
*MOVIEFEST
CHARITABLE
TRUST*

Trust Deed

JOHN DEAN LAW OFFICE
Barristers & Solicitors • Wellington, New Zealand

P.O. Box 10-107 • DX SP20035
E-Mail jad@jdlo.co.nz
Fax (64-4) 473-0784
Telephone (64-4) 472-9369

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DATED:

2005

PARTIES ("the Trustees")

- 1.1 **GRAEME ERNEST MOFFAT** of Wellington, Manager
- 1.2 **JOSEPH GRAEME BOOTH** of Wellington, Manager
- 1.3 **EDMUND HINTZ** of Wellington, Administrator
- 1.4 **MICHAEL THOMAS GRIFFIN** of Wellington, Chartered Accountant

BACKGROUND

- 2.1 The Parties named above wish to establish and register under the Charitable Trusts Act 1957 a Trust to be known as the MovieFest Charitable Trust ("the Trust") to educate, promote, screen and publish the work of amateur movie makers, to encourage and inspire them, and to provide feedback from professional judges, their peers and the general public.
- 2.2 The Trustees have agreed to act as trustees of the Trust.
- 2.3 This Deed is being completed by the Trustees to establish the purposes and terms of the Trust.

THIS DEED WITNESSES

The Trustees agree to act as trustees on the terms set out in this Deed.

PART 1 ESTABLISHMENT, OBJECTS AND POWERS OF THE TRUST

1.0 Interpretation and Definitions

- 1.1 **In this Deed**, unless the context otherwise requires:

"Charitable Purpose" means any purpose which in accordance with the law of New Zealand is a charitable purpose for the benefit of the people of New Zealand.

"Major Sponsor" means an individual or corporation making a contribution with a substantial monetary value to the Trust to assist the Trust in its work.

"Major Transaction" means a transaction, undertaking, agreement or arrangement that has or is likely to have the effect of the Trustees acquiring rights or interests or incurring obligations or liabilities the value of which are more than 25% of the value of the Trusts Assets at that time.

"Related Party" means:

- (a) Any of the Trustees from time to time; or
- (b) Any company, partnership, trust or other entity in which a Trustee or any spouse of a Trustee is financially interested whether as a

shareholder, partner, director, employee, beneficiary or otherwise;
or

(c) Any spouse of a Trustee.

"**Special Resolution**" means a special resolution of Trustees passed in the manner provided in clause 18.3.3 or 20.1.1

"**The Trustees**" means the trustees of the Trust from time to time.

"**This Deed**" means this Deed as amended from time to time in accordance with the powers contained herein.

"**Trust**" means the trust established by this Deed and known as the **MOVIEFEST CHARITABLE TRUST**.

"**Trust Assets**" means all assets, including property, both real and personal, investments and monies, including any income, from time to time owned or held by the Trust.

- 1.2 A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, or agency of state (in each case whether or not having separate legal personality).
- 1.3 Headings and marginal notes are included for convenience only and do not affect the interpretation of this Deed.
- 1.4 This Deed is binding upon all parties and their respective successors and permitted assigns.
- 1.5 Where the context permits words describing the singular include the plural and vice versa and words imputing masculine, feminine or neuter gender include all genders.

2.0 Establishment of the Trust

- 2.1 The Trust shall comprise all Trust Assets from time to time held by the Trustees upon the trusts of this Deed including the income arising therefrom.
- 2.2 The Trust Assets shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this Deed.
- 2.3 The Trust shall commence on the date of this Deed and shall continue until terminated pursuant to clause 13.0.

3.0 Name of the Trust

- 3.1 The name of the Trust is the "**MovieFest Charitable Trust**".

4.0 Objects of the Trust

- 4.1 To educate and encourage resident New Zealand amateur movie makers and to promote, screen and publish this work.
- 4.2 To showcase New Zealand amateur movie making talent by way of educating amateur movie makers and marketing, promoting and screening amateur movies.

- 4.3 To promote education in and use of digital video editing tools.
- 4.4 To promote education in the use of computers for digital video editing.
- 4.5 To organise and promote amateur movie competitions and have them judged by professionals in each field of movie making.
- 4.6 To promote education about movie making, including but not limited to:
 - 4.6.1 Acting as a resource for people interested in furthering their skills and abilities;
 - 4.6.2 All technical skills associated with movie making and moving pictures;
 - 4.6.3 Developing resource materials.
- 4.7 To provide appropriate venues and facilities to further the efforts of the MovieFest Charitable Trust to assist in the public education of artistic taste.
- 4.8 To promote the objects of the Trust within New Zealand and to establish and maintain connections and co-operate with organisations in New Zealand and overseas which the Trustees determine to be advantageous to the Trust.
- 4.9 To do any lawful act nationally and internationally that advances the above objects of the MovieFest Charitable Trust.
- 4.10 To do all things necessary and desirable to achieve these objects to the intent that the declaration of objects shall not be exclusive and may at any time be extended to permit the MovieFest Charitable Trust to give such assistance in other ways to educate and promote the convergence for the public good of persons or bodies who are extending their understanding of communications and information technologies.

5.0 Powers of MovieFest Charitable Trust

- 5.1 Subject to the provisions of this Deed, and in particular clauses 5.2 and 5.3 and the resolution requirements, the Trustees shall have all the powers over and in respect of the MovieFest Charitable Trust and the Trust Assets which they could exercise if they were the absolute and beneficial owners of the Trust Assets. In particular, without derogating from the foregoing, the Trustees shall have full and absolute power to do the following:
 - 5.1.1 Enter into management agreements and other contracts with any person for the purpose of organising and operating any activities in furtherance of the objects of the MovieFest Charitable Trust.
 - 5.1.2 Enter into lease arrangements or other contracts for the management of assets in furtherance of the objects of the MovieFest Charitable Trust.

- 5.1.3 Purchase, sell, lease or otherwise deal with assets on behalf of the MovieFest Charitable Trust upon such terms as the Trustees think fit.
- 5.1.4 Carry out and pay for repairs and improvements relating to Trust Assets.
- 5.1.5 Insure any Trust Assets for such amounts and on such conditions as the Trustees determine.
- 5.1.6 Instruct agents and consultants to act in relation to Trust Assets or assets intended to be acquired by the MovieFest Charitable Trust.
- 5.1.7 Agree, enter into and perform any contract, option or other right relating to any part or all of the Trust Assets or proposed assets.
- 5.1.8 Enter into any arrangements with any government, public body or authority to obtain any rights, authorities, concessions or clearances and to give any undertakings binding upon the Trustees either generally or on conditions that the Trustees think fit and to carry out, exercise and comply with any of the same.
- 5.1.9 Employ, engage or contract with upon such terms and conditions as to salary, remuneration, contract, payment or other consideration any employee, manager, agent, professional advisor or other person (including any person who is a Trustee) as the Trustees think fit upon such terms as the Trustees deem expedient provided that any payment to a Trustee must be fair and reasonable for the services provided.
- 5.1.10 Participate in the rights and obligations, including obligations to contribute in any manner to the liabilities of the parties, under any partnership, joint venture, or other agreement relating to Trust Assets or to act as the operator or one of the operators under any such agreement which relates to Trust Assets.
- 5.1.11 Perform and enforce agreements.
- 5.1.12 Determine whether any money or other Trust Asset is capital or income and what expenses ought to be paid out of income and capital respectively and also apportion blended funds. Every such determination or apportionment shall be final and binding on all persons interested in the MovieFest Charitable Trust provide that such determination is made in good faith and in accordance with the requirements of this Deed.
- 5.1.13 Place or permit to be placed any Trust Assets in the name of any agent or nominee for such period or periods as the Trustees in their absolute discretion think fit.
- 5.1.14 Appoint a custodian trustee for all or part of the Trust Assets and to terminate any such appointment.

- 5.1.15 Open a bank account or accounts in the names of the Trustees of the MovieFest Charitable Trust and to resolve how cheques and other banking documents may be signed on behalf of the MovieFest Charitable Trust.
- 5.1.16 To adopt such means of making known the activities and objects of the MovieFest Charitable Trust as may seem expedient in particular by advertising by press, by circulars and by periodicals whether through paper or by digital communication.
- 5.1.17 Receive donations and seek and obtain sponsorship.
- 5.1.18 Pay all or any of the expenses incurred in connection with the incorporation and establishment of the MovieFest Charitable Trust.
- 5.1.19 Obtain any statutory or similar order or Act of Parliament enabling the MovieFest Charitable Trust to carry or better carry any of its objects into effect or to effect any modification to the MovieFest Charitable Trust constitution or for any other purpose which the Trustees consider expedient.
- 5.1.20 To do all such other things as in the opinion of the Trustees may be incidental or conducive to the attainment of any of the foregoing objects or the exercise of any of the foregoing powers.
- 5.2 The Trustees shall also have the following additional powers, but will not exercise any of the following powers unless the exercise of the power is authorised by Special Resolution or contingent upon the passing of a Special Resolution.
 - 5.2.1 Lend money whether secured or unsecured to further the objects of the MovieFest Charitable Trust.
 - 5.2.2 Borrow or raise money whether unsecured or secured.
 - 5.2.3 Guarantee the performance of any person in relation to any agreement, security, charge, contract, undertaking or promise and secure any such guarantee by mortgage, charge or other encumbrance over the whole or any part of the Trust Assets.
 - 5.2.4 Create, grant, renew, alter, or vary any mortgage, charge, or other encumbrance over the whole or any part of the Trust Assets for the purposes of the MovieFest Charitable Trust and upon such terms and conditions as the Trustees may in their absolute discretion think fit.
 - 5.2.5 Agree to the release, modification or variation of any rights, privileges or liabilities of any Trust Assets from time to time or any securities given in relation thereto.
 - 5.2.6 Institute, prosecute, compromise and defend legal proceedings.
 - 5.2.7 Invest in pooled or mixed forms of investment in common with other investors.

5.2.8 Incorporate any company and to purchase, establish and carry on any business or other commercial venture for the purposes of benefiting the MovieFest Charitable Trust.

5.2.9 Make donations and grant sponsorships.

5.3 The Trustees may not enter into a Major Transaction unless the Major Transaction is:

5.3.1 Authorised by Special Resolution; or

5.3.2 Contingent upon the passing of a Special Resolution.

6.0 Transactions with Related Parties

6.1 The Trustees may:

6.1.1 Sell, purchase or otherwise dispose of or acquire any asset to or from any Related Party; or

6.1.2 Enter into any contract, agreement or other arrangement with any Related Party to provide management, administration or other services for the MovieFest Charitable Trust; or

6.1.3 Enter into any other transaction with any Related Party in relation to the MovieFest Charitable Trust; or

6.1.4 Cause any Trust Assets which comprise cash to be invested or lodged with any Related Party, provided that the Trustees in good faith are of the opinion that the particular transaction is on reasonable commercial terms and is in the best interests of the MovieFest Charitable Trust.

7.0 Trustees' Indemnity and Liability

7.1 The Trustees shall not be liable for:

7.1.1 Any losses except losses arising from their own dishonesty, wilful default or wilful breach of trust; or

7.1.2 Any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this Deed; or

7.1.3 Any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustee under this Deed.

7.2 The Trustees and every other person acting on behalf of the Trustees shall be indemnified out of Trust Assets against all liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the MovieFest Charitable Trust. This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled thereto though it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Assets and may

retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.

- 7.3 The liability of the Trustees in connection with this Deed or at law shall at all times be limited to the Trust Assets.

8.0 Delegation by Trustees

- 8.1 The Trustees shall have, to the extent permitted by law, full power to delegate to any one or more Trustees or to any attorney, agent or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed but without in any way releasing the Trustees from their obligations under this Deed. Without in any way affecting the generality of the foregoing the Trustees may in exercising this power of delegation:

8.1.1 By power of attorney appoint any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions.

8.1.2 Appoint by writing or otherwise any person to be agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such agent or sub-agent for any reason as the Trustees think sufficient.

- 8.2 The Trustees shall be entitled to delegate any of their powers and duties under this Deed to any committee or committees consisting of such of the Trustees (or any other person) as the Trustees may appoint for such purpose.

9.0 Incorporation under the Charitable Trusts Act 1957

- 9.1 The Trustees shall forthwith after the execution of this Deed apply for incorporation under the Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust.

10.0 Common Seal

- 10.1 Upon incorporation of this Trust in accordance with clause 9.1 the Trustees shall procure a common seal for the Trust and shall provide for its custody. Any documents required to be signed under the common seal shall be attested by any two Trustees.

11.0 Accounts and Audit

- 11.1 The Trustees shall keep proper records and accounts relating to the MovieFest Charitable Trust including a record of all sums of money received and expended by or on behalf of the Trust.

- 11.2 At the end of each financial year the Trustees shall prepare appropriate financial statements for the MovieFest Charitable Trust and will have those financial statements audited by an independent qualified accountant who shall be appointed annually by the Trustees.

12.0 Alteration to the Deed

- 12.1 The Trustees may from time to time by amending Deed or instrument alter, rescind or add to any of the provisions of this Deed subject to:
- 12.1.1 At least 14 days notice of intention to move any amendment to this Deed being given to all Trustees; and
 - 12.1.2 The alteration, rescision or addition being not prejudicial to the legal charitable status of the MovieFest Charitable Trust.
- 12.2 Any amendment to this Deed shall be made by Special Resolution passed by the Trustees in accordance with Part 2 of this Deed.

13.0 Winding up of the MovieFest Charitable Trust

- 13.1 The MovieFest Charitable Trust shall terminate and be wound up and dissolved if:
- 13.1.1 The Trustees resolve by Special Resolution that the Trust shall be wound up; or
 - 13.1.2 The MovieFest Charitable Trust is wound up by law.
- 13.2 Every resolution to wind up the MovieFest Charitable Trust shall specify an effective termination date of the MovieFest Charitable Trust and thereafter the Trustees shall realise or dispose of the Trust Assets as soon as reasonably practicable in accordance with this clause.
- 13.3 The Trust Assets or the proceeds resulting therefrom shall be applied by the Trustees upon a winding up in the following order of priority and manner:
- 13.3.1 First, in meeting all costs, expenses and liabilities of the MovieFest Charitable Trust including the costs and expenses or winding up the MovieFest Charitable Trust and setting aside any amount that the Trustees consider necessary or desirable in respect of any contingent liability of the MovieFest Charitable Trust.
 - 13.3.2 Secondly, in the payment or distribution (by instalments if the Trustees consider appropriate) of the balance to or for the benefit of such exclusively Charitable Purpose(s) as the Trustees shall determine. If the Trustees are not able to agree on this decision the balance shall be disposed of in accordance with the direction of the High Court under section 27 of the Charitable Trusts Act 1957.

14.0 Members of the MovieFest Charitable Trust

- 14.1 The Trustees may establish a members group (in this clause called "the Members"). The Trustees shall establish rules regarding Members. The following provisions shall apply to Members:
- 14.1.2 The Members will not be a separate legal entity and shall have no rights to the Trust Assets at any time.

- 14.1.3 Subject to sub-clause 14.1.5 on payment to the Trust of such amount as the Trustees shall determine from time to time each Member shall become a Member of the MovieFest Charitable Trust and shall have such rights as the Trustees shall determine.
- 14.1.4 Subject to sub-clause 14.1.5 the Trustees may determine different classes of Member which shall enjoy Such different rights and privileges and be subject to making such payment or other liability as the Trustees shall determine.
- 14.1.5 Notwithstanding any of the provisions of the above sub-clauses the Trustees will not establish rules which confer to any Member rights or privileges of a pecuniary nature.

15.0 Major Sponsors

- 15.1 The Trustees may appoint Major Sponsors for the MovieFest Charitable Trust. Any Major Sponsor shall make a donation, grant, gift or other payment with a appropriate monetary value as determined by the Trustees.
- 15.2 The Major Sponsors shall have such rights as the Trustees shall determine including a right to nominate a Trustee under clause 16.3.
- 15.3 Notwithstanding the provisions of clause 15.2 no Major Sponsor shall have any right or privilege of a pecuniary nature and shall have no rights to the Trust Assets.

PART 2 PROCEEDINGS OF TRUSTEES

16.0 Appointment and Removal of Trustees

- 16.1 There shall be a minimum of 4 and a maximum of 10 Trustees of the MovieFest Charitable Trust. The Trustees at the date of execution of this Deed are those set out on the first page of this Deed ("the Initial Trustees").
- 16.2 Subsequent Trustees shall be appointed by the Trustees in the manner set out in this Deed. During the period of three months from the date of this Deed the Initial Trustees may appoint additional Trustees of the MovieFest Charitable Trust by a resolution passed by majority vote.
- 16.3 In considering the appointment of new trustees, the Trustees shall endeavour to appoint Trustees who are broadly representative of the community as a whole and who have the skills to act as Trustees.
- 16.4 At the invitation of the Trustees, and if the Trustees confer such rights on a Major Sponsor under clause 15.2, Major Sponsors of the MovieFest Charitable Trust may nominate a trustee for the period of the sponsorship.
- 16.5 If the number of Trustees at any time is lower than permitted under this Deed (through retirement or other eventuality) the Trustees shall call for nominations in accordance with clause 16.7.

- 16.6 Nominations for the office of trustee under clause 16.4 shall be called for publicly and the Trustees shall appoint such persons as they determine will best assist the fulfilment of the aims of the MovieFest Charitable Trust and in accordance with clause 16.2 of this Deed.
- 16.7 The appointment of a trustee shall be vacated if a trustee:
- 16.7.1 Resigns;
 - 16.7.2 Dies;
 - 16.7.3 Becomes bankrupt;
 - 16.7.4 Becomes of unsound mind;
 - 16.7.5 Becomes for any reason unable in the opinion of the remaining Trustees to perform the duties of a trustee including (if the Trustees determine) failing to participate in at least four consecutive Trustee meetings without having previously obtained special leave;
 - 16.7.6 Is convicted of an indictable offence.

17.0 Appointment of Chairman

- 17.1 The MovieFest Charitable Trust shall have a chairman who shall be a member of the MovieFest Charitable Trust. The chairman shall be elected by the Trustees annually.
- 17.2 Any retiring chairman shall have the right to stand for re-election.
- 17.3 If a chairman is unable for any reason to perform the chairman's duties then the Trustees may elect an acting chairman during the relevant period of inability.

18.0 Proceedings of Trustees' Meetings

- 18.1 Subject to this Deed the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit.
- 18.2 At any meeting of the Trustees the chairman shall preside or in the absence of the chairman the Trustees may elect one of their members to preside.
- 18.3 At all meetings of Trustees:
- 18.3.1 No business shall be transacted unless the requisite quorum is present at commencement of business;
 - 18.3.2 The quorum for passing a Special Resolution shall be 75% of the number of Trustees;
 - 18.3.3 The quorum for the transaction of any other business at a meeting shall be 51% of the number of Trustees;

18.3.4 The expression "Special Resolution" means a resolution passed at a meeting of Trustees at which not less than 75% of the Trustees present in person or by proxy vote in favour of the resolution;

18.3.5 A resolution put to the vote of a meeting shall be decided on a show of hands. On a show of hands each Trustee present in person or by proxy at the meeting shall have one vote only. The chairperson shall not have a second or casting vote. A declaration by the chairperson that a resolution has been carried shall be conclusive evidence of the fact.

18.4 Where any Trustee or any Related Party has been engaged by the MovieFest Charitable Trust to carry out consultancy or other services for the MovieFest Charitable Trust that will result in the Trustee or the Related Party receiving a financial benefit for such services then that Trustee shall not be entitled to vote on any resolution to carry out any proposal for the Trust recommended by the Trustee or the Related Party.

18.5 An act or decision of the Trustees shall not be invalid by reason only of:

18.5.1 A fault, default or irregularity in or in connection with the appointment of a Trustee; or

18.5.2 A vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee; or

18.5.3 The accidental omission to give notice to or the non-receipt of notice by any Trustee.

18.6 The Trustees shall keep a minute book and shall cause minutes to be kept therein of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the chairperson of the Trustees of a meeting shall be receivable as prima facie evidence of the matters contained in such minutes.

19.0 Convening of Meetings

19.1 The Trustees shall hold at least one meeting each year but otherwise shall hold such meetings in any calendar year as they shall decide.

19.2 The chairman shall convene the meetings of the Trustees.

19.3 The chairman shall convene any meeting of the Trustees if the chairman receives a written request from at least three Trustees to hold a meeting. At least seven days prior notice of meetings of Trustees shall be given to all Trustees.

20.0 Resolution in Lieu of Meeting

20.1 A resolution in writing signed or assented to by letter, telegram, cable, telex, facsimile, email, internet communication or other written or auditable electronic manner, by:

20.1.1 75% of the Trustees in the case of a Special Resolution; and

20.1.2 51% of the Trustees in the case of an ordinary resolution;

shall be as valid and effective as if it had been passed at a meeting of Trustees duly called and constituted. Any such resolution may consist of several documents in like form either signed or purporting to have been dispatched by any one or more of the Trustees.

21.0 Proxies

- 21.1 A Trustee may exercise the right to vote either by being present in person or by proxy. Only an existing Trustee of the MovieFest Charitable Trust may be appointed as a proxy.
- 21.2 A proxy for a Trustee is entitled to attend and be heard at a meeting of Trustees as if the proxy were the Trustee.
- 21.3 A proxy must be appointed by notice in writing signed by the Trustee which must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months, and a copy of which must be produced before the start of the meeting.
- 21.4 No proxy is effective unless it is produced not less than 24 hours before the start of the meeting.

22.0 Tele/Digital Conference Meetings of Trustees

- 22.1 The contemporaneous linking together by telephone or Internet messaging or other means of communication of a number of Trustees not less than the required quorum (whether or not anyone or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this Deed in respect of such meetings shall apply so long as the following conditions are met:
- 22.1.1 All Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting;
- 22.1.2 Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear or visually or otherwise receive the messages of each other participating Trustee, and contemporaneously communicate with each of the Trustees taking part in the meeting.

23.0 Service of Notices

- 23.1 Notices shall be deemed served by one party upon another party:
- 23.1.1 If posted, 2 days following posting;
- 23.1.2 If delivered personally, at the date of service;
- 23.1.3 If sent by facsimile or other electronic device, on the day following the date of transmission.

SIGNED by GRAEME ERNEST MOFFAT

in the presence of

Witness:

Signature: _____

Occupation: _____

Address: _____

SIGNED by JOSEPH GRAEME BOOTH

in the presence of

Witness:

Signature: _____

Occupation: _____

Address: _____

SIGNED by EDMUND HINTZ

in the presence of

Witness:

Signature: _____

Occupation: _____

Address: _____

SIGNED by MICHAEL THOMAS GRIFFIN

in the presence of

Witness:

Signature: _____

Occupation: _____

Address: _____
