

## **By-Laws**

### **ENCORE! CAST PERFORMING ARTS, INC.**

#### **ARTICLE I - NAME**

The registered name of the corporation is "ENCORE Cast Performing Arts, Inc" (hereinafter referred to as "ENCORE!", "the Corporation" or "the organization"). The Corporation also operates under the registered fictitious name of "ENCORE Performing Arts".

#### **ARTICLE II - CORPORATE PURPOSE**

##### **Section 1- Nonprofit Purpose**

The Corporation is organized exclusively for charitable, educational, and artistic purposes, 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, or the corresponding section of any future Federal tax code.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its participants, Directors, Officers or other private persons, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payment and distributions in furtherance of the purposes set forth in the Mission clause hereof. No part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any political party or candidate for public office. Notwithstanding any other provision of this document, the Corporation shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or (b) by an organization, contributions to which are deductible under 170(c)(23) of the Internal Revenue Code, or corresponding section of any future Federal tax code.

##### **Section 2- Mission**

The mission and purpose of ENCORE! is to give participants of the Central Florida Community a creative outlet to express their artistic talents, while simultaneously strengthening and giving back to our local community through various non-political charitable endeavors and organizations.

## **ARTICLE III - GOVERNANCE**

### **Section 1- BOARD OF DIRECTORS**

The affairs and property of ENCORE! shall be managed by the Board of Directors (the Board), which shall consist of the Executive Committee, the Artistic Council and the Advisory Council. Individuals elected to the Board of Directors are hereinafter referred to as "Members".

#### **A. THE EXECUTIVE COMMITTEE**

The President, Vice President, Treasurer and Secretary (See **Article IV - Officers** for descriptions of duties and responsibilities) shall comprise the Executive Committee. Except for the powers to amend the Articles of Incorporation and Bylaws, the Executive Committee shall have all the powers and authority of the Board of Directors in the intervals between meetings of the Board of Directors and is subject to the direction and control of the full Board. The Executive Committee may have input, but not decision-making control of the creative endeavors of the Organization. Officers of this Committee will forfeit the opportunity to participate in major roles of the creative efforts of the organization. Participation in a supportive role, an ensemble role, or in the Chorale or Orchestra may be allowed.

#### **B. THE ARTISTIC COUNCIL**

The Artistic Council shall consist of the Artistic Director, Creative Director and the Executive Producer. Participants of the Artistic Council shall forfeit the opportunity to hold Executive Committee positions while serving on the Artistic Council. (See **Article VI - Artistic Council** for further descriptions.)

#### **C. THE ADVISORY COUNCIL**

An Advisory Council shall be created whose participants shall be approved and elected by the Executive Committee annually. The Advisory Council participants shall possess the desire to serve the community and support the Mission and work of the organization by providing expertise and professional knowledge. Participants of the Advisory Council shall sit on the Board of Directors. The Board shall select participants of a Nominating Committee, which may submit at a meeting prior to the annual meeting the names of those persons for positions on the Advisory Council. Nominations may also be received from the floor after the report of the Nominating Committee. The election shall be held at the annual meeting of the Board. Those elected shall serve a term of two (2) years, commencing at the next Board meeting following the annual meeting. (Further information is in **Article VII - Advisory Council**).

## **Section 2 – Number, Tenure, Requirements and Qualifications**

Members of the Board (Directors) shall be elected, and the number of serving Directors shall be fixed from time-to-time by a majority vote at any regular meeting of a quorum of the Board. The number of Directors shall be no less than three (3) or more than fifteen (15) individuals. The duly elected Directors shall immediately enter upon the performance of their duties and shall continue in office until their successors have been duly elected and qualified. No two Directors related by blood or marriage/domestic partnership within the second degree of consanguinity or affinity may vote at the same time on the same issue.

The elected term for a Member of the Board of Directors shall be two (2) years. The terms shall be staggered so that at the time of each Annual Meeting, the terms of approximately one-half (1/2) of all Members of the Board of Directors expire.

Each Member of the Board of Directors shall attend, physically or through digital means, a majority of the monthly meetings of the Board each year.

## **Section 3- Regular and Annual Meetings**

An Annual Meeting of the Organization shall be held at a time and day of each calendar year and at a location designated by the Executive Committee of the Board of Directors. All present and past participants of ENCORE! may attend the Annual Meeting.

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.

## **Section 4- Special Meetings**

Special Meetings of the Board of Directors may be called by or at the request of the President or any two 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.

## **Section 5- Notice**

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. Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these by-laws.

## **Section 6 - Quorum**

The presence, in person or through digital means, 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 by-laws.

## **Section 7- Forfeiture**

Any Member of the Board of Directors who fails to fulfill any of his or her requirements as set forth in Section 2 of this Article by September first of any year shall automatically forfeit his or her seat on the Board. The Secretary shall notify that Director in writing that his or her seat has been declared vacant, and the Board of Directors may forthwith immediately proceed to fill the vacancy. Members of the Board of Directors who are removed for failure to meet any or all of the requirements of Section 2 of this Article are not entitled to vote at the Annual Meeting and are not entitled to the procedure outlined in Section 13 of this Article.

## **Section 8- Vacancies**

Whenever any vacancy occurs on 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 at which a quorum is present. Vacancies may be created and filled according to specific methods approved by the Board of Directors.

## **Section 9- Compensation**

Members of the Board of Directors shall not receive compensation of any kind for their services as Directors.

## **Section 10- Informal Action by Directors**

Any action required by law to be taken at a meeting of the Directors, or any action that 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 organization 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 organization's purposes or can reasonably be expected to benefit the organization. Directors shall use discretion and good business judgment in discussing the affairs of the organization with third parties. Without limiting the foregoing, Directors may discuss upcoming fundraisers and the purposes and functions of the organization including, but not limited to, accounts on deposit in financial institutions.

Directors shall not disclose or discuss future ENCORE! plans with anyone outside the Board. Mention to non-Board participants of names or concepts of future shows contemplated are prohibited until they are publicly announced by the Board.

Each Director shall execute a confidentiality agreement consistent herewith upon being voted onto and accepting appointment to the Board of Directors.

### **Section 12- Parliamentary Procedure**

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

### **Section 13- Removal**

Any Member of the Board of Directors may be removed with or without cause, at any time, by vote of two-thirds (2/3) of the Members of the Board of Directors if in their judgment the best interest of the Organization would be served thereby. Each Member of the Board of Directors must receive written notice of the proposed removal at least twenty (20) days in advance of the proposed action. No Member of the Board of Directors shall be expelled without an opportunity to be heard in person or via digital means. A Member who has been removed from the Board of Directors shall automatically be removed from office.

Members of the Board of Directors who are removed for failure to meet the minimum requirements in Section 2 of this Article in these by-laws automatically forfeit their positions on the Board pursuant to Section 7 of this Article and are not entitled to the removal procedure outlined in this Section 13.

## **ARTICLE IV - OFFICERS**

### **Section 1- President**

The President shall preside at all meetings of the Board or public meetings of participants involving operations of ENCORE!, and shall:

- A. Preside at all meetings of the Executive Committee.
- B. Have general and active management of the business of the Board.
- C. See that all orders and resolutions of the Board are properly brought to the Board of Directors.
- D. Have general superintendence and direction of all other Officers of ENCORE! and see that their duties are properly performed.
- E. Report on the operations of the organization for the fiscal year to the Board at the Annual Meeting, and from time to time, shall report to the Board on all matters that may affect operations.
- F. Be an ex-officio participant of all standing committees and shall have the power and duties usually vested in the office of the President.
- G. The President shall not receive a vote on the Board; however, will have the final decision in case of a tie vote.

## **Section 2- Vice-President**

The Vice-President shall be vested with all the powers and shall perform all the duties of the President during the President's absence. The Vice-President shall:

- A. Have the duty of chairing committees as appointed by the Board,
- B. Perform such other duties as may, from time to time, be required by the President or the Board.

## **Section 3- Treasurer**

The Treasurer shall:

- A. Operate under the supervision of the Board and the President.
- B. Present to the Board a complete and accurate report of the finances raised by this organization at each meeting of the Board, or at any other time requested by the Board.
- C. Have the right of inspection of the funds of the budgets and subsequent audit reports for all creative efforts.
- D. Assist in direct audits of the funds of the organization according to funding source guidelines and generally accepted accounting principles.
- E. Chair the Finance Committee.
- F. Perform such other duties as may be prescribed by the Board or the President.

## **Section 4- Secretary**

The Secretary shall attend, either in person or by designee, all meetings of the Board and of the Executive Committee, and all Board-sanctioned public meetings of participants, and shall act as a clerk thereof. It is the Secretary's duty to:

- A. Record all votes and minutes of all proceedings in a book to be kept for that purpose.
- B. In concert with the President, make the arrangements for all meetings of the Board, including the Annual Meeting of the organization.
- C. Send notices of all meetings to the Members of the Board, and shall take reservations for the meetings.
- D. Record and distribute all official correspondence from the Board as may be prescribed by the Board or the President.
- E. Maintain Participant Rosters.

## **Section 5 - Officer Succession**

Officers of the Executive Committee shall be eligible to succeed themselves in their respective positions for two (2) consecutive terms only. An Officer of the Executive Committee whose term(s) have concluded must wait two (2) years before being considered for re-election to the Executive Committee.

## **ARTICLE V – ANCILARY COMMITTEES**

### **Section 1- Committee Formation**

The Board may create committees as needed, such as fundraising, housing, public relations, data collection, etc. The Executive Committee will be responsible for appointing, by majority vote, the chair of each respective committee.

### **Section 2- Finance Committee**

The Treasurer may form a Finance Committee to assist the financial management of the organization and shall be the chairperson of such. The Finance Committee will include a minimum of two (2) other organization participants who are in good standing. The Finance Committee will have no more than six (6) total participants, including the Treasurer. The Finance Committee is responsible for developing and reviewing fiscal procedures, fundraising plans, and the annual budget with staff and other Board Members. 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 or the Executive Committee. The fiscal year shall be the calendar year. Annual reports are required to be submitted to the Board showing income, expenditures, and financial position. The Annual Report of the organization is public information and shall be made available upon written request.

## **ARTICLE VI - ARTISTIC COUNCIL**

### **Section 1- Artistic Director**

The Artistic Director shall be Clay Price, founder of the Organization. This position shall remain with Mr. Price until he steps down from the role. The Artistic Director shall lead the development and creative efforts of the organization, including, but not limited to the three (3) present programs of the organization: The ENCORE! Chorale, The ENCORE! Pops Orchestra and ENCORE! Theatricals, and any future creative programs.

With approval from the Executive Board, Mr. Price may name an Acting Artistic Director, if in the short term, he cannot fulfill his duties. The Acting Artistic Director role is for a finite length of time to be determined at the time of the appointment.

Should Mr. Price retire from the role of Artistic Director, by a writing submitted to the Executive Committee, the position will be filled by Executive Committee appointment.

### **Section 2: Creative Director**

The Creative Director will oversee the creative endeavors of the Organization. The Creative Director will be appointed by the Artistic Director with approval of the Executive Committee by simple majority.

The Creative Director may be removed by the Artistic Director with approval of the Executive Committee by simple majority.

### **Section 3- Executive Producer**

The Executive Producer is responsible for the leadership and management of the artistic, theatrical and programmatic efforts of the organization. The Executive Producer will be appointed by the Artistic Director with approval of the Executive Committee by simple majority.

The Executive Producer may be removed by the Artistic Director with approval of the Executive Committee by simple majority.

### **ARTICLE VII – ADVISORY COUNCIL**

Three Members of the Advisory Council shall be elected to represent the performance components of the Organization and must receive Executive Committee approval:

- ENCORE! Chorale Representative
- ENCORE! Theatrical Representative
- ENCORE! Pops Orchestra Representative

Other Members of the Advisory Council may be appointed by the Executive Committee and may include:

- Member at Large
- Legal Advisor

The Executive Committee may expand this Council up to 9 Members in total. Collectively, the Advisory Council shall receive one (1) vote during Board votes when the council has 5 or fewer Members. If the council is expanded to 6 or more Members, they shall receive two (2) total votes. (See also **Article III, Section 1C**)

### **ARTICLE VIII - PARTICIPATION**

Participation in the organization is open to all individuals who are interested in moving the Mission and purpose of the organization forward. Previous participation, or current participation in any aspect of ENCORE! does not guarantee a role or spot in a show, ensemble, and/or concert except as provided below, but does not preclude a participant from auditioning or applying for another role or position within the Organization.

A. Opportunities for participation include, but are not limited to:

- Board of Directors
- Advisory Council
- ENCORE! Chorale
  - Audition required.
  - Performers must meet standards of musicianship, attendance and show guidelines
- The ENCORE! Pops Orchestra
  - Audition required.
  - Performers must meet standards of musicianship, attendance and show guidelines.



- ENCORE! Theatricals
  - Performers
    - Show Specific Auditions required.
    - Must meet professional and artistic standards, attendance and show guidelines.
  - Production personnel
    - Must apply to or be invited by any participant of the Artistic Council and be approved by the Executive Producer.
  - Orchestral personnel
    - Audition required.
    - Musicians must meet standards of musicianship, attendance and show guidelines.
- Administrative and Front of House personnel
  - Must meet standards of attendance and organizational guidelines.

B. Removal from or reinstatement to participation in the ENCORE! Chorale, The ENCORE! Pops Orchestra, and/or ENCORE! Theatricals shall be determined by the Artistic Director in consultation with artistic and production managers and coordinators.

## **ARTICLE IX - CONFLICT OF INTEREST AND COMPENSATION**

### **Section 1- Purpose**

The purpose of the conflict of interest policy is to protect the organization's 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**

#### 1. Interested Person

Any Director, principal Officer, or participant of a committee with governing Board delegated powers, who has a direct or indirect financial interest, as defined below.

#### 2. Financial Interest

- a. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
  - i. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
  - ii. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
  - iii. 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.

- b. A financial interest is not necessarily a conflict of interest. Under this Article IX 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.
3. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial (\$25 or more).

### **Section 3- Procedures**

**A. Duty to Disclose.** 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 participants of committees with governing Board delegated powers considering the proposed transaction or arrangement.

**B. Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she 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 participants 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 shall leave the meeting during the discussion of, and the 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 participant has failed to disclose actual or possible conflicts of interest, it shall inform the participant of the basis for such belief and afford an opportunity for explanation of the alleged failure to disclose.

- b. If, after hearing the participant's response and after making further investigation as warranted by the circumstances, the governing Board or committee determines the participant 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 Board's 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 participant of the governing Board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that participant's compensation.
- B. A voting participant 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 participant's compensation.
- C. No voting participant 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 participant of a committee with 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, and
- D. Understands the Organization is charitable and in order to maintain its Federal tax status It must engage primarily in activities that 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 IX, 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 X - INDEMNIFICATION**

The organization may purchase and maintain insurance to indemnify the Organization or any person who is or was a participant, Director, Officer, employee, or agent of ENCORE! against any liability asserted against such person and incurred in any matter occurring while carrying out the work of ENCORE!, whether or not the organization would have the power or obligation to indemnify such person against such liability under this Article.

## **ARTICLE XI - BOOKS AND RECORDS**

The organization shall keep complete books and records of account and minutes of the proceedings of the Board of Directors. The financial books shall be kept on the accrual basis. The fiscal year of the organization shall be the calendar year.

## **ARTICLE XII - DISTRIBUTION OF ASSETS UPON DISSOLUTION**

Upon dissolution of this organization, all assets remaining after payment of costs and expenses of such dissolution shall be distributed to a 501(c)(3) organization, to be voted on by the Board, or the assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose as shall be determined by the Executive Board at the time of dissolution. None of the assets shall be distributed to any participant, Officer or Director of this organization.

## **ARTICLE XIII - AMENDMENTS**

### **Section 1. Articles of Incorporation**

The **Articles of Incorporation** 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 effected thereby shall be given to each Director at least three (3) days in advance of such a meeting if delivered personally, by facsimile, or by e-mail or at least five (5) days if delivered by mail. All amendments of the Articles shall require the affirmative vote of an absolute majority of a quorum of Directors then in office.

### **Section 2. Bylaws**

The Organization may, at any regular meeting of the Board, by affirmative vote of two-thirds (2/3) majority of a quorum of Board Members, amend or repeal its Bylaws, providing that no proposal for such amendment or repeal shall be acted upon unless the changes have been published at least thirty (30) days prior to a the Board meeting adopting such changes.

**AMENDMENT AND ADOPTION OF BY-LAWS**

This document amends and replaces in its entirety the most recent By-Laws previously adopted in December of 2018. We, the undersigned, being a majority of the present quorum of Directors of ENCORE!, hereby consent to and adopt this document, consisting of 14 pages, as the By-Laws of this corporation.

ADOPTED AND APPROVED by the Board of Directors on this \_\_\_th day of \_\_\_\_\_, 2020.

\_\_\_\_\_, President — ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Vice President - ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Treasurer – ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Secretary - ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Director - ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Director - ENCORE! Cast Performing Arts, Inc.

\_\_\_\_\_, Director - ENCORE! Cast Performing Arts, Inc.