

BYLAWS OF HENDERSONVILLE THEATRE

A North Carolina Corporation

ARTICLE I. NAME OF ORGANIZATION

The name of the Corporation is HENDERSONVILLE THEATRE or HT.

ARTICLE II. CORPORATE PURPOSE

Section 1. Nonprofit Purpose

This Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to Organizations that qualify as exempt Organizations under Section 501(c)(3) of the Internal Revenue Code.

Section 2. Specific Purpose

The mission of HT is to inspire, nurture, enrich, empower, educate, entertain and challenge artists and audiences with theatrical productions that range from the classics to new works; we train and support the next generation of theatre artists; we provide arts education programs that promote life-long learning to a diverse community; and we celebrate the essential power of the theatre to illuminate our common humanity.

The specific objectives and purpose of this organization shall be:

- A. To continue to increase the cultural life of the people of Henderson County and surrounding areas. To be a leader in the display, preservation and performance of local arts and contemporary craft. To contribute to the increased enrichment by presenting diverse voices that effectively reflect a broad array of cultural backgrounds and viewpoints. To actively encourage, promote and cultivate an appreciation of the Arts.
- B. To produce, publish and present various dramatic works of literary and artistic merit, both established and experimental, approved and untried for the entertainment, enjoyment, and the intellectual and emotional stimulation of all ages, skill levels, needs and backgrounds.
- C. To further provide the knowledge and development of skills in the dramatic and associated arts and crafts by working participation, academic and vocational training as well as instruction in all phases of theatre production; ranging from the reading and writing of plays, musical compositions to the challenges of business administration and management.

ARTICLE III. LOCATION

Section 1. Office

The principal office of the Corporation is located at 229 S. Washington Street, Hendersonville, NC 28739 in Henderson County, State of North Carolina. The principal office of the organization, at which the general business of the Corporation will be transacted and where the records of the Corporation will be kept, will be at such a place in the State of North Carolina as may be fixed from time to time by the Board of Directors.

ARTICLE IV. BOARD OF DIRECTORS

Section 1. General Powers

The affairs of the Corporation shall be managed by its Board of Directors. The Board of Directors shall have control of and be responsible for the management of the affairs and property of the Corporation.

Section 2. Number, Tenure, Requirements, and Qualifications

The number of Directors shall be fixed from time-to-time by the Directors but shall consist of no less than three (3) nor more than eleven (11) including the following Officers: the President, the Secretary, and the Treasurer. Director is defined as any member or Officer of the Board.

The members of the Board of Directors shall, upon election, immediately enter upon the performance of their duties and shall continue in office until their successors shall be duly elected and qualified. All members of the Board of Directors must be approved by a majority vote of the Board members present and voting. No vote on new members of the Board of Directors shall be held unless a quorum of the Board of Directors is present as provided in Section 6 of this Article.

No two members of the Board of Directors related by blood or marriage/domestic partnership within the second degree of consanguinity or affinity may serve on the Board of Directors at the same time. A Director shall be a natural person who is at least eighteen years of age and in good standing with the Corporation. A Director need not be a resident of the State of North Carolina.

Each member of the Board of Directors shall be elected for a two-year term of office and shall hold office until the expiration of the term for which he/she/they was elected or death, resignation, or removal. No Director shall be eligible to serve more than two consecutive terms as a Director, which limitation shall not apply with respect to the unexpired term for any person elected to fill a vacancy in an unexpired term, unless the Board votes to extend a Director's term for one year for the purposes of continuity. The Secretary shall maintain a list of all Directors, indicating expiration of their respective terms. Approximately one-third of the members of the Board of Directors shall be elected each year.

Each member of the Board of Directors shall attend at least nine (9) monthly meetings of the Board per year.

Section 3. Duties

It shall be the duty of the Directors to:

- A. Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws; and meet at such times and places as required by these

Bylaws.

- B. Appoint and remove, employ and discharge, supervise, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all Officers and Executive Directors and assure their duties are performed properly.
- C. Register their mail and electronic communication addresses with the Secretary of the Corporation.

Section 4. Regular and Annual Meetings

An annual meeting known as the Strategic Planning meeting shall be held at a time and day in the month of January of each calendar year and at a location designated by the Executive Committee of the Board of Directors.

The Board of Directors may provide by resolution the time and place for the holding of regular meetings of the Board. Notice of these meetings shall be sent to all members of the Board of Directors no less than ten (10) days prior to the meeting date. Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board of Directors need to be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

Directors may participate in and act at any meeting of the Board by means of conference, telephone or other communications equipment if all persons participating in the meeting can communicate with each other. Participation in such a meeting shall constitute presence in person at the meeting.

Section 5. Special Meetings

Special meetings of the Board of Directors may be called by or at the request of the President or any two members of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any location, as the place for holding any special meeting of the Board called by them.

Notice of any special meeting of the Board of Directors shall be given at least two (2) days in advance of the meeting by telephone, facsimile or electronic methods or by written notice. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. Conduct of Meetings

Meetings of the Board of Directors shall be presided over by the president of the Board, or in their absence, by a chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of the Board, provided that, in their absence, the presiding Officer shall appoint another person to act as Secretary of the meeting.

Section 7. Quorum

The presence in person of a majority of current members of the Board of Directors shall be necessary at any meeting to constitute a quorum to transact business, but a lesser number shall have power to adjourn to a specified later date without notice. The act of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

Section 8. Vacancies

Whenever any vacancy occurs in the Board of Directors, it shall be filled without undue delay by a

majority vote of the remaining members of the Board of Directors at a regular meeting. Vacancies may be created and filled according to specific methods approved by the Board of Directors.

Vacancies on the Board of Directors shall exist (1) on the death, resignation, or removal of any Director, and (2) whenever the number of authorized Directors is increased. Any Director may resign effective upon giving written notice to the President of the Board, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the office of the Attorney General or other appropriate agency of this state. Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this state. Unless otherwise prohibited by the Articles of Incorporation, these Bylaws, or provisions of law, vacancies on the Board may be filled by approval of the Board of Directors. If the number of Directors then in office is less than a quorum, a vacancy on the Board may be filled by approval of a majority of the Directors then in office or by a sole remaining Director. A person elected to fill a vacancy on the Board shall hold office until the next election of the Board of Directors or until his or her death, resignation, or removal from office.

Section 9. Compensation

Directors shall serve without compensation except that they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. Any payments to Directors shall be approved in advance in accordance with this Corporation's conflict of interest policy, as set forth in **Article VIII** (8) of these Bylaws. Any Officer, Director or Chairperson who is also serving the Corporation in an additional and remunerative capacity, having been retained or employed as managerial, production, technical, clerical, administrative or other professional personnel, shall be entitled to receive fair and just compensation as authorized and contracted by the Board, just as would any other person employed by the Corporation.

Section 10. Informal Action by Directors

Any action required by law to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by two-thirds (2/3) of all of the Directors following notice of the intended action to all members of the Board of Directors.

Section 11. Confidentiality

Directors shall not discuss or disclose information about the Corporation or its activities to any person or entity unless such information is already a matter of public knowledge, such person or entity has a need to know, or the disclosure of such information is in furtherance of the Corporations' purposes or can reasonably be expected to benefit the Corporation. Directors shall use discretion and good business judgment in discussing the affairs of the Corporation with third parties. Without limiting the foregoing, Directors may discuss upcoming fundraisers and the purposes and functions of the Corporation, including but not limited to accounts on deposit in financial institutions. Each Director shall execute a confidentiality agreement consistent herewith upon being voted onto and accepting appointment to the Board of Directors.

Section 12. Advisory Council

An Advisory Council may be created whose members shall be elected by the members of the Board of Directors annually but who shall have no duties, voting privileges, nor obligations for attendance at regular meetings of the Board. Advisory Council members may attend said meetings at the invitation of a

member of the Board of Directors. Members of the Advisory Council shall possess the desire to serve the and support the work of the Corporation by providing expertise and professional knowledge. Members of the Advisory Council shall comply with the confidentiality policy set forth herein and shall sign a confidentiality agreement consistent therewith upon being voted onto and accepting appointment to the Advisory Council.

Section 13. Parliamentary Procedure

Any questions concerning parliamentary procedure at meetings shall be determined by the President by reference to Robert's Rules of Order.

Section 14. Self-Audit

The Boards of Directors will conduct routine yearly self-audits or self-assessment to evaluate the internal condition of a business and the performance of the Board and Committees on their core responsibilities and to identify the perceived importance of responsibilities for the next 1-2 years and the quality of enablers in place to support Board effectiveness.

Section 15. Removal

Any member of the Board of Directors, including members of the Advisory Council, may be removed with or without cause, at any time, by a vote of three-quarters (3/4) of the members of the Board of Directors if in their judgment the best interests of the Corporation would be served thereby. If any Director accumulates 3 unexcused absences or a total of 5 combined absences from meetings in any given year, it shall be presumed that the Director's resignation has been tendered and accepted and a vacancy shall be declared. It will further be understood as just cause for their removal. The Directors may suspend this rule by a majority vote.

1. An "excused absence" would consist of an absence due to death, sickness or emergency of a family member or self. An "unexcused absence" therefore, would be defined as any absence not known at the time a meeting was planned, that is outside of the reasons listed above.

ARTICLE V. OFFICERS

The Officers of this Board shall be the President, Secretary and Treasurer.

Officers shall be elected by the Board of Directors and each Officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first. Those Officers elected shall serve a term of one (2) years, commencing January 1, 2023.

Section 1. President

The President shall preside at all meetings. The President shall have the following duties:

- A. He/She/They shall preside at all meetings of the Executive Committee.
- B. He/She/They shall have general and active management of the business of the Board of Directors and the Advisory Board.
- C. He/She/They shall see that all orders and resolutions of the Advisory Board are brought to the Board of Directors.
- D. He/She/They shall have general superintendence and direction of all other Officers of this Corporation and see that their duties are properly performed.

- E. He/She/They shall submit a report of the operations of the program for the fiscal year to the Advisory Board and Board members at their annual meetings, and from time to time, shall report to the Board all matters that may affect this program.
- F. He/She/They shall be Ex-officio members of all standing Committees and shall have the power and duties usually vested in the office of the President.

Section 2. Secretary

The Secretary shall attend all meetings of the Advisory Board and of the Executive Committee, and all meetings of Directors, and assisted by a staff member, will act as a clerk thereof. The Secretary's duties shall consist of:

- A. He/She/They shall record all votes and minutes of all proceedings in a book to be kept for that purpose.
- B. He/She/They, in concert with the President, shall make arrangements for all meetings of the Board, including the Annual Strategic Planning meeting.
- C. Assisted by a staff member, he/she/they shall send notices of all meetings to the Board members.
- D. He/She/They shall perform all official correspondence from the Board as may be prescribed by the President.

Section 3. Treasurer

The Treasurer's duties shall be:

- A. He/She/They shall submit for the Finance and Fund Development Committee approval of all expenditures of funds raised by the Board, proposed capital expenditures (equipment and furniture), and other expenditures by the staff of the organization.
- B. He/She/They shall present a complete and accurate report of the finances at each meeting, or at any other time upon request to the Board.
- C. He/She/They shall have the right of inspection of the funds including budgets and subsequent audit reports.
- D. It shall be the duty of the Treasurer to assist in direct audits of the funds of the program according to funding source guidelines and generally accepted accounting principles.
- E. He/She/They shall perform such other duties as may be prescribed by the President under whose supervision he/she/they shall be.

Section 4. Removal of an Officer

Any Officer (including a temporary appointee) may be removed with or without cause, at any time, by a vote of three-quarters (3/4) of the members of the Board of Directors if in their judgment the best interests of the Corporation would be served thereby. An Officer who has been removed as a member of the Board of Directors shall automatically be removed from office and a successor shall be elected by the Board for the remainder of the unexpired term. If any Officer accumulates 3 unexcused absences or a total of 5 combined absences from meetings in any given year, it shall be presumed that the Officer's resignation has been tendered and accepted and a vacancy shall be declared. It will further be understood as just cause for their removal. The Board of Directors may suspend this rule by a majority vote.

1. An "excused absence" would consist of an absence due to death, sickness or emergency of a family member or self. An "unexcused absence" therefore, would be defined as any absence not known at the time a meeting was planned, that is outside of the reasons listed above.

Section 5. Vacancies

Vacancies occurring in the position of Officers appointed at the discretion of the Board may or may not be filled as the Board shall determine. If a Board Officer position becomes vacant for any reason, the Board shall fill without undue delay by a majority vote of the remaining members of the Board of Directors at a regular meeting. Vacancies may be created and filled according to specific methods approved by the Board of Directors.

If a sitting Board Member wishes to fill a vacant Board Officer position, the sitting Board Member must first resign from the Board and, then, may be selected for said vacant Board Officer position at the next meeting of the Board by a majority of the remaining Board Members then present.

Section 6. Other Officers

The Board of Directors shall have the power to appoint additional Officers, employees or agents, as may be necessary in its judgment for the conduct of the business of the Corporation and designate the office title. The Board of Directors may engage an Executive Director and Artistic Director, respectively.

ARTICLE VI. COMMITTEES

Section 1. Committee Formation

The Board may create committees as needed, such as Fundraising, Marketing, Public Relations, Education, Production etc. The Board President appoints all Committee Chairs.

Regular, special or ad hoc committees shall be appointed as the Board of Directors deem necessary to carry on the mission and work of the Corporation.

The President shall be ex-officio members of all Committees and each committee shall consist of one (1) or more Board Members.

The Treasurer is the chair of the Finance Committee, which includes two other Directors and a bookkeeper. The Finance Committee is responsible for developing and reviewing fiscal procedures and the annual budget with staff and other Board members.

The Executive Director and Artistic Director shall be the ad hoc members of their respective committees.

ARTICLE VII. BUDGETS

Section 1. Approval

The Board must approve the budget and all expenditures must be within budget. Any major change in the budget must be approved by the Board. Major budget change is defined as any change that goes against the directions of the Board, the approved strategy of the organization, or otherwise would create liabilities for the Officers and Directors of the Corporation.

ARTICLE VIII. ANNUAL REPORTS

Section 1. Calendar Year

The fiscal year shall be the calendar year starting in the year 2023. Annual reports are required to be submitted to the Board showing income, expenditures, and pending income. The financial records of the organization are public information and shall be made available to the public.

ARTICLE IX. CORPORATE STAFF

Section 1. Executive Director

The Board of Directors may hire an Executive Director who shall serve at the will of the Board. The Executive Director shall be the chief staff advisor and shall be responsible for organizing and overall supervision of the financial, operational, marketing, fundraising, and human resource of the Corporation, and shall direct the day-to-day business of the Corporation, maintain the properties of the Corporation, hire, discharge, and determine the salaries and other compensation of all staff members under the Executive Director's supervision, and perform such additional duties as may be directed by the Executive Committee or the Board of Directors. No Officer, Executive Committee member or member of the Board of Directors may individually instruct the Executive Director or any other employee. The Executive Director shall make such reports at the Board and Executive Committee meetings as shall be required by the President or the Board. The Executive Director will work in conjunction with the Artistic Director. The Executive Director shall be an ad-hoc member of all finance, budgeting, operational, marketing and fundraising related committees.

The Executive Director may not be related by blood or marriage/domestic partnership within the second degree of consanguinity or affinity to any member of the Board of Directors or Advisory Council. The Executive Director may be hired at any meeting of the Board of Directors by a majority vote and shall serve until removed by the Board of Directors upon an affirmative vote of three-quarters (3/4) of the members present at any meeting of the Board of Directors. Such removal may be with or without cause. Nothing herein shall confer any compensation or other rights on any Executive Director, who shall remain an employee terminable at will, as provided in this Section.

Section 2. Artistic Director

The Board of Directors may hire an Artistic Director who shall serve at the will of the Board. The Artistic Director shall define and implement the overall artistic vision of the Corporation, including the development and oversight of artistic and cultural programming, further growth and outreach of the Corporation, and have involvement in Board/donor relations and marketing efforts of the Corporation, and shall direct the day-to-day artistic business of the Corporation, hire, discharge, and determine the salaries and other compensation of all staff members under the Artistic Director's supervision, and perform such additional duties as may be directed by the Executive Committee or the Board of Directors. No Officer, Executive Committee member or member of the Board of Directors may individually instruct the Artistic Director or any other employee. The Artistic Director shall make such reports at the Board and Executive Committee meetings as shall be required by the President or the Board. The Artistic Director will work in conjunction with the Executive Director. The Artistic Director shall be an ad-hoc member of all artistic and production related committees.

The Artistic Director may not be related by blood or marriage/domestic partnership within the second

degree of consanguinity or affinity to any member of the Board of Directors or Advisory Council. The Artistic Director may be hired at any meeting of the Board of Directors by a majority vote and shall serve until removed by the Board of Directors upon an affirmative vote of three-quarters (3/4) of the members present at any meeting of the Board of Directors. Such removal may be with or without cause. Nothing herein shall confer any compensation or other rights on any Artistic Director, who shall remain an employee terminable at will, as provided in this Section.

Section 3. Whistleblower Policy

Hendersonville Theatre urges its employees, and all others having business with it, to notify HT of any conflict, transactions or facts related to HT's operations which may be a violation of any law, regulation, or standard of fair dealing and decency, including but not limited to, any claims of sexual harassment or abuse, improper financial dealings, and any actions that might violate HT's tax exempt status. Such notices may be given to any member of the Executive Committee, with a request that it be reported to the appropriate Board members for investigation and action. HT's Directors have been instructed in their obligation to advance such reports to the Board and to keep them confidential, except as required to investigate and respond.

ARTICLE X. CONFLICT OF INTEREST AND COMPENSATION

Section 1: Purpose

The purpose of the conflict-of-interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Section 2: Definitions

- A. Interested Person: Any Director, Officer, or member of a committee with governing Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- B. Financial Interest: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
 - b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article IX, Section 2B, a person who has a financial interest may have a conflict of interest only if the appropriate governing Board or committee decides that a conflict of interest exists.

Section 3. Procedures

- A. Duty to Disclose
 - a. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Directors and members of committees with governing Board delegated powers considering the proposed transaction or arrangement.
- B. Determining Whether a Conflict of Interest Exists
 - a. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she/they shall leave the governing Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.
- C. Procedures for Addressing the Conflict of Interest
 - a. An interested person may make a presentation at the governing Board or committee meeting, but after the presentation, he/she/they shall leave the meeting during the discussion of, and vote on the transaction or arrangement involving the possible conflict of interest.
 - b. The Chairperson of the governing Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - c. After exercising due diligence, the governing Board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
- D. Violations of the Conflicts of Interest Policy
 - a. If the governing Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
 - b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings

The minutes of the governing Board and all committees with Board delegated powers shall contain:

- A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing Boards or committee's decision as to whether a conflict of interest in fact existed.
- B. The names of the persons who were present for discussions and votes relating to the transaction

or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5. Compensation

- A. A voting member of the governing Board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- B. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- C. No voting member of the governing Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Section 6. Annual Statements

Each Director, principal Officer, and member of a committee with governing Board delegated powers shall annually sign a statement which affirms such person:

- A. Has received a copy of the conflicts of interest policy,
- B. Has read and understands the policy.
- C. Has agreed to comply with the policy,
- D. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 7. Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- A. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- B. Whether partnerships, joint ventures, and arrangements with management Organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Section 8. Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing Board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE XI. INDEMNIFICATION

Section 1. General

To the full extent authorized under the laws of the state of North Carolina, the Corporation shall indemnify any Director, Officer, employee, or agent, or former Director, Officer, employee, or agent of the Corporation, or any person who may have served at the Corporation's request as a Director or Officer of another Corporation (each of the foregoing members, Directors, Officers, employees, agents, and

persons is referred to in this Article individually as an “indemnitee”), against expenses actually and necessarily incurred by such indemnitee in connection with the defense of any action, suit, or proceeding in which that indemnitee is made a party by reason of being or having been such member, Director, Officer, employee, or agent, except in relation to matters as to which that indemnitee shall have been adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. The foregoing indemnification shall not be deemed exclusive of any other rights to which indemnitee may be entitled under any Bylaw, agreement, resolution of the Board of Directors, or otherwise.

However, this provision shall not eliminate or limit the liability of a Director, Officer, employee, or agent, or former Director, Officer, employee, or agent of the Corporation for any of the following:

- A. a breach of duty of loyalty to the Corporation and its members
- B. acts or omissions not in good faith or that involve intentional misconduct or knowing violation of the law
- C. a transaction from which the Director derived an improper personal benefit
- D. an act or omission that is grossly negligent

Section 2. Expenses

Expenses (including reasonable attorneys’ fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding, if authorized by the Board of Directors, upon receipt of an undertaking by or on behalf of the indemnitee to repay such amount if it shall ultimately be determined that such indemnitee is not entitled to be indemnified hereunder.

Section 3. Insurance

The Corporation shall purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person’s status as such, whether or not the Corporation would have the power or obligation to indemnify such person against such liability under this Article.

ARTICLE XII. BOOKS AND RECORDS

The Corporation shall keep complete books and records of accounts and minutes of the proceedings of the Board of Directors.

Section 1. Contracts

The Board of Directors shall specify any Director or Officer, employee, agent or agents, to enter into any contract or execute or deliver any instrument in the name of or on behalf of the Corporation, and such authority may be general or confined to specific instances and unless so authorized by the Board with a written Board Resolution, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

Section 2. Loans

No indebtedness for borrowed money shall be contracted on behalf of the Corporation and no evidence of such indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authorization may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc.

All Checks, drafts, or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by the Treasurer or President or such other person or persons as the Board of Directors may from time to time designate.

Section 4. Gifts and Contributions

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or any special purpose of the Corporation.

Section 5. Board of Director's Annual Report

At least once in each year the Board of Directors shall make a public financial report of the Corporation for the preceding fiscal year and distribute to each Director, committee chair within four months after the end of the fiscal year. The report shall include the Corporation's statement of income, its year-end balance sheet and, if prepared by the Corporation, its statement of source and application of funds and such other information as may be required by statute.

Section 6. Books and Records

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and shall keep at the registered or principal office a record giving the names and addresses of the Directors.

Section 7. Audit

The Corporation shall consider an audit of all its books and records to be performed by a firm of independent certified public accounts if an audit should be required by a funding agency.

ARTICLE XIII. INVESTMENT FUND

The Board of Directors shall cause an Investment Fund to be established for the purposes set forth in this Article.

Section 1. Funding

The following monies shall be deposited into the Investment Fund:

All monies received as gifts, bequests and donations (hereinafter, "donations"). All donations, which are made or given for a specifically stated purposes shall be deemed restricted donations to be used solely and exclusively for the purpose stated by or on behalf of the donor unless the donor or an authorized representative of the donor otherwise consents, in writing, as to an alternative use. In the event that a donor or an authorized representative of the donor cannot be contacted after a reasonable, good faith effort has been made to do so, the Board of Directors, at an authorized and approved meeting, may, by majority vote, authorize an appropriate alternative use of such donation consistent with this Article.

Within 6 months following the acquisition of real property and capital equipment with an original useful life of more than two years, the Board of Directors shall cause a portion of the Corporation's revenues to be deposited no less frequently than quarterly into a separate account (to be known as the Replacement Reserve Account) within the Investment Fund to insure that funds will be available to replace each such piece of real property and capital equipment at the end of its useful life. The amount of the contribution to the Replacement Reserve Fund for each item shall be computed as follows:

1. For each new item, the calculation shall be based on (i) the estimated useful life of the item on the date of its acquisition by the Corporation expressed in months and (ii) the estimated cost to replace the item at the end of its useful life; and, the monthly contribution to the Replacement Reserve Account for such item (The Monthly Reserve Amount) shall be computed by dividing the estimated replacement cost by the number of months of the estimated useful life; and,
2. For each item that is not new on the date of its acquisition, the calculation shall be based on (i) the estimated useful life of the item when new (the Original Estimated Useful Life) expressed in terms of months, (ii) the remaining useful life on the date of its acquisition by the Corporation expressed in months and (iii) the estimated cost to replace the item at the end of its useful life; and, the contribution to the Replacement Reserve Account with respect to each such item shall be calculated in two steps as follows:
 - a. A Catch-Up Contribution equal to the total of the Monthly Reserve Amount contributions that would have been made for the period when the item was new to the date on which the Corporation acquired the item computed by multiplying the monthly contribution as determined in the manner provided for in 2.a. above by the Expired Useful Life (the Original Estimated Useful Life expressed in months minus the Remaining Useful Life where the Remaining Useful Life is the number of months remaining until the Original Useful Life expires); and
 - b. The ongoing Monthly Reserve Amount contribution computed as above from the date of acquisition.
 - c. Such other monies as the Board of Directors shall from time to time authorize for deposit into the Investment Fund.

Section 2. Uses

Monies deposited into the Investment Fund shall only be utilized for the following purposes:

1. To effect a payment (including a down payment) for the purchase of or investment in real property, either improved or unimproved, solely to advance the purposes of the Corporation as set forth in its Mission Statement, and Articles of Incorporation;
2. The improvement of, including additions to, any existing property owned by the Corporation; and,
3. Any restricted purpose designated by the maker of a donation and acceptable to the Corporation.
4. To secure the personnel and processes prudent to implement the strategic growth and purpose of the Organization, ensuring its longevity and necessary expansion.
5. In addition, the Board of Directors may authorize the establishment of a Contingency Fund. This fund is to be used to cover any unbudgeted, emergency expenditures as determined by the Treasurer and one or more additional Officers of the Board of Directors. The total Contingency Fund shall not exceed the lesser of 5% of the most recent quarterly investment account statement, or \$5000 per quarter for a maximum of \$20,000 in any 12 month period, provided, however, that any quarterly disbursement not transferred to the Contingency Fund shall not be deemed accessible in succeeding quarters.

ARTICLE XIV. OPERATIONAL MANUAL

Section 1. Manual

In order to facilitate its administrative responsibilities and to supplement these Bylaws where necessary,

the Board shall prepare and adopt an “Operational Manual”. The Operational Manual shall include the definitive description of the position and duties of the Executive Director, Artistic Director and each Primary Staff member; a code of policies, procedures, and regulations; and, a working plan of Organization , including, but not limited to, selection of plays and number of productions, participation rules, budgetary and accounting procedures. It may be altered and amended, in whole or in part, from time to time and at any time, by a majority vote of the Board present at any meeting of the Board at which there is a quorum.

ARTICLE XV. AMENDMENTS

Section 1. Articles of Incorporation

The Articles may be amended in any manner at any regular or special meeting of the Board of Directors, provided that specific written notice of the proposed amendment of the Articles setting forth the proposed amendment or a summary of the changes to be effective thereby shall be given to each Director at least three days in advance of such a meeting if delivered personally, by facsimile, or by e-mail or at least five days if delivered by mail. As required by the Articles, any amendment to Article III or Article VI of the Articles shall require the affirmative vote of all Directors then in office. All other amendments of the Articles shall require the affirmative vote of an absolute majority of Directors then in office.

Section 2. Bylaws

The Board of Directors may amend these Bylaws by a two-thirds majority vote at any regular or special meeting. Written notice setting forth the proposed amendment or summary of the changes to be effective thereby shall be given to each Director within the time and manner provided for the giving of notice of meetings of Directors.

ARTICLE XVI – DISSOLUTION

In the event of the dissolution of Hendersonville Theatre and after payment, or provision for payment, of all debts and liabilities of the Corporation, the Board of Directors in its sole discretion shall cause the net assets of the Corporation to be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government or to a state or local government for public purposes. Such distribution shall be made in accordance with all applicable provisions of the laws of the State of North Carolina.

In the event that the Corporation can no longer function as a theatre, the Corporation shall be dissolved and all properties, whether real estate or personal property, shall be sold, and monies remaining after payment of outstanding bills, shall be delivered to the Henderson County Community Foundation with the restriction that the funds be used to fund arts grants.