

**CultureTrust Greater Philadelphia**  
**Amended and Restated Trust Agreement**

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## **1. Trust Organization, Trustee, and Officers**

### **1.1 Name and Situs**

The name of this charitable trust is CultureTrust Greater Philadelphia (the “**Trust**”). The Trust’s situs is the City and County of Philadelphia in the Commonwealth of Pennsylvania.

### **1.2 Establishment of Trust and Irrevocability**

CultureWorks Greater Philadelphia, a Pennsylvania nonprofit corporation (“**CWP**” or “**Settlor**”), established the Trust by irrevocably transferring to the Trustee one-hundred dollars (\$100) for the uses and purposes as provided in this Trust Agreement (this “**Agreement**”). The Trust is irrevocable except as provided in Section 7 of this Agreement.

### **1.3 Trustee**

Settlor shall be the sole trustee of the Trust, hereinafter referred to as the “**Trustee**”.

### **1.4 Acceptance of Trust by Trustee**

The Trustee acknowledges receipt of the Trust property, accepts the Trust created by this Agreement, and agrees to administer the Trust pursuant to the provisions of this Agreement.

### **1.5 Officers**

The Trust shall have a President, Secretary, and Treasurer, each with the powers and duties typically ascribed to such offices and such other obligations and powers as determined by the Trustee, and may have such additional officers and assistant officers as the Trustee may determine (each an “**Officer**”). The President may execute documents on behalf of the Trust. The Secretary may certify any document or record of the Trust. The Treasurer shall have authority to open and monitor bank accounts on behalf of the Trust.

### **1.6 Bond**

The Trustee and the Treasurer need not provide any bond.

## **2. Restrictions**

### **2.1 Charitable Purposes**

The Trust is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”). The Trust may only be operated consistent with such purposes, and the Trust shall not carry on any activity not permitted to be conducted or carried on by an organization exempt under Section 501(a), and described in Section 501(c)(3), of the Code or by an organization described under Section 170(c)(2) of the Code, contributions to which are deductible under Sections 170(a), 2055(a)(2), and 2522(a)(2) of the Code.

## **2.2 Mission**

The mission of the Trust is to foster sustainability and impact for creative and preservation practices by providing affordable shared-management resources for arts and heritage programs of diverse disciplines and cultural traditions.

## **2.3 Pennsylvania Institution of Purely Public Charity**

The Trustee shall manage the Trust so as to place the Trust in the best position to qualify as an institution of purely public charity in compliance with the Constitution of the Commonwealth of Pennsylvania and the Pennsylvania Institutions of Purely Public Charity Act, as amended. Notwithstanding any other provision herein, the surplus funds of this Trust are prohibited from being used for private inurement to any person in the event of a sale or dissolution of the Trust.

## **2.4 Political Activity Prohibited**

The Trust shall not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, whether by the publication or distribution of statements or otherwise.

## **2.5 Limited Lobbying Activity**

Except as authorized by Section 501(h) of the Code and a proper election filed thereunder, no substantial part of the activities of the Trust shall consist of carrying on propaganda or otherwise attempting to influence legislation.

# **3. Projects**

## **3.1 Projects**

The Trust is organized to operate and provide direct management and fiduciary services for small or project-based charitable arts and heritage projects and organizations operating in the Greater Philadelphia metropolitan area, each of which shall be accounted for as a separate and revocable subtrust of the Trust (collectively, the subtrusts of the Trust are, the “**Projects**” and, each subtrust, a “**Project**”).

## **3.2 Project Declaration**

The Trustee shall declare a Project through a project declaration, as determined by the Trust in its sole discretion, which shall include reference to this Agreement and cannot state any provision inconsistent with this Agreement.

## **3.3 User Manual**

The Trustee shall adopt and maintain a set of policies, procedures, and business methods to organize and operate the Projects (the “**User Manual**”).

### **3.4 Project Director**

Each Project shall appoint an individual to supervise the Project (the “**Project Director**”), who shall be a natural person of full age and a member in good standing of CWP as determined by CWP in its sole discretion. Each Project shall submit the name of its Project Director for approval by the Trustee in its Project application.

### **3.5 Duties and Powers of a Project Director**

A Project Director shall serve as a fiduciary of his or her respective Project and shall act in good faith in accordance with applicable law. A Project Director may, in compliance with applicable law, this Agreement, the User Manual, and the Project’s approved budget, direct the Trustee to:

- hire or dismiss an employee subject to the employment policies adopted by the Trust;
- engage or disengage a nonemployee service provider;
- buy goods or supplies; and
- incur other expenses to perform the Project’s activities.

### **3.6 Trustee’s Power to Direct**

Consistent with Section 7778(b) of the Title 20 of Pennsylvania’s Consolidated Statutes, the *Probate, Estates and Fiduciaries Code*, as amended, the Trustees must act concerning a Project under the Project Director’s written direction unless the attempted exercise is manifestly contrary to this Agreement or applicable law, could subject the Trust to penalty or adversely affect the Trust’s tax-exempt or corporate status, violates any policy or procedure of the Trust, as determined by the Trustee, or would be a breach of the Project Director’s fiduciary duty. A Project Director’s power to direct is not a power of withdrawal or a power of appointment. The Project Director’s role is not purely advisory and, notwithstanding any other provision herein, a Project is not intended to be, and shall not be deemed to be, a donor advised fund within the provisions of the Code, and all provisions of this Agreement shall be interpreted consistent with maintaining such non-donor advised fund status.

### **3.7 Project Termination**

The Trustee may terminate a Project at any time in its sole discretion. Notwithstanding any other provision herein, all Project funds shall remain committed to the charitable purposes for which such funds were given.

## **4. Duties of the Trustee**

### **4.1 Trust Administration**

The Trustee shall administrator the Trust for its charitable purposes in good faith according to the provisions of this Agreement and applicable state law. The Trustee shall

have full discretion concerning the administration of the Trust and shall have all powers that are necessary or appropriate to discharge its duties.

#### **4.2 Trust Accounting**

The Trustee shall account for the Trust's assets, income, and expenses as required by applicable law and to maintain the Trust's status as an organization described in Section 501(c)(3) of the Code.

#### **4.3 Trust Defense**

Consistent with applicable law, the Trustee shall defend the Trust in any threatened, pending, or completed action, suit, examination, or proceeding, civil, criminal, administrative, arbitrative, or investigative, formal or informal, at law, in equity or chancery, or in arbitration or other alternative dispute resolution (each, a "**Proceeding**"), and without regard to the person or government agency who or that brought or commenced the Proceeding, that asserts that the Trust or its activities are unlawful, illegal, void, or voidable. A Trustee may pay from, or be reimbursed out of, the Trust property his or her actual expenses incurred in the defense of the Trust.

### **5. Powers of the Trustee**

#### **5.1 General Powers**

Subject to the charitable purposes of the Trust, the Trustee shall have the power to perform all acts necessary for the proper management, investment, and distribution of the Trust property; and the powers granted in this Section shall be in addition to those granted by law and may be exercised even after termination of the Trust hereunder until actual distribution of all Trust principal. Any specific powers granted herein are in addition to the general powers of the Trustee.

#### **5.2 Trust Distributions**

The Trustee may make payment of money or other delivery of property out of either the income or principal of the Trust in furtherance of the Charitable Purposes (each, a "**Distribution**"). The Trustee shall not be limited in any way with regard to Distributions of the principal of the Trust. The Trustee may consider recommendations and information received from a Project Director to determine the amount, timing, or character of a Distribution related to a Project.

#### **5.3 Reliance on Trustee**

The certificate of the Trustee that the Trustee is acting according to this Agreement shall fully protect all persons dealing with a Trustee. Third parties may rely on the actions of the Trustee, without further inquiry, as being binding upon the Trust.

#### **5.4 Power to Employ Agents**

The Trustee may engage and employ (at the Trust's expense) suitable accountants, actuaries, banks, trust companies, securities broker-dealers, commodities brokers or

dealers, insurance agents or brokers, investment advisers, investigators, lawyers, an assistant of any of them, or another agent of any kind (each, an “**Agent**”) to perform or provide services to the Trust. The Trustee may pay an Agent’s actual fees, compensation, and expenses out of the Trust property. The Trustee shall not be responsible for an act or omission of an Agent that the Trustee selected in good faith and with due care.

#### **5.5 Power to Manage**

The Trustee shall have the power and discretion to manage and to make all decisions with respect to any and all of the Trust property, including, but not limited to, acting as a manager of any property in which the Trust owns an interest, or engaging the services of any professional investment, money or property manager, or management company, or forming one or more subsidiary or affiliate entities, such as corporations or limited liability companies. The Trustee shall also have the power to delegate to any bank, savings and loan, brokerage firm, trust company, or other financial institution or management company the full powers to manage, control, or invest all or any part of the Trust property, without liability on the part of the Trustee for actions taken or not taken by said institution.

#### **5.6 Power to Invest**

Trustee shall be subject to the “prudent man” standard in investing the Trust property, but shall not be limited to the investments or types of investments permitted under applicable law governing investments by Trustees in the Commonwealth of Pennsylvania. Subject only to the “prudent man” standard, the Trustee shall not be liable for any error of judgment or for any act or omission pursuant to the powers granted in this Agreement except for the Trustee’s own willful misconduct or gross negligence.

#### **5.7 Power to Delegate**

Pursuant to applicable law, the Trustee may delegate any powers and authorities related to its investment and management functions that a prudent investor of comparable skills might delegate under the circumstances to another Trustee for any period that the delegating Trustee deems appropriate.

#### **5.8 Signature of Trustee**

In the event any Trustee shall execute this Agreement or a written consent to serve as Trustee, the signature of said Trustee shall be construed as no more than an acceptance of the terms of this Agreement as they apply to the rights, powers, and duties of the Trustee during such Trustee’s tenure as a trustee, and shall in no way be construed to mean acceptance, ratification, or approval of any of the acts, omissions, or defaults of the Trustee or any predecessor Trustee nor an undertaking by the Trustee to audit or verify the records of the Trustee or any predecessor Trustee. The Trustee shall be entitled to rely upon statements and records (which may come into the Trustee’s possession after a reasonable search) of the Trustee or a predecessor Trustee as to the property of the Trust (or any separate trust).

### **5.9 Governing Law**

The Trust and this Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania.

### **5.10 Records**

The Trustees may keep any records electronically to the fullest extent allowed by applicable law so long as the electronic record accurately reflects its source and remains accessible for at least the minimum record-retention period required by applicable law.

## **6. Hold Harmless and Indemnification**

### **6.1 Hold Harmless**

The Trustee shall not be personally liable for monetary damages for any action taken, or failure to take any action, in good faith other than as expressly provided in Pennsylvania law or as otherwise required by law and shall only be liable for its own willful or gross misconduct. It is the intention of this provision to limit the liability of the Trustee to the fullest extent permitted by any present or future provision of Pennsylvania law. The Trustee shall not be liable for any loss or depreciation occasioned by the acquisition, disposition, or retention of any property acquired, disposed of, or retained by the Trustee provided the Trustee shall have acted in good faith in administering the Trust and prudently investing the Trust property. The Trustee's exercise or non-exercise of powers and discretions in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in manners it reasonably believes to be in the best interest of the Trust, shall be conclusive on all persons.

### **6.2 Indemnification**

The Trust shall hold harmless, defend, and indemnify the Trustee and Officers, and may by a resolution adopted by the Trustee hold harmless, defend, and indemnify employees and agents, including volunteers, of the Trust when acting on behalf of the Trust to the fullest extent permitted by any present or future provision of Pennsylvania law, provided the person meets the requirements herein. The Trust may procure insurance providing greater indemnification to those people and may share the premium cost with any of those people.

### **6.3 Advancing Expenses**

Expenses incurred by a person entitled to be indemnified under this Section shall be paid by the Trust in advance of the final disposition of any action, suit, or proceeding upon receipt of: (a) a written affirmation by the person of their good faith belief that they have met the relevant standard of conduct required by applicable law; and (b) a written undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that they are not entitled to be indemnified by the Trust.



#### **6.4 Proceedings Initiated by Person Entitled to be Indemnified**

Notwithstanding any other provision of these Bylaws, the Trust shall not indemnify any person for any liability incurred in a proceeding initiated or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by a resolution of the Trustee.

#### **6.5 Indemnification Procedure**

Notwithstanding any other provision of these Bylaws, the Trust need not defend or indemnify any person for any expense or claim if such person fails to: (a) promptly notify the Trust in writing of the expense or claim; (b) use commercially reasonable efforts to mitigate the effects or size of the expense or claim; (c) reasonably cooperate with the Trust in the defense of such expense or claim; and (d) permit the Trust to control the defense and settlement of the expense or claim, with counsel reasonably satisfactory to such person, all at the Trust's cost and expense.

#### **6.6 Rights to Indemnification**

Any rights to indemnification provided by this Agreement are not exclusive and do not exclude other rights of the indemnified person. Any amendment or modification of this Agreement providing for indemnification pursuant to this Agreement that has the effect of limiting a person's rights to indemnification with respect to any act or failure to act occurring prior to the date of adoption of such amendment or modification shall not be effective as to that person unless they consent in writing to be bound by such amendment or modification. The rights provided by or granted pursuant to this Section to an individual shall inure to the benefit of their heirs, executors, and administrators.

### **7. Amendment or Termination**

#### **7.1 Amendment of Trust Agreement**

The Trustee may amend the Trust or this Agreement by written instrument without notice to any person.

#### **7.2 Termination of Trust**

In the event of the liquidation, dissolution, or winding up of the Trust, the assets or property of the Trust shall be distributed for one or more of the Trust's charitable purposes. No Officer of the Trust or any other private person shall be entitled to share in the distribution of any of the assets on dissolution of the Trust.

This Trust Agreement was executed by the Trustee on April 9, 2019 to be effective as of June 21, 2017.

CULTUREWORKS GREATER PHILADELPHIA

BY:    
 (Jamaine Smith)   
 its Chief Commons Director