

**BY-LAWS  
OF  
CREATIVE CAPITAL FOUNDATION  
(the “Corporation”)**

**ARTICLE I  
MEMBERS**

The Corporation shall have no members.

**ARTICLE II  
BOARD OF DIRECTORS**

**Section 1. Powers and Number.** The Corporation shall be managed by its Board of Directors (the “Board”). The initial Board shall be as set forth in the Certificate of Incorporation and shall hold office until the first annual meeting of the Board and until their successors have been elected and qualified. The number of directors constituting the entire Board shall be not less than five and not more than thirty. The number of directors may be increased or decreased from time to time by amendment to these by-laws made by a majority vote of the entire Board, but in no event shall the number be less than five.

**Section 2. Election, Term of Office.** Each director other than the Executive Director shall serve for a term of one year and there is no limit on the number of terms a director may serve. Each director shall hold office until the expiration of the term for which he or she is elected, and his or her successor, has been elected and qualified or until his or her death, resignation or removal.

**Section 3. Ex-Officio Directors.** The Executive Director and a representative from The Andy Warhol Foundation for the Visual Arts shall be ex-officio members of the Board with all the rights and duties of directors.

**Section 4. Resignations.** Any director may resign from office at any time by submitting his or her resignation to the Board Chair in writing, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 5. Removal.** Any or all of the directors may be removed for cause by vote of the entire Board.

**Section 6. Newly Created Directorships and Vacancies.** Newly created directorships and vacancies among the directors for any reason may be filled by vote of a majority of the directors then in office, and each director so elected shall serve until the next annual meeting of the Board, and his or her successor has been elected and qualified, or until his or her death, resignation or removal.

**Section 7. Emeritus Status.** Emeritus status for former Board members may be approved by a majority vote of the entire Board. This status will be reserved for Board members whose service to Creative Capital has been exemplary and long-term and who pledge to continue to provide counsel to the organization. Emeritus Board members shall serve for a term of one year and there is no limit on the number of terms they may serve. Emeritus Board members shall not have voting rights.

**Section 8. Meetings.** Meetings of the Board may be held at any place within or without the State of New York as the Board may from time to time fix, or as shall be specified in the notice or waivers of notice thereof. The annual meeting of the Board shall be held at such time as determined by the Board. Special meetings of the Board shall be held whenever called by the Board Chair or by any director upon written demand of not less than one-third of the entire Board. In each case, the person or persons calling the special meeting shall fix the time and place of the meeting.

**Section 9. Quorum and Voting.** Unless a greater proportion is required by law, a quorum of the Board for the transaction of business, or of any specified item of business, shall be at least five directors, plus one additional director for every ten directors (or fraction thereof) in excess of 15. Except as otherwise provided by law or these by-laws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be an act of the Board.

**Section 10. Action Without a Meeting.** Any action required or permitted to be taken by the Board, or any committee thereof, may be taken without a meeting if all members of the Board or the committee consent in writing or email to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

**Section 11. Meeting by Use of Telecommunications.** Any one or more members of the Board, or any committee thereof, may participate in a meeting of the Board or committee by means of a conference telephone or similar telecommunications equipment allowing all persons

participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 12. Notice of Meeting: Waiver.** Notice of the time and place of each regular or special meeting of the Board shall be mailed, postage prepaid, or emailed to each director, addressed to him or her at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request), in a reasonable time, and in the case of a special meeting not fewer than two days, in advance of the day on which the meeting is to be held. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

**Section 13. Compensation of Directors.** Directors shall not receive any compensation for their services as directors.

### **ARTICLE III**

#### **OFFICERS, EMPLOYEES AND AGENTS**

**Section 1. Officers: Number and Qualification.** The officers of the Corporation shall be Board Chair, Executive Director, Secretary and Treasurer, and such other officers as the Board shall determine. Each officers, other than the Executive Director, shall be elected from among the directors by a majority vote of the Board at its annual meeting. The officers shall serve for a three-year term with the ability to be re-elected for a second, consecutive three-year term. A vacancy in any office may be filled by the Board at any meeting.

In the case of resignation by the Board Chair, the Secretary or the Treasurer, an interim officer shall be approved by a vote of the full Board to serve for the balance of the resigning officer's term. Any such resignation or intended resignation shall be notified to the Board Chair in writing, or in the case of resignation of the Board Chair, to the chair of the Board's governance and nominating committee. The Board Chair shall advise the chair of the Board's governance and nominating committee, who shall promptly alert the Executive Committee. The Board's governance and nominating committee shall propose a candidate(s) for consideration and approval by the full Board. Once approved, the interim officer will serve with all powers and duties of the position until completion of the original term. Interim service will not be counted towards the allowed number of consecutive terms, should the interim officer then seek election to the office for a full term.

**Section 2. Compensation of Officers.** Officers of the Corporation shall serve with such compensation, if any, for services as such, as is determined by the Board.

**Section 3. Employees and Other Agents.** The Board shall appoint an Executive Director and may from time to time appoint such other employees and other agents as it shall deem necessary, each of whom shall hold office during the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, as the Board may from time to time determine. The Board may by resolution delegate these powers to the Board Chair or other officers of the Corporation.

**Section 4. Grantee Board Members**

Expectations and Criteria for Nomination

1. Grantee board members will serve one-year terms, like all other members, but will only be eligible to serve for three years. Grantee term limits will create opportunities for a larger number of alumni artists to serve as board members, and will create an easy way for artists to cycle off of the board and take advantage of monetary alumni services, which are restricted during service (details below).
2. Grantee board members are expected to attend board meetings; participate in committees; participate in electronic votes and communications; attend events; act as ambassadors for Creative Capital; and fulfill all other duties expected of board members. (Grantee board member travel and accommodations will be covered for board meetings as needed.)
4. Grantee board members are expected to make an annual financial contribution to Creative Capital, at a personally significant level, in support of our commitment to achieve 100% board participation in giving each year.
5. The nomination and election of grantee board members will follow existing protocols. All board members are welcome to suggest nominees, who will be vetted and brought to the board for discussion and approval by the Governance/Nominating Committee.
5. Grantee representation on the board should reflect the incredible diversity of all funded artists (cultural, geographic, age, artistic discipline), in keeping with Creative Capital's ongoing efforts to achieve greater board diversity overall. Grantee board members should have a deep knowledge of

the Creative Capital system, interest in giving back to the community, and should bring new perspectives to the board.

#### Eligibility and Conflicts of Interest

1. In order to be eligible, grantees must have fully completed their funding relationship with Creative Capital, giving them alumni status, and must agree to waive any further monetary relationship with Creative Capital during their board service. They are, however, eligible for any non-monetary services offered to grantees, including: consultations with staff; access to phone-in clinics; promotion of projects across various media, including Creative Capital's website, email communications and social media.
2. Grantee board members are not eligible to participate in any activities that include payment from Creative Capital. This includes teaching in the Professional Development Program (PDP) and serving as Artist Advisors, among others.
3. Grantee board members cannot apply to the Alumni Loan Fund for the duration of their board terms, as this is a monetary service.
4. Grantee board members could be invited to participate in presentation events; however, they would be required to waive the small honoraria typically offered to grantees for these types of events. Similarly, grantee board members could be asked to donate work to the Creative Capital auction, but would waive receipt of a portion of the proceeds.
5. Grantee board members will be invited to the Artist Retreat as observers; they will not give presentations, but will have access to workshops and one-on-one meetings with consultants.
6. Since grantee board members will be asked to vote on new grantee rosters, they cannot participate in any part of the application evaluation process. Standard Creative Capital conflict of interest rules will apply.

**Section 5. Removal.** Any officer, employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the entire Board. The Board may by resolution delegate these powers to the Board Chair or other officers of the Corporation.

**Section 6. Board Chair: Powers and Duties.** The Board Chair shall have general supervision of the affairs of the Corporation and shall keep the Board fully informed about the activities of the Corporation. The Board Chair shall preside at meetings of the Board and shall perform such other duties as shall from time to time be assigned by the Board.

**Section 6A: Board Vice Chair: Powers and Duties:** The Vice Chair shall support the Board Chair in general supervision of the affairs of the Corporation, and may be called upon to lead meetings if the Board Chair is unavailable. The Vice Chair shall assist in communications with the Board as needed and shall perform such other duties as assigned by the Board and Board Chair as needed.

**Section 7. Executive Director: Powers and Duties.** The Executive Director shall be the chief executive officer of the Corporation and shall supervise its day-to-day operations and report to the Board Chair or the Corporation's executive committee on its operations. He or she shall present at each annual meeting of the Board a report on the condition of the Corporation. The Executive Director shall have the power to sign alone, unless the Board shall specifically require an additional signature, in the name of the Corporation, all contracts authorized either generally or specifically by the Board.

**Section 8. Secretary: Powers and Duties.** The Secretary shall act as Secretary of all meetings of the Board. He or she shall keep or cause to be kept minutes of Board meetings in appropriate record books and giving and serving all notices of the Corporation. He or she shall keep or cause to be kept the corporate seal to be affixed when required. The Secretary shall perform all the duties customarily incident to the office of Secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

**Section 9. Treasurer: Powers and Duties.** The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such depositories as the Board may designate. At the annual meeting of the Board, and whenever else required by the Board, he or she shall render a statement of the Corporation's accounts. He or she shall at all reasonable times exhibit the Corporation's books and accounts to any officer or director of the Corporation and shall perform all duties incident to the office of Treasurer, subject to the control of the Board.

**ARTICLE IV**  
**COMMITTEES OF THE BOARD**

**Section 1. Committees in General.** The Board may establish and appoint an executive committee, and a finance committee, and such other permanent or special committees as may be provided for in these by-laws or approved by a vote of a majority of the entire Board, as the Board may deem appropriate. Each committee shall consist of no fewer than two people. Committee chairs shall serve for one year, renewable at discretion of the Board Chair. Two members of a committee shall constitute a quorum for the transaction of business at any committee meeting. Each standing committee established and appointed by the Board shall have such powers as authorized by these by-laws or by resolution of the Board, shall maintain a record of its actions, and shall report the transactions of any meeting to the Board at its next regular meeting.

**Section 2. Executive Committee.** The executive committee shall be a standing committee and shall consist of the officers of the Corporation. At the discretion of the Board Chair, additional committee chairs may be asked to serve as members of the executive committee. Executive committee members shall serve until the next annual meeting and until their successors are duly elected and qualified. They shall act for the Board (with or without specific prior authorization from the Board to do so) when the Board is not in session. Except as otherwise provided by these by-laws or by the Board, they shall have and may exercise all the powers of the Board in the management of the affairs and property of the Corporation, and in the exercise of its corporate powers.

**Section 3. Finance Committee.** The finance committee shall be a standing committee and shall consist of two members of the Board and the Treasurer, who shall chair the finance committee. Committee members shall serve until the next annual meeting and until their successors are duly elected and qualified. The finance committee shall consider and recommend to the Board, for Board approval, investment policies and programs for the Corporation and shall act for the Board to implement those policies and programs.

The finance committee shall be responsible for all compensation policy and shall review any proposed agreement or transaction between the Corporation and any director, officer or other disqualified person as to the Corporation, prior to its acceptance by the Board on behalf of the Corporation, to ascertain whether the proposed agreement or transaction is an excess benefit transaction. Minutes of each meeting shall be maintained and a summary thereof presented to the

Board at its next meeting. No director whose agreement or transaction is under consideration shall be a member of this committee during its deliberations as to his or her agreement or transaction.

The finance committee shall examine the annual audit of the Corporation's books and records, shall confer with the auditors and shall recommend to the Board from time to time appropriate financial and management procedures.

**Section 4. Development and Cultivation Committee.** There shall be a development and cultivation committee, which shall consist of at least two members of the Board and such other persons as are selected by the Board. This committee shall consider and recommend to the Board, for Board approval, appropriate activities to increase the funds and endowment of the Corporation and shall implement activities related to the cultivation of individuals and foundations who could serve as donors to the Corporation.

Through cultivation, this committee may identify individuals who could serve as Board members for the Corporation, and would pass the names of these individuals to the Board's governance and nominating committee for undertaking of a formal vetting and proposal process.

**Section 5. Board Governance and Nominating Committee.** There shall be a board governance and nominating committee, which shall consist of at least two members of the Board. This committee shall be responsible for Board governance, communicating and clarifying expectations for Board service, and providing oversight for all forms of Board evaluation and assessment.

This committee shall be responsible for the formal vetting of any prospective Board members for consideration by the full Board, and for orientation to Board service of new members. This committee shall also propose a slate of Board officers and directors for consideration by the full Board.

Additionally, the committee shall initiate such succession planning for officers and directors as may be requested by the Board Chair or approved by the Board, for consideration by the Board.

**Section 6. Grants Committee.** There shall be a grants committee, which shall consist of all members of the Board and shall be responsible for approving persons to serve on the Corporation's arts panels, which shall review grant proposals, and this committee shall approve grants recommended by those arts panels.

## ARTICLE V

## **CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS**

**Section 1. Checks, Notes and Contracts.** The Board is authorized to select such depositories as it shall deem proper for the funds of the Corporation and shall determine who shall be authorized on behalf of the Corporation to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

**Section 2. Investments.** The funds of the Corporation may be retained part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board or the Finance Committee may deem desirable.

## **ARTICLE VI**

### **BOOKS**

Correct books of account of the activities and transactions of the Corporation, including a minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these by-laws, and minutes of all meetings of the Board, shall be kept at the office of the Corporation.

## **ARTICLE VII**

### **FISCAL YEAR**

The fiscal year of the Corporation shall be July 1 through June 30 of the following year.

## **ARTICLE VIII**

### **INDEMNIFICATION**

The Corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she was a director or officer of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees and may so indemnify any person made or threatened to be made a party to any action or proceeding by reason for the fact that he or she was an employee or agent of the Corporation. However, the Corporation shall not indemnify a person if doing so would constitute an act giving rise to any tax or sanction under the Internal Revenue Code of 1986, as the same may be amended, or the regulations thereunder.

## **ARTICLE IX**

## **AMENDMENTS**

Except as prohibited by the Certificate of Incorporation, these by-laws may be amended by the affirmative vote of a majority of the entire Board at any meeting of the Board, provided that notice of the proposed amendment has been included in the notice of meeting.

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(April 2012)