
CHARITABLE DEED OF TRUST

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DATED: The _____ Day of _____ 2018

PARTIES

1. **Nicola Yvette Henderson, 7 Halley St, Outer Kaiti, Gisborne, 4010**
2. **Tonie Dinna Myers, 20 Rua Street, Mangapapa, Gisborne, 4010**
3. **Suzan Swinson Anderson, 17 Cameron Rd, Taruheru, Gisborne, 4071**

BACKGROUND

The parties to this deed wish to establish a charitable trust in New Zealand ("the Trust") for the purposes described in clause 3 of this deed and are at the same time giving to the Trust the sum of \$100.00, to form the Initial Trust Fund.

OPERATIVE PART

1. NAME

The name of the Trust will be Evolution Theatre Company Trust.

2. OFFICE

- 2.1 The office of the Trust will be such place in the Gisborne Region of New Zealand as the Trustees may determine from time to time. The initial office of the Trust will be 20 Rua St, Mangapapa, Gisborne, 4010.

3. OBJECTS AND PURPOSES

- 3.1 The charitable objects and purposes of the Trust (The Trust Purposes) are as follows:
 - (a) Engage: To provide members of our community with the opportunity to engage with the performing arts, as artists and audience.
 - (b) Educate: To provide low-cost education in the performing arts to the youth of our community by providing classes and opportunities to explore a variety of aspects of the craft of theatre.
 - (c) Entertain: To bring quality productions of classic and contemporary to Gisborne Audiences.
 - (d) Evolve: To motivate evolution of young artists in our community to become the next generation of arts leaders thereby helping to secure the future of the performing arts in Gisborne.
 - (e) To undertake all things as are incidental or conducive to the attainment of the purposes described in clause 3.1 (a) to (d).

4. CAPACITY AND POWERS

- 4.1 In pursuit of the Objects and Purposes defined above, and subject to the Charitable Trusts Act of 1957 and any other enactment and general law, The Trust has within New Zealand full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and for those purposes full rights, powers, and privileges. Without derogating from or limiting that capacity or those rights, powers, and privileges, the Trustees shall also have the following powers:

- (a) To adopt such means of making known the activities and objects of the Trust as they may deem expedient. (Marketing)
- (b) To seek, raise, accept and receive donations, subsidies, grants, endowments, gifts, legacies, and bequests either in money or in kind or partly in money and partly in kind for all or any of the Trust Purposes, as appropriate to the organisations written gift acceptance policy.
- (c) To borrow, raise or secure the payment of money for the furtherance of the objects of the Trust in such manner and on such terms as the Trustees think fit.
- (d) To invest surplus funds in any way permitted by law for the investment of Trust funds and upon such terms as the Trustees think fit.
- (e) To pay all of the Trusts proper expenses and outgoings including the employment of professional advisers, agents, officers, and staff the Trustees consider necessary or expedient.
- (f) To determine from time to time the amount which is to be made available for distribution out of the income or the capital of the Trust Fund or out of both the income and the capital and to pay or apply that amount for the furtherance of the objects of the Trust.
- (g) To lease, purchase, build, sell, manage, improve, develop, modify, demolish, maintain, and repair, land and buildings and all chattels required for the operation of theatre and theatre education and training.
- (h) To carry on any business, including, but not limited to the production of theatre, box office management, dramatic publishing and printing.
- (i) To give or lend (with or without security) monies or any real or personal property, and to give guarantees for the Trust Purposes to such persons or organisations and on such terms as the Trustees think fit without being bound to see to the application thereof.
- (j) To institute, initiate, or take and to defend, compromise, or abandon legal proceedings involving the property or affairs of the Trust.
- (k) To employ officers and staff and obtain professional and other advice and services to assist in the work of the Trust for such reasonable remuneration and on such terms as may be deemed expedient.
- (l) To enter into contracts for employment, apprenticeship, and teaching, and to make arrangements for unpaid work by volunteers.
- (m) To hold licences for the sale of liquor and food.
- (n) To organize theatre education programs for the community.
- (o) Subject to these Rules to exercise all or any of the powers conferred on Trustees by the Trustee Act 1956 or any statutory modification, variation or re-enactment thereof.
- (p) To do all such other acts and things as are incidental to or will further or be conducive to the attainment of the Trust Purposes.

4.2 The Trustees are empowered to seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.

5. BOARD OF TRUSTEES

- 5.1 The Trustees shall consist of no fewer than three nor more than seven persons. If at any time there are fewer than three Trustees (excluding Advisory Trustees) the remaining Trustees shall appoint an additional Trustee in accordance with clause 7.

6. RETIREMENT AND APPOINTMENT OF TRUSTEES AND TERM

- 6.1 A Trustee will cease to hold office:

- 6.1.1 On the expiration of his or her term of appointment.
- 6.1.2 After a maximum of three years of consecutive service.
- 6.1.3 If he or she shall resign in writing to the Secretary of the Board.
- 6.1.4 If he or she shall become bankrupt or insolvent.
- 6.1.5 If he or she becomes of unsound mind or subject to an order under the Protection of Personal and Property Rights Act 1988 or whose property is managed by a trustee corporation under section 32 of that Act, or otherwise becomes unfit or unable to act as a Trustee.
- 6.1.6 If he or she shall be convicted of an indictable offence involving dishonesty or resulting in jail time in excess of six months.
- 6.1.7 If he or she shall die.
- 6.1.8 If he or she shall be absent from three consecutive meetings of the Board without reasonable cause or leave of absence granted by the Board, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason in each instance for such non-attendance
- 6.1.9 If he or she is disqualified from being an officer of a charitable entity under section 31(4) of the Charities Act 2005
- 6.1.10 If he or she is prohibited from being a director or promoter or being concerned or taking part in the management of a company under sections 382, 383 or 385 of the Companies Act 1993.
- 6.1.11 Is removed from office under Clause 7.

6.2 Order of Rotation

- 6.2.1 With effect from each annual meeting at least one Trustee shall retire from office.
- 6.2.2 The Trustees to retire in rotation under clause 6.2.1 shall be those who have been longest in office since the last appointment. As between Trustees who became Trustees on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot. A trustee retiring by rotation shall be eligible for reappointment.
- 6.2.3 A Trustee that has retired or has been removed shall cease to be a Trustee immediately except for the purpose of carrying out the acts and deeds necessary for the proper vesting of the Trust Fund in the continuing Trustees, which acts and deeds shall be carried out at the expense of the Trust Fund.
- 6.2.4 A retiring Trustee shall be eligible for re-election.

6.3 Appointment of Trustees

- 6.3.1 The persons named in this deed as trustees shall be the first Trustees of the Trust.
- 6.3.2 At each Annual General Meeting the Trustees shall by appointment fill any vacant Trustee Position.
- 6.3.3 The power of appointment of trustees shall be vested in the Trustees or, in the event of the retirement or removal of a Trustee or Trustees, by the remaining Trustees and shall be exercised in accordance with the provisions of this clause. Where there are less than the minimum number of Trustees the remaining Trustees shall only have the power to act as Trustees for the purpose of appointing new Trustees so as to maintain the minimum number of Trustees and shall promptly act to appoint such new Trustee or Trustees.
- 6.3.4 The Trustees may at any time appoint additional Trustees for a term not exceeding one year provided that the total number of Trustees does not exceed the maximum number permitted under this Deed.
- 6.3.5 Any appointment of a trustee will be by a motion decided by a two-thirds majority of votes.
- 6.3.6 When appointing Trustees in any circumstances, the Trustees must have regard to the need to appoint persons interested in the Trust Purposes and capable of assisting the Trust to carry out the Trust Purposes by their skill, expertise, profession, standing in the community or other qualification.

7. TERMINATION OF APPOINTMENT OF TRUSTEE

- 7.1 The Trustees may, by a motion decided by a two-thirds majority of votes, terminate a Trustee's position as Trustee of the Trust if they believe that such action is in the best interest of the Trust.

8. HONORARY TRUSTEES

- 8.1 The Board may, from time to time, appoint Honorary Trustees in recognition of exceptional service to the Trust.
- 8.2 Honorary Trustees shall hold office for life and shall have no duties, voting rights, responsibilities, or personal liability in respect of the activities of the Trust, but may, as appropriate, attend meetings, and receive reports.

9. FUNCTIONS AND DUTIES OF THE TRUSTEES

- 9.1 The management control and administration of the Trust property shall be vested in the Trustees.
- 9.2 The Board may exercise all or any of the powers of the Trust as set out in this Deed or otherwise conferred bylaw.

10. PROCEEDINGS AND MEETINGS OF THE BOARD

- 10.1 The Trustees will hold an Annual General Meeting within three (3) months of the end of the Trust's financial year to approve the Trust's financial statements, review Trust policies and operations during the previous year and to make any appointments required by this Deed.
- 10.2 The Trustees shall meet at such times and places as they determine, and shall elect a chairperson from amongst their number at their first meeting and at every subsequent Annual General Meeting.

- 10.3 The Trustees may make from time to time all such rules and regulations for the conduct of their meetings as they may deem desirable but not inconsistent with anything contained in this Deed.
- 10.4 The chairperson shall preside at all meetings of the Trustees at which she or he is present. In the absence of the chairperson from any meeting, the Trustees present shall appoint one of their number to preside at that meeting.
- 10.5 No business shall be transacted at any meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum shall be a majority of trustees.
- 10.6 All questions before the Trustees shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the motion shall be lost.
- 10.7 Any meeting of the Trustees may be held by telephone or video conference.

11. POWER TO DELEGATE / COMMITTEES

- 11.1 The Trustees may, from time to time, appoint any committee and may delegate any of their powers and duties to any such committee or to any person, and the committee or person, as the case may be, may without confirmation by the Trustees exercise or perform the delegated powers or duties in like manner and with the same effect as the Trustees could themselves have exercised or performed them.
- 11.2 Any committee or person to whom the Trustees have delegated powers or duties shall be bound by the charitable terms of the Trust.
- 11.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Trustees.
- 11.4 It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a Trustee.

12. PROFESSIONAL OFFICERS

- 12.1 The board may appoint a General Manager, Artistic Director, Program Director, and any such persons as are considered necessary by the Board which may pay such salaries and allowances as it thinks fit.
- 12.2 The duties and powers Professional officers shall be defined by written contracts of employment.
- 12.3 The Board may terminate the employment of any Professional Officer.

13. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES

- 13.1 Any income, benefit or advantage shall be applied to the Trust Purposes.
- 13.2 A Trustee is entitled to such remuneration for services provided as may be reasonable having regard to that Trustee's duties and responsibilities for those services PROVIDED THAT any payment to a Trustee referred to in this clause must not exceed fair market value for services provided and no Trustee receiving such payment and no person associated with such Trustee may participate in, or materially influence, any decision made by the Trust in respect of the payment.
- 13.3 Each Trustee is entitled to be indemnified against, and reimbursed for, all expenses properly incurred in connection with the Trust and the Trustees duties.

13.4 Nothing expressed or implied in this deed will permit the Trustees' activities or any business carried on by or on behalf of or for the benefit of the Trustees in connection with the Trust, to be carried on for the private profit of any individual.

13.5 The provisions and effect of this clause 13 shall not be removed from this Deed and shall be included and implied into any document replacing this document.

14. FUNDS, PROPERTY AND ACCOUNTS.

14.1 The financial year of the Trust shall end on 31 March in each year or such other date as the Trustees shall determine.

14.2 The Trustees shall cause proper financial records to be kept, incorporating complete accounts of all transactions. Financial records shall be kept at the registered office or at any such place as the board may direct. All records shall be open to inspection by any trustee during normal operating hours. The Trustees shall keep an account or accounts at such bank or banks as the Trustees may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons (including in all instances at least one Trustee) as the Trustees may decide.

14.3 All accounts and property of the Trust shall be held in the name of the Trust.

15. ALTERATION OF DEED

15.1 The Trustees may, by consensus or pursuant to a motion decided by a two thirds majority of votes make alterations or additions to the terms and provisions of this deed provided that no such alteration or addition shall detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

16. TRUSTEES LIABILITY AND INDEMNITY

16.1 No Trustee will be liable for any losses other than those attributable to his or her own dishonesty or the wilful commission of any act known by him or her to be a breach of trust.

16.2 No Trustee Member is obliged to take proceedings against a co-Trustee, or any former Trustee.

16.3 The Trustees shall be entitled to take out and maintain from trust funds Trustee indemnity insurance premiums, by unanimous vote of the Trustees.

17. WINDING UP AND DISPOSITION OF SURPLUS ASSETS

17.1 The Trust may be wound up on the unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose provided that not less than 30 days notice of such a meeting has been provided to the Trustees.

17.2 If upon the winding up or dissolution of the Trust there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid out or distributed other than to some exclusively charitable institution or institutions operating for the benefit of New Zealand residents and having such objects and purposes similar to the Charitable Purposes as set out in clause 3.1. Alternatively, any surplus property remaining after the winding up or dissolution of the Trust may be disposed of upon the direction or order of the High Court of New Zealand.

18. RESTRICTION TO CHARITABLE PURPOSES WITHIN NEW ZEALAND

18.1 Notwithstanding anything contained in this Deed, its provisions shall at all times be interpreted and construed so as to limit the objects and powers of the Trust to powers

and objects which are charitable within New Zealand and to the use of the Trust funds within New Zealand.

19. COMMON SEAL

19.1 If the Trustees obtain incorporation as an incorporated charitable trust board, then the board shall have a common seal which shall be kept in the custody of such trustee or officer as shall be appointed by the Trustees, and shall be used only as directed by the Trustees. It shall be affixed to documents only in the presence of, and accompanied by the signature of, two Trustees.

Signed by Initial Trustee **Nicola Yvette Henderson**

Witness:

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Signature

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Full Name

.....
Residential Address

.....
Occupation

Signed by Initial Trustee **Tonie Dinna Myers**

Witness:

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Signature

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Full Name

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Residential Address

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Occupation

Signed by Initial Trustee **Suzan Swinson Anderson**

Witness:

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Signature

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Full Name

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Residential Address

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Occupation