and quality of work are fair.
- Function as the primary compliance officer of the Center for health and safety requirements.
- Oversee the front office operation of the Center, i.e., receptionists and secretarial staff.
- Recruit, train and supervise the Center's maintenance supervisor.

Other duties as assigned by the President or the Board of Directors.