

# BY-LAWS OF SARATOGA PERFORMING ARTS CENTER, INC.

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## **ARTICLE I – MEMBERS**

### **Section 1. Members Authorized**

Any person (defined as an individual or an entity authorized by law to become a member of a New York not-for-profit corporation, such as a partnership or corporation) interested in the furtherance of the purposes set forth in the Certificate of Incorporation may become a Member of the Saratoga Performing Arts Center, Inc. ("SPAC" or "the Corporation") by meeting the qualifications for one of the categories of membership set forth below:

- (a) Charter Members: subscribers to the original Certificate of Incorporation, other individuals who contributed at least \$2,500 and other persons that contributed at least \$5,000 to SPAC prior to the opening of the Saratoga Performing Arts Center on July 9, 1966.
- (b) Life Members: individuals who contributed at least \$1,000, and other persons that contributed at least \$10,000 cumulatively to SPAC prior to August 31, 1995.
- (c) Honorary Life Members: individuals selected for special recognition by the Board of Directors for their past support of SPAC and its purposes.
- (d) Benefactors: persons that contributed at least \$25,000 cumulatively to SPAC prior to August 31, 1995.
- (e) Annual Members: persons that contribute during a fiscal year at or above the amount set annually by the Board of Directors; annual memberships shall lapse on December 31<sup>st</sup> of each year.

A Member that is an entity shall designate one (1) representative for purposes of voting in any case in which the Not-for-Profit Corporation Law entitles a Member to vote. SPAC may presume that such Member's designated representative is the individual identified in the Corporation's books as the Member's contact person. Membership shall be effected and evidenced in such manner as the Board of Directors may prescribe. Any attempt to transfer, assign or hypothecate membership shall be void *ab initio*.

### **Section 2. Annual Meetings**

A meeting of Members shall be held for the election of Directors and the transaction of other business in May of each year on any day in that month as determined by the Board of Directors.

### **Section 3. Special Meetings**

Special meetings of the Members may be called at any time by the Chair of the Board of Directors, the Board or Members entitled to cast ten percent (10%) of the total number of votes entitled to be cast at such a meeting.

### **Section 4. Action by Members Without a Meeting**

Whenever under the Not-for-Profit Corporation Law the Members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all the Members entitled to vote thereon.

### **Section 5. Place of Meetings**

Meetings of Members shall be held at SPAC's principal office at the Hall of Springs at the Saratoga State Park, or at such other place, within the State of New York, as may be fixed by the Board of Directors.

### **Section 6. Notice of Meetings**

(a) Notice of each meeting of Members shall be given in writing and shall state the place, date and hour of the meeting and, unless it is an Annual Meeting, shall indicate the person or persons calling the meeting. The notice of a Special Meeting shall also state the purpose or purposes for which it is being called. A copy of the notice of any meeting of Members shall be given personally or by first-class mail, facsimile transmission or electronic mail to each Member entitled to vote thereat not less than ten (10) nor more than fifty (50) days before the date of the meeting.

(b) If mailed, such notice is deemed to have been given when deposited in the United States mail, with postage prepaid, directed to the Member or designated representative at the Member's mailing address as it appears on the Corporation's record of Members, or if the Member shall have filed with the Secretary a written request that notices be mailed to some other address, then directed to the Member or designated representative at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is deemed to have been given when directed to the Member's or the designated representative's fax number or electronic mail address as it appears on the Corporation's record of Members, or to such fax number or other electronic mail address as filed with the secretary of the Corporation; provided, however, that notice shall not be deemed to have been given electronically if the Corporation (1) is unable to deliver two consecutive notices by facsimile transmission or electronic mail, or (2) otherwise becomes aware that notice cannot be delivered by facsimile transmission or electronic mail to a Member or

designated representative. The Corporation shall send notice of meetings by first class mail to any Member who requests in writing that notice be delivered by this method.

(c) Notice need not be given to any Member who submits a waiver of notice, in person or by proxy, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the Member or, if the Member is an entity, the designated representative, by signing such waiver or causing the signature to be affixed thereto by any reasonable means, including, but not limited to, facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any Member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice thereof, shall constitute a waiver of notice.

### **Section 7. Qualification of Voters**

- (a) In any case in which the Not-for-Profit Corporation Law entitles a Member to vote, each Member shall have no more than, nor less than, one (1) vote. As specified in Section I of this Article, Members that are entities shall each have one (1) designated representative for purposes of voting. Members shall be entitled to such other rights and obligations as are set forth in the Not-for-Profit Corporation Law.
- (b) The Board of Directors may fix a date as the record date for the purpose of determining the Members entitled to vote at any meeting of Members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting. The record date shall not be more than fifty (50) nor less than ten (10) days before the date of the meeting.

### **Section 8. Quorum and Adjourned Meetings**

- (a) At every meeting of the Members, the presence, either in person or by proxy, of at least one hundred (100) of the Members entitled to cast votes or one tenth (1/10) of the total number of votes entitled to be cast at a meeting of Members, whichever is less, shall constitute a quorum for the transaction of any business. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Members.
- (b) Despite the absence of a quorum, the Members present may adjourn the meeting to another time and place and it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. If after the adjournment, however, the Board of Directors fixes a new

record date for determining the Members entitled to vote at the adjourned meeting, a notice of the adjourned meeting shall be given to each Member entitled to vote and then entitled to notice under Section 6 of this Article.

## **Section 9. Organization**

At every meeting of the Members, the Chair of the Board of Directors, or in the absence of the Chair, a Vice Chair (or in the absence of such officers, a person selected by the Members at the meeting) shall preside. The Secretary or, in the absence of the Secretary, any Assistant Secretary (or in the absence of both such officers, a person selected by the chairperson of the meeting) shall act as secretary of the meeting.

## **Section 10. Voting**

- (a) Whenever any corporate action, other than the election of Directors, is to be taken by vote of the Members, it shall, except as otherwise required by law or the Certificate of Incorporation, be authorized by a majority of the votes cast at such meeting.
- (b) Directors shall be elected by a plurality of the votes cast at a meeting of Members as otherwise required by law.

## **Section 11. Proxies**

- (a) Every Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize another person or persons to act for such Member by means of a proxy. A Member or, in the case of a Member that is an entity, the Member's designated representative, may execute a written proxy by signing the writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature. A Member may transmit a proxy by electronic communication (including email), provided the communication states or is submitted with information from which SPAC may reasonably determine that the Member authorized the electronic transmission.
- (b) No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided by law.
- (c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of incompetence or of death is received by the Secretary or an Assistant Secretary.



## **Section 12. Inspectors of Election**

(a) The Board of Directors, in advance of any meeting of Members, may appoint one (1) or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a meeting of Members may, and on the request of any Member entitled to vote thereat, shall appoint one (1) or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board in advance of the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability.

(b) The inspectors shall determine the number of Members entitled to vote, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to Members entitled to vote. On request of the person presiding at the meeting or any Member entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be *prima facie* evidence of the facts stated and of the vote as certified by them.

## **Section 13. List of Members at Meeting**

A list or record of Members entitled to vote, certified by the Secretary or any Assistant Secretary, shall be produced at any meeting of Members upon the request therefore of any Member who has given written notice to SPAC that such request will be made at least ten (10) days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat shall require such list or record of Members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list of record to be Members entitled to vote thereat may vote at such meeting.

## **ARTICLE II - BOARD OF DIRECTORS**

### **Section 1. Power of Board and Qualification of Directors**

SPAC shall be managed by its Board of Directors. Each Director shall be an "Independent director" within the meaning of Not-for-Profit Corporation Law and shall have been a Member of SPAC entitled to vote, either individually or as a designated representative, at the time of election. The Directors of SPAC shall be persons of high repute and standing in their

communities and shall broadly represent the arts, business and communities which are inclusive and representative of the interests, goals and objectives of the Corporation. Directors shall accept their fiduciary duty to be faithful to the Corporation's mission, consistently attend and actively participate in Board and committee meetings and provide strong leadership, financial support and guidance to SPAC. The Saratoga-Capital Region State Park Recreation and Historic Preservation Commission shall be invited to supply the names of two (2) of its Commissioners who shall be included in any slate of Directors presented by SPAC to its members. The president of SPAC shall, concurrent with the term of that presidency, serve *ex officio* as a Director. Additionally, the Presidents of the Saratoga Performing Arts Center Action Council and the Junior Committee shall, concurrent with the terms of their respective presidencies, also serve *ex officio* as Directors.

**Section 2. Number and Term of Office**

- (a) The Board of Directors shall consist of not less than five (5) nor more than thirty-five (35) members, the number of Directors to be determined from time to time by resolution of the entire Board of Directors, provided that no decrease in the number of Directors shall shorten the term of any incumbent Director. As used in this Article, "entire Board of Directors" means the total number of elected and ex officio Directors entitled to vote, as set forth in paragraph 2., (c), below, which SPAC would have if there were no vacancies.
- (b) With the exception of the *ex officio* Directors, Directors shall be elected at each Annual Meeting of Members to hold office for a term of one (1) year, two (2) years, or three (3) years and until their successors have been elected or appointed. The terms shall be so arranged that approximately one-third (1/3) of the total Directors shall be eligible for election each year. Upon the expiration of their terms of office, Directors shall be eligible for re-election. There shall be no limit upon the number of terms Directors may serve.
- (c) Each Director, and the Presidents of the SPAC Action Council and Junior Committee who serve *ex officio* , shall have one (1) vote. The President/CEO of SPAC who serves *ex officio* shall not have a vote.

**Section 3. Organization**

At each meeting of the Board of Directors, the Chair, or, in the absence of the Chair, a Vice Chair (or in the absence of both of such officers, a Board member chosen by a majority of the Directors present) shall preside. The Secretary shall act as secretary of the Board of Directors. In the event the Secretary shall be absent from any meeting of the Board of Directors, the chairperson of the meeting shall select its secretary.

#### **Section 4. Resignations and Removal of Directors**

- (a) Any Director of SPAC may resign at any time by giving written notice to the President, or to the Secretary. Such resignation shall take effect at the time specified therein or, if no time is specified, then on delivery.
- (b) Any or all of the Directors may be removed for cause by vote of the Members, or by vote of the Directors provided there is a quorum of not less than a majority of the entire Board of Directors present at the meeting of Directors at which such action is taken.

#### **Section 5. Vacancies and Newly Created Directorships**

Vacancies occurring for any reason in the number of Directors authorized by Section 2 (a) of this Article and newly created directorships resulting from an increase in the maximum number of Directors shall be filled by vote of a majority of the Directors then in office, regardless of their number. Directors elected to fill vacancies shall hold office until the next Annual Meeting at which the election of Directors is in the regular order of business, and until their successors are elected and qualified. Directors elected to fill newly created Directorships shall hold office until their successors have been elected and qualified; there shall be no classification of these additional Directors until the next annual meeting of members.

#### **Section 6. Action by the Board of Directors**

- (a) Except as otherwise provided by law or in these Bylaws, any reference to an action of the Board of Directors shall mean action at a meeting of the Board by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time.
- (b) Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or the committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.
- (c) Any one or more members of the Board of Directors or any committee thereof who is not physically present at a meeting of the Board or a committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as

long as all persons participating in the meeting can hear each other at the same time, and each Director can participate in all matters before the Board, including, without limitation, the ability to propose, object to and vote upon a specific action to be taken by the Board or committee.

### **Section 7. Place of Meeting**

The Board of Directors may hold its meetings at SPAC's principal office, or at such place or places within or without the State of New York as the Board of Directors may from time to time determine.

### **Section 8. Annual Meetings**

As soon as practical in conjunction with the Annual Membership meeting, the Board of Directors shall meet for the purpose of organization and the transaction of other business. Notice of such meeting need not be given. Such first meeting may be held at any other time; and if it is held at another time, notice shall be given as provided in Section 10 of this Article for special meetings of the Board.

### **Section 9. Regular Meetings**

Regular meetings of the Board of Directors may be held without notice at such times as may be fixed from time to time by the Board.

### **Section 10. Special Meetings**

Special meetings of the Board of Directors shall be held whenever called by the Chairman, or by any four (4) of the Directors. Notice may be given orally, or by mail or electronic transmission (including email), and shall specify the purposes, time and place of the meeting. If notice is given orally, either in person or by telephone, it shall be furnished not less than one (1) day before the meeting; if given by mail or transmitted electronically, it shall be furnished not less than three (3) days before the meeting.

### **Section 11. Waivers of Notice**

Notice of meeting need not be given to any Director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its conclusion, the lack of notice. Such waiver of notice may be written or electronic in compliance with the requirements of the Not-for-Profit Corporation Law.

### **Section 12. Quorum**

- (a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business.
- (b) A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any Director.

### **Section 13. Compensation**

Directors shall receive no compensation for their services but may be reimbursed for the expenses reasonably incurred by them in the performance of their duties.

### **Section 14. Restrictions on the Hiring of Directors and Members of Their Families**

No Director except the President shall be an employee of SPAC. Any member of a Director's family, as the term "family" is defined in SPAC's Conflict-of-Interest Policy, shall be prohibited from working for SPAC as a management-level employee.

### **Section 15. Emeritus Directors**

At each annual meeting, the Board of Directors may elect one or more Emeritus Directors from those who have served as Board members and may designate terms as it sees fit. Emeritus Directors may attend meetings of the Board and may speak on any matter pertaining to business of the Board, but shall not vote and shall not be counted toward a quorum.

### **Section 16. Trustees of Counsel**

The Board of Directors may elect up to eight (8) individuals to serve as Trustees of Counsel. Trustees of Counsel are individuals who have special talents or abilities but who cannot undertake all of the responsibilities of Board membership. Trustees of Counsel will receive notice of all meetings and may attend, but will not be expected to attend. They may speak on any matter pertaining to business of the Board, but shall not vote and shall not be counted toward a quorum. The Board may designate Trustees of Counsel to serve on committees of the corporation or to undertake other efforts on behalf of SPAC. Trustees of Counsel shall hold office for a term of three (3) years, which shall be renewable.

### **Section 17. Annual Report**

The Board of Directors of SPAC shall present at each Annual Meeting of the Members a report, verified by the President of the Corporation and the Treasurer, or certified by an independent public or certified accountant or a firm of such accountants selected by the Board, covering, at a minimum, the following topics in appropriate detail:

- (a) SPAC's assets and liabilities, including the trust funds, as of the end of a 12-month fiscal period of SPAC terminating not more than six (6) months prior to the meeting;
- (b) the principal changes in assets and liabilities, including trust funds, during such fiscal period;
- (c) SPACs revenue or receipts, both unrestricted and restricted to particular purposes, during such fiscal period;
- (d) SPAC's expenses or disbursements, for both general and restricted purposes, during such fiscal period; and
- (e) the number of Members (within the meaning of Section 1 of Article I) as of the date of the report, together with a statement of increase or decrease in the number during such fiscal period, and a statement of the place where the names and places of residence of the current Members may be found.

Each Annual Report shall be filed with SPAC's records and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting at which the report is presented. The annual report and annual budget shall be made available to the public simultaneously with presentation at the Annual Meeting via website at [www.spac.org](http://www.spac.org).

## **ARTICLE III – COMMITTEES**

### **Section 1. Designation of Committees**

- (a) The Board of Directors may by resolution designate from among its Directors one or more committees to direct the Corporation's business. Each such committee may exercise the authority granted to it by the Board's enabling resolution and/or these Bylaws. The procedures and manner of acting of such committees shall be subject at all times to the Board's direction.
- (b) The Board of Directors may by resolution create and designate individuals (including non-Directors) to serve on a committee of the corporation. No such committee shall have the power to bind SPAC. The provisions of the Not-for-Profit Corporation Law applicable to officers generally shall apply to the members of any such committee.

### **Section 2. Limitation on Committee Powers**

No committee shall have the authority of the Board of Directors to amend, alter, or repeal these Bylaws; to elect, appoint, or remove any member of any such committee or any Officer or Director of SPAC; to amend or restate the Certificate of Incorporation of SPAC; to adopt a plan of merger or adopt a plan of consolidation with another corporation; to authorize the sale, lease,

exchange, or mortgage of all or substantially all of SPAC's property and assets; to authorize the voluntary dissolution of SPAC or to revoke proceedings therefor; to adopt a plan for the distribution of SPAC's assets; to amend, alter, or repeal any resolution of the Board; or as otherwise may be prohibited by law. Rules governing procedures for meetings of any committee shall be as established by the Board of Directors or, in the absence thereof, by the committee itself. If no rules are established, then the rules that govern the Directors shall govern each committee. All committees are to report promptly to the Board and only take such action(s) as is (are) specifically set forth in these Bylaws or the resolution establishing the committee or setting forth its duties and responsibilities. Each committee shall consist of three (3) or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent members or members at any meeting of such committee. Members of a committee shall serve until the next annual meeting of SPAC, or until their successors are appointed.

### **Section 3. Committee Chair**

The Chair of the Board of Directors, with the approval of the Board, shall appoint all committee chairs for the ensuing year at or within a reasonable time after the Board's Annual Meeting. If the Board establishes a new committee by resolution at a meeting other than the Board's Annual Meeting, the Chair, with the Board's approval, shall similarly appoint the new committee Chair at the time the committee is established, or within a reasonable time after its establishment.

### **Section 4. Committee Meetings**

Meetings of committees of the Board of Directors may be called by the respective Chairs thereof or by any two (2) members of the committee. At all meetings of any committee, a majority of the members of the committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of the committee present at any meeting thereof at which there is a quorum shall be the act of the committee, except as may be otherwise specifically provided for by these Bylaws.

### **Section 5. Executive Committee**

Each year, at the Board of Directors' Annual Meeting, the Board of Directors shall designate an Executive Committee consisting of the Chair of the Board of Directors, all Vice Chairs, the Secretary, the Treasurer, the Chair of the Governance Committee, the Chair of the Strategic Planning Committee, one Ad Hoc Director appointed annually by the Board Chair and the President of the Corporation.

## **5.1 Powers and functions**

During the intervals between meetings of the Board of Directors, the Executive Committee shall, subject to Section 2 of this Article, possess and may exercise all the powers and functions of the Board in the management and direction of SPAC's affairs in all cases in which specific direction shall not have been given by the Board. The Executive Committee shall review and evaluate the performance and recommend to the Board the annual salary and other benefits, direct or indirect, of the senior executives of the Corporation.

## **5.2 Reports to Board required**

All actions taken by the Executive Committee shall be reported to the Board of Directors as soon as practicable. Regular minutes of the proceedings of the Executive Committee shall be kept. A majority of the members of the Executive Committee in office at the time shall be necessary to constitute a quorum and in every case an affirmative vote of a majority of the members of the Committee present at a meeting shall be necessary for taking any action.

## **Section 6. Finance & Audit Committee**

The Board of Directors shall designate, at or within a reasonable time after the Annual Meeting of the Members, a Finance & Audit Committee. In addition to such other matters as may from time to time be delegated to it by the Board, the Finance & Audit Committee shall:

### **6.1 Oversight**

Provide oversight to all asset management and stewardship issues, maintain data with respect to SPAC's financial condition, and report to the Board of Directors thereon at least quarterly.

### **6.2 Recommend service providers**

Review and recommend providers of services for financial and fiduciary management.

### **6.3 Budget**

Review and recommend the annual operating budget for SPAC.

### **6.4 Financial Activities**

Monitor actual financial activities in comparison to the operating and capital financial plan approved by the Board of Directors.



## **6.5 Major Projects**

Review from a financial perspective any major projects introduced during the year which would further SPAC's purposes.

## **6.6 Recommend Policy and Monitor Performance**

Annually review and recommend to the Board of Directors for approval: a) investment policies, b) investment strategy and asset allocation parameters, and c) selection, retention, termination of investment managers, as well as review and monitor investment performance and undertake responsibility for such other matters as may from time to time be delegated to the Finance & Audit Committee by the Board.

## **6.7 Recommend independent auditor**

Recommend the firm to be employed as SPAC's independent auditor, and annually consider the auditor's performance and independence. Prior to the audit's commencement, the Finance & Audit Committee shall review with the independent auditor the auditor's compensation, the scope and terms of the audit and the auditor's independence.

## **6.8 Review independent audit**

Review and discuss with the independent auditor the result of each independent audit of SPAC, including, but not limited to, any material risks and weaknesses in internal controls identified by the auditor, any restrictions on the scope of the auditor's activities or access to requested information, any significant disagreements between the auditor and management and the adequacy of SPAC's accounting and financial reporting processes.

## **6.9 Review annual financial statements**

Review, in consultation with the independent auditor and management, SPAC's annual financial statements; any report or opinion rendered by the independent auditor in connection with those financial statements; any restrictions on the scope of the auditor's activities or access to requested information; and any dispute between management and the independent auditor that arose in connection with the preparation of those financial statements. The Finance & Audit Committee shall review and report to the Board of Directors with respect to the financial portions of SPAC's annual report.

## **6.10 Evaluate internal accounting controls and financial reporting processes**

Consider, in consultation with the independent auditor and the chief internal auditor, if any, material risks and weaknesses in internal controls, if any, identified by the auditor and the adequacy of the corporation's accounting and financial reporting processes.

#### **6.11 Compliance with Requirement for Annual Statement Regarding Conflicts of Interest**

Prepare, in consultation with the independent auditor and the chief internal auditor, if any, the Annual Statement called for by SPAC's Conflict-of-Interest Policy; and furnish the Statement to those individuals required to complete it. The Annual Statements are to be returned by January 31<sup>st</sup> of each year.

### **Section 7. Governance/Officer Nominating Committee**

The Board of Directors shall designate, at or within a reasonable time after the Annual Meeting of the Members, a Governance/Officer Nominating Committee. In addition to such other matters as may from time to time be delegated to it by the Board, the Governance Committee shall

#### **7.1 Propose Directors and Officers**

- (a.) Solicit potential Directors of high integrity and moral character, who are interested in preserving the Corporation's heritage and furthering its mission. In addition, the Governance/Officer Nominating Committee shall be responsible for proposing persons for election as Directors at the Annual Meeting of the Members, and, in the event a vacancy occurs between Annual Meetings, for proposing replacement Directors for election by the Board. The Committee shall recommend a slate of Officers for approval by the Board each year at its meeting immediately following the Annual Meeting.
- (b.) The Officer Nominating Committee shall be considered a sub-committee of the Governance Committee, and shall be responsible for proposing a slate of Directors for election as Officers each year, or at any time a vacancy is created. The sub-committee shall make its recommendation to the Governance Committee, which shall propose a slate of Officers for approval by the Board of Directors each year at its meeting held in conjunction with SPAC's Annual Meeting.

The Officer Nominating Committee shall consist of the Chair of the Board and four (4) Directors designated by the Chair, who are neither officers of the Corporation nor candidates to become officers while serving on the Nominating Committee. In the event the current Board Chair is seeking re-election, the Chair shall designate the Governance Committee Chair to appoint the four (4) directors who shall serve on this committee along with the Governance Committee Chair.

## **7.2 Bylaws and Corporate Governance**

Make recommendations to the Board regarding issues of corporate governance; propose changes to organizational structure; review from time to time and propose revisions as necessary or desired to SPAC's Bylaws, and submit same for approval to the Board of Directors for submission to and final approval by the Members.

## **7.3 Board Composition**

Review at least annually the composition of the Board of Directors with respect to such factors as gender, ethnicity, age, industry representation, geographic distribution and areas of expertise, and SPAC's needs, so as to better be able to propose persons for election as directors.

## **7.4 Conflict-of-Interest**

Annually review SPAC's Conflict-of-Interest Policy, and recommend other policies and procedures to ensure good corporate governance, such as Board training and education, codes of conduct, etc.

## **Section 8. Facilities Committee**

The Board of Directors shall designate, at or within a reasonable time after the Annual Meeting of the Members, a Facilities Committee. In addition to such other matters as may from time to time be delegated to it by the Board, the Facilities Committee shall

### **8.1 Review of Facilities**

Tour, at least annually, all facilities under the scope of SPAC's lease with New York State Office of Parks, Recreation and Historic Preservation and report annually to the Board of Directors on the condition of these facilities.

### **8.2 Capital Improvements**

Work in consultation with New York State Office of Parks, Recreation and Historic Preservation and SPAC's administration to determine all necessary capital improvements and repairs.

### **8.3 Other Improvements**

Review and assess as necessary all other facility related needs in consultation with SPAC's administration, staff and maintenance.

## **Section 9. Strategic Planning Committee**

The Board of Directors shall designate, at or within a reasonable time after the Annual Meeting of the Members, a Strategic Planning Committee, composed of at least one member of the Executive Committee, the President, and other members as appointed by the Board. In addition to such other matters as may from time to time be delegated to it by the Board, the Strategic Planning Committee shall:

### **9.1 Development of Plan**

Oversee development and implementation of a three (3)-year rolling strategic plan, consistent with SPAC's mission and values, to be linked to its financial goals.

### **9.2 Annual Review**

Review, on an annual basis, the strategic plan, to determine progress on established goals, report to the Board of Directors as to progress of the plan, and where appropriate, recommend changes or adjustments.

## **Section 10. Development Committee**

The Board of Directors shall designate, at or within a reasonable time after the Annual Meeting of the Members, a Development Committee. In addition to such other matters as may from time to time be delegated to it by the Board, the Development Committee shall

### **10.1 Fundraising**

Be responsible for overseeing the formulation and implementation of SPAC's fundraising policies, and identify and secure funding for SPAC's programs.

### **10.2 Identification and Solicitation of Gifts**

Ensure that SPAC's fundraising program is aligned with its mission and planning priorities as approved by the Board of Directors.

## **ARTICLE IV– OFFICERS**

### **Section 1. Number**

SPAC's officers shall consist of a Chair, one or more Vice Chairs, a Treasurer, a Secretary, a President and such other officers as the Board of Directors may in its discretion determine. Any

two (2) or more offices may be held by the same person, except the offices of Chair and Secretary.

**Section 2. Term of Office and Qualifications**

- (a.) With the exception of the President, those Officers whose titles are specifically mentioned in Section 1 of this Article shall be elected by the Board of Directors at its Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such officer. The Officers shall be elected from among the Directors.
- (b.) Except as otherwise provided in this Section 2 (b.), no Officer shall serve in any one officer position for more than two (2) two (2)-year terms. The Board of Directors shall retain the authority to waive this limitation in cases of extraordinary circumstances, such as where the individual Director is contributing valuable services in the midst of a development campaign or other major project.

**Section 3. Additional Officers**

Additional officers may be elected for such period, and shall have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

**Section 4. Removal of Officers**

Any officer may be removed by the Board of Directors with or without cause at any time.

**Section 5. Resignation**

Any officer may resign at any time by giving written notice to the Board of Directors, or to the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then upon delivery.

**Section 6. Vacancies**

A vacancy in any office shall be filled by the Board of Directors.

**Section 7. Chair**

The Chair shall preside at all meetings of the Members and of the Board of Directors at which the Chair is present.

**Section 8. Vice Chair**

In the absence or incapacity to act of the Chair, or if the office of Chair be vacant, the Vice Chair or, if there be more than one Vice Chair, the Vice Chairs in order of seniority as determined by the Board of Directors, shall preside at all meetings of the Members and the Board, and shall perform the duties and exercise the powers of the Chair, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. Each Vice Chair shall have such powers and shall perform such other duties as may be assigned by the Board of Directors or the Chair.

### **Section 9. Treasurer**

The Treasurer shall keep, or cause to be kept and maintained, the books of account and shall have charge and custody of, and be responsible for, all SPAC's funds and securities, and the deposit of all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board. The Treasurer shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors. At each Annual Meeting of the Members, the Treasurer shall submit the Annual Report showing SPAC's financial transactions and financial condition, as described in Section 16 of Article II.

### **Section 10. Secretary**

It shall be the duty of the Secretary to act as secretary of all meetings of the Board of Directors, and to keep, or cause to be kept, the minutes of all such meetings in a proper book or books to be provided for that purpose. The Secretary shall insure that all notices required to be given by SPAC are duly given and served; and shall prepare, or cause to be prepared, for use at meetings of the Members, the list or record of Members referred to in Section 13 of Article I, and shall certify such list. The Secretary shall keep, or cause to be kept, a current list of SPAC's Directors and Officers and their residence addresses; the Secretary shall be custodian of SPAC's seal and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary, or some other person authorized by the Board in lieu of the Secretary, shall have custody of the minute book containing the minutes of all meetings of Members, Directors, the Executive Committee, and any other committees which may keep minutes, and of all contracts or other documents not in the custody of SPAC's Treasurer.

### **Section 11. President/Chief Executive Officer**

The Board of Directors shall appoint a President/Chief Executive Officer to have the general management of SPAC's affairs, and to see that all the Board's orders and resolutions are carried into effect. The President/CEO shall act as the chief executive officer of SPAC and shall supervise generally the management of SPAC's affairs, subject to the Board's supervision. The President/CEO shall negotiate contracts with administrative personnel, resident companies, trade unions, artists and other persons and entities necessary to SPAC's business and operation. The

President/CEO shall also perform such other duties as may be assigned from time to time by the Board.

**ARTICLE V - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS**

**Section 1. Execution of Contracts**

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, in the name of and on behalf of SPAC, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these Bylaws, no officer, agent or employee shall have any power or authority to bind SPAC by any contract or engagement, or to pledge its credit or render it pecuniarily liable in any amount for any purpose.

**Section 2. Loans**

No loans shall be contracted on behalf of SPAC unless specifically authorized by the Board of Directors.

**Section 3. Checks, Drafts, etc.**

All checks, drafts and other orders for the payment of money out of SPAC's funds, and all notes or other evidences of SPAC's indebtedness shall be signed on the Corporation's behalf in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 4. Deposits**

All funds of SPAC not otherwise employed shall be deposited from time to time to the Corporation's credit in such banks, trust companies or other depositories as the Board of Directors may select.

**ARTICLE VI - INDEMNIFICATION AND INSURANCE**

**Section 1. Authorized Indemnification**

Unless clearly prohibited by law or Section 2 of this Article, SPAC shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of SPAC, by reason of the fact that he or she (or his or her testator), whether before or after adoption of this Section, (a) is or was a Director or Officer of SPAC, or (b) in addition is

serving or served, in any capacity, at SPAC's request, as a director or officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided SPAC shall have consented to such settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

## **Section 2. Prohibited Indemnification**

SPAC shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

## **Section 3. Advancement of Expenses**

SPAC shall, on request of any Indemnified Person who is or may be entitled to be indemnified by SPAC, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay SPAC, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 2 of this Article. An Indemnified Person shall cooperate in good faith with any request by SPAC that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

## **Section 4. Indemnification of Others**

Unless clearly prohibited by law or Section 2 of this Article VI, the Board of Directors may authorize and approve indemnification by the Corporation as set forth in Section 1 or advancement of expenses as set forth in Section 3, to a person (or the testator of a person) who is or was employed by SPAC or who is or was a volunteer for SPAC, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at SPAC's request in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

## **Section 5. Determination of Indemnification**



Indemnification mandated by a final order of a court of competent jurisdiction will be paid. If indemnification has not been ordered by a court after termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, the Board of Directors shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these Bylaws. Before indemnification can occur, the Board must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable, the Board shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these Bylaws.

**Section 6. Binding Effect**

Any person entitled to indemnification under these Bylaws has a legally enforceable right to indemnification which cannot be abridged by amendment of these Bylaws with respect to any event, action or omission occurring prior to the date of such amendment.

**Section 7. Insurance**

SPAC is not required to purchase directors' and officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure SPAC for any obligation it incurs as a result of this Article VI or operation of law and it may insure directly the Directors, officers, employees or volunteers of SPAC for liabilities against which they are not entitled to indemnification under this Article VI as well as for liabilities against which they are entitled or permitted to be indemnified by SPAC.

**Section 8. Nonexclusive Rights**

The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors is authorized to enter into agreements on behalf of SPAC with any Director, member of the executive staff, employee or volunteer providing them rights to indemnification or advancement of expenses in addition to the provisions therefore in this Article VI, subject in all cases to the limitations of Section 2 of this Article and any applicable law.

## **ARTICLE VII - CONFLICT OF INTEREST**

SPAC shall at all times maintain a Conflict-of-Interest Policy that, at a minimum, defines what a conflict is; requires disclosure to the Board of Directors of any actual or potential conflict by the potentially-conflicted Director or principal officer of the Corporation; directs the Board to decide if a true conflict of interest exists; and precludes a conflicted Director from voting on any transaction in which he or she has a conflict.

## **ARTICLE VIII – COMPENSATION**

### **Section 1. Reasonable Compensation**

It is the policy of SPAC to pay no more than reasonable compensation for services rendered to SPAC by its President/CEO and employees. Directors shall not receive compensation for fulfilling their duties as Directors, although they may be reimbursed for actual out-of-pocket expenses incurred in order to fulfill their duties as Directors. Expenses of spouses will not be reimbursed by SPAC unless necessary to achieve a purpose of the Corporation.

### **Section 2. Approval of Compensation**

The Board of Directors must approve in advance the amount of all compensation for The President/CEO of SPAC. Before approving compensation, the Board shall determine that the total compensation to be provided by SPAC to the -President is reasonable in amount in light of the position, responsibility and qualification of the -President for the position held, including the result of an evaluation of the President/CEO's prior performance for SPAC, if applicable. In making the determination, the Board shall consider total compensation to include the salary and the value of all benefits provided by SPAC to the individual in payment for services. At the time of the discussion and decision concerning the President's compensation, the President shall not be present in the meeting. The Board shall obtain and consider appropriate data concerning comparable compensation paid to similar presidents in like circumstances. The Board shall set forth the basis for its decisions with respect to compensation in the minutes of the meeting at which the decisions are made, including the conclusions of the evaluation and the basis for determining that the individual's compensation was reasonable in light of the evaluation and the comparability data.

## **ARTICLE IX – GENERAL**

### **Section 1. Office**

SPAC's office shall be at such place in the County of Saratoga, State of New York, as the Board of Directors may determine.

## **Section 2. Books and Records**

There shall be kept at the office of SPAC: (1) correct and complete books and records of account; (2) minutes of the proceedings of the Members, the Board of Directors and the Executive Committee and other committees which keep minutes; (3) a current list of SPAC's Directors and Officers and their residence addresses; (4) a list of record containing the names and addresses of all Members, the class or classes of Membership; (5) a copy of these Bylaws; (6) a copy of SPAC's application to the Internal Revenue Service for recognition of exemption; and (7) copies of SPAC's information returns to the Internal Revenue Service for the past three (3) years.

## **Section 3. Seal**

The corporate seal shall be in the form of a circle and shall have inscribed thereon the following: Saratoga Performing Arts Center, Inc., 1962, New York Not-for-Profit Corporation.

## **ARTICLE X - FISCAL POLICY**

### **Section 1. Loans to Directors and Officers**

No loans other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by SPAC to its Directors or Officers, or to any other corporation, firm, association or other entity in which one or more of its Directors or Officers are directors or officers or hold a substantial financial interest, except as allowed by law.

### **Section 2. Fiscal Year**

SPAC's fiscal year shall commence January 1st in each calendar year and end on December 31st.

## **ARTICLE XI – AMENDMENTS**

SPAC's Bylaws may be amended or repealed or added to, or new Bylaws may be adopted, (i) by the Members at the time entitled to vote in the election of Directors or, (ii) subject to any limitation set forth in the Certificate of Incorporation, by the Board of Directors. If any Bylaw regulating an impending election of Directors is adopted, amended or repealed by the Board, there shall be set forth in the notice of the next meeting of the Members for the election of Directors the Bylaws so adopted, amended or repealed, together with a concise statement of the changes made.