

**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 members 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. The number of directors constituting the entire Board shall be not less than five (5) and not more than thirty (30). The number of directors may be increased or decreased from time to time by amendment to these by-laws approved by a majority of the entire Board entitled to vote, as provided for in Article IX of these by-laws, but in no event shall the number of Board members be less than five (5).

**Section 2. Election, Term of Office.** Each director other than the Executive Director shall serve for a term of one (1) year and there shall be 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 until his or her successor, has been elected, or until his or her sooner death, resignation or removal.

**Section 3. Ex-Officio Directors.** The Executive Director (during his or her term of office) and a representative designated by 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 a majority of the entire Board entitled to vote.

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

**Section 7. Emeritus Status.** Emeritus status for former Board members may be approved by the Board. This status shall be reserved for Board members whose service to Creative Capital is deemed by the Board to be exemplary and long-term and who pledge to continue to provide counsel to the organization. Each emeritus Board member shall serve for a term of one (1) year or such other term as may be stipulated by the Board, which shall be automatically renewed unless otherwise determined by the Board, or until his or her sooner death, resignation or removal, and there shall be no limit on the number of terms he or she 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 (1/3) of the entire Board entitled to vote. In each case, the person or persons calling the special meeting shall fix the time and place of the meeting, in accordance with these by-laws, at a location previously approved by the Board for holding of meetings of the Corporation.

**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 (5) directors entitled to vote, plus one (1) additional director entitled to vote for every ten (10) directors (or fraction thereof) entitled to vote, if there shall be in excess of fifteen (15) Board members entitled to vote at such time. Except as otherwise provided by law or these by-laws, action or approval by the Board shall require and mean action or approval by the vote of a majority of Board

members entitled to vote, who are present or participating at a meeting (as provided for in Article II, Section 11 of these by-laws) at the time of the vote, if a quorum is present or so participating at such time, and any such action or approval shall constitute an act of the Board.

**Section 10. Action Without a Meeting.** Except as otherwise provided or permitted by law, any action required or permitted to be taken by the Board, or any committee thereof, may be taken without a meeting, instead of at a meeting, if all members of the entire Board or the committee entitled to vote 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 entitled to vote shall be filed with the required 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 Board member, 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), at a reasonable time during local business hours, not fewer than five (5) business days in advance of the day on which the meeting is to be held, together with notice of the purpose or purposes for said meeting. Notice of a meeting need not be given to any Board member who submits a signed waiver of notice 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.** Board members shall not receive compensation for their services as directors, nor shall they otherwise be entitled to receive any financial benefits from the Corporation, unless authorized by the Board, except as otherwise specifically provided for in these by-laws. Upon request, in case of need, the Board Chair may exercise discretion to pay or reimburse reasonable travel and accommodation expenses for physical attendance at Board meetings for any Board member.

**Section 14. Artist Grantee Board Members.** From time to time, the Board may appoint artist grantees to serve as artist grantee Board members on the following terms and conditions:

### Expectations and Criteria for Nomination

A. Each artist grantee Board member appointed as such shall be entitled to serve a one (1) year term, and until his or her successor is appointed or until his or her sooner death, resignation or removal, but shall only be eligible to serve for three (3) years. These artist grantee Board term limits shall be intended to create opportunities for a variety of alumni artists to serve as artist grantee Board members, and to create an easy way for artists to cycle off the Board and take advantage of monetary alumni services, which shall be restricted during Board service, as provided for in these by-laws.

B. Artist grantees who serve as Board members shall be 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. Upon request, in case of need, the Board Chair may exercise discretion to pay or reimburse reasonable travel and accommodation expenses for physical attendance at Board meetings for artist grantees who serve as Board members.

C. Artist grantees who serve as Board members shall be expected to make an annual financial contribution to Creative Capital, at a personally significant level, in support of a commitment to achieve 100% Board participation in giving each year.

D. Prospective artist grantee Board members may be suggested by any Board member(s), for vetting and presentation for approval to the Board by the governance and nominating committee.

### Eligibility and Conflicts of Interest

(A) Artist grantee representation on the Board shall be intended to reflect the diversity of Creative Capital's funded artists (cultural, geographic, age, artistic discipline). In keeping with Creative Capital's ongoing efforts to achieve Board diversity, artist grantees who serve as Board members shall be expected to have a deep knowledge of the Creative Capital system and interest in giving back to the community, and to be able to bring new perspectives to the Board.

(B) In order to be eligible for Board membership, artist grantees must have fully completed their funding relationship with Creative Capital, giving them alumni status, and shall be required to avoid or waive any financial benefit from Creative Capital during their Board service, except as

specifically otherwise permitted in these by-laws (however, they shall continue to be eligible for non-monetary services offered to artist 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).

(C) Artist grantees who serve as Board members shall not be eligible to participate in any activities for which compensation is paid by Creative Capital. These shall include teaching in the Professional Development Program (PDP) and serving as Artist Advisors, among others.

(D) Artist grantees who serve as Board members shall not be eligible to apply to the Alumni Loan Fund during their Board terms, as this shall be considered to be a financial benefit.

(E) Artist grantees who serve as Board members may be invited to participate in presentation events; however, they shall be required to avoid or waive entitlement to any honoraria offered to artist grantees for these types of events. Similarly, if artist grantee Board members donate work to Creative Capital auctions, they shall be required to avoid or waive receipt of any portion of the proceeds.

(F) Artist grantees who serve as Board members shall be entitled to attend the Artist Retreat as observers and to attend Board meetings held thereat and to give artist presentations, but they shall not have access to workshops and one-on-one meetings with consultants, which shall be considered financial benefits.

(G) Since artist grantees who serve as Board members will be able to vote on new artist grantee rosters, they shall not be entitled to participate in any part of the application evaluation process and related matters, so long as they remain eligible for any present or future benefits from this process from Creative Capital, as artist grantees.

(H) Artist grantee Board members shall be subject to all other conflict of interest requirements applicable to Board members.

**Section 15. Appointment of Artist Grantees as Board Members and/or Officers.**

Any artist grantee shall be eligible for appointment as a full Board member (and as an officer) of the Corporation, provided that the conflicts of interest provisions applicable to artist grantees, as

cited in Article II, Section 14 above, shall apply to them, as artist grantees, so long as they shall remain eligible for benefits from the Corporation as artist grantees, unless otherwise determined by the Board. Artist grantees who are appointed as Board members shall be subject to all other conflict of interest rules applicable to Board members.

### **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 may determine from time to time (including, for example, and without limitation, a President and/or a Vice Chair). Each officer other than the Executive Director, shall be elected by the Board from among Board members at its annual meeting, or at any other regular or special meeting of the Board held in accordance with these by-laws. The officers shall serve for a three (3) year term with ability to be re-elected for a second consecutive three (3) year term. Each officer shall hold office until the expiration of the term for which he or she is elected, and until his or her successor shall be elected, or until his or her sooner death, resignation or removal. A vacancy in any office may be filled by the Board at any meeting.

**Section 2. Resignations.** In the case of resignation by the Board Chair, the Secretary or the Treasurer, an interim officer shall be approved by the 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 Board. Once approved, the interim officer shall serve with all powers and duties of the position until completion of the original term. Interim service shall 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 3. Compensation of Officers.** Officers of the Corporation shall serve with such compensation, if any, for services as such, as may be determined by the Board. Except as otherwise determined by the Board, the Board Chair may exercise discretion, upon request, in case of need, to

pay or reimburse reasonable travel, accommodation expenses and/or other out of pocket expenses for performance of duties by officers.

**Section 4. 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 any of these powers to the Board Chair or other officers of the Corporation.

**Section 5. Removal.** Any officer, employee or agent of the Corporation may be removed with or without cause by a majority of the entire Board entitled to vote. The Board may by resolution delegate any of 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, if appointed, 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.

**Section 10. President: Powers and Duties.** From time to time, the Board may add or substitute the title of President to or for the title of Executive Director, without change to the powers and duties of the Executive Director, except as otherwise determined by 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 standing or special ad hoc committees as may be provided for in these by-laws or approved by the Board or the Board's executive committee. Each committee shall consist of no fewer than two (2) members of the Board, and shall have a chair and a vice chair or co-chair. Co-chairs and vice chairs shall be authorized to act as chairs, in case of unavailability of chairs. Committee members, chairs, co-chairs and vice chairs shall be appointed or subject to change by the Board Chair or the Board's executive committee, and shall serve for one (1) year, renewable at discretion of the Board Chair or the Board's executive committee, and until their successors shall be appointed, or their sooner death, resignation or removal. At the discretion of the Board Chair or the Board's executive committee, and if approved by the Board, each committee may include non-Board members, in a consulting capacity, provided that (1) non-Board members shall not be entitled to vote on recommendations or actions to be taken by a Board committee, nor entitled to act on behalf of any committee, and (2) appropriate measures shall be taken to require non-Board members to keep confidential all proceedings, business and non-public information of any such committee, the Board and the



Corporation. Two (2) Board members of a committee shall constitute a quorum for the transaction of business at any committee meeting. Each committee established and appointed by the Board or the Board Chair or the Board's executive committee shall have powers and duties authorized by these by-laws or by the Board, and shall report regularly concerning its proceedings to the Board or the Board's executive committee. Except for the Board's executive committee, as provided for in Article IV, Section 2 of these by-laws, and except as otherwise authorized by the Board, committees of the Board may make recommendations to the Board or the Board's executive committee but shall not have authority to act for or bind the Board or the Corporation or Board's executive committee. The Board may approve changes in name or scope of duties of any committee established hereunder. From time to time, the Board or the Board Chair or the Board's executive committee may request recommendations from any Board committee concerning any business of the Board or the Corporation.

**Section 2. Executive Committee.** The Board's 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 and the immediate past Board Chair of the Corporation 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 shall be appointed or their sooner death, resignation or removal. They shall have authority to 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. Only members who are entitled to vote as Board members shall be entitled to vote as executive committee members.

**Section 3. Finance Committee.** The Board's finance committee shall be a standing committee and shall consist of two (2) members of the Board and the Treasurer, who shall chair the Board's finance committee. Committee members shall serve until the next annual meeting and until their successors are duly elected and qualified or until their sooner death, resignation or removal. The Board's finance committee shall consider and recommend to the Board, for Board approval, investment policies and programs for the Corporation and (if so authorized by the Board) shall act for the Board to implement those policies and programs. The Board's 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 regular or annual meeting or any special meeting called to consider any matter or matters within the purview of the Board's finance committee. 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 Board's 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 of the Board, which shall consist of at least two (2) members of the Board and such other persons as are selected by the Board Chair or the Board's executive committee. 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 recommend and (if so authorized by the Board), implement activities related to the cultivation of individuals and foundations who could serve as donors to the Corporation. This committee may also identify individuals who could serve as Board members for the Corporation, and pass the names of such 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 (2) 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. From time to time, this committee shall propose a slate of Board officers and directors for consideration by the full Board. Additionally, this committee shall initiate such succession planning for officers and directors as may be requested by the Board Chair or the Board's executive committee 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 full 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 of 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 regulations thereunder.

**ARTICLE IX**  
**AMENDMENTS**

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

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(October 2017)