



**BYLAWS**

**OF**

**THE NEWBURYPORT ART ASSOCIATION, INC.**

**Revision of January 17, 2006 (Proposed)**

## TABLE OF CONTENTS

<a href="#"><u>ARTICLE I - NAME</u></a> .....	1
<a href="#"><u>ARTICLE II - GENERAL</u></a> .....	1
<a href="#"><u>Section 1. Purpose</u></a> .....	1
<a href="#"><u>Section 2. Limitation of Methods</u></a> .....	1
<a href="#"><u>Section 3. Nondiscrimination</u></a> .....	1
<a href="#"><u>Section 4. Fiscal Year</u></a> .....	1
<a href="#"><u>ARTICLE III - OFFICERS, AGENTS AND GOVERNING BODY</u></a> .....	1
<a href="#"><u>Section 1. Officers and Agents</u></a> .....	1
<a href="#"><u>Section 2. Directors</u></a> .....	1
<a href="#"><u>Section 3. Directors Emeritus</u></a> .....	1
<a href="#"><u>Section 4. Board of Directors</u></a> .....	2
<a href="#"><u>Section 5. Number and Election</u></a> .....	2
<a href="#"><u>Section 6. Qualifications and Limitations</u></a> .....	2
<a href="#"><u>Section 7. Removal</u></a> .....	2
<a href="#"><u>Section 8. Resignation</u></a> .....	2
<a href="#"><u>Section 9. Vacancies</u></a> .....	2
<a href="#"><u>Section 10. Compensation</u></a> .....	3
<a href="#"><u>ARTICLE IV - DUTIES AND POWERS OF DIRECTORS, OFFICERS AND AGENTS</u></a> .....	3
<a href="#"><u>Section 1. Duties and Powers of the Board of Directors</u></a> .....	3
<a href="#"><u>Section 2. Sale, Conveyance or Lease of Real Property</u></a> .....	3
<a href="#"><u>Section 3. Execution of Papers</u></a> .....	3
<a href="#"><u>Section 4. Duties of the Officers and Agents</u></a> .....	3
<a href="#"><u>A. President</u></a> .....	3
<a href="#"><u>B. Vice-President</u></a> .....	3
<a href="#"><u>C. Treasurer</u></a> .....	4
<a href="#"><u>D. Secretary</u></a> .....	4
<a href="#"><u>E. Other Officers</u></a> .....	4
<a href="#"><u>F. Executive Director</u></a> .....	5
<a href="#"><u>ARTICLE V - MEMBERS</u></a> .....	5
<a href="#"><u>Section 1. Qualification</u></a> .....	5
<a href="#"><u>Section 2: Powers and Rights</u></a> .....	5
<a href="#"><u>Section 4. Removal and Dues Arrearage</u></a> .....	5
<a href="#"><u>Section 5. Resignation</u></a> .....	5
<a href="#"><u>ARTICLE VI - COMMITTEES</u></a> .....	5
<a href="#"><u>Section 1. Appointment and Authority</u></a> .....	5
<a href="#"><u>Section 2. Executive Committee</u></a> .....	5
<a href="#"><u>Section 3. Finance Committee</u></a> .....	6
<a href="#"><u>Section 4. Board Development Committee</u></a> .....	6
<a href="#"><u>ARTICLE VII - MEETINGS OF THE MEMBERS</u></a> .....	6
<a href="#"><u>Section 1. Place</u></a> .....	6
<a href="#"><u>Section 2. Annual Meeting</u></a> .....	6
<a href="#"><u>Section 3. Special Meetings</u></a> .....	7
<a href="#"><u>Section 4. Notice</u></a> .....	7
<a href="#"><u>Section 5. Quorum</u></a> .....	7
<a href="#"><u>Section 6. Voting</u></a> .....	7

<u>ARTICLE VIII - MEETINGS OF THE BOARD OF DIRECTORS</u> .....	7
<u>Section 1. Place</u> .....	7
<u>Section 2. Regular Meetings</u> .....	7
<u>Section 3. Special Meetings</u> .....	7
<u>Section 4. Notice</u> .....	8
<u>Section 5. Quorum</u> .....	8
<u>Section 6. Action by Consent</u> .....	8
<u>Section 7. Vote of Interested Directors</u> .....	8
<u>ARTICLE XI - OTHER PROVISIONS</u> .....	9
<u>Section 1. Partnerships</u> .....	9
<u>Section 2. Prohibition on Distribution of Assets</u> .....	9
<u>Section 3. Prohibition of Political Activities</u> .....	9
<u>Section 5. Limitation of Liability</u> .....	10
<u>Section 6. Indemnification</u> .....	10
<u>ARTICLE XII - PARLIAMENTARY AUTHORITY</u> .....	11
<u>ARTICLE XIII - AMENDMENTS</u> .....	11

**ARTICLE I - NAME**

This corporation shall be called the Newburyport Art Association, Inc. (hereinafter, the Association)

**ARTICLE II - GENERAL**

**Section 1. Purpose**

The purpose of the Association shall be to encourage and share the creation of fine arts and crafts through the development of artistic perception and sound craftsmanship within the Association and in the surrounding communities.

**Section 2. Limitation of Methods**

The Association shall function exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and within the meaning of the General Laws of Massachusetts Chapter 180, Section 4, as amended, pursuant to the above purpose and through any programs or services which would further the same, or for any other charitable or educational purpose and to conduct any business that may be lawfully carried on by a corporation formed under General Laws of Massachusetts, Chapter 180 and that is not inconsistent with the Association's qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended

**Section 3. Nondiscrimination**

The affairs, bylaws, recommendations and resolutions of the Association shall be in compliance with all Federal and State statues concerning equal opportunity, and shall not discriminate on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability, and further shall promote a workplace free of sexual harassment.

**Section 4. Fiscal Year**

The fiscal year shall commence on the first day of January or on such a date as the board of directors may determine.

**ARTICLE III - OFFICERS, AGENTS AND GOVERNING BODY**

**Section 1. Officers and Agents**

The officers of the Association shall consist of a president, vice-president, treasurer, and secretary. The board of directors may elect from time to time other officers of the Association. [The Association may also have an Executive Director and may have other such agents, if any, as the directors may appoint. Agents of the Association may but need not be members.](#)

**Section 2. Directors**

In addition to the officers, there shall be twelve other directors. The board of directors may elect from time to time additional directors of the Association.

**Section 3. Directors Emeritus**

A person who is distinguished by valuable and meritorious service to the Association may be elected by the board of directors as a director emeritus at any regular or special meeting of the

board of directors by a majority vote of the members present and voting. A director emeritus may attend board of directors meetings and receive communications, but shall not vote.

#### **Section 4. Board of Directors**

The officers and directors shall be known as the board of directors. The board of directors may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Association or such other titles as they deem appropriate.

#### **Section 5. Number and Election**

Officers and directors shall be elected at the annual meeting. [Their terms of office shall commence on the day following their election and shall cease once their respective successors are elected and qualified.](#) The president, vice president, secretary, treasurer and [other officers, if any,](#) shall hold office for one year. The president may serve three consecutive one-year terms. [The directors shall be divided into three classes of equal size, the term of each class expiring each year. At each annual meeting of the members, the members shall elect for a term of three years the appropriate number of successors to the class whose term is expiring, and they may also elect additional directors to the other classes to the extent necessary to maintain equality in size among classes.](#) Officers and directors may serve consecutive terms.

#### **Section 6. Qualifications and Limitations**

Officers and directors shall be members in good standing of the Association. Two or more offices may be held by the same person, but shall be counted as one vote. Upon cessation of their terms, officers are immediately eligible to election as a director on the board of directors. A president who has completed three consecutive terms is eligible for election as president after a one-year lapse. The secretary shall be a resident of Massachusetts unless a resident agent shall have been appointed pursuant to Massachusetts law.

#### **Section 7. Removal**

Officers or directors may be removed from their respective offices with or without cause by a vote of the majority of the officers and directors then in office, or by a majority of the members present and voting at a special meeting called for this purpose in accordance with these bylaws. [The Executive Director and each agent of the Association shall retain their authority at the pleasure of the board of directors.](#)

#### **Section 8. Resignation**

An officer or director may resign at any time by giving his or her resignation in writing to the president, or any other officer or director.

#### **Section 9. Vacancies**

Continuing officers and directors may act despite a vacancy or vacancies in the board of directors and shall for this purpose be deemed to constitute a full board of directors. [Any vacancy in the board of directors, however occurring, including a vacancy resulting from an enlargement of the board of directors, may be filled by the members or, in the absence of the member action to fill such vacancy, by the board of directors by a majority vote of the board of directors then in office. Each such successor shall hold office for the unexpired term until her](#)

successor is chosen and qualified, or in each case she sooner dies, resigns or is removed or becomes disqualified.

**Section 10. Compensation**

No director or officer shall be entitled to receive compensation for services as director or officer but shall not be precluded from serving the Association in any other capacity and from receiving compensation for such services.

**ARTICLE IV - DUTIES AND POWERS OF DIRECTORS, OFFICERS AND AGENTS**

**Section 1. Duties and Powers of the Board of Directors**

The board of directors shall have policy and fiduciary responsibility, and shall have the general management and supervision responsibility for the affairs of the Association and other powers and duties of a board of directors under Massachusetts law, except with respect to those powers reserved to members by law, the articles of incorporation or these bylaws. The board of directors shall have the custody and control of the estate, buildings and collections of the Association. The board of directors may from time to time, to the extent permitted by law, delegate any of its powers to committees or to agents of the Association, subject to such limitations as the board of directors may impose.

**Section 2. Sale, Conveyance or Lease of Real Property**

The board of directors, with approval of a majority of the members present and voting at any meeting of the Association, provided that a notice is given at least 30 days prior to the meeting to the membership of said meeting, may sell, convey or lease to such persons as they see fit any real estate in which the Association has interest; and all deeds, leases and conveyances of such real estate, so sold or leased, shall be signed in the name of the Newburyport Art Association, Inc. by the president and the treasurer.

**Section 3. Execution of Papers**

Except as the directors may generally or in particular cases authorize the execution thereof in some manner all deeds, leases, transfers, contracts, notes, checks, drafts, and other obligations made, accepted or endorsed by the Association shall be signed by the President, the Treasurer or the Executive Director.

**Section 4. Duties of the Officers and Agents**

**A. President**

The President shall be the chief executive officer of the Association and preside at all meetings of the members and board of directors and shall have other powers and duties as may be determined by the board of directors. Subject to the control of the board of directors, the President shall have general charge and supervision of the affairs of the Association.

**B. Vice-President**

Shall have all the powers and be subjected to all the responsibilities given to or imposed upon the president in the absence or disability of the president and shall have other duties and powers as

the board of directors may from time to time designate.

### **C. Treasurer**

1. Shall be the chief financial officer and the chief accounting officer of the Association.
2. Shall receive all income, financial donations, and bequests and shall deposit the same in the name of the Association. This responsibility may be carried out by a designee of the treasurer.
3. Shall make, sign and endorse in the name of the Newburyport Art Association, Inc. all checks, drafts, notes and offers of payment of money, subject to the directions of the board of directors or the Executive Committee. This responsibility may be carried out by a designee of the treasurer.
4. Shall render a statement of the financial condition of the Association at each regular meeting of the board of directors and at other such meetings that may be required, and shall render a financial report to the board of directors prior to the annual meeting and to the members at the annual meeting.
5. Shall receive and receipt all money and securities due the Association and to hold, manage and use the same in accordance with the directions of the board of directors.
6. Shall keep separate, apart and inviolate all funds given to the Association in trust, or with limitations as to the income or use thereof, and the investments thereof shall be in the control of the board of directors.
7. Shall keep the funds of the Association at interest, or invested, retaining only sums as may be necessary to meet expenses of the Association. The condition of the various funds, as well as the receipts and disbursements, shall be included in the annual report of the treasurer.
8. Shall prepare or oversee all reports and filings required by the Commonwealth of Massachusetts, the Internal Revenue Service and other governmental agencies.

### **D. Secretary**

1. Shall keep a record of all meetings of the Association and board of directors in books kept for that purpose at the principal office of the Association in Massachusetts. Such books shall also contain the original or certified By-laws of the Association and the names and addresses of all directors, officers and agents of the Association.
2. Shall report at the annual meeting the transactions for the preceding annual meeting.
3. Shall give notice of all meetings of the Association and board of directors.
4. Shall notify all directors and officers of their election.
5. If the secretary is absent from any meeting of the members or directors, a temporary secretary chosen shall exercise the duties of the Secretary at such meeting.

### **E. Other Officers**

Other officers shall have such powers as may be designated from time to time by the board of directors.

## **F. Executive Director**

The Executive Director shall be subject to the direction of the board of directors, president or executive committee and:

1. Shall be the chief operating officer of the Association.
2. Shall conduct the programs, education and exhibitions of the Association.
3. Shall have other duties and powers as the board of directors, president or executive committee may from time to time designate.

## **ARTICLE V - MEMBERS**

### **Section 1. Qualification**

Any person interested in furthering and supporting the purpose of the Association may become a member upon payment of the applicable annual dues. The annual dues for membership categories shall be determined by the board of directors.

### **Section 2: Powers and Rights**

The members of the Association shall have the right to elect the officers and directors of the Association and other such powers and rights as are vested in them by law, these bylaws and other such powers and rights as the board of directors from time to time designate.

### **Section 4. Removal and Dues Arrearage**

Members may be removed from membership at any time with or without cause by a majority vote of the board of directors. The Association shall notify members whose dues are three months in arrears, and those whose dues are not paid within three months thereafter shall be automatically dropped from membership in the Association.

### **Section 5. Resignation**

Members may voluntarily resign from the Association on giving notice to the board of directors or their designee.

## **ARTICLE VI - COMMITTEES**

### **Section 1. Appointment and Authority**

The board of directors may delegate such of their powers as they consider advisable, except those powers which by law, the articles of organization, policies of the Association or these bylaws, may not be so delegated, to such committees as the board of directors may from time to time establish. Members of such committees, unless otherwise specified, need not be directors.

### **Section 2. Executive Committee**

The Executive Committee shall have the mission to provide general management support to the board of directors in fulfilling policies, strategies and operational responsibilities, and shall consist of the president, vice president, secretary, treasurer and **no more than three other directors** elected annually by the board of directors. The Executive Committee shall have the power to transact all regular business of the Association during the interim between meetings of the board

of directors; provided that such action taken by the Executive Committee shall not conflict with the policies and expressed wishes of the board of directors, and provided further that the Executive Committee shall refer all matters of major importance to the board of directors. A majority of the members of the Executive Committee then holding office shall constitute a quorum. The immediate past president shall be an ex-officio member of the Executive Committee for a term of one-year starting at the conclusion of the president's elected term and shall be counted in constituting a quorum.

### **Section 3. Finance Committee**

The Finance Committee shall have the mission to provide planning, policies and oversight in support of the board of directors' fiduciary and risk management responsibilities. It shall be composed of the president, treasurer and up to three other members who shall be appointed by the president with approval of the board of directors. The duty of this committee shall be: (a) to prepare and maintain financial and risk management policies; (b) to prepare annual operating and capital budgets for board of directors; (c) to recommend investments for board of directors approval and to review them at least annually; (d) to implement internal audit procedures; (e) to review annually the adequacy of the insurance coverage; and (f) to appoint a certified public accountant whose responsibilities shall be (i) to compile the association's annual financial statement; (ii) to prepare the federal and Massachusetts returns for organizations exempt from income tax, and (iii) to conduct independent financial audits or reviews as required by law. It shall be the responsibility of the Finance Committee to present the financial audit results to the board of directors.

### **Section 4. Board Development Committee**

The Board Development Committee shall have the mission to support the board of directors in the selection and education of board of directors members and committee chairs, and in the self-assessment of board of directors performance. The committee shall have the following on-going responsibilities: (a) to review the current membership to identify candidates for directors, officers and committee positions; (b) to contact potential candidates to discuss the work of the board of directors and their interest in serving; (c) to recommend a slate of candidates to the board of directors; (d) to orient new board and committee members; (e) to maintain an up-to-date board handbook; (f) to help the board assess its performance; (g) to monitor board retention and address problems when appropriate; and (h) to recognize the service of dedicated board and committee members.

## **ARTICLE VII - MEETINGS OF THE MEMBERS**

### **Section 1. Place**

All meetings of the members shall be held at such a place within the United States of America as is named in the call.

### **Section 2. Annual Meeting**

The annual meeting of the members shall be held on the third Tuesday in January and shall be called by the president or any other officer. In the event the annual meeting is not held on such a

date a special meeting in lieu of the annual meeting may be held with all the force and effect of an annual meeting.

### **Section 3. Special Meetings**

Special meeting of the members may be called by the president or by any six directors, and shall be called by the secretary, or in the case of the death, absence, incapacity or refusal of the Secretary, or by any other officer, upon written application of any member or members entitled to vote thereat. In case none of the officers is able or willing to call a special meeting, the Supreme Judicial or Superior Court, upon application of said member or members entitled to vote thereat, shall have jurisdiction in equity to authorize one or more of such members to call a meeting by giving such notice as is required by law.

### **Section 4. Notice**

All meetings of the membership shall be called by giving at least seven days notice to each member stating the place, day and hour of the meeting and the purpose thereof. Notices shall be mailed postpaid to or delivered at the address, including electronic mail, of the members as they appear on the books of the Association. Whenever a notice of the meeting is required to be given a member under applicable law, the articles of organization, or these bylaws, a written waiver, thereof, executed before or after the meeting by such member or his attorney thereunto authorized and filed with the records of the meeting, shall be deemed equivalent to such notice. Notwithstanding the foregoing, notice of any change of the date fixed in the bylaws for the annual meeting shall be given to all members at least twenty days before the new date fixed for such meeting.

### **Section 5. Quorum**

A quorum at the annual meeting or at any special meeting of the membership shall be ten members.

### **Section 6. Voting**

At all meetings of the members, every voting member as defined in these bylaws, shall be entitled to one vote. When a quorum is present at any meeting, the majority of the members represented thereat, except when a larger vote is required by law, articles of organization, or these bylaws, decide any question before the meeting.

## **ARTICLE VIII - MEETINGS OF THE BOARD OF DIRECTORS**

### **Section 1. Place**

Meetings of the board of directors shall be held at such a place within the United States of America as is named in the call.

### **Section 2. Regular Meetings**

Regular meetings may be held at such times as the directors may fix.

### **Section 3. Special Meetings**

Special meetings of the board of directors may be called by the president or any other officer or

director at other times throughout the year.

**Section 4. Notice**

No notice need be given for a regular or annual meeting. Forty-eight's hours notice by mail, electronic mail, telephone or word of mouth shall be given for a special meeting unless shorter time notice is adequate under the circumstances. A notice or waiver of notice need not specify the purpose of any special meeting. Notice of a meeting need not be given to any officer or director if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any officer or director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

**Section 5. Quorum**

A majority of the members of the board of directors then in office shall constitute a quorum, but a smaller number may adjourn finally or from time to time without further notice until a quorum is present. If a quorum is present, a majority of the members of the board of directors present may take action on behalf of the board of directors except to the extent that a larger number is required by law, the articles of organization or these bylaws.

**Section 6. Action by Consent**

Any action required or permitted to be taken at any meeting of the board of directors may be taken without a meeting if all the members consent to the action in writing and the written consents are filed with the records of the meeting. Such consents shall be treated for all purposes as a vote at a meeting. Members of the board of directors of the Association or any committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute a meeting.

**Section 7. Vote of Interested Directors**

A director who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Association contemplates contracting or transacting business shall disclose his or her relationship or interest to other directors acting upon or in reference to such contract or transaction. No director so interested shall vote on such contract or transaction, but he or she may be counted for purpose of determining a quorum. The affirmative vote of a majority of the disinterested directors shall be required before the Association may enter into such contract or transaction.

In case the Association enters into a contract or transacts business with any firm, corporation or association of which one or more of its directors is a member, stockholder, trustee, director, officer, of employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such director or directors have or may have interests therein that are or might be adverse to the interests of the Association. No director or directors having disclosed such adverse interest shall be liable to the Association or to any creditor of the Association or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such director or directors be accountable for any gains or profits to be realized thereon.

Notwithstanding the foregoing, nothing in this section shall require a director who is a member, stockholder, trustee, director, officer or employee of an affiliate of the Association to disclose his or her relationship with such affiliate and such relationship in connection with a discussion of, or vote on, any matter dealing with such affiliate and such relationship shall not be deemed a conflict of interest for any purpose, unless otherwise expressly determined by an affirmative vote of the majority of all the directors then in office. For purposes of this section, an affiliate shall mean any other nonprofit corporation which is described in and qualified under section 501(c)(3) of the Internal Revenue Code.

## **ARTICLE XI - OTHER PROVISIONS**

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the Association, for its voluntary dissolution, or for limiting, defining, or regulating the power of the Association, or of its officers or members, are as follows:

### **Section 1. Partnerships**

The Association may be a partner in any enterprise which it would have power to conduct itself.

### **Section 2. Prohibition on Distribution of Assets**

No part of the assets of the Association and no part of any net earnings of the Association shall be divided among or inure to the benefit of any officer or director of the Association, or any private individual, or be appropriated for any purposes other than the purposes of the Association as herein set forth, except that the Association shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of its purposes.

### **Section 3. Prohibition of Political Activities**

No substantial part of the activities of the Association shall be the carrying on of any propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

### **Section 4. Dissolution of the Association**

Except as may be otherwise required or permitted by law, the Association may at any time authorize a petition for dissolution to be filed with the Supreme Judicial Court for the Commonwealth of Massachusetts pursuant to General Laws of Massachusetts, Chapter 180 Section 11A, by the affirmative vote of a majority of the directors of the Association then in office; provided, however, that in the event of any liquidation, dissolution, termination, or winding up of the Association, the property or assets of the Association remaining after paying its debts and obligations, shall be conveyed, transferred, distributed and set over outright to one or more educational, charitable, or literary institutions or organizations, created for nonprofit purposes similar to those of this Association, as long as such organization is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. A majority of the total number of directors of the Association shall so designate the Association (s) to receive the contributions,

and in what proportion.

### **Section 5. Limitation of Liability**

No officer, director or agent shall be personally liable to the Association or its members for monetary damages for or arising out of a breach of fiduciary duty as an officer, director or agent notwithstanding any provision of the law imposing such liability; provided, however, that the foregoing shall not eliminate or limit the liability of an officer or director to the extent that such liability is imposed by applicable law (i) for a breach of the director's duty of loyalty to the Association, or its members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or (iii) for any transaction from which the officer or director derived an improper personal benefit. The foregoing provision shall not eliminate or limit the liability of an officer, director or agent for any act or mission occurring prior to the date upon which the foregoing provision became effective. To the extent permitted by law, no amendment or deletion of the foregoing provisions of this paragraph (i) which restricts or limits the limitation on liability provided there under to officers and directors shall apply or be effective with respect to actions and omissions of any officer, director or agent occurring prior to the date said amendment or deletion became effective.

### **Section 6. Indemnification**

The Association shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as a director, president, vice president, treasurer, assistant treasurer, clerk, assistant clerk, executive director or other officer or agent of the Association (hereinafter "Indemnified Officer (s)"), against any and all expenses and liabilities, including, without limitation, counsel fees, judgments, fines, excise taxes, penalties and settlement payments, reasonable incurred by or imposed upon such Indemnified Officers in connection with any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative, in which an Indemnified Officer may become involved by reason of serving or having served in such capacity; provided that no indemnification shall be provided for any such Indemnified Officer with respect to any matter as to which the Indemnified Officer shall have been finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that such Indemnified Officer's action was in the best interests of the Association.

Such indemnification may, to the extent authorized by the board of directors of the Association, include payment by the Association of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such proceeding or action, upon receipt of any undertaking by the person indemnified to repay such payment if such Indemnified Officer shall not be entitled to indemnification under this paragraph, which undertaking may be accepted without regard to the financial ability of such Indemnified Officer to make repayment.

The payment of any indemnification or advance shall be conclusively deemed authorized by the Association under this paragraph, and each director and officer of the Association approving such payment shall be wholly protected, if:

(i) The payment has been approved or ratified (1) by a majority vote of a quorum of either (a) the members who are not at that time parties to the proceeding or (b) the directors who

Bylaws of the Newburyport Art Association, Inc. Revision of January 17, 2006

are not at the time parties to the proceeding or (2) by a majority vote of a committee of two or more directors who are not at the time parties to the proceeding and are selected for this purpose by the full board of directors (in which selection directors who are parties may participate); or

(ii) The action is taken in reliance upon the opinion of an independent legal counsel (who may be counsel to the Association) appointed for the purpose by vote of the directors in the manner specified in these bylaws or, if that manner is not possible, appointed by a majority of the full board of directors then in office; or

(iii) The directors have otherwise acted in accordance with the standard of conduct applied to directors under MGL c.180; or

(iv) A court having jurisdiction shall approve the payment.

The indemnification provided hereunder shall insure to the benefit of the heirs, executors and administrators of any Indemnified Officer entitled to indemnification hereunder.

The right of indemnification under this paragraph shall be in addition to and not exclusive of all other rights to which any person may be entitled. Nothing contained in this paragraph shall affect any rights to indemnification to which Association employees, agents, directors, officers and other persons may be entitled by contract or otherwise under law.

No amendment or repeal of the provisions of this paragraph which adversely affects the rights of an Indemnified Officer under this paragraph shall apply with respect to such Indemnified Officer's acts or omissions that occurred at any time prior to such amendment or repeal, unless such amendment or repeal was voted for by or was made with the written consent of, such Indemnified Officer.

#### **ARTICLE XII - PARLIAMENTARY AUTHORITY**

The current edition of *Roberts Rules of Order* shall be the final source of authority in all questions of parliamentary procedures when such rules are consistent with the bylaws of the Association and any special rules of order the Association might adopt.

#### **ARTICLE XIII - AMENDMENTS**

These bylaws may be altered, amended or repealed, in whole or in part, by the affirmative vote of a majority of the members present and voting at any meeting, the notice of which contains a statement of the proposed alteration or amendment. The board of directors may also make, amend or repeal these bylaws in whole or in part and shall give written notice of such action to the membership before the next meeting of members. Any such alteration, amendment or repeal by the board of directors may then be altered, amended or repealed, in whole or in part, by the affirmative vote of a majority of the membership present and entitled to vote thereon.

Notwithstanding the above provision of this Article, any amendment, alteration, or repeal of a bylaw by the board of directors as provided for in this Article shall be valid and given full force and effect unless and until acted upon by the membership.