

December 2, 2013

**HAND DELIVERED**

Mr. Jeremy Hanson Willis  
Director of Community Planning and  
Economic Development  
105 5<sup>th</sup> Avenue South  
Suite 200  
Minneapolis, MN 55401-2534

Re: Orchestra Hall: Initial Report

Dear Mr. Hanson Willis:

This letter responds to the letters of Charles T. Lutz, Deputy Director, CPED, dated October 16 and November 12, 2013, requesting a report from the Minnesota Orchestral Association ("MOA"), setting forth the information to be included in an Annual Report under Section 9 of the Lease and Use Agreement ("Lease") between the City of Minneapolis and MOA. As suggested by Mr. Lutz in a subsequent telephone conversation with him, we are delivering this response promptly following the Thanksgiving holiday weekend.

The Hall was only physically completed in August 2013 and the information in this letter therefore covers the period of time following our re-occupancy of the building. We understood that the first report of activities would be due on December 1, 2014, based on the contract definitions and the fact that our F2014 business plan and budgets have already been provided to CPED. Nonetheless, we are providing information on the limited year to date pursuant to Mr. Lutz's request.

As you are aware, MOA is in the midst of a protracted labor dispute with its musicians and, as a result, the Minnesota Orchestra is not currently performing. For the long term viability of MOA to perform the Governmental Program, we must operate in a fiscally sound fashion that does not require unsustainable draws from our endowment to achieve budgetary balance. Before the start of Hall construction, MOA clearly communicated to the City that it would be necessary to materially reduce costs under the musician contract as part of a comprehensive plan to increase income and reduce costs in order to become a sustainable organization. MOA's incremental \$38 million investment in the Orchestra Hall renovation, which accompanied the State's \$14 million in bonding that was facilitated by the City of Minneapolis, was but one of the many initiatives intended to increase revenues to support the viability of the organization by providing a more comfortable and appealing venue for the public to experience fine music in the heart of the City. We are, of course, deeply saddened by the lengthy labor dispute, have expressed multiple times our willingness to negotiate and have offered numerous contract proposals and compromises in

an effort to achieve a resolution. We remain committed to resolving this matter in an equitable manner that addresses the legitimate interests of the musicians, MOA and our community. However, without two parties willing to negotiate and compromise, the timing of the resolution of the current labor dispute is outside of MOA's control.

Due to the labor dispute, MOA has been actively planning Orchestra Hall programming designed to fulfill the requirements of the Governmental Program along two parallel paths – one path based on the timely return of the Minnesota Orchestra, which is our preference, and one path in the event of continued interruption of Orchestra performances due to the labor dispute. Regardless of the circumstances, our goal and intent is to fulfill the Governmental Program and provide performing arts in the Hall for the enjoyment of our community.

### **Major Hall Activities for the Current Fiscal Year Fulfill the Governmental Program**

The Governmental Program is defined in the Lease as “a program for performing arts to be conducted in Orchestra Hall,” recognizing that the Governmental Program is intended to include multiple performing arts organizations. Compliance with the Governmental Program “shall be evidenced by the fact that at least half of the earned revenue is being generated by the production or presentation of music and other performance programs.”

#### **1. Events Held September 1, 2013, to November 30, 2013**

MOA's primary goal for the past many months has been to reach a contract settlement with the musicians that allows us to present the already-programmed 2013-14 season in the renovated Orchestra Hall and our energies have been focused on achieving this goal. But as negotiations have continued and a mutual settlement has not been forthcoming, MOA has begun to create a new series of concerts designed to keep music alive in Orchestra Hall.

In the short period since the Orchestra Hall construction was completed, several noteworthy events have been held in the venue, most significantly the Orchestra's annual gala, Symphony Ball, and its companion event for young professionals, Crash the Ball. The events, held on September 20, featured musical performances by a Twin Cities pop and jazz ensemble whose musicians have performed with such renowned artists as Prince, Bette Midler, Johnny Lang and others. Three additional performing arts events were also arranged by MOA as rental events and held at the renovated venue this fall.

During the period from September 1, 2013 to November 30, 2013, the musical programs MOA presented resulted in combined earned revenue (including ticket sales, rental fees and other forms of earned revenue) totaling approximately \$600,000.<sup>1</sup> MOA has also hosted several public and private events in the Hall that did not include arts performances. Total revenue from ticket sales and rental fees for these events was approximately \$67,000.

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<sup>1</sup> In addition to ticket sales to Symphony Ball and Crash the Ball, approximately \$430,000 in additional donations were received from the Symphony Ball/Crash the Ball Encore musical events. These separate fundraising donations are not included in the revenue numbers reported above for purposes of demonstrating the performing arts element of the Governmental Program.

Although the period of operation is considerably less than a full year, the events held since opening of the Hall to the present include performing arts events with revenue equal to 90% of the total earned revenue generated, well in excess of the 50% required to meet the Governmental Program requirements.

<b>Event Type</b> <b>September 1 to November 30, 2013</b>	<b>Revenue from Ticket Sales/Rental Fees/Other Earned Income</b>	<b>% of Revenue</b>
Performing Arts Events	\$600,990	90%
Non-performing Arts Events	67,000	10%
<b>Total</b>	<b>\$667,990</b>	<b>100%</b>

## **2. F2014 Events Planned If Labor Dispute Concluded**

MOA has prepared and planned a full schedule of concerts for the fiscal year 2014 (F2014) season, to be presented when the labor contract is resolved. A copy of the full F2014 Concert Program is enclosed as Exhibit A. The program includes concert programs with the Minnesota Orchestra, in some cases with guest artists and conductors, as well as concerts by other groups and performers, such as the Preservation Hall Jazz Band, Duke Ellington, Chris Botti, and George Winston. So long as the labor dispute continues, programs planned for the Minnesota Orchestra, of course, will not be held. When a new labor contract becomes effective, MOA will promptly reinstate this programming, subject to any modifications needed if planned guest artists are no longer available.

MOA hopes that all other F2014 planned concerts involving artists other than the Minnesota Orchestra will move forward, unless such artists cancel performances due to the labor dispute and in response to anticipated pressure from the musicians' union and/or other third parties. Because of uncertainties created by the labor dispute, MOA has worked diligently and largely successfully with these guest artists to reschedule concerts later in the fiscal year, during the winter and spring 2014.

## **3. Additional F2014 Events Planned In Case of Continued Labor Dispute**

As previously noted, MOA has prepared plans for F2014 along two separate paths, depending on when the labor dispute is ultimately resolved by mutual agreement, to ensure it keeps music alive in Orchestra Hall. In addition to its efforts to maintain and present performing arts events scheduled as part of its regular season (discussed above), MOA has aggressively sought to add performances to increase the music activities and events in the Hall. Seven of the events previously scheduled during the fall have been rescheduled for the spring. MOA currently has scheduled ten additional Hall rentals for public music performances from December 1, 2013, to August 31, 2014, and it continues to add events to this schedule, consistent with our dual track approach and to maintain availability of the Hall for the balance of the Orchestra season when the labor dispute is settled.

For example, MOA is in discussions for a prominent music group to perform a five-concert series during F2014. It is also making arrangements for the Hall to be available for performances by other music groups, including professional, community and school orchestras, choruses and youth groups. MOA plans to use its marketing resources to widely disseminate information about many of these concerts and bring people downtown to enjoy the music and the newly renovated Hall. These community events will meet the Governmental Program objectives of showcasing music and cultural performances, furthering music education and community engagement, and drawing people to the City to patronize local businesses and restaurants.

Because planning is continuing, it is difficult to accurately predict the number and scope of such performances. In addition, some groups have expressed hesitation in using the Hall because of interference and pressure of adverse publicity and picketing reportedly threatened against performing organizations. MOA efforts to date suggest that many (but not all) planned music groups will in fact move forward to perform in the Hall, though ultimate results will depend on the extent and nature of such labor activities which are well outside of our control.

### **Annual Budgets for F2014 – F2017**

MOA has prepared budgets for the fiscal years 2014 through 2017, which assume settlement of the labor dispute and the return to regular performance season consistent with its strategic business plan. A copy of the F2014 – F2017 budgets is enclosed as Exhibit B.

Enclosed as Exhibit C is a separate schedule showing MOA's F2014 forecast expenses to operate and maintain the Premises, expected to be \$707,760.<sup>2</sup> MOA has unencumbered funds in the amount of \$7.4 million reserved for Hall operating and capital expenditures, as part of its Hall Fund endowment, well in excess of 2.5 times the funds required under the Lease.

### **Expenditures for Improvements in F2013**

Finally, Mr. Lutz has requested that we provide a report of MOA's expenditures for Improvements to the Hall during fiscal year 2013. As you know, the Hall was not operational during F2013 and all expenditures for Improvements were for the initial construction of the Improvements. The City has already received full details on the expenditures for the renovation, as a party to the Disbursement Agreement, and has approved all expenditures and the final facility as constructed. There have been no additional costs for Hall improvements outside of these amounts. The private investment by MOA in the Hall was far in excess of the one-to-one match required for the \$14 million of State bonds.

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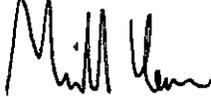
<sup>2</sup> Reports under Section 9 of the Lease must include annual budget information and confirm that MOA's unencumbered funds be equal to or greater than 2.5 times the amount it cost to maintain the Premises in the most recent fiscal year (the "Maintenance Obligation"). Because the building was not operational in F2013, there was no such maintenance cost. Nonetheless, in an effort to be responsive to Mr. Lutz's letters, we are providing budgeted information for F2014.

Conclusion

MOA appreciates the support of the citizens of Minnesota in providing \$14 million for the renovation of Orchestra Hall and the efforts of the City of Minneapolis in facilitating that funding. We are also proud to have been able to provide construction jobs in Minneapolis through the actions of the State, the City and our benefactors who made the redevelopment of a world class venue in downtown Minneapolis a reality despite a severe economic recession.

MOA exists to bring great music to our community far into the future, consistent with the Governmental Program. We are deeply saddened by the prolonged labor dispute with the musicians, but we are also stewards of the MOA's future and are committed to operating in a fiscally prudent manner in order to provide future generations of our community with the opportunity to experience great live music in downtown Minneapolis. We look forward to the day when a resolution to the labor dispute is reached and our Hall programming includes Minnesota Orchestra performances. Until that time, we will continue to work diligently to provide additional music in accordance with our programming obligations and agreements with the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Henson". The signature is stylized and cursive.

Michael Henson  
Minnesota Orchestral Association

cc: Charles T. Lutz, Deputy Director  
Shelley Roe/Minneapolis City Attorney

# F2014 Concert Program

## September 2013

Michael Feinstein with the Minnesota Orchestra and Special Guest Jane Krakowski Fri & Sat Sep 21 8pm	\$150/\$110/\$85/\$65/\$40
Orquesta Buena Vista Social Club® Wed Sep 25 7:30pm	\$75/\$65/\$55/\$45/\$35
Red Baraat Thu Sep 26 7:30pm	\$45/\$40/\$35/\$30/\$25
A Night in Tremé featuring Preservation Hall Jazz Band Fri Sep 27 8pm	\$75/\$65/\$55/\$50/\$35
Bill Cosby Live Sat Sep 28 2pm & 8pm	\$98/\$75/\$65/\$45/\$35
Duke Ellington Orchestra Sun Sep 29 2pm	\$60/\$50/\$45/\$35/\$25
<b>October 2013</b>	
Beethoven's Symphony No. 9 Thu Oct 3 11am	\$70/\$60/\$50/\$35/\$25
Fri Oct 4 & 5 8pm	\$98/\$79/\$65/\$47/\$25
Sun Oct 6 2pm	\$70/\$60/\$50/\$35/\$25
Casablanca with the Minnesota Orchestra Fri Oct 11 8pm	\$80/\$70/\$65/\$55/\$25
Matthew Morrison with the Minnesota Orchestra Sat Oct 12 8pm	\$95/\$80/\$50/\$42/\$30
Violin Concerto with Hilary Hahn Thu Oct 17 7:30pm	\$73/\$63/\$47/\$35/\$25
Fri & Sat Oct 18-19 8pm	\$84/\$69/\$55/\$42/\$26
Symphony & Song with Anne Sofie von Otter Thu Oct 24 11am	\$50/\$52/\$42/\$31/\$22
Fri & Sat Oct 25-26 8pm	\$84/\$69/\$55/\$42/\$26
The Rocky Horror Picture Show with Opening Guest Van Steel Thu Oct 31 8pm	\$30

## November 2013

Kathy Mattea Sat Nov 2 8pm	\$65/\$55/\$50/\$40/\$30
Robert Spano Conducts Thu Nov 7 11am	\$56/\$52/\$42/\$31/\$22
Fri Nov 8 8pm	\$84/\$69/\$55/\$42/\$26
Symphony in 60 Sat Nov 9 8pm	\$1 TBD
A Veterans Day Tribute: Charles Lazarus with the Minnesota Orchestra Sun Nov 10 2pm	\$65/\$55/\$50/\$35/\$25
Veterans Sun Nov 10 8pm	\$35/\$30/\$28/\$20/\$15

## Dinnerstein Plays Mozart

Thu Nov 14 11am	\$66/\$52/\$42/\$31/\$22
Fri & Sat Nov 15-16 8pm	\$84/\$69/\$55/\$42/\$26

Warner Bros. Presents Bugs Bunny at The Symphony with the Minnesota Orchestra and Starring Bugs Bunny! Created and Conducted by George Daugherty  
Fri & Sat Nov 22-23 8pm \$60/\$55/\$40/\$35/\$25  
Sun Nov 24 2pm \$60/\$55/\$40/\$35/\$25  
Youth (6-17) Sun Only \$20

## December 2013

Handel's Messiah with the Minnesota Orchestra Fri & Sat Dec 6-7 8pm	\$84/\$69/\$55/\$42/\$26
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Friends & Family Concert: Amahl and the Night Visitors  
Dec 7 1pm & 3pm \$1 TBD  
Tonic Sol-Fa: Home for the Holidays  
Mon Dec 9 7:30pm \$50/\$40/\$38/\$32/\$29

'Twas the Night Before Christmas with Irvin Mayfield and the New Orleans Jazz Orchestra and the Minnesota Orchestra  
Wed Dec 11 7:30pm \$69/\$59/\$39/\$45/\$30

Chris Botti Christmas Fri Dec 13 8pm	\$100/\$75/\$65/\$50/\$40
Sat Dec 14 8pm	\$105/\$85/\$65/\$50/\$40

Hosanna! Presents Hosanna! Christmas Concert featuring the Minnesota Orchestra  
Dec 13 7pm | Dec 14 7:30pm | Dec 15 3pm & 7pm  
Tickets: Hosanna!concert.com

A Scandinavian Christmas with the Minnesota Orchestra  
Sat & Sun Dec 14-15 2pm \$105/\$85/\$65/\$50/\$40

Michael W. Smith with the Minnesota Orchestra Wed Dec 18 7:30pm	\$100/\$80/\$70/\$60/\$40
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Celtic Woman: A Christmas Celebration with the Minnesota Orchestra  
Thu Dec 19 7:30pm \$110/\$85/\$65/\$57/\$45

Tangled by Turtles with the Minnesota Orchestra Thu Dec 21 8pm	\$50/\$40/\$35/\$30/\$25
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Jingle Bell Doc with Doc Severinsen & the Minnesota Orchestra Fri Dec 20 8pm	\$70/\$60/\$55/\$45/\$35
Sun Dec 22 2pm	\$70/\$60/\$55/\$45/\$35

George Winston Sun Dec 22 7pm	\$1 TBD
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## January 2014

A Vintage New Year's Day Celebration Wed Jan 1 11am	\$66/\$52/\$42/\$31/\$22
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Vanska Conducts Future Classics  
Fri Jan 10 8pm \$20/\$12  
adult/youth (6-17) & students - general admission

Symphony in 60 Sat Jan 11 8pm	\$1 TBD
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Mozart: The Three Final Symphonies Sun Jan 12 2pm	\$60/\$55/\$42/\$31/\$22
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Rachmaninoff Program 1 TBA Thu Jan 16 11am	\$56/\$52/\$42/\$31/\$22
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Rachmaninoff Program 2 TBA Fri & Sat Jan 17-18 8pm	\$84/\$69/\$55/\$42/\$26
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Rachmaninoff Program 3 TBA Fri & Sat Jan 24-25 8pm	\$84/\$69/\$55/\$42/\$26
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Distant Worlds: Music from Final Fantasy® with the Minnesota Orchestra Fri Jan 31 8pm	\$65/\$60/\$50/\$40
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February 2014	
Distant Worlds: Music from Final Fantasy® with the Minnesota Orchestra Sat Feb 1 8pm	\$65/\$60/\$50/\$40

Mahler's Symphony No. 5 Thu Feb 6 11am	\$56/\$52/\$42/\$31/\$22
Sat Feb 8 8pm	\$84/\$69/\$55/\$42/\$26

That's Amore! with the Minnesota Orchestra Fri Feb 7 8pm	\$70/\$60/\$50/\$40/\$30
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Elgar's Cello Concerto Thu Feb 13 7:30pm	\$73/\$63/\$47/\$35/\$25
Sat Feb 15 8pm	\$84/\$69/\$55/\$42/\$26

Jim Brickman: Be My Valentine with the Minnesota Orchestra Fri Feb 14 8pm	\$72/\$62/\$52/\$42/\$30
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Gregory Porter and Jonathan Batiste Sun Feb 16 7pm	\$65/\$55/\$50/\$35/\$35
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Varga, Rachmaninoff and Bartok Thu Feb 20 11am	\$66/\$52/\$42/\$31/\$22
Fri & Sat Feb 21-22 8pm	\$84/\$69/\$55/\$42/\$26

MGM HD Presents West Side Story with the Minnesota Orchestra Fri Feb 28 8pm	\$80/\$70/\$65/\$55/\$30
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## March 2014

MGM HD Presents West Side Story with the Minnesota Orchestra Sat Mar 1 8pm	\$80/\$70/\$65/\$55/\$30
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Andrew Litton and Stephen Hough Thu Mar 6 11am	\$56/\$52/\$42/\$31/\$22
Fri Mar 7 8pm	\$84/\$69/\$55/\$42/\$26

Symphony in 60 Sat Mar 8 8pm	\$1 TBD
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Tao: The Art of Drum Sun Mar 9 2pm	\$60/\$55/\$50/\$40/\$30
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Friends & Family Concert: Supersonic Sounds Mar 12 2pm	\$1 TBD
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Rodgers and Hammerstein's Carousel Thu Mar 13 11am	\$60/\$50/\$45/\$40/\$30
Fri & Sat Mar 14-15 8pm	\$80/\$80/\$70/\$60/\$30
Sun Mar 16 2pm	\$60/\$50/\$45/\$40/\$30

Sibelius Symphonies No. 3, 4, 5 Thu Mar 20 11am	\$56/\$52/\$42/\$31/\$22
Fri & Sat Mar 21-22 8pm	\$84/\$69/\$55/\$42/\$26

Sibelius Symphonies No. 6 and 7 Thu Mar 27 11am	\$56/\$52/\$42/\$31/\$22
Fri & Sat Mar 28-29 8pm	\$84/\$69/\$55/\$42/\$26

April 2014	
Eric Whitacre: A Choral Celebration Thu Apr 10 7:30pm	\$73/\$63/\$47/\$35/\$25
Fri & Sat Apr 11-12 8pm	\$84/\$69/\$55/\$42/\$26
Sun Apr 13 2pm	\$60/\$55/\$42/\$31/\$22

Ramsey Lewis & John Pizzarelli: Straighten Up & Fly Right: The Nat King Cole Tribute Fri Apr 18 8pm	\$70/\$60/\$50/\$45/\$35
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Kenny G with the Minnesota Orchestra [Date TBD - Possibly Moving to June]	
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Bobby McFerrin Sat Apr 19 8pm	\$89/\$75/\$65/\$59/\$40
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Ben Folds with the Minnesota Orchestra Fri Apr 25 8pm	\$75/\$65/\$59/\$43/\$35
Sat Apr 26 8pm	\$95/\$75/\$65/\$59/\$35

Friends & Family Concert: Rite of Spring Apr 27 1pm & 3pm	\$1 TBD
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May 2014	
Friends & Family Concert: Sultans of String Sun May 11 2pm	\$1 TBD

## EXHIBIT A

# F2014 Concert Program

## May 2014

### Erin Keeffe Plays Mendelssohn

Thu May 15 11am \$56/\$52/\$42/\$31/\$22  
Fri & Sat May 16-17 8pm \$84/\$69/\$55/\$42/\$26

### Yevgeny Suddhin Plays Beethoven

Thu May 29 11am \$56/\$52/\$42/\$31/\$22  
Fri & Sat May 30-31 8pm \$84/\$69/\$55/\$42/\$26

## June 2014

### Vanska Conducts Beethoven and Bruckner

Thu Jun 5 7-30pm \$73/\$63/\$47/\$35/\$26  
Fri Jun 6 & Sat Jun 7 8pm \$84/\$69/\$55/\$42/\$26

Midtown Men or Meghan Hilly or Alan Cumming or  
Bond & Beyond with the Minnesota Orchestra  
Fri Jun 20 8pm TBD

### Pixar in Concert with the Minnesota Orchestra

Sat & Sun Jun 21 8pm \$70/\$55/\$45/\$35/\$25  
Sun Jun 22 2pm \$70/\$55/\$45/\$35/\$25

### Friends & Family Concert: Peter and the Wolf

Sun Jul 13 1pm & 3pm \$TBD

NOTE: This F2014 Concert Program is the full concert season booked by MOA and slated for performances in the renovated Orchestra Hall, in anticipation of a labor contract settlement. During labor negotiations, many of these events have been canceled or postponed, and MOA is programming alternative musical events to satisfy the Governmental Program for F2014.

# MOA Operating Budgets F14 – F17

(In \$000s)

	F2014	F2015	F2016	F2017
Ticket Sales	\$7,272	\$7,239	\$7,383	\$7,531
Other Concert Revenue	823	832	842	852
Other Concert Activities	2,082	2,124	2,166	2,210
<b>TOTAL EARNED REVENUE</b>	<b>\$10,177</b>	<b>\$10,195</b>	<b>\$10,391</b>	<b>\$10,592</b>
<b>CONTRIBUTIONS</b>	<b>\$9,729</b>	<b>\$9,881</b>	<b>\$10,037</b>	<b>\$10,196</b>
MOA Endowment	3,477	3,036	3,038	3,065
BFF Endowment	750	900	1,000	1,000
Oakleaf Trust	3,186	3,291	3,373	3,589
Other	365	365	365	365
<b>TOTAL DRAWS AND DISTRIBUTIONS</b>	<b>\$7,778</b>	<b>\$7,592</b>	<b>\$7,777</b>	<b>\$8,019</b>
<b>TOTAL OPERATING REVENUE</b>	<b>\$27,684</b>	<b>\$27,667</b>	<b>\$28,205</b>	<b>\$28,807</b>
<b>CONCERT EXPENSE</b>				
Guest Artists & Concert Production	3,566	3,637	3,710	3,784
Marketing	1,354	1,381	1,409	1,437
Rentals/Food & Beverage	520	531	541	552
Touring	831	831	831	831
Symphony Ball	300	300	300	300
<b>TOTAL CONCERT EXPENSE</b>	<b>\$6,571</b>	<b>\$6,679</b>	<b>\$6,790</b>	<b>\$6,904</b>
<b>OVERHEAD EXPENSE</b>				
Musicians & Conductors	12,156	12,407	12,542	12,679
Administration & Concert Production Personnel	6,307	6,432	6,593	6,659
General Overhead	1,482	1,511	1,542	1,572
Building	576	588	600	612
Financing	574	52	53	54
<b>TOTAL OVERHEAD EXPENSE</b>	<b>\$21,095</b>	<b>\$20,990</b>	<b>\$21,330</b>	<b>\$21,576</b>
<b>TOTAL OPERATING EXPENSE</b>	<b>\$27,666</b>	<b>\$27,669</b>	<b>\$28,120</b>	<b>\$28,480</b>
<b>NET OPERATIONS</b>	<b>\$18</b>	<b>(\$2)</b>	<b>\$85</b>	<b>\$327</b>

**EXHIBIT B**

# MOA Hall Maintenance Budget – F2014

- MOA has an endowment, the Hall Fund, to provide funding for operating and capital expenditures for the Hall. As of August 31, 2013 the fund value was \$7.4M

## F14 BUDGET

i.	Salary, benefits and related overhead for core building operation staff	\$	309,160
ii.	Building equipment operation and maintenance		78,900
iii.	Building repairs		10,000
iv.	Property tax payments (including any special assessments)		5,500
v.	Permits		1,500
vi.	Snow and ice removal		1,900
vii.	Waste removal		9,600
viii.	Landscaping maintenance		1,500
ix.	Utilities (e.g., electricity, steam and water/sewer) @ 50% of Costs		94,200
	Electricity		74,000
	Steam		88,000
	Water/Sewer		26,400
x.	Stormwater fees		15,000
xi.	Security services		3,500
xii.	Fire/smoke alarm/sprinkler services and maintenance		6,000
xiii.	Property and liability insurance		170,000
xiv.	Similar costs needed to maintain the building and its value		-
<b>TOTAL</b>			<b>\$ 706,760</b>

**EXHIBIT C**

**John H. Herman**  
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December 2, 2013

**HAND DELIVERED**

Mr. Jeremy Hanson Willis  
Director of Community Planning and  
Economic Development  
City of Minneapolis  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401

RE: Provision of Governmental Program during Labor Dispute

Dear Mr. Hanson Willis:

Our firm represented the Minnesota Orchestral Association (“MOA”) with respect to the construction of the expanded Orchestra Hall and continues to represent MOA regarding the Lease and Use Agreement (the “Lease”) for operation of the Hall. We are responding to Chuck Lutz’s letter of November 12, 2013 indicating an obligation to submit the first annual program report and budgets this December 1.

MOA appreciates the strong support of the City and the State in helping to bring the Orchestra Hall renovation and expansion to fruition as a world class performance venue. The contribution of the citizens of Minnesota through the State bonds allowed MOA to update this 40-year old building to modern functionality, safety and energy standards, positioning MOA to operate the Hall, in cooperation with the City, for many years into the future.

By separate letter from Michael Henson, MOA is providing information regarding Hall operations for the few months since physical completion of the Improvements. Although programming has been adjusted to account for the continuing labor dispute, the report demonstrates full compliance with the general programmatic test and the specific financial test under the Lease, even for this abbreviated period since MOA has regained occupancy of the Hall.

Notwithstanding the submission of MOA’s report in response to Mr. Lutz’s letter and the Lease compliance demonstrated by such report, we feel we must respectfully reserve the MOA’s position with

respect to several legal points regarding both the report and MOA's performance obligations under the Lease, as described below, in the event that, at some point in the future, further issues or questions arise regarding MOA's performance under the Lease that are dependent upon an interpretation of those points.

**Initial Reporting Period.** First, an initial report under the Lease is not required until December 1, 2014. This 2014 initial reporting date is clear from the plain language of the definition of "Completion Date" in both the Lease and the Grant Agreement.<sup>1</sup> In each instance, the Completion Date is defined as a date certain of December 1, 2013, and the first report is therefore due on the next December 1, or December 1, 2014. The date of physical completion of the Improvements was uncertain when the Lease and Grant Agreements were drafted and the parties contemplated that construction might not be fully complete until as late as December 1, 2013. December 1, 2013 was not contemplated to be the first reporting date, a date by which it was possible no operations would have yet occurred. (See, e.g., Lease Section 10(h).) It would be nonsensical and circular for the Lease to require that all Improvements be completed by the Completion Date, if the Completion Date was defined as the date all Improvements are completed. The only reasonable interpretation of the Lease is that the parties intended for "Completion Date" to mean December 1, 2013, the date by which all Improvements must be concluded, and the first report to be due the next December 1 – December 1, 2014.

The 2014 initial reporting date is also evident by the fact that much of the information now being reported was already provided to the City as part of the project approval. In connection with the project approval process, including the State Predesign and Legislative Chair approvals, the City and the State received, reviewed and approved the performance schedule being planned for 2013/2014, and the full fiscal year budgets for FY 2014, 2015 and 2016. All this information was included in the original MOA strategic plan and budget submissions, which were fully reviewed and approved by the City, and is again provided in MOA's current report.

As noted above, notwithstanding the plain language of the Lease regarding the initial reporting date, MOA understands the City's desire for information given the protracted labor dispute and is cooperating fully with the City's requests for responsive information.

**Applicability of Force Majeure Clause.** As noted in the report provided by Mr. Henson, MOA has pursued a dual track with its planning, creating alternative artistic programming during the labor dispute and also preparing to promptly commence programming with the Minnesota Orchestra and guest artists

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<sup>1</sup> The Grant Agreement provides in Section 1.01: "'Completion Date' – means December 1, 2013, the date of projected completion of the Project." The Lease provides in Section 21: "The Improvements shall be substantially completed no later than December 1, 2013 (the "Completion Date") ..." Section 9 of the Lease states the annual reporting obligation occurs on each December 1, "commencing on the December 1 first following the Completion Date," such that the initial report is due December 1, 2014.

upon settlement of the dispute. Programming activities under both approaches are designed to fulfill the Lease terms and, even if this were not the case, MOA's operation of the Governmental Program would be excused under the *force majeure* clause in the Lease.

Sections 13 and 21 of the Lease recognize that performance will be excused in the case of Unavoidable Delays. "Unavoidable Delays" is defined as events "beyond the control of [MOA] and without the fault or negligence of either party, including but not limited to . . . *strikes and other similar labor troubles* . . ." (emphasis added). The current labor situation meets the requirements to constitute an Unavoidable Delay on two separate and independent grounds, each of which alone is sufficient to excuse performance under the Lease: (1) the Lease recognizes that "strikes and other similar labor troubles" are per se Unavoidable Delays; and (2) even if it were not among the enumerated delays, the circumstances of this labor dispute that are impacting MOA's performance are Unavoidable Delays because they are "beyond the control . . . and without the fault or negligence" of MOA.

The current labor dispute falls squarely within the itemized occurrence of "strikes and other similar labor troubles," an event that is by definition an Unavoidable Delay. This common *force majeure* provision is intended to protect against interference with the federally protected rights of employers and employees to collectively bargain over the terms and conditions of employment and to ensure the full use of economic pressures and leverage available to the parties in contract negotiations. Although the term "lockout" is not specifically used in the Lease, strikes and lockouts are parallel rights of parties to a labor negotiation and are undoubtedly "similar labor troubles." See *California ex rel. Lockyer v. Safeway, Inc.*, 371 F. Supp. 2d 1179, 1190 (C.D. Cal. 2005) (explaining that the "linkage of strikes and lockouts demonstrates that they are *two sides of the same coin* under national labor policy. . ." (emphasis added)); cf. *Independent Sch. Dist. No. 12 v. Minn. Dep't of Educ.*, 788 N.W.2d 907, 913 (Minn. 2010) (stating that the use of the term "include" introduces a non-exhaustive list of examples). This interpretation is further confirmed by the parties' awareness at the time of the Lease negotiations that labor difficulties were possible. MOA fully disclosed to the City that significant restructuring of the union contract was necessary to meet budgets and financial projections. The *force majeure* provision was intended to directly address the possibility, while not desirable, that labor unrest could occur as a result of efforts to reach a financially sustainable contract.

Also, the circumstances of this dispute and the lack of a resolution with the musicians are factors well "beyond the control" of MOA. A party in a labor dispute is not obligated to settle on economically untenable terms, even though such a settlement is always within the party's theoretical control by agreeing to the other party's demands, whether the work stoppage is due to strike or lockout. An employer has no reasonable choice but to initiate a lockout when labor demands are financially unsustainable, but such action is not within the employer's reasonable control or due to the employer's "fault or negligence." See *Nissho-Iwai Co., Ltd. v. Occidental Crude Sales*, 729 F.2d 1530, 1539-42 (5th Cir. 1984) (applying a reasonableness limitation to the control analysis of a *force majeure*

provision); *Powers v. Stats*, 70 N.W.2d 344, 348-49 (Minn. 1955) (concluding that a significant deviation in expense could excuse nonperformance); Williston on Contracts § 77:92 (4th ed. 2013).<sup>2</sup>

MOA also cannot control the fact that the musicians' union has not been willing to engage in meaningful bargaining. While MOA has made numerous concessions and compromises, the union has only once offered a substantive contract proposal during the course of the past 20 months; instead it has repeatedly presented an ultimatum to MOA: reinstate employment at prior salaries as a precondition to their participation in substantive negotiation over the contract terms. Because MOA cannot compel the musicians to come to the table and compromise, and cannot afford to reinstate the prior salary levels for an indefinite period, resolution of this labor dispute is beyond the control of MOA.

Finally, other actions by musicians and other third parties have also interfered with MOA's efforts to present arts programming in the Hall, further reflecting the existence of "similar labor troubles" and other events beyond MOA's control. Picketing, adverse publicity, and other labor dispute tactics have resulted in multiple cancellations and delays in performance by music organizations scheduled to perform in Orchestra Hall.

**Conclusion.** The Minnesota Orchestral Association desires to cooperate with the City and so has provided the requested report demonstrating compliance with the requirements of the Lease in the short period prior to December 1, 2013. It has further described its program for future musical performances and its commitment to a rapid return to performances by the Minnesota Orchestra, upon settlement of the current labor dispute.

MOA is a non-profit organization made up of hundreds of supporters of orchestral music. It has served the community for decades as the community's vehicle for bringing symphonic music to the Twin Cities. While MOA appreciates the assistance of the citizens of the State in the Hall's renovation, it must be recognized that MOA also brings to this endeavor significant assets that make the Orchestra possible: its endowment and annual fund-raising capability, private investment in the Hall far in excess of the State Bond funds, its devoted management and staff and its board members' decades-long commitment of volunteer time and financial resources to symphonic music performances. MOA did not seek salary concessions from its union lightly, but does so because the continued erosion of the endowment is unsustainable. MOA remains committed to a negotiated settlement with its musicians that will ensure sustainability of the Orchestra for the full duration of the Lease term.

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<sup>2</sup> The economic viability of MOA requires a material reduction in expenses from the expired labor contract, a contract that was entered into before the Great Recession and that provided significant salary increases to musicians during a period of years when investment earnings and contributions declined and other MOA expenses were cut. The result has been large draws from endowment well over a sustainable 5% level. The compensation levels of the expired contract cannot be supported even over a short duration by the endowment, let alone over the 50-year Lease term.

Mr. Jeremy Hanson Willis

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December 2, 2013

We believe the MOA has demonstrated compliance with the Lease in its submission, but we must respectfully reserve the MOA's positions with respect to the contract terms discussed above, so as to preserve the normal interplay of labor and management negotiations that are necessary to resolve the current labor dispute. Thank you for your consideration of these issues as part of your review of MOA's program submission. Please call me or my partner Kathy Noecker (612/766-8604) with any questions or to discuss these issues at any time.

Sincerely,

FAEGRE BAKER DANIELS LLP

A handwritten signature in cursive script that reads "John H. Herman". The signature is written in dark ink and is positioned above the printed name.

John H. Herman

HERJH

cc: Shelley Roe/Minneapolis City Attorney (via hand delivery)  
Charles T. Lutz, Deputy Director (via hand delivery)  
Michael Henson  
Bryan Ebensteiner  
Kathy Noecker