

NATURAL HERITAGE TRUST
BY-LAWS
(Revised June 2008)

Article I Name, Authority and Board of Directors

- Section 1. The Corporation shall be known as the Natural Heritage Trust, hereinafter referred to as the “Trust.”
- Section 2. The Trust is a public benefit corporation established by L. 1968, c.653; amended by L. 1983, c. 876; L. 1990, c.804; L. 2001, c.450. Incorporated by reference herein is Chapter 55 of the Arts and Cultural Affairs Law, as the same may be amended from time to time by the New York State Legislature.
- Section 3. The Board of Directors shall consist of the Chair of the State Council of Parks, Recreation and Historic Preservation, the Commissioner of Parks, Recreation and Historic Preservation, the Commissioner of Environmental Conservation and the Secretary of State.

Article II Mission Statement

- Section 1. The purpose of the Trust is to serve as a focal point for the receipt and administration of gifts, grants, devises and bequests of real and personal property to further conservation, outdoor recreation, historic preservation and waterfront and community revitalization.

Article III Fiscal Year

- Section 1. The fiscal year of the Trust and the Board shall end on March 31 of each year.

Article IV Duties of the Chair and Vice Chair

- Section 1. At the first meeting of the Board in each fiscal year, the members shall choose from their number a Chair and a Vice Chair.
- Section 2. The Chair shall:
- a. Preside at all meetings of the Board;
 - b. Enforce all laws and regulations relating to the organization and operation of the Board and these By-Laws;
 - c. Call meetings of the Board (a) when s/he deems it necessary and proper or (b) when requested by any member of the Board;
 - d. Present at each meeting of the Board such recommendations as s/he may deem necessary and proper;
 - e. Perform all the powers and duties incident to the position of Chair.

Section 3. In the case of a vacancy in the office of Chair or in the Chair's absence from New York State or from a meeting of the Board, the Vice Chair shall have the powers and duties of the Chair.

Article V Officers

Section 1. The Executive Director shall be appointed by the Board and shall be the Chief Executive Officer of the Trust, subject to the policies established by the Board and under the direction of the Chair and subject to the right of the Board to assign to any other officer, agent or employee of the Board any powers and duties not expressly delegated to the Executive Director. The Executive Director shall have the right to attend but not vote at all meetings of the Board.

Section 2. The Chief Financial Officer shall report on the financial condition of the Trust as required by the NYS Public Authorities Law and at such other times as the Board may require; shall cause the financial statements of the Trust to be audited annually by an independent certified public accountant retained by the Board; and shall carry out such duties required by the investment policies established by the Board, to the extent consistent with law.

Section 3. The Secretary shall cause to be entered in the proper books all resolutions and proceedings of the Board or of any Committee thereof. The Secretary shall conduct the correspondence of the Board, cause the notices of Board meetings to be issued, keep the books and records of the Board and perform all powers and duties pertaining to the office of Secretary.

Section 4. The Counsel shall be the Chief Legal Officer of the Trust and shall advise and render opinions to the members and officers of the Trust as to all legal matters relating to the administration, operations and financing of the Trust and as to the laws governing the programs of the Trust. The counsel shall draft, examine and approve as to legal compliance all forms, contracts or other documents necessary for all phases of the Trust's work or purposes. The Counsel shall exercise such other powers and perform such other duties as the Board may determine.

Section 5. All acts, agreements and documents of the Trust shall be performed or executed in the name of the Trust by an authorized officer. The following are designated as an authorized officer of the Trust for such purposes: the Chair and the Executive Director. The Chief Financial Officer, the Counsel and such other officer or person may from time to time be designated as an authorized officer for specific purposes.

Section 6. In the event of a vacancy in any office or the absence or disability of any officer or for any other reason that the Board may deem sufficient, the Board, except as otherwise provided by law, may temporarily delegate the powers or duties of any officer to any other officer.

Section 7. Any officer appointed by the Board may be removed or suspended by the Board, at any time, with or without cause.

Section 8. No Board Member shall serve as an officer of the Trust.

Article VI Committees

Section 1. The Board shall have an Audit Committee consisting of at least two members appointed by the Chair of the Board in consultation with the Board, with the committee chair appointed by the Chair of the Board. The Audit Committee shall exercise the functions contained in the charter of the Audit Committee, which shall be adopted by the Board.

Section 2. The Board shall have a Governance Committee consisting of at least two members appointed by the Chair of the Board in consultation with the Board, with the committee chair appointed by the Chair of the Board. The Governance Committee shall exercise the functions contained in the charter of the Governance Committee, which shall be adopted by the Board.

Section 3. The Board may appoint one or more special committees to investigate and report to the Board on any matters. The Board shall appoint the chair of each committee. All committees shall meet at the call of their respective chairs.

Article VII Policies

Section 1. The Board shall adopt and annually review and may, from time to time, amend as may be necessary or desirable investment policies and guidelines in accordance with the Public Authorities Law.

Section 2. The Board shall adopt and annually review and may, from time to time, amend as may be necessary or desirable ethics policies and guidelines in accordance with the Public Authorities Law.

Section 3. The Board shall adopt and annually review and may, from time to time, amend as may be necessary or desirable procurement policies and guidelines in accordance with the Public Authorities Law.

Article VIII Meetings

Section 1. The annual meeting of the Board shall take place prior to the 30th day of June each year in Albany, New York.

Section 2. Except as otherwise provided in these By-Laws, written notice of all meetings of the Board, specifying the time, place and purposes thereof, shall be given to each member by mail, personally or by e-mail, telegram or fax at least five (5) days before such meeting. Notices by mail shall be deemed to have been given at the time when mailed to such member at her or his address on the books of the Board, and notices by e-mail, telegram or fax shall be deemed to have been given at the

time when given for transmission. In lieu of such written notice, a waiver thereof in writing, signed by the member or members entitled to such notice, whether before, at or after the meeting, shall be deemed equivalent to such notice for purposes of these By-Laws. No notice to or waiver by any member with respect to any meeting shall be required if such member is present at such meeting and does not at its convening object to the lack of notice thereof.

- Section 3. A majority of the whole number of the members of the Board shall constitute a quorum authorized to transact any business at any meeting of the Board. If at any meeting there is less than a quorum, a majority of those members present may, without notice to any absent member, adjourn the meeting. Any rescheduled meeting must be noticed in accordance with these By-Laws.
- Section 4. All actions of the Board shall require the votes of a majority of the whole number of the members of the Board then in office at a meeting with a quorum.
- Section 5. The order of business and all other matters of procedure at each meeting of the Trust may be determined by the Chair.

Article IX Office

- Section 1. The principal office of the Board and the Trust shall be One Empire State Plaza, 14th Floor, Albany, New York 12238.
- Section 2. Except as otherwise directed by the Board or as the operations of the Board may require, all the books and records of the Board shall be kept at the principal office of the Board.

Article X Indemnification

- Section 1. The Trust shall to the fullest extent permitted by law save harmless and indemnify any person, or his or her estate, who shall serve or served as a Director, Officer or Employee of the Trust, against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, action or proceeding, whether it be civil or criminal, or the defense thereof, and arising out of: (a) any transaction of the Trust or, (b) by any act or failure to act by any such Director, Officer or Employee while engaged in the discharge of his duties on behalf of the Trust.
- Section 2. The right to indemnification shall be conditioned on (a) the prompt delivery to the Trust of a copy of the summons, complaint, process, notice, demand or pleading commencing any suit, action or proceeding; (b) a contemporaneous request to name the General Counsel to the Trust as the counsel representing the Director, Officer or Employee in the defense of such claim, demand, suit, action or proceeding and; (c) the full cooperation of the Director, Officer or Employee in the event that the Trust chooses to provide for their legal representation. If the

Trust grants the request for representation, which can be accomplished by either the General Counsel, the Attorney General of the State of New York or by an outside counsel of its choice, the Trust shall assume the representation of any person who becomes a party to the claim, demand, suit, action or proceeding, except in situations where the choice of counsel is governed by statute.

Section 3. A Director, Officer or Employee who becomes a party to an action or proceeding may request that the Trust advance expenses pending the final disposition of such action or proceeding.

Section 4. Reasonable litigation expenses incurred by an Director, Officer or Employee who becomes a party to an action or proceeding may be paid by the Trust from time to time pending the final disposition of such action or proceeding without the need for any authorization, findings, or other action by the Directors prior to the making of such advances provided however, that: (a) the Directors may make a preliminary finding at any time prior to the final disposition of such action or proceeding that it then appears that an Director, Officer or Employee has clearly not acted in good faith, for a purpose reasonably believed to be in the best interest of the Trust in criminal actions or proceedings, in addition, that the Director, Officer or Employee clearly had not had reasonable cause to believe that his or her conduct was lawful; (b) the Directors may determine, or provide for the determination of the reasonableness of expenses sought to be advanced.

Section 5. The provisions of this article shall be in addition to and shall not supplant any indemnification by the State of New York heretofore or hereafter conferred upon any Director, Officer or Employee of the Trust by Sections 17, 18 or 19 of the Public Officers Law or otherwise. This article is to be construed liberally in favor of each Director, Officer and Employee of the Trust to the fullest extent permitted by law and the right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such Director, Officer and Employee may now or hereafter be otherwise entitled. Any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Director, Officer or Employee. The provisions of this article shall inure only to the Directors, Officers and Employees of the NHT and shall not impair, limit or modify the rights and obligation of any insurer under any policy of insurance.

Article XI Amendments to By-Laws

Section 1. These By-Laws may be amended at a duly held meeting of the Board by vote of a majority of its members. Proposed amendments to these By-Laws shall be circulated to all members not less than ten days prior to a scheduled meeting of the Board.

ARTICLE 55
NATURAL HERITAGE TRUST

Section 55.01. Short title.

55.03. Definitions.

55.05. Natural Heritage Trust.

55.07. Purposes and powers of the corporation.

55.09. Temporary assignment and transfer of employees.

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55.19. Members and employees not to profit.

55.21. Application of law.

55.23. Actions against the trust.

§ 55.01. Short title. This title may be cited as the "Natural Heritage Trust Act."

§ 55.03. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. The term "trust" shall mean the corporation created by section 55.05 of this article.

2. The term "board" shall mean the members of the corporation.

3. The term "real property" shall mean lands, structures, franchises and interest in lands and any and all things usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real property.

§ 55.05. Natural Heritage Trust. The board known as the "Natural Heritage Trust" is hereby continued. Such a board shall be a body corporate and politic constituting a public benefit corporation and its existence shall commence upon the appointment of the members as herein provided. Such board shall consist of the chairperson of the state council of parks and outdoor recreation, the commissioner of environmental conservation, the secretary of state and the commissioner of parks, recreation and historic preservation. The powers of the board shall be vested in and exercised by the majority of the members thereof. The members of the board shall serve without compensation, but shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties. At the first meeting of the board and the first meeting thereof in each fiscal year thereafter, the members of the board shall choose from their number, a chairperson and vice-chairperson. The trust and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the trust shall have bonds, notes and other obligations outstanding, unless adequate provision has

been made for the payment thereof in the documents securing the same. Upon termination of the existence of the trust, all its rights and properties shall vest in the state.

§ 55.07. Purposes and powers of the corporation. The purpose of the corporation shall be to serve as a focal point for the receipt and administration of private gifts, devises and bequests of real and personal property donated to further conservation, outdoor recreation and historic preservation purposes and advance public understanding, revitalization and restoration of New York's waterfronts. Revitalization and restoration of the waterfront shall be undertaken pursuant to, and consistent with an approved local waterfront revitalization plan or plan approved by the department of state, which has been the subject of a public hearing. To carry out said purposes, the corporation shall have power:

1. To accept unconditional gifts, devises and bequests, and, with the approval of the governor, conditional gifts, devises and bequests, of real or personal property for conservation, outdoor recreation, historic preservation purposes and public understanding, revitalization and restoration of New York's waterfronts and to administer and expend funds made available to the corporation for any of its purposes.

2. To acquire real property in the name of the people of the state of New York by purchase, gift, devise or exchange of lands previously acquired by the trust and under its immediate jurisdiction or by appropriation through the agency of the commissioner of parks, recreation and historic preservation or the commissioner of environmental conservation whenever the attorney general shall determine such appropriation is necessary to clear any defect or encumbrance on the title of such real property which would hinder its use for the intended public purpose. The cost of such land acquisition, exclusive of services furnished by any state department, board, commission or agency, shall be paid from funds available to the trust.

3. To acquire personal property in the name of the people of the state of New York by purchase, gift, bequest or exchange of personalty previously acquired by the trust and under its immediate jurisdiction. The cost of acquisition of such personal property shall be paid from funds available to the trust.

4. To transfer immediate jurisdiction and control over any real or personal property acquired by the trust to the office of parks, recreation and historic preservation, the department of environmental conservation, the secretary of state or other appropriate public body or agency with its consent and the prior approval of the director of the budget.

5. To undertake any work, including furnishing of services and materials, required to manage, preserve, restore, maintain or improve any real or personal property under its jurisdiction and, at the request of the office of parks, recreation and historic preservation, department of state or department of environmental conservation, upon real or personal property under the jurisdiction of the requesting agency, after prior approval of the director of the budget.

6. To undertake research, studies and make reports relating to conservation, outdoor recreation, historic preservation matters and public understanding, revitalization and restoration of New York's waterfronts.

7. To sell and convey any real or personal property or interest therein acquired by and under the jurisdiction of the trust and surplus to its needs, provided such sale and conveyance does not contravene the terms or conditions of any gift, devise or bequest, and to retain the proceeds derived therefrom for its corporate purposes.

8. To appoint and employ such officers, employees and staff and to retain such expert legal, financial, engineering, architectural and such other consultant services as it deems necessary to carry out its corporate purposes.

9. To participate and cooperate with other public and private agencies having mutual interests and purposes in appropriate programs and projects intended to preserve and improve the natural and historic resources of the state and advance public understanding, revitalization and restoration of New York's waterfronts in furtherance of the education, welfare and enjoyment of its people.

10. To administer, manage or operate any property acquired by the trust pending transfer of jurisdiction thereof and to retain for its corporate purposes any receipts, revenue or income derived therefrom during the pendency of such transfer.

11. To sue and be sued.

12. To have a seal and alter the same at pleasure.

13. To do all things necessary or convenient to carry out the purposes of this corporation.

§ 55.09. Temporary assignment and transfer of employees. Whenever in the opinion of the trust it would be in the public interest, it may, after prior approval of the director of the budget, request the temporary assignment and transfer of certain employees of any board, commission, agency or department of the state or its political subdivisions, and said board, commission, agency or department, if in its opinion such transfer will not interfere with the performance of its duties and functions may make such assignment and transfer of said employees to the trust. Such assignment and transfer or extension thereof shall not in any way affect the civil service status, continuity of service, retirement plan status, right to compensation, grade or compensation or other rights or privileges of any employee so transferred.

§ 55.11. Examination of title. The title to all real property proposed to be acquired by the trust shall be examined and approved by the attorney general of the state who shall also furnish any and all necessary legal services and advice required to assist the trust in accomplishing its corporate purposes.

§ 55.13. Moneys of the corporation. 1. The moneys of the trust shall be retained by it and deposited in a general account and such other accounts as the trust may deem necessary for the transaction of its business and shall be paid out on checks signed by the chairperson of the corporation or by such other member or officer as the corporation may authorize.

2. The comptroller of the state and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the trust including its receipts, disbursements, contracts, investments and any other matters relating to its financial standing.

3. The trust shall submit to the governor, the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year, a complete and detailed report of its operations and accomplishments, its receipts and disbursements and its assets and liabilities.

§ 55.15. Creation of trust a public purpose. It is hereby found, determined and declared that the creation of the trust and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the preservation and improvement of the natural, historic and waterfront resources constituting their natural heritage and in furtherance of their welfare and prosperity, and is a public purpose, in that the trust will be performing an essential governmental function in the exercise of the powers conferred upon it by this title and the trust shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction and control, or upon its activities in the operation and maintenance of such properties or use of any moneys, revenues or other income received by the corporation. All contributions of real or personal property made to the trust whether by gift, devise or bequest shall qualify as deductions in computing the net taxable income of the donor for the purposes of any income tax imposed by the state or any political subdivision thereof.

§ 55.17. Payments in lieu of taxes. The trust may, when funds are available and with the approval of the governor, enter into an agreement with a municipality or district within which real property has been acquired by the trust providing for the payment of moneys in lieu of anticipated tax revenues for a period not to exceed five years whenever the trust shall determine that undue hardship justifying such financial relief has been created by such acquisition.

§ 55.19. Members and employees not to profit. No officer, member or employee of the trust shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except reasonable compensation for services in effecting one or more of its purposes herein set forth.

§ 55.21. Application of law. All of the general provisions of the public authorities law or of any other law shall apply to the natural heritage trust herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article.

§ 55.23. Actions against the trust. Except in an action for wrongful death, an action against the trust founded on tort shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the trust within the time limited by, and in compliance with all the requirements of section fifty-e of the general municipal law. An action against the trust for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of the public authorities law.