

WHITE HERON THEATRE COMPANY
d/b/a White Heron Theatre, Nantucket Theatre Institute
CONFLICT OF INTEREST AND CONFIDENTIALITY
POLICY

**ARTICLE I
PURPOSE AND STATEMENT**

1.1 Purpose. This policy defines the principles governing the identification and resolution of conflicts of interest that involve members of the Board of Directors (“Board”) of White Heron Theatre Company, Inc (hereinafter the “Company”). This Policy also defines the obligations of the Directors to maintain the confidentiality of information and not to disclose or use it, whether for personal, business, or other outside purpose.

1.2 Statement. The Company is a non-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. The Company is under the direction and guidance of an uncompensated governing body known as the Board of Directors (previously defined as the “Board”). The principles of good corporate governance as well as state and federal law require that the members of the Board discharge their duties to the Company in good faith, consistent with their duties of loyalty and fidelity to the Company, and guided solely by the best interests of the Company. The duty of loyalty requires that their allegiance be uncompromised by outside interests. Consequently, no member of the Board may use the member’s position with the Board for personal profit, gain or other personal advantage, participate in any decision that might affect any personal interest of the member, or have any personal interest, the promotion of which is fundamentally inconsistent with the best interests of the Company. Compliance with a comprehensive policy on conflicts of interest will assist Directors to meet their obligations to the Company.

This Policy supplements but does not replace applicable state laws governing conflicts of interest that apply to non-profit and charitable corporations.

**ARTICLE II
UNDERLYING DEFINITIONS**

2.1 Company. The “Company” means White Heron Theatre Company, Inc, d/b/a White Heron Theatre and Nantucket Theatre Institute.

2.2 Board. “Board” means the Board of Directors of the Company

2.3 Director. “Director” means a member of the Board of Directors of the Company. “Director” expressly includes an ex-officio Director who serves on the Board by virtue of a position or an elected office held by the individual.

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. **2.4 Financial Interest.** A Director has a Financial Interest if the Director, directly or indirectly, personally or through a Related Person has an actual or potential:

- o ownership or investment interest (whether equity or debt) in, or
- o compensation arrangement with any entity or business that
- o transacts, or is negotiating to transact, business with the Company, or
- o competes with the Company, or may be affected in a non-incident manner by the Company's strategic or business decision-making.

Compensation includes direct and indirect payments or benefits as well as gifts or favors that are substantial in nature.

. **2.6 Nonfinancial Interest.** A Director has a Nonfinancial Interest if the person, directly or indirectly, personally or through a Related Person:

. is an uncompensated trustee, director, officer, manager, member, or partner of any other entity or business that does or seeks to do business with or competes with the Company;

. or is an uncompensated trustee, director, officer, manager, member, or partner of any other entity or business that takes action, or advocates for a position, adverse to the interests of the Company.

. **2.7 Related Person.** Related Person means, as to any Director, any of the following:

. a member of the Director's immediate family, including spouse or domestic partner, parent, child, grandchild, and brother or sister;

. the spouse or domestic partner of a member of the Director's immediate family;

. an individual who shares the Director's home;

. an estate or trust in which the Director or any Related Person is a beneficiary; and

. an individual or entity for which the Director or a Related Person serves as a fiduciary or is financially responsible.

ARTICLE III DEFINITION OF CONFLICT OF INTEREST

3.1 Conflict of Interest. A conflict of interest may take many forms but generally arises when a Director has a Financial or Nonfinancial Interest, and the promotion of that interest is, or may in the foreseeable future be, inconsistent with the Company's best interests. An actual or potential conflict of interest exists when a Director is, or might be, able to use his or her position at the Company to influence deliberations or decisions that might affect, further, or relate to a Financial or Nonfinancial Interest of the Director or a Related Person. An actual or potential conflict of interest also exists when a Director might be able to use information available to the Director because of his or her Company position to further a Financial or Nonfinancial Interest of the Director or a Related Person. Actual or potential competition with the Company presents a conflict of interest.

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The mere existence of an actual or potential conflict of interest is not inherently illegal or improper, and the challenge generally lies in the timely identification and proper management of the conflict. However, as discussed in Article 6.4, an individual's actual or potential conflicts of interest, including loyalties to other groups or entities competitive interests, may be so pervasive or severe that the individual may be unable to serve in a fiduciary capacity.

3.2 Examples. Examples of activities that may constitute a conflict of interest and may be subject to normal audit procedures include:

A Director's ownership interest in a business that sells goods or services to the Company; or

A Director's employment by a bank or financial institution that provides banking or other financial services to the Company; or

A Director's ownership interest in an existing business or facility that could be affected by the Company's decision whether or not to pursue a new initiative; or

A Director's service on the Board of an organization that lobbies for legislative action that could adversely affect the Company; or

A Director's investment in a White Heron Theatre Commercial Production (such investments are governed by Article XI); or

The employment of a Related Person of a Director by a business that wants to provide consulting services to the Company.

ARTICLE IV DISCLOSURE

4.1 Need for Disclosure. The successful management of conflicts of interest requires complete and timely disclosure by each Director. Successful management of conflicts of interest is also furthered by a culture in which all Directors are encouraged and expected to identify their own conflicts as well as to assist in the early identification of the potential conflicts of others.

4.2 Duty to Disclose. Each Director shall disclose the existence and nature of any personal or outside interest that may affect or be affected by the Company's operations or by decisions that the Director makes on the Company's behalf. More specifically, each Director shall disclose each Financial and Nonfinancial Interest that might present a conflict of interest.

4.3 Annual Disclosure. By March 31st of each year, every Director shall complete the required Questionnaire attached as Exhibit A and submit it to the Chair of the Board of Directors of the Company. Each Director's Questionnaire will be reviewed by the Board Chair and the Chair of the Governance Committee. The Questionnaires of the Board Chair and the Governance Committee Chair shall be reviewed by a Vice Chair of the Board.

4.4 Disclosure Upon Initial Appointment or Election as Director. Upon initial appointment or election, as the case may be, each Director shall complete the Questionnaire and provide it to the Chair of the Board of Directors.

4.5 Continuing Duty. If, prior to the next annual disclosure, any Financial or Nonfinancial Interest on the part of any Director develops that has not previously been disclosed, the Trustee shall promptly disclose the interest and make it a matter of record.

ARTICLE V

PROCEDURES TO DETERMINE WHETHER ACTUAL CONFLICT EXISTS

5.1 Ongoing Compliance Procedures. The Chair of the Board will review in advance the agenda of each annual, regular and special meeting of the Board and of the Executive Committee and identify, to the extent possible, potential conflicts of interest. If a potential conflict of interest is identified, the Chair of the Board will notify and advise the individual with the potential conflict prior to the meeting and the full Board or Executive Committee as the case may be, will be advised of the potential conflict at the meeting. In addition, each Director attending a meeting who believes there is or may be a potential or actual conflict of interest either for him/herself or for any other Director shall identify the issue for consideration by the Board or Executive Committee if the Chair of the Board has not done so.

5.2 Determining whether a Conflict Exists. If a Director may have a conflict of interest, the Director shall leave the meeting after providing all material information relevant to the existence of a conflict. The individuals remaining in the meeting shall decide if a conflict of interest exists. If so, as provided in Article 6.1, the Director shall not thereafter vote on the substantive matter or be present during deliberations. If it is determined that there is no conflict, the Director may fully participate in the meeting.

5.3 Conflicting Duties. In certain circumstances, a Director may be faced with conflicting duties such that the disclosure of the actual or potential conflict of interest would breach the duty of confidentiality to another organization. In such cases, the Director should state that an actual or potential conflict of interest exists and the Director's duties to another organization preclude full disclosure of the nature or extent of the interest. The Director should then leave the meeting and remain out of the meeting during discussion and the vote as provided in Article VI.

ARTICLE VI

PROCEDURES WHEN A CONFLICT OF INTEREST IS FOUND TO EXIST

6.1 Voting. No Director who has a conflict of interest on any matter shall participate in substantive deliberations or vote on that matter or be counted in determining the quorum for the meeting at which the vote is taken, even when permitted by law. No Director who has a conflict of interest on any matter shall use his or her personal influence on the matter.

6.2 Participation By Director with Conflict. These requirements do not prevent an individual from briefly stating his or her position on any matter, where appropriate, or answering pertinent questions asked by others, since his or her knowledge may provide assistance to others. The Director with a conflict of interest must leave the meeting after providing any information requested by others; no Director shall be present during substantive discussions, deliberations, or voting on the matter on which that Director has a conflict.

6.3 Transactions. This paragraph shall not apply to conflicts of interest governed by Article XI. If a Director has a conflict of interest with respect to a proposed transaction or financial arrangement, the Chair shall appoint, if appropriate, a disinterested committee or Director to investigate alternatives to the proposed transaction or arrangement, including seeking competitive bids in all possible cases. If the transaction or arrangement is not suitable for competitive bidding and an alternative transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors whether the original proposed transaction or arrangement is in the Company's best interests and is fair and reasonable to the Company. The Board may obtain outside independent advice confirming the financial fairness of the transaction or arrangements. Otherwise, the Company shall not enter into transactions or financial arrangements in any case in which a Director has a conflict of interest unless (1) there has been competitive bidding or (2) the transaction or arrangement has a value of less than fifty dollars (\$50) a year. This Policy, including Article XI, shall be interpreted and administered to achieve compliance with the requirements of section 501(c)(3) of the Internal Revenue Code and to avoid the imposition of the "Intermediate Sanctions" under section 4958 of the Code.

6.4 Need for Resignation, Decision Not to Appoint, or Exclusion from Meeting.

A Director may have actual or potential conflicts of interest or loyalties to other organizations that are so pervasive or significant that the Director may not be able to serve as a Director. In such cases, the Board may take such action as may be necessary to resolve the conflicts, tension, or duality of interests.

6.4.1 If the Board in its sole discretion determines that any elected Director has one or more conflicts of interest sufficient in number and/or importance that the effectiveness of such Director on behalf of the Company may be significantly impaired, the Board may ask such Director to resign from (or shall not appoint such individual to) his or her position with the Company

6.4.2 No Director may serve as a Director if he/she serves as a principal, partner, employee, counsel, or shareholder in a law firm that represents a party adverse to the Company in any litigation or in any dispute involving potential litigation.

6.5 Failure to Disclose. If the Board or Executive Committee has reasonable cause to believe that a Director has failed to disclose a Financial or Nonfinancial Interest that could present or give rise to a conflict of interest, it shall inform the Director of the basis for that belief and give the Director an opportunity to explain the alleged failure to disclose. If, after hearing the response of the Director and making such further investigation as may be warranted in the circumstances, the Board or Executive Committee, as the case may be, determines that the Director has in fact failed to disclose such an interest, the Board or Executive Committee shall take appropriate disciplinary and corrective action.

ARTICLE VII RECORDS OF THE MEETINGS

7.1 The minutes of each meeting shall contain the name(s) of Directors who disclosed or otherwise were thought to have a personal or outside interest in connection with any matter before the Board or the Executive Committee, the nature of the interest, and the decision as to whether a conflict of interest in fact existed.

7.2 The minutes shall also contain the names of the persons who were present for discussions and votes relating to the matter, names of individuals abstaining from discussions and votes, the content of the discussion, including alternatives to any proposed transaction or arrangement, and a record of any votes taken. The minutes shall document when the Director with a conflict was present or absent from the meeting.

ARTICLE VIII STATE LAW

In any case in which the definitions and procedures set forth in applicable state law are more restrictive than this Policy, then the statutes shall govern.

ARTICLE IX CONFIDENTIALITY

10.1 Definition. Directors often have access to or learn Confidential Information of the Company. "Confidential Information" means:

Information including but not limited to strategic plans, proposed new programs or services, personnel issues, risk management materials, discussions at Board and committee meetings, and minutes of meetings.

- . 10.2 All Confidential Information coming to the attention of Directors shall be held strictly confidential. Confidential Information may not be used for purposes other than authorized Board functions, and may not be removed from the Company's offices or files, duplicated, or disclosed to outside parties without proper authorization in accordance with established policies.
- . Access to Confidential Information by Directors is only permissible when the person provided with or seeking access is involved in authorized activities. This requirement applies regardless of the form in which Confidential Information is maintained or stored.
- . 10.3 Whenever necessary, the Board or the Chair shall take appropriate disciplinary and corrective action with respect to a Director who misuses, obtains improper access to, alters, or removes Confidential Information, or otherwise violates this Policy.
- . If the Board or a Board Committee had reasonable cause to believe that a Director has violated this Policy, it shall inform the Director of the basis for such conclusion and afford the Director an opportunity to provide an explanation.
- . If, after hearing the explanation of the Director and making such further investigation as may be warranted under the particular circumstances, the Board or Committee determines that the Director has violated this Policy, it shall take appropriate disciplinary and corrective action.

ARTICLE X
INVESTMENT IN COMMERCIAL PRODUCTIONS

11.1 Definition. A White Heron Theatre Company Commercial Production is a theatrical production managed by a for-profit entity (e.g. a limited liability corporation or partnership) in which the Company is either a non-passive or managing participant (e.g. managing partner, manager, general partner) or to which the Company has assigned commercial production rights

11.2 A Director may invest in a White Heron Theatre Company Commercial Production if

- a) the transaction with the Director is governed by terms no more favorable to the Director than those offered to non-Trustee investors;
- b) a special committee of Directors appointed by the Chair determines, after appropriate consultation with the Company's counsel or professional advisors that such investment is consistent with Section 501(c)(3) of the Internal Revenue Code and will not result in the imposition of Intermediate Sanctions under section 4958 of the Internal Revenue Code, regulations thereunder or interpretations thereof.

11.3 Investment in a White Heron Theatre Company Commercial Production may be made in one of the following ways:

- a) The Director may make a non-recourse loan to the Company at a set interest rate, which would pass scrutiny from the Internal Revenue Service as advised by the Company's professional advisors or counsel, to be used by the Company to purchase shares or an interest in the for-profit entity. All such loans would be subject to restrictions and/or approvals as required by or as negotiated with the Company's other lenders. The Director shall not receive any additional remuneration in addition to potential repayment of the loan principal and the specified interest, or
- b) The Director investing in a manner other than the making of such a loan shall enter into a binding agreement to donate 50% to 100% of any return in excess of his/her investment to the Foundation.

11.4 A Director's investment in a White Heron Theatre Company Commercial Production shall be deemed a conflict of interest, and the Director shall be subject to the requirements and procedures set forth in Articles 4 and 6 (except the first paragraph of Section 6.3) of this Policy.