DLN 3

OMB No 1545-0047

Form **990**

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

Department of the Treasury Internal Revenue Service

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

2005

Open to Public Inspection

A For the 2005 calendar year, or tax year beginning November 1 , 2005, and ending October 31 , 20 06

B Check if applicable: ☑ Address change ☐ Name change ☐ Initial return ☐ Final return ☐ Amended return ☐ Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization: **Shaw Festival Foundation**

Number and street (or P O box if mail is not delivered to street address): **c/o Nicole R. Tzetzo, Esq. 200 Delaware Avenue** Room/suite: **900**

City or town, state or country, and ZIP + 4: **Buffalo, New York 14202**

D Employer identification number: **22 2809351**

E Telephone number: **(716) 843.3859**

F Accounting method: ☑ Cash ☐ Accrual ☐ Other (specify) ▶

• **Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).**

H and I are not applicable to section 527 organizations

H(a) Is this a group return for affiliates? ☐ Yes ☑ No

H(b) If "Yes," enter number of affiliates ▶

H(c) Are all affiliates included? ☐ Yes ☐ No (If "No," attach a list See instructions)

H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☑ No

I Group Exemption Number ▶

G **Website: ▶ N/A**

J **Organization type** (check only one) ▶ ☑ 501(c) (3) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527

K Check here ▶ ☐ if the organization's gross receipts are normally not more than $25,000 The organization need not file a return with the IRS, but if the organization chooses to file a return, be sure to file a complete return **Some states require a complete return**

M Check ▶ ☐ if the organization is **not** required to attach Sch B (Form 990, 990-EZ, or 990-PF)

L Gross receipts Add lines 6b, 8b, 9b, and 10b to line 12 ▶ **1,282,626.00**

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances *(See the instructions.)*

Revenue

1	Contributions, gifts, grants, and similar amounts received.				
a	Direct public support	1a	1,247,054.00		
b	Indirect public support	1b	-0-		
c	Government contributions (grants)	1c	-0-		
d	**Total** (add lines 1a through 1c) (cash $ 1,209,776.00 noncash $ 37,278.00)			1d	1,247,054.00
2	Program service revenue including government fees and contracts (from Part VII, line 93)			2	-0-
3	Membership dues and assessments			3	-0-
4	Interest on savings and temporary cash investments			4	1,865.00
5	Dividends and interest from securities			5	-0-
6a	Gross rents	6a	-0-		
b	Less rental expenses	6b	-0-		
c	Net rental income or (loss) (subtract line 6b from line 6a)			6c	-0-
7	Other investment income (describe ▶ Oil and Gas Royalties)			7	52.00

		(A) Securities		(B) Other		
8a	Gross amount from sales of assets other than inventory	33,655.00	8a	-0-		
b	Less cost or other basis and sales expenses	34,207.00	8b	-0-		
c	Gain or (loss) (attach schedule)	(552.00)	8c	-0-		
d	Net gain or (loss) (combine line 8c, columns (A) and (B))				8d	(552.00)

9	Special events and activities (attach schedule). If any amount is from **gaming**, check here ▶ ☐				
a	Gross revenue (not including $ ______ of contributions reported on line 1a)	9a	-0-		
b	Less: direct expenses other than fundraising expenses	9b	-0-		
c	Net income or (loss) from special events (subtract line 9b from line 9a)			9c	-0-
10a	Gross sales of inventory, less returns and allowances	10a	-0-		
b	Less. cost of goods sold	10b	-0-		
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)			10c	-0-
11	Other revenue (from Part VII, line 103)			11	-0-
12	**Total revenue** (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)			12	1,248,419.00

Expenses

13	Program services (from line 44, column (B))	13	1,237,500.00
14	Management and general (from line 44, column (C))	14	17,179.00
15	Fundraising (from line 44, column (D))	15	8,825.00
16	Payments to affiliates (attach schedule)	16	-0-
17	**Total expenses** (add lines 16 and 44, column (A))	17	1,263,504.00

Net Assets

18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	(15,085.00)
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	247,742.00
20	Other changes in net assets or fund balances (attach explanation)	20	-0-
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	232,657.00

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat No 11282Y Form **990** (2005)

STATUTE UNIT RECEIVED DEC 26 2012 TPR BRANCH OGDEN

RECEIVED DEC 19 2012 OGDEN, UT IRS-OSC

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Part II Statement of Functional Expenses All organizations must complete column (A) Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others (*See the instructions*)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule) (cash $ 1,237,500.00 noncash $ 0) If this amount includes foreign grants, check here ▶ ☐	22	1,237,500.00	1,237,500.00		
23 Specific assistance to individuals (attach schedule)	23	-0-	-0-		
24 Benefits paid to or for members (attach schedule)	24	-0-	-0-		
25 Compensation of officers, directors, etc.	25	-0-	-0-	-0-	-0-
26 Other salaries and wages	26	-0-	-0-	-0-	-0-
27 Pension plan contributions	27	-0-	-0-	-0-	-0-
28 Other employee benefits	28	-0-	-0-	-0-	-0-
29 Payroll taxes	29	-0-	-0-	-0-	-0-
30 Professional fundraising fees	30	-0-	-0-	-0-	-0-
31 Accounting fees	31	-0-	-0-	-0-	-0-
32 Legal fees	32	15,903.00	-0-	15,903.00	-0-
33 Supplies	33	-0-	-0-	-0-	-0-
34 Telephone	34	-0-	-0-	-0-	-0-
35 Postage and shipping	35	-0-	-0-	-0-	-0-
36 Occupancy	36	-0-	-0-	-0-	-0-
37 Equipment rental and maintenance	37	-0-	-0-	-0-	-0-
38 Printing and publications	38	-0-	-0-	-0-	-0-
39 Travel	39	-0-	-0-	-0-	-0-
40 Conferences, conventions, and meetings	40	-0-	-0-	-0-	-0-
41 Interest	41	-0-	-0-	-0-	-0-
42 Depreciation, depletion, etc (attach schedule)	42	-0-	-0-	-0-	-0-
43 Other expenses not covered above (itemize).					
a Bank service charges	43a	1,276.00	-0-	1,276.00	-0-
b Credit card service charges	43b	8,764.00	-0-	-0-	8,764.00
c Miscellaneous	43c	61.00	-0-	-0-	61.00
d	43d	-0-	-0-	-0-	-0-
e	43e	-0-	-0-	-0-	-0-
f	43f	-0-	-0-	-0-	-0-
g	43g	-0-	-0-	-0-	-0-
44 **Total functional expenses.** Add lines 22 through 43 (Organizations completing columns (B)-(D), carry these totals to lines 13-15)	44	1,263,504.00	1,237,500.00	17,179.30	8,825.00

Joint Costs. Check ▶ ☐ if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in **(B)** Program services? ▶ ☐ Yes ☑ No

If "Yes," enter **(i)** the aggregate amount of these joint costs $ N/A, **(ii)** the amount allocated to Program services $ N/A, **(iii)** the amount allocated to Management and general $ N/A, and **(iv)** the amount allocated to Fundraising $ N/A

Part III **Statement of Program Service Accomplishments** *(See the instructions.)*

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

What is the organization's primary exempt purpose? ▶ **Grants to public charities** All organizations must describe their exempt purpose achievements in a clear and concise manner State the number of clients served, publications issued, etc Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others)	**Program Service Expenses** (Required for 501(c)(3) and (4) orgs, and 4947(a)(1) trusts but optional for others)
a **Grants to Shaw Festival Theatre Foundation** **Niagara-on-the-lake, Ontario for the Capital Campaign** (Grants and allocations $ **402,000.00**) If this amount includes foreign grants, check here ▶ ☑	**402,000.00**
b **Grants to Shaw Festival Theatre Foundation** **Niagara-on-the-lake, Ontario for Patron Development** (Grants and allocations $ **370,000.00**) If this amount includes foreign grants, check here ▶ ☑	**370,000.00**
c **Grants to Shaw Festival Theatre Foundation** **Niagara-on-the-lake, Ontario for General Operations** (Grants and allocations $ **465,000.00**) If this amount includes foreign grants, check here ▶ ☑	**465,000.00**
d **Grants to Niagara Pumphouse Visual Arts Centre** (Grants and allocations $ **500.00**) If this amount includes foreign grants, check here ▶ ☑	**500.00**
e Other program services (attach schedule) (Grants and allocations $ **N/A**) If this amount includes foreign grants, check here ▶ ☐	**N/A**
f **Total of Program Service Expenses** (should equal line 44, column (B), Program services). . . . ▶	**1,237,500.00**

Part IV Balance Sheets *(See the instructions.)*

Note: *Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.*			(A) Beginning of year		(B) End of year
Assets 45	Cash—non-interest-bearing		-0-	45	-0-
46	Savings and temporary cash investments		247,742.00	46	229,585.00
47a	Accounts receivable	47a -0-			
b	Less allowance for doubtful accounts	47b -0-	-0-	47c	-0-
48a	Pledges receivable	48a -0-			
b	Less: allowance for doubtful accounts	48b -0-	-0-	48c	-0-
49	Grants receivable		-0-	49	-0-
50	Receivables from officers, directors, trustees, and key employees (attach schedule)		-0-	50	-0-
51a	Other notes and loans receivable (attach schedule)	51a -0-			
b	Less allowance for doubtful accounts	51b -0-	-0-	51c	-0-
52	Inventories for sale or use		-0-	52	-0-
53	Prepaid expenses and deferred charges		-0-	53	-0-
54	Investments—securities (attach schedule) ▶ ☑ Cost ☐ FMV		-0-	54	3,072.00
55a	Investments—land, buildings, and equipment: basis	55a -0-			
b	Less accumulated depreciation (attach schedule)	55b -0-	-0-	55c	-0-
56	Investments—other (attach schedule)		-0-	56	-0-
57a	Land, buildings, and equipment: basis	57a -0-			
b	Less: accumulated depreciation (attach schedule)	57b -0-	-0-	57c	-0-
58	Other assets (describe ▶)		-0-	58	-0-
59	**Total assets** (must equal line 74) Add lines 45 through 58.		247,742.00	59	232,657.00
Liabilities 60	Accounts payable and accrued expenses		-0-	60	-0-
61	Grants payable		-0-	61	-0-
62	Deferred revenue		-0-	62	-0-
63	Loans from officers, directors, trustees, and key employees (attach schedule)		-0-	63	-0-
64a	Tax-exempt bond liabilities (attach schedule)		-0-	64a	-0-
b	Mortgages and other notes payable (attach schedule)		-0-	64b	-0-
65	Other liabilities (describe ▶ None)		-0-	65	-0-
66	**Total liabilities.** Add lines 60 through 65		-0-	66	-0-
Net Assets or Fund Balances	**Organizations that follow SFAS 117, check here ▶** ☐ and complete lines 67 through 69 and lines 73 and 74.				
67	Unrestricted		-0-	67	-0-
68	Temporarily restricted		-0-	68	-0-
69	Permanently restricted		-0-	69	-0-
	Organizations that do not follow SFAS 117, check here ▶ ☐ and complete lines 70 through 74.				
70	Capital stock, trust principal, or current funds		-0-	70	-0-
71	Paid-in or capital surplus, or land, building, and equipment fund		-0-	71	-0-
72	Retained earnings, endowment, accumulated income, or other funds		247,742.00	72	232,657.00
73	**Total net assets or fund balances** (add lines 67 through 69 **or** lines 70 through 72, column (A) **must** equal line 19; column (B) **must** equal line 21)		247,742.00	73	232,657.00
74	**Total liabilities and net assets/fund balances.** Add lines 66 and 73		247,742.00	74	232,657.00

Part IV-A Reconciliation of Revenue per Audited Financial Statements With Revenue per Return *(See the instructions.)*

a	Total revenue, gains, and other support per audited financial statements			a	1,248,419.00
b	Amounts included on line **a** but not on Part I, line 12:				
1	Net unrealized gains on investments	b1	-0-		
2	Donated services and use of facilities	b2	-0-		
3	Recoveries of prior year grants	b3	-0-		
4	Other (specify):	b4	-0-		
	Add lines **b1** through **b4**			b	-0-
c	Subtract line **b** from line **a**			c	1,248,419.00
d	Amounts included on Part I, line 12, but not on line **a**:				
1	Investment expenses not included on Part I, line 6b	d1	-0-		
2	Other (specify):	d2	-0-		
	Add lines **d1** and **d2**			d	-0-
e	**Total revenue** (Part I, line 12). Add lines **c** and **d** ▶			e	-0-

Part IV-B Reconciliation of Expenses per Audited Financial Statements With Expenses per Return

a	Total expenses and losses per audited financial statements			a	1,263,504.00
b	Amounts included on line **a** but not on Part I, line 17				
1	Donated services and use of facilities	b1	-0-		
2	Prior year adjustments reported on Part I, line 20	b2	-0-		
3	Losses reported on Part I, line 20	b3	-0-		
4	Other (specify). -0-	b4	-0-		
	Add lines **b1** through **b4**			b	-0-
c	Subtract line **b** from line **a**			c	1,263,504.00
d	Amounts included on Part I, line 17, but not on line **a**:				
1	Investment expenses not included on Part I, line 6b	d1	-0-		
2	Other (specify)	d2	-0-		
	Add lines **d1** and **d2**			d	-0-
e	**Total expenses** (Part I, line 17). Add lines **c** and **d** ▶			e	1,263,504.00

Part V-A Current Officers, Directors, Trustees, and Key Employees (List each person who was an officer, director, trustee, or key employee at any time during the year even if they were not compensated.) *(See the instructions.)*

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-.)	(D) Contributions to employee benefit plans & deferred compensation plans	(E) Expense account and other allowances
Robert J.A. Irwin, 6 St. Andrews Walk Buffalo, New York 14222	Pres. & Director - .5	-0-	-0-	-0-
Victor A. Rice, 33 Tudor Place Buffalo, New York 14222	V. Pres & Director -.5	-0-	-0-	-0-
George F. Phillips, Jr., Suite 3765, One HSBC Center Buffalo, New York 14203	V. Pres & Director - .5	-0-	-0-	-0-
Paul A. Battaglia, 8 Valley View Drive Orchard Park, New York 14127	Sec, Tres, Dir - .5	-0-	-0-	-0-
Calvin G. Rand, 16 St. Andrews Walk Buffalo, New York 14222	Director - .5	-0-	-0-	-0-
James G. Wadsworth, The Guaranty Bldg. 140 Pearl Street, Suite 100, Buffalo, NY 14202	Director - .5	-0-	-0-	-0-

Part V-A Current Officers, Directors, Trustees, and Key Employees *(continued)*

			Yes	No
75a	Enter the total number of officers, directors, and trustees permitted to vote on organization business at board meetings ▶ 6			
b	Are any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, related to each other through family or business relationships? If "Yes," attach a statement that identifies the individuals and explains the relationship(s)	75b		✓
c	Do any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, receive compensation from any other organizations, whether tax exempt or taxable, that are related to this organization through common supervision or common control? **Note** Related organizations include section 509(a)(3) supporting organizations. If "Yes," attach a statement that identifies the individuals, explains the relationship between this organization and the other organization(s), and describes the compensation arrangements, including amounts paid to each individual by each related organization.	75c		✓
d	Does the organization have a written conflict of interest policy?	75d	✓	

Part V-B Former Officers, Directors, Trustees, and Key Employees That Received Compensation or Other Benefits (If any former officer, director, trustee, or key employee received compensation or other benefits (described below) during the year, list that person below and enter the amount of compensation or other benefits in the appropriate column See the instructions)

(A) Name and address	(B) Loans and Advances	(C) Compensation	(D) Contributions to employee benefit plans & deferred compensation plans	(E) Expense account and other allowances
N/A				

Part VI Other Information *(See the instructions.)*

			Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76		✓
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.	77	✓	
78a	Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?	78a		✓
b	If "Yes," has it filed a tax return on **Form 990-T** for this year?	78b		
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79		✓
80a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a		✓
b	If "Yes," enter the name of the organization ▶ and check whether it is ☐ exempt **or** ☐ nonexempt			
81a	Enter direct and indirect political expenditures (See line 81 instructions) 81a			
b	Did the organization file **Form 1120-POL** for this year?	81b		✓

Part VI Other Information *(continued)*

			Yes	No
82a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a		✓
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III) 82b			
83a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	✓	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	✓	
84a	Did the organization solicit any contributions or gifts that were not tax deductible?	84a		✓
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b		
85	*501(c)(4), (5), or (6) organizations.* a Were substantially all dues nondeductible by members?	85a		
b	Did the organization make only in-house lobbying expenditures of $2,000 or less?	85b		
	If "Yes" was answered to either 85a or 85b, **do not** complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.			
c	Dues, assessments, and similar amounts from members 85c N/A			
d	Section 162(e) lobbying and political expenditures 85d N/A			
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices 85e N/A			
f	Taxable amount of lobbying and political expenditures (line 85d less 85e) 85f N/A			
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?	85g		
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h		
86	*501(c)(7) orgs.* Enter: a Initiation fees and capital contributions included on line 12 86a N/A			
b	Gross receipts, included on line 12, for public use of club facilities 86b N/A			
87	*501(c)(12) orgs.* Enter a Gross income from members or shareholders 87a N/A			
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.) 87b N/A			
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301 7701-2 and 301 7701-3? If "Yes," complete Part IX	88		✓
89a	*501(c)(3) organizations* Enter. Amount of tax imposed on the organization during the year under. section 4911 ▶ ....; section 4912 ▶ ...., section 4955 ▶			
b	*501(c)(3) and 501(c)(4) orgs.* Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b		✓

c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ▶ -0-

d Enter: Amount of tax on line 89c, above, reimbursed by the organization ▶ N/A

90a List the states with which a copy of this return is filed ▶ New York

b Number of employees employed in the pay period that includes March 12, 2005 (See instructions.) 90b 0

91a The books are in care of ▶ Nicole R. Tzetzo, Esq. Telephone no. ▶ (716) 843.3859

Located at ▶ 200 Delaware Avenue, Suite 900, Buffalo, New York ZIP + 4 ▶ 14202

			Yes	No
b	At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)?	91b	✓	
	If "Yes," enter the name of the foreign country ▶ Canada			
	See the instructions for exceptions and filing requirements for **Form TD F 90-22.1,** Report of Foreign Bank and Financial Accounts.			
c	At any time during the calendar year, did the organization maintain an office outside of the United States?	91c		✓
	If "Yes," enter the name of the foreign country ▶			

92 *Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of **Form 1041**—*Check here ▶ ☐
and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 92

Part VII Analysis of Income-Producing Activities *(See the instructions.)*

Note: *Enter gross amounts unless otherwise indicated.*	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93 Program service revenue:					
a					
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	1,865.00	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate:					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income			15	52.00	
100 Gain or (loss) from sales of assets other than inventory			18	(552.00)	
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue: a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))				1,357.00	

105 **Total** (add line 104, columns (B), (D), and (E)) ▶ 1,357.00

Note: *Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.*

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes *(See the instructions.)*

Line No. ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
	N/A

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities *(See the instructions.)*

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts *(See the instructions.)*

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☑ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☑ No

Note: *If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).*

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

James M Wadsworth 12/5/12

Signature of officer Date

James M. Wadsworth, President

Type or print name and title

Paid Preparer's Use Only

Preparer's signature	Nicole R. Foltz	Date 12/5/12	Check if self-employed ▶ ☑	Preparer's SSN or PTIN (See Gen Inst W) P00741947
Firm's name (or yours if self-employed), address, and ZIP + 4	Jaeckle Fleischmann & Mugel, LLP, 200 Delaware Ave Suite 900, Buffalo, New York 14202		EIN ▶ 16:0774920	Phone no ▶ (716) 856-0600

SCHEDULE A (Form 990 or 990-EZ)

Department of the Treasury Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information—(See separate instructions.)

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

2005

Name of the organization

Employer identification number

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than $50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				

Total number of other employees paid over $50,000 ▶

Part II-A Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions. List each one (whether individuals or firms) If there are none, enter "None ")

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		

Total number of others receiving over $50,000 for professional services ▶

Part II-B Compensation of the Five Highest Paid Independent Contractors for Other Services

(List each contractor who performed services other than professional services, whether individuals or firms. If there are none, enter "None." See page 2 of the instructions.)

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		

Total number of other contractors receiving over $50,000 for other services ▶

Part III **Statements About Activities** (See page 2 of the instructions.)

			Yes	No
1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ $ ______ (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B)	1		✓
	Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities			
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? *(If the answer to any question is "Yes," attach a detailed statement explaining the transactions)*			
a	Sale, exchange, or leasing of property?	2a		✓
b	Lending of money or other extension of credit?	2b		✓
c	Furnishing of goods, services, or facilities?	2c		✓
d	Payment of compensation (or payment or reimbursement of expenses if more than $1,000)?	2d		✓
e	Transfer of any part of its income or assets?	2e		✓
3a	Do you make grants for scholarships, fellowships, student loans, etc ? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments)	3a		✓
b	Do you have a section 403(b) annuity plan for your employees?	3b		✓
c	During the year, did the organization receive a contribution of qualified real property interest under section 170(h)?	3c		✓
4a	Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?	4a		✓
b	Do you provide credit counseling, debt management, credit repair, or debt negotiation services?	4b		✓

Part IV **Reason for Non-Private Foundation Status** (See pages 3 through 6 of the instructions.)

The organization is not a private foundation because it is (Please check only **ONE** applicable box)

5 ☐ A church, convention of churches, or association of churches Section 170(b)(1)(A)(i)

6 ☐ A school Section 170(b)(1)(A)(ii) (Also complete Part V)

7 ☐ A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii)

8 ☐ A Federal, state, or local government or governmental unit Section 170(b)(1)(A)(v)

9 ☐ A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii) **Enter the hospital's name, city, and state** ▶ ______

10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A)

11a ☑ An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)

11b ☐ A community trust Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)

12 ☐ An organization that normally receives **(1) more than 33⅓%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions—subject to certain exceptions, and **(2) no more than 33⅓%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A)

13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in **(1)** lines 5 through 12 above, or **(2)** sections 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2) Check the box that describes the type of supporting organization ▶ ☐ Type 1 ☐ Type 2 ☐ Type 3

Provide the following information about the supported organizations. (See page 6 of the instructions)

(a) Name(s) of supported organization(s)	**(b)** Line number from above

14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4) (See page 6 of the instructions)

Part IV-A **Support Schedule** (Complete only if you checked a box on line 10, 11, or 12) *Use cash method of accounting.*

Note: *You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting*

	Calendar year (or fiscal year beginning in) ▶	(a) 2004	(b) 2003	(c) 2002	(d) 2001	(e) Total
15	Gifts, grants, and contributions received. (Do not include unusual grants See line 28).	1,782,991.00	1,268,251.00	668,645.00	779,077.00	4,498,964.00
16	Membership fees received	-0-	-0-	-0-	-0-	-0-
17	Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc , purpose	-0-	-0-	-0-	-0-	-0-
18	Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	2,712.00	528.00	698.00	1,802.00	5,740.00
19	Net income from unrelated business activities not included in line 18					
20	Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21	The value of services or facilities furnished to the organization by a governmental unit without charge Do not include the value of services or facilities generally furnished to the public without charge					
22	Other income Attach a schedule Do not include gain or (loss) from sale of capital assets					
23	Total of lines 15 through 22	1,785,701.00	1,268,779.00	669,343.00	780,879.00	4,504,704.00
24	Line 23 minus line 17	1,785,701.00	1,268,779.00	669,343.00	780,879.00	4,504,704.00
25	Enter 1% of line 23	17,857.00	12,688.00	6,693.00	7,809.00	

26 **Organizations described on lines 10 or 11:** a Enter 2% of amount in column (e), line 24 ▶ 26a 90,094.00

b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 2001 through 2004 exceeded the amount shown in line 26a. **Do not file this list with your return.** Enter the total of all these excess amounts ▶ 26b 546,646.00

c Total support for section 509(a)(1) test Enter line 24, column (e) ▶ 26c 4,504,704.00

d Add Amounts from column (e) for lines 18 5,740.00 19 ------ 22 ------- 26b 546,646.00 ▶ 26d 552,386.00

e Public support (line 26c minus line 26d total) ▶ 26e 3,952,318.00

f **Public support percentage (line 26e (numerator) divided by line 26c (denominator))** ▶ 26f 87.74 %

27 **Organizations described on line 12:** a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person " **Do not file this list with your return.** Enter the sum of such amounts for each year

(2004) .... (2003) .... (2002) .... (2001) ....

b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the **larger** of **(1)** the amount on line 25 for the year or **(2)** $5,000 (Include in the list organizations described in lines 5 through 11b, as well as individuals) **Do not file this list with your return.** After computing the difference between the amount received and the larger amount described in **(1)** or **(2)**, enter the sum of these differences (the excess amounts) for each year

(2004) .... (2003) .... (2002) .... (2001) ....

c Add Amounts from column (e) for lines 15 ____ 16 ____ 17 ____ 20 ____ 21 ____ ▶ 27c

d Add Line 27a total. ____ and line 27b total ____ ▶ 27d

e Public support (line 27c total minus line 27d total) ▶ 27e

f Total support for section 509(a)(2) test Enter amount from line 23, column (e) ▶ 27f

g **Public support percentage (line 27e (numerator) divided by line 27f (denominator))** ▶ 27g %

h **Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator)).** ▶ 27h %

28 **Unusual Grants:** For an organization described in line 10, 11, or 12 that received any unusual grants during 2001 through 2004, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant **Do not file this list with your return.** Do not include these grants in line 15

SHAW FESTIVAL FOUNDATION
Attachment to 2005 Form 990
E.I.N.· 22-2809351

Part 1. Line 8

Description	Net Amount Realized	Book Value	Gain (Loss)
26 shares Abbott Laboratories	992 71	1,028 04	(35 33)
560 shares DWS Inv Trust Growth & Income Fund	12,430 00	12,460 00	(30 00)
160 shares Heineken N V	4,765 15	4,888 00	(122 85)
98 shares Merck	2,892 27	2,924 81	(32 54)
26 shares Pepsico	1,476 23	1,530 62	(54 39)
170 shares Pepsico	9,959 92	10,072 50	(112 58)
28 shares Walgreen	1,138 67	1,302 84	(164 17)
Total	**$33,654.95**	**$34,206.81**	**(551.86)**

Attachment to 2005 Form 990
SHAW FESTIVAL FOUNDATION
E I.N.: 22-2809351

Part II, Line 22 - Grants and Allocations

Grantee	Amount	Purpose
Shaw Festival Theatre Foundation 10 Queen's Parade Niagara-on-the-Lake, Ontario, Canada L0S 1J0	$402,000 00	Capital Campaign
Shaw Festival Theatre Foundation 10 Queen's Parade Niagara-on-the-Lake, Ontario, Canada L0S 1J0	$370,000 00	Patron Development
Shaw Festival Theatre Foundation 10 Queen's Parade Niagara-on-the-Lake, Ontario, Canada L0S 1J0	$465,000 00	General Operations and Development of U S Audience
Niagara Pumphouse Visual Arts Centre 247 Ricardo Street Niagara-on-the-Lake, Ontario, Canada LOS 1JO	$500 00	Niagara Pumphouse Visual Arts Centre
TOTAL	$1,237,500 00	

Part IV, Line 54 - Investments - Securities

Beginning of Year		End of Year	
Description	Amount	Description	Amount
NONE		87 Shares General Electric	$3,072 41

SHAW FESTIVAL FOUNDATION
Attachment to 2005 Form 990
E.I.N.: 22-2809351

Part VI, Line 77 - Other Information

The By-Laws were amended to increase the number of directors from six to seven as of August 30, 2006.

SECRETARIAL CERTIFICATE

I, THOMAS ~~G.~~ R. HYDE, Secretary of the SHAW FESTIVAL FOUNDATION, do hereby certify that the foregoing is a true and complete copy of the By-Laws of said Corporation, including all amendments thereto, and that the same are in force at the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Corporation this 5th day of December, 2012.

[Seal]

Thomas R. Hyde

Thomas ~~G.~~ R. Hyde

1069576v1

BY-LAWS

OF

SHAW FESTIVAL FOUNDATION

[AS AMENDED THROUGH AUGUST 30, 2006]

ARTICLE I

Offices

1. Office. The office of the Corporation shall be located in the City of Buffalo, County of Erie and State of New York.

2. Additional Offices. The Corporation may have offices at such other places within or without the State of New York as the Board of Directors may from time to time appoint or the business of the Corporation may require.

ARTICLE II

Members

The Corporation shall have no members. The Board of Directors may take any action which is permitted or required to be taken by members of a not-for-profit corporation formed under the Laws of New York State, by the affirmative vote of a majority of the Board or such greater vote as may be required by law or by these by-laws, without the necessity of any prior action by the Board which would have otherwise been required by law for such action if there were members entitled to vote on such action.

ARTICLE III

Board of Directors

1. General. The affairs of the Corporation shall be managed by its Board of Directors.

2. Number. The number of Directors of the Corporation shall be seven but such number may be increased or decreased by amendment to these by-laws. [As amended 8/30/06.]

3. Qualifications. Each Director shall be at least eighteen years of age.

4. Election and Term of Office. The Board, at each annual meeting, shall elect a full Board of Directors to serve until the following annual meeting and until their successors are elected and qualified. Such Directors shall be elected by a majority of the votes cast at such meeting. [As amended 5/31/94.]

5. Resignation. Any Director may resign at any time by giving written notice of such resignation to the Board of Directors.

6. Removal. Any Director may be removed at any time for cause by the Board provided there is a quorum of not less than a majority present at the meeting of the Board at which such action is taken.

7. Vacancies. Any vacancy occurring in the Board of Directors by reason of death, resignation, removal, refusal to serve, or otherwise, shall be filled by a vote of the majority of the remaining Directors at any regular or special meeting.

8. Compensation. Members of the Board shall not receive any compensation for their services as Directors, but the Board may, by resolution, authorize reimbursements of

expenses incurred in the performance of their duties. Nothing herein shall preclude a Director from serving the Corporation in any other capacity and receiving compensation for such services.

9. Committees of the Board. The Board of Directors by resolution adopted by a majority of the entire Board, may designate from among its members an executive committee and other standing committees, each consisting of three or more Directors, and such special committees as may be deemed desirable, and each such committee, to the extent provided in such resolution and not prohibited by law, shall have all the authority of the Board.

10. Honorary Directors. The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate one or more persons to serve as honorary directors of the Corporation. Honorary directors shall serve at the pleasure of the Board and shall be entitled to receive notice of Board meetings and to attend such meetings but shall have no voting rights. [Added 5/31/94.]

ARTICLE IV

Meetings of the Board

1. Regular Meetings. The Board shall hold regular meetings with such frequency as may be determined from time to time by the Board.

2. Annual Meeting. A meeting of the Board of Directors shall be held annually for the election of directors and officers and the transaction of other business in the month of January in each and every year on such day of the month, at such time of the day and at such place as the Board may determine.

3. Special Meetings. Special meetings of the Board may be called by the President and such call shall be issued whenever requested in writing by any two Directors.

4. Notice of Meetings. Ten days' notice shall be given of all meetings of the Board. Notices of such meetings may be either oral or written. Notices sent by mail shall be deemed given when deposited in the United States mail, with first-class postage thereon prepaid, directed to the director at his or her address as it appears on the records of the Corporation. No notice need be given to any Director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. [As amended 5/31/94.]

5. Quorum. At all meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business, provided, however, that in no event shall less than one-third of the entire number of Directors constitute a quorum. When a quorum is once present to organize the meeting, it is not broken by the subsequent withdrawal of any of those present.

6. Adjournment If No Quorum. If less than a quorum is present for any duly noticed meeting of the Board, a majority of the Directors present nay adjourn the meeting from time to time not exceeding thirty days at any one time until a quorum shall be present and the business of the meeting accomplished, and of such adjourned meeting, no notice need be given.

7. Voting of Directors. The vote of the majority of the Directors at a meeting at which a quorum is present shall be the act of the Board, unless the vote of a greater number is required by law or by these by-laws.

8. Action by Board Without a Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all the members of the Board or committee consent in writing to the adoption of a resolution authorizing the action.

9. Conference Telephone. Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE V

Officers

1. Designation. The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer, and such other officers as the Board of Directors may determine.

2. Election and Term of Office. Each officer shall be elected by the Board to hold office for a term of one year, and shall hold office for such term and until his or her successor shall have been elected and qualified.

3. Compensation. The officers of the Corporation shall serve without compensation.

4. President. The President shall be the chief executive officer of the Corporation, shall be generally in charge of all affairs of the Corporation, shall preside at all meetings of the Board, and shall perform all other duties pertaining to the office.

5. Vice President. In the absence of the President, the Vice President or the Vice Presidents, in the order of their election or stated number, shall perform all of the duties appertaining to that office; and shall perform such duties as the Board and the President may from time to time prescribe.

6. Secretary. The Secretary shall keep a record of the proceedings of all meetings of the Board; shall have custody of the records and papers of the Corporation not otherwise provided for; and shall perform the other duties customarily performed by the Secretary of a corporation.

7. Treasurer. The Treasurer shall receive all monies of the Corporation and deposit the same in such bank or banks as directed by the Board of Directors; shall collect all contributions and keep an accurate account of all receipts and disbursements; shall present a detailed report of the accounts of the Corporation when directed by the Board; shall pay out all funds by order of the Board; and shall perform the other duties customarily performed by the Treasurer of a corporation.

8. Removal. Any officer may be removed by the Board with or without cause.

9. Vacancies. If the office of any officer becomes vacant for any reason, the Directors may elect any qualified person to fill such vacancy, who shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected and qualified.

ARTICLE VI

Grants and Contributions by the Corporation

1. Power Vested in Board of Directors. In furtherance of its purposes, the Corporation may make grants and contributions and otherwise render financial assistance to other organizations organized and operated exclusively for charitable, scientific, literary, cultural or educational purposes. The making of such grants and contributions and otherwise rendering of financial assistance shall be within the exclusive power of the Board of Directors.

2. Permissible Grantees. Only those organizations which are organized and operated exclusively for charitable, scientific, literary, cultural or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), shall be the recipients of grants, contributions or other financial assistance from the Corporation.

3. Grant Requests. The Board of Directors shall review all requests for funds from other organizations, shall require that such requests specify the use to which the funds will be put, and if the Board of Directors approves the request, shall authorize payment of such funds to the approved grantee. The Board of Directors, in its absolute discretion, may refuse to make any grants or contributions or otherwise render financial assistance to or for any or all the purposes for which funds are requested.

4. Periodic Reports. In the case of any grant to an organization other than an organization described in paragraph (l), (2), or (3) of section 509(a) of the Internal Revenue Code of 1986 or an exempt operating foundation as defined in section 4940(d)(2) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), the Board shall require the grantee to furnish such accountings and reports to the Corporation as will enable the Corporation to exercise "expenditure responsibility" with respect to such grant (as the latter term is defined in section 4945(h) of the Code). In the case of any other grant, the Board of Directors may require that a grantee furnish periodic accountings to the Corporation to insure that funds are expended for approved purposes.

5. Power to Withdraw Approval. At all times prior to payment of funds to a grantee, the Board of Directors shall have the authority to withdraw the approval of any grant, and to use funds committed to or solicited for such grant for such other charitable, scientific,

literary, cultural or educational purposes as the Board may determine in accordance with the provisions of these by-laws.

ARTICLE VII

Indemnification of Directors and Officers

1. Indemnification. The Corporation shall indemnify to the broadest and maximum extent permitted by the New York Not-for-Profit Corporation Law, as the same exists on the date of the adoption of this Article or to the greater extent permitted by any amendment of that Law (the intent being to provide the greatest of those indemnification rights granted by that Law at any time from the time of the act or omission through the final disposition of the action) any person ("Indemnitee") made or threatened to be made a party to any action or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which any director or officer of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that the Indemnitee is or was a director or officer of the Corporation or is or was serving such other enterprise at the request of the Corporation; provided, however, that the Corporation shall provide indemnification in connection with any such action or proceeding initiated by an Indemnitee only if such action or proceeding was authorized by the Board. [Added 5/31/94.]

2. Advances. Expenses incurred by an Indemnitee in defending an action or proceeding shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such Indemnitee to repay the expenses so advanced by the Corporation to the extent they exceed the indemnification to which

the Indemnitee is entitled. Unless otherwise required by law, such Indemnitee shall not be required as a condition of obtaining advancement of expenses hereunder to show that the Indemnitee has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding. [Added 5/31/94.]

3. Inurement. The rights of indemnification and advancement of expenses provided for in this Article shall inure to the benefit of the Indemnitee's legal representatives, heirs and distributees. [Added 5/31/94.]

4. Insurance. The Board may, in its discretion, authorize the Corporation to purchase and maintain insurance to indemnify itself for any obligation which it incurs as a result of the indemnification of any Indemnitee or to indemnify any Indemnitee to the fullest extent permitted by law. [Added 5/31/94.]

5. Interpretation. To the extent permitted under applicable law, the rights of indemnification and advancement of expenses provided in this Article (a) shall be available with respect to events occurring prior to the adoption of this Article, (b) shall continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Indemnitee (or, if applicable, at the sole discretion of the heirs, distributees or legal representatives of such Indemnitee seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the Indemnitee were parties to a separate written agreement. [Added 5/31/94.]

6. Other Rights. The rights of indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any other rights to which any Indemnitee or other person may now or hereafter be otherwise entitled, whether contained in the Certificate of Incorporation, these By-Laws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Indemnitee or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof. [Added 5/31/94.]

7. Severability. If this Article or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article shall remain fully enforceable. [Added 5/31/94.]

ARTICLE VIII

Miscellaneous

1. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of November and terminate on the last day of October in each calendar year.

2. Seal. The seal of the Corporation shall be in the form of a circle, and shall bear the words "Corporate Seal, New York," and the name of the Corporation and the year of incorporation.

ARTICLE IX

Amendments

These by-laws and any hereafter adopted may be amended, repealed or adopted by a majority of the entire Board of Directors.

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