

BYLAWS  
OF  
PEABODY HISTORICAL SOCIETY AND MUSEUM (PHS)

**PREAMBLE**

The following Bylaws shall be subject to, and governed by, the Non-Profit Corporation Act of Massachusetts and the articles of Incorporation of Peabody Historical Society and Museum (PHS). In the event of a direct conflict between the herein contained provisions of these Bylaws and the mandatory provisions of the Non-Profit Corporation Act of Massachusetts, said Non-Profit Corporation Act shall be the prevailing controlling law. In the event of a direct conflict between the provisions of these Bylaws and the Articles of Incorporation of the PHS, it shall then be these Bylaws which shall be controlling. These bylaws replace the amended bylaws of 2018.

**MISSION STATEMENT**

The mission of the Peabody Historical Society and Museum is the collection, preservation and study of historical properties and matters associated with the City of Peabody. Furthermore, the organization seeks to educate the public at large about these matters and strives to develop a greater understanding of the City and its people through the study and appreciation of its past.

**ARTICLE 1 – NAME**

The legal name of the Non-Profit Corporation/Organization shall be known as the Peabody Historical Society and Museum (PHS) and shall herein be referred to as the “PHS”.

**ARTICLE 2 – PURPOSE**

The purpose for which the PHS is formed is set forth in the attached Articles of Incorporation.

The PHS is established within the meaning of IRS Publication 557 Section 501(c) (3) Organization of the Internal Revenue Code of 1986, as amended (the “Code”) or the corresponding section of any future federal tax code and shall be operated exclusively for the collection, preservation and study of historical matters pertaining to the city of Peabody, Massachusetts; the purchase, preservation and maintenance of significant historic properties located in the city of Peabody, Massachusetts, Furthermore, the PHS seeks to educate the public at large about these matters and strives to develop a greater understanding of the city and its people through the study, preservation and appreciation of its past.

In addition, the PHS has been formed for the purpose of performing all things incidental to, or appropriate in, the foregoing specific and primary purposes, including any fundraising activities directed at meeting these objectives. However, the PHS shall not, except to an insubstantial degree, engage in any activity or the exercise of any powers which do not further its primary non-profit purposes.

The PHS shall hold and may exercise all such powers as may be conferred upon any nonprofit organization by the laws of the State of Massachusetts and as may be necessary or expedient for the administration of the affairs and attainment of the purposes of the PHS. At no time and in no event shall the PHS participate in any activities which have not been permitted to be carried out by a Corporation/Organization exempt under Section 501 (c) of the Internal Code of 1986 (the "Code").

### **ARTICLE 3 – OFFICES**

The principal office of the PHS will be located at 35 Washington St., Peabody, Massachusetts 01960.

The PHS may have other such offices as the Board of Directors may require.

The properties and assets of the PHS are irrevocably dedicated to and for non-profit purposes only. No part of the net earnings, properties, or assets of the PHS, on dissolution or otherwise, shall benefit any person or any member, director, or officer of the PHS. On liquidation or dissolution, all remaining properties and assets of the PHS shall be distributed and paid over to an organization dedicated to non-profit purposes which has established its tax-exempt status pursuant to Section 501 (C) of the Code.

### **ARTICLE 4 – MEMBERSHIP**

Any person whose current dues have been paid will be considered a member in good standing. Dues and privileges will be in accordance with established annual membership policies. The annual dues must be paid in advance of the Annual Meeting, held in May, for any member to be eligible to vote. Each member is entitled to one vote at meetings under such rules as the Board of Directors may make. Thirty-six (36) members will constitute a quorum for the transaction of business at the Annual Meeting of the PHS.

### **ARTICLE 5 – BOARD OF DIRECTORS**

#### **5.1 General Powers and Responsibilities**

The PHS will be governed by a Board of Directors (the "Board"), which shall have all the rights, powers, privileges and limitations of liability of directors of a non-profit corporation organized under the Non-Profit Corporation Act of Massachusetts. The Board will establish policies and

directives governing business and programs of the PHS and will delegate to the President, applicable Committee and PHS staff, subject to the provisions of these Bylaws, authority and responsibility to see that the policies and directives are appropriately followed.

### **5.2 Number and Qualifications**

The Board will have up to, but no fewer than eleven (11), members. The number of Board members may be increased or decreased by the affirmative vote of a two-thirds majority of the then serving Board of Directors. A Board member need not be a resident of the City of Peabody, Massachusetts.

In addition to the regular membership of the Board, the immediate past President will be an *Ex-Officio Board Member*, with no voting rights. This is an honorary advisory position.

### **5.3 Board Compensation**

The Board will receive no compensation other than for reasonable expenses. However, provided the compensation structure complies with Sections relating to “Contracts Involving Board Members and/or officers” as stipulated under these Bylaws, nothing in these Bylaws will be construed to preclude any Board member from serving the PHS in any other capacity and receiving compensation for the services rendered. See Section 6.5. The Secretary of the Board may receive compensation for their work.

### **5.4 Board Elections**

The Board will present nominations for new and renewing Board members to the general membership for approval at the annual meeting held in May of each year. At the annual meeting nomination for Board membership can be made by any member in good standing. In the case of a Board vacancy the Board can, by a two-thirds majority of those Board members at a Board meeting at which a quorum is present, appoint a member in good standing to complete the term of the vacant position.

### **5.5 Term of Board**

All appointments to the Board will be for a term of 1 year. Commencing at the annual meeting in May of 2020 no person will serve more than 5 consecutive terms in the same position unless a majority of the Board, during the course of a Board meeting at which a quorum is present, votes to allow a Board member to serve an additional 1 year term. After serving the maximum total number of consecutive years on the Board, a member may be eligible for reconsideration as a Board member after one year has passed since the conclusion of such Board member’s service. Fulfilling an incomplete term is not considered part of the term limit.

### **5.6 Vacancies**

A vacancy on the Board of Directors may exist at the occurrence of the following conditions:

- a) The death, resignation, or removal of any director.
- b) The declaration by the Board of a vacancy in the office of a director who has been declared of unsound mind by a final order of court, convicted to a felony, found by final judgment of any court to have breached a duty of the Corporation Code and/or Act of the law dealing with the standards of conduct for a director, or has missed three (3) consecutive unexcused meetings ( an excused meeting is one in which the Board member has notified the Board in advance and the Board has voted to allow the absence) meetings of the Board of Directors, or a total of 6 meetings of the Board during any one calendar year.
- c) An increase in the authorized number of directors; or
- d) The failure of the members in good standing, at any annual or other meeting of director(s) at which directors are to be elected, to elect the full authorized number of directors.

The Board of Directors, by way of affirmative vote of two thirds (2/3) of the directors then current in office, may remove any director without cause at any regular or special meeting, provided that the director to be removed has been notified in writing in the manner set forth in **Article 5 – Meetings**. Specifically, notification must be given that removal of a specific Director would be considered at the meeting.

Except as provided in this paragraph, any director may resign effective upon giving written notice to the President of the Board and/or to the Board of Directors, unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a future time, a successor may be designated to take office when the resignation becomes effective. Any vacancy on the Board may be filled by vote of a two-thirds majority of the directors then in office, whether the number of directors then in office is less than a quorum, or by vote of a sole remaining director. No reduction of the authorized number or directors will have the effect of removing any director before that director’s term of office expires.

A Board member elected to fill a vacancy will be elected for the unexpired term of his or her predecessor in office.

### **5.7 Resignation**

Each Board member will have the right to resign at any time upon written notice thereof to the President of the Board, Secretary of the Board, or to the Board of Directors. Unless otherwise stated in the notice, the resignation will take effect upon receipt thereof, and acceptance of such resignation will take effect upon receipt, thereof, and acceptance of such resignation will not be necessary to make it effective.

## **5.8 Removal**

A Board member may be removed, with or without cause, at any duly constituted meeting of the Board, by the affirmative vote of a two-thirds majority of then-serving Board members.

## **5.9 Meetings**

**5.9.1 Regular Meetings.** The Board will meet at least ten (10) times per year. Regular meetings will be held monthly on the first Monday of the month, except in August and December. Notice will be given at least seven (7) days prior. Remote participation in a Board meeting by means of communications equipment may be allowed.

**5.9.2 Special Meetings.** The Chair of the Board or any three (3) regular Board members may call a special meeting of the Board to address any issue or issues relating to the operation of the Society. A seven (7) day written notice will be served upon each Board member via hand delivery, regular mail, email, telephone or fax. The person(s) authorized to call such special meetings of the Board may also establish the place the meeting is to be conducted, so long as it is a reasonable place to hold any special meeting of the Board. Remote participation in a special Board meeting by means of communications equipment may be allowed.

**5.9.3 Emergency Meetings.** The Board in an emergency can vote either online or by telephone to authorize emergency action. The vote taken must be confirmed by formal vote at the next formal meeting of the Board.

## **5.10 Minutes**

The Secretary of the Board will be responsible for the recording of all minutes of every meeting of the Board in which business will be transacted. However, if the Secretary is unavailable, the Chair of the Board will appoint an individual to act as Secretary at the meeting. The Secretary, or the individual appointed to act as Secretary will prepare the minutes of the meetings, which will be delivered to the PHS to be placed in the minute book. A copy of the minutes will be delivered to each Board member via either regular mail, hand delivered, or by electronic mail. The minutes should be prepared and transmitted to the board members in a timely manner, preferably, within one week of the meeting to which they pertain.

## **5.11 Action by Written Consent**

Any action required by law to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken without a meeting if consent in writing setting forth the action to be taken will be signed by all Board members. The number of directors in office must constitute a quorum for an action taken by unanimous written consent. Such consent will be placed in the minute book of the PHS and will have the same force and effect at unanimous vote of the Board taken at an actual meeting. The Board members written consent

may be executed in multiple counterparts or copies, each of which will be deemed an original for all purposes. In addition, facsimile signatures and electronic signatures or other electronic “consent click” acknowledgements will be effective as original signatures.

#### **5.12 Quorum**

At each meeting of the Board of Directors the presence of one-half plus one of the directors in office will constitute a quorum for the transaction of business. If at any time the Board consists of an even number and a vote results in a tie, the vote of the Chair of the Board will be the deciding vote. If a quorum is not present at a meeting, the Board members present may adjourn the meeting without further notice until a quorum is present. However, a Board member will be considered present at any meeting of the Board or Board Committees if during the meeting he or she is present via telephone or web conferencing with the other Board members participating in the meeting.

#### **5.13 Voting**

Each Board member will only have one vote.

#### **5.14 Funds**

No obligation of funds in excess of One Thousand Dollars (\$1000.00) will be made unless by prior authorization of the Executive Board, except in case of emergency. All contracts for services between the PHS and any private party in excess of said amount will be in writing and contain an indemnity clause in favor the PHS. Except for emergency repairs or alterations, all tradesmen hired by the Society to complete work on our property must have on file with us a Certificate of Insurance indemnifying the Society against loss and must have a W-9 form on file with the PHS.

### **ARTICLE 6 – OFFICERS**

#### **6.1 Officers and Duties**

The members in good standing will elect officers of the PHS which will include a President of the Board (Chief Executive Officer), 1<sup>st</sup> Vice President, 2<sup>nd</sup> Vice President, Treasurer (Chief Financial Officer), Secretary of the Board, Librarian, Historian and four additional At-Large members and any such other officers as the Board may designate. The same person may hold any number of offices, except that neither the Secretary nor the Treasurer may serve concurrently as the President. In addition to the duties in accordance with this Article, officers will conduct all other duties typically pertaining to their offices and other duties which may be required by law, Articles of Incorporation, or by these bylaws, subject to control of the Board of Directors, and they will perform any other such additional duties which the Board of Directors may assign to them at their discretion.

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The officers will be selected by a majority of the members in good standing at its annual meeting, and will serve the needs of the Board, subject to all the rights, if any, of any officer who may be under a contract or employment. Therefore, without and bias or predisposition to the rights of any officer that may be under any contract of employment, any officer may be removed with cause by the Board. All officers have the right to resign at any time by providing notice in writing to the President, and/or Secretary of the PHS without bias or predisposition to all rights, if any, of the PHS under any contract to which said officer is a part thereof. All resignations will become effective upon the date on which the written notice of resignation is received or at any time later as may be specified within the resignation; and unless otherwise indicated with the written notice, a stated acceptance of the resignation will not be required to make the resignation effective.

All vacancies in any office because of death, resignation, disqualification, removal, or for any other cause, will be filled in accordance to the herein prescribed bylaws for regular appointments to such office. The compensation, if any, of the officers will be fixed or determined by the Board of Directors.

#### **6.2 President of the Board (Chief Executive Officer)**

It will be the responsibility of the President of the Board, when present, to preside over all meetings of the Board of Directors. The President is authorized to execute, in the name of the PHS, any and all contracts or other documents which may be authorized, either generally or specifically, by the Board to be executed by the PHS, except when required by law that the President's signature must be provided.

It will be the responsibility of the President to supervise and conduct all activities and operations of the PHS, subject to the control, advice and consent of the Board of Directors. The President will keep the Board of Directors completely informed, will freely consult with them in relation to all activities of the PHS, and will see that all orders and/or resolutions of the Board are carried out to the effects intended. The Board of Directors may place the President under a contract of employment where appropriate. The President will be empowered to act, speak for, or otherwise represent the PHS between meetings of the Board. The President, with the advice and consent of the Personnel Committee, will be responsible for the hiring and firing of all personnel, and will be responsible for keeping the Board informed at all times of staff performance and for implementing any personnel policies which may be adopted and implemented by the Board. The President, is authorized to contract, receive, deposit, disburse and account for all funds of the PHS, to execute in the name of the PHS all contracts and other documents authorized either generally or specifically by the Board to be executed by the PHS, and to negotiate any and all material business transactions of the PHS.

#### **6.3 First Vice President**

In the absence of the President, or in the event of his/her inability or refusal to act, it will then be the responsibility of the First Vice President to perform all the duties of the President, and in doing so will have all authority and powers of, and will be subject to all the restrictions on, the President. The duties of the First Vice President will include the Chairmanship of a Standing Committee designated by the President.

#### **6.4 Second Vice President**

In the absence of the President or First Vice President, or in the event of their inability or refusal to act, it will then be the responsibility of the Second Vice President to perform all the duties of the President, and in doing so will have all authority and powers of, and will be subject to all the restrictions on, the President. The duties of the Second Vice President will include the Chairmanship of a Standing Committee as designated by the President.

#### **6.5 Secretary of the Board**

The Secretary, or his/her designee, will be the custodian of all records and documents of the PHS which are required to be kept at the principal office of the PHS, and will act as secretary at all meetings of the Board of Directors, and will keep the minutes of all such meetings on file in hard copy or electronic format. S/he will attend to the giving and serving of all notices of the PHS.

The Secretary may, subject to annual review and approval by the Board, receive an annual stipend for the performance of these duties.

#### **6.6 Treasurer (Chief Financial Officer)**

It will be the responsibility of the Treasurer to keep and maintain, or cause to be kept and maintained, adequate and accurate accounts of all the properties and business transactions of the PHS, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements.

The Treasurer will be responsible for ensuring the deposit of, or cause to be deposited, all money and other valuables as may be designated by the Board of Directors. Furthermore, the Treasurer will disburse, or cause to be disbursed, the funds of the PHS, as may be ordered by the Board of Directors, and will render to the President, and directors, whenever they request it, an account of all the Treasurer's transactions and of the financial condition of the PHS.

The Treasurer will give the PHS a bond, if so requested and required by the Board of Directors, in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of the Treasurer's office and the restoration to the PHS of all its books, papers, vouchers, money and other property of every kind in the Treasurer's possession or under the

Treasurer's control upon the Treasurer's death, resignation, retirement, or removal from the office. The PHS will pay the cost of such a bond.

The Treasurer will serve as the Chair of the Finance Committee.

The Treasurer, may, subject to an annual review and approval of the Board, receive an annual stipend for the performance of these duties.

#### **6.7 Historian**

The Historian will be responsible for ensuring that all queries relating to local history from both the membership and public at large are researched and answered.

#### **6.8 Librarian**

The Librarian, in conjunction with the Curators, will be the custodian of all books, papers, manuscripts and writings, after their accession. All other articles in the collection of the PHS will be in the custody of the Curators.

#### **6.9 President Emeritus**

The President Emeritus is the immediate past president of the PHS. She/he can attend all Board meetings and can participate in the meetings but does not have a vote. Unless prohibited by Article 7.2 she/he is to serve on the Audit Committee. She/he can serve on any other Committee if appointed by the President.

### **ARTICLE 7 – COMMITTEES**

The Board of Directors may designate one or more committees to exercise all or a portion of the authority of the Board, to the extent of the powers specifically delegated in the resolution of the Board or in these bylaws. Each committee will consist of one (1) or more directors and may also include persons who are not on the Board but whom the directors believe to be reliable and competent to serve at the specific committee. An employee of the PHS may not serve on a committee with oversight over another employee. Due to their underlying confidential nature and authority the following committees of the Board of Directors may not have any non-director members: Personnel and Finance. (See specific comments under these designated committees). The Board may designate one or more alternative members of any committee who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the directors then in office, provided that a quorum is present. The Board of Directors may also designate one or more advisory committees that do not have the authority of the Board. However, no committee, regardless of Board resolution, may:

- a) Approve of any action that, pursuant to applicable Law, would also require the affirmative vote of the Board if this were a membership vote.
- b) Fill vacancies on, or remove the members of, the Board of Directors or any committee that has the authority of the Board.
- c) Fix compensation of the directors serving on the Board or any committee.
- d) Amend or repeal the Articles of Incorporation or bylaws or adopt new bylaws.
- e) Amend or repeal any resolution of the Board of Directors that by its express terms cannot be amended or repealed.
- f) Appoint any other committees of the Board of Directors or their members.
- g) Approve a plan of merger, consolidation, voluntary dissolution, bankruptcy, or reorganization; or a plan for the sale, lease, or exchange of all or considerably all of the property and assets of the PHS otherwise than in the usual and regular course of its business, or revoke any such plan.
- h) Approve any self-dealing transaction, except as provided pursuant to law.

Unless otherwise authorized by the Board of Directors, no committee will compel the PHS in a contract or agreement to expand PHS funds.

### **7.1 Meetings and Actions of Committees**

Meetings and actions of all committees will be governed by and held and taken in accordance with the provisions of **Article 5 – Board of Directors** of these bylaws concerning meetings and actions of the directors. Special meetings of committees may also be called by the Board of Directors. Notice of special meetings of committees will also be given to all alternate members, who will have the right to attend all meetings of the committee. A report of any meeting held by a Committee must be made at the next regular Board meeting. At a minimum the report should contain the subject material discussed and any decision/recommendation made. The Board of Directors may adopt rules not consistent with provisions of these bylaws or the governance of any committee.

If a director relies on information prepared by a committee of the Board on which the director does not serve, the committee must be composed exclusively of any or any combination of (a) directors, (b) directors or employees of the PHS whom the director believes to be reliable and competent in the matters presented, or (c) counsel, independent accountants, or other persons as to matters which the director believes to be within that person’s professional or expert competence.

### **7.2 Committees:**

#### **7.2.1 Standing Committees**

There will be six (6) Standing Committees of the PHS: Personnel, Finance, Audit, Building, Curatorial, and Scholarship.

The President will appoint, except as set forth under each Committee description noted below) the chairpersons and members of all committees from the Board of Directors and where permitted from PHS membership in good standing. The Board of Directors will ratify the appointment of the Chairpersons. All committee appointments will terminate upon the election of a new President.

All committees will function within the guidelines and budgets established by the Board of Directors

The President will be an ex officio member of all committees, except the Audit Committee, and may attend any committee meetings. The President should be kept informed of the date and time of any meeting and may send anyone, if they are a member in good standing of the PHS, to any committee meeting as the President's representative.

The committee Chairperson will provide a report of what transpired at the committee meeting to the Board at the next regularly scheduled Board meeting.

#### **7.2.2 Personnel Committee**

The President of PHS is the Chair of this Board. The Committee should consist of two (2) Board members and its purpose is to establish, implement and oversee all personnel policies and to ensure that they comply with all applicable non-discriminatory laws and regulations. Copies of applicable policies should be reduced to writing, compiled into a policy manual, approved by the full Board, maintained when changes are made, kept in an area , where it is easily accessible by all applicable parties (staff, employees, Board members), etc. The Policy Manual should be reviewed and re-approved by the full Board annually. It is this Committees responsibility to hire, direct, prescribe the duties of, and discharge all employees. The Committee with the approval of the full Board also sets the compensation and benefits for all PHS's employees.

#### **7.2.3 Finance Committee**

The Treasurer of the PHS will be the Chair of this Committee. The Finance Committee will consist of Three (3) members, two of whom must be members of the Board. The 3<sup>rd</sup> member must be a must be a member in good standing of the Peabody Historical Society. No Finance Committee member can consecutively serve as a member of the Audit Committee. The Finance Committee oversees development of the budget; ensures accurate tracking/monitoring/accountability for funds; ensures adequate financial

controls; maintains records as required by federal and state legal requirements, prepares state and federal tax returns and oversees PHS's Investments.

#### **7.2.4 Audit Committee**

The Board, at its sole discretion, will appoint an Audit Committee, which will otherwise govern any committee's operations, and may be comprised of one or more persons including persons other than Board members of the PHS. The President Emeritus, unless prohibited by one of the prohibitions listed below, can serve on this committee.

The membership of the Audit Committee will not include the following persons:

- a) The President (Chair of the Board of the Board) of the PHS
- b) The Treasurer of the PHS
- c) Any employee of the PHS
- d) Any member of the Finance Committee
- e) Any person with a material financial interest in any entity doing business with the PHS

The Audit Committee will make recommendations to the Board of Directors regarding the hiring and termination of an auditor, who will be an independent certified public accountant, and may be authorized by the Board to negotiate the auditor's compensation.

The Audit Committee will consult with the auditor (CPA firm retained by the PHS) to assure its members that the financial affairs of the PHS are in order and after review will determine whether to accept the audit.

It is the responsibility of the Audit Committee to ensure that the auditor's firm adheres to the standards for auditor independence, as set forth in the latest version of the Government Auditing Standards, which have been published by the Comptroller General of the United States, or any standards established and published by the Attorney General of Massachusetts.

#### **7.2.5 Building Committee**

The Building Committee will consist of three (3) members. The Chairpersons of this Board must be a Board member. The Building Committee has the responsibility for the purchase, operation, maintenance and repair of PHS's buildings and equipment. The Building Committee also has operational oversight over PHS's Facilities Manager. The Building

Committee has the authority to make expenditures up to \$5,000 with subsequent Board notification, and emergency expenditures, as needed with subsequent Board approval. In an emergency, if possible, the Building Committee should seek Board approval using telephonic or online means before making expenditures over \$5,000.

#### **7.2.6 Curatorial Committee**

The Committee consists of three (3) members who have oversight responsibility for the Curatorial Staff and function. The Chairperson of this committee must be a Board member.

#### **7.2.7 Scholarship Committee**

The Committee may contain up to three (3) members. The Chairperson of this committee must be a Board member. The Board solicits applicants for available PHS Scholarships, reviews the scholarship applications, selects the recipient, notifies the Board as to who the recipient is, notifies the recipient and organizes and administers the awards ceremony.

#### **7.2.8 Temporary Committees**

At any time, the Board will establish Temporary Committees and task forces as advisable to assist with governance. A Temporary Committee is one that is established for a specific need or occasion and once the need or occasion has been met is disbanded. An example of a Temporary Committee is one that is established to organize a special anniversary i.e., 100<sup>th</sup> anniversary of the organization. Once the event has taken place the Committee is no longer needed and is dissolved.

### **ARTICLE 8 – STANDARD OF CARE**

#### **8.1 Loans**

The PHS will not make any loan of money or property to, or guarantee the obligation of, any director or officer, unless approved by the Massachusetts Attorney General; provided, however, that the PHS may advance money to a director or officer of the PHS or any subsidiary for expenses reasonably anticipated to be incurred in the performance of the duties of such officer or director so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

#### **8.2 Conflict of Interest**

The Conflict of Interest policy protects the interests of the PHS when a proposed transaction or arrangement might benefit the private interests of one of its officers or directors or might otherwise result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to

nonprofit and charitable organizations and is not intended as an exclusive statement of responsibilities.

#### **8.2.1 Restriction on Interested Directors**

Not more than one third (1/3) of the number of individuals serving on the Board of Directors at any time may be interested persons. An interested person is (1) any person currently being compensated by the PHS for services rendered to it within the previous twelve (12) months, whether as a full- time or part- time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director; and (2) any brother, sister, parent, ancestor, descendent, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this section will not affect the validity or enforceability of any transaction entered into by the interested person.

#### **8.2.2 Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors who are considering the proposed transaction or arrangement.

#### **8.2.3 Establishing a Conflict of Interest**

After the disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested person will leave the Board meeting while the potential conflict of interest is discussed and voted upon. The remaining Board members will decide if a conflict of interest exists.

#### **8.2.4 Addressing a Conflict of Interest**

If the Board determines that a proposed transaction or arrangement establishes a conflict of interest, the Board will proceed with the following actions.

- a) Any interested person may render a request or report at the Board meeting, but upon completion of said request or report the individual will be excused while the Board discusses the information and/or material presented and then votes on the transaction or arrangement proposed involving the possible conflict of interest.
- b) The Chair of the Board will, if deemed necessary and appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c) After exercising due diligence, the Board will determine whether the PHS and obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board will determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the best interest of the Corporation/Organization, for its own benefit, and whether it is fair and reasonable. It will make its decision as to whether to enter into the transaction arrangement in conformity with this determination.

#### **8.2.5 Violations of Conflict of Interest Policy**

Should the Board have reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, the Board will then inform the interested person on the basis for such belief and afford the interested person an opportunity to explain the alleged failure to disclose.

If, after hearing the interested person's explanation, and after making further investigation as may be warranted in consideration of the circumstances, the Board determines the interested person intentionally failed to disclose an actual or possible conflict of interest, it will take appropriate disciplinary and corrective action.

#### **8.3 Procedures and Records**

All minutes of the Board Meetings, when applicable, will contain the following information.

- a) The names of all the persons who disclosed or otherwise were found to have an interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
- b) The names of the persons who were present for discussions and any votes relating to the transaction or arrangement, the content of the discussions, including any alternatives to the proposed transaction or arrangement, and a record of any vote taken in connection with the proceedings.

#### **8.4 Acknowledgement of Conflict of Interest Policy**

Each director, principle officer, and member of a committee with Board delegated powers will be required to sign a statement which affirms that each person:

- (a) Has received a copy of the Conflict of Interest policy
- (b) Has read and understands the policy
- (c) Has agreed to comply with the policy; and
- (d) Understands that the Corporation/Organization is charitable, and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **8.5 Violation of Loyalty-Self-Dealing Contracts**

A self-dealing contract is any contract or transaction (i) between the PHS and one or more of its Directors, or between the PHS and any corporation, firm, or association in which one or more of the Directors has a material interest (“Interested Director”), or (ii) between the PHS and a corporation, firm, or association of which one or more of its directors are Directors of the PHS. Said self-dealing will not be void or voidable because such Director(s) of corporation, firm, or association are parties or because said Director(s) are present at the meeting of the Board of Directors or committee which authorizes, approves or ratifies the self-dealing contract, if:

- a) All material facts are fully disclosed to or otherwise known by the members of the Board and the self-dealing contract is approved by the Interested Director in good faith (without including the vote of any membership owned by said interested Director(s));
- b) All material facts are fully disclosed to or otherwise known by the Board of Directors or committee, and the Board of Directors or committee, and the Board of Directors or committee authorizes, approves, or ratifies the self-dealing contract in good faith-without counting the vote of the interest Director(s)-and the contract is just and reasonable as to the Corporation/Organization at the time it is authorized, approved, or ratified; or
- c) As to contracts not approved as provided in above sections (a) and/or (b), the person asserting the validity of the self-dealing contract sustains the burden of providing that the contract was just and reasonable as to the PHS at the time it was authorized, approved, or ratified.

Interested Director(s) may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof, which authorizes, approves, or ratifies a contract of transaction as provided for and contained in this section.

## **8.6 Indemnification**

To the fullest extent permitted by law, the PHS will indemnify its agents, as described by law, including its directors, officers, employees and volunteers and including persons formerly occupying any such position, and their heirs, executors and administrators, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any “proceeding”, and including any action by or in the right of the PHS, by reason of the fact that the person is or was a person as described in the Non-Profit Corporation Act. Such right of indemnification will not be deemed exclusive of any other right to which such persons may be entitled apart from this Article.

To the fullest extent permitted by law, and, except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification in defending and “proceeding” will be advanced by the PHS of an undertaking by or on behalf of that person to repay such amount unless it is ultimately determined that the person is entitled to be indemnified by the Corporation/Organization for those expenses.

The Corporation/Organization will have the power to purchase and maintain insurance on behalf of any agent of the Corporation/Organization, to the fullest extent permitted by law, against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, or to give other indemnification to the extent permitted by law.

## **ARTICLE 9 – EXECUTION OF CORPORATE INSTRUMENTS**

### **9.1 Execution of Corporate Instruments**

The Board of Directors may, at its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except when otherwise provided by law, and such execution or signature will be binding upon the PHS.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the PHS, promissory notes, deeds of trust, mortgages, other evidence of indebtedness of the PHS, other corporate/organization instruments or documents, memberships in other corporations/organization, and certificates of shares of stock owned by the PHS will be executed, signed, and/or endorsed by the President and Treasurer.

All checks and drafts drawn on banks or other depositories on funds to the credit of the PHS will be signed by such person or persons as the Board of Directors will authorize to do so.

### **9.2 Loans and Contracts**

No loans or advances will be contracted on behalf of the PHS and no note or other evidence of indebtedness will be issued in its name unless and except as the specific transaction is authorized by the Board of Directors. Without the express and specific authorization of the Board, no officer or other agent of the PHS may enter into any contract or execute and deliver any instrument in the name of the PHS.

## **ARTICLE 10 – RECORDS AND REPORTS**

### **10.1 Maintenance and Inspection of Articles and Bylaws**

The PHS will keep at its principal office the original or a copy of Articles of Incorporation and bylaws as amended to date, which will be open to inspection by the directors at all reasonable times during office hours.

#### **10.2 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns**

The PHS will keep at its principal office a copy of its federal tax exemption application and its annual information returns for three years from their date of filing, which will be open to the public inspection and copying to the extent required by law.

#### **10.3 Maintenance and Inspection of Other Corporate Records**

The PHS will keep adequate and correct books and records of accounts and written minutes of the proceedings of the Board and committees of the Board. All such records will be kept at a place or places as designated by the Board and committees of the Board, or in the absence of such designation, at the principal office of the PHS. The minutes will be kept in written or typed form, and other books and records will be kept either written or typed form or in any form capable of being converted into written, typed, or printed form. Upon leaving office, each officer, employee, or agent of the PHS will turn over to his or her successor or the Chair of the Board or President, in good order, such corporate/organization monies, books, records, minutes, lists, documents, contracts or other property of the PHS as have been in the custody of such officer, employee, or agent during his or her term of office.

Every director will have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the PHS and each of its subsidiary corporations/organizations. The inspection may be made in person or by an agent or attorney and will include the right to copy and make extracts of documents.

#### **10.4 Preparation of Annual Financial Statement**

The PHS will prepare annual financial statements using generally accepted accounting principles. Such statements will be audited by an independent certified public accountant, in conformity with generally accepted accounting standards, under supervision of the Audit Committee established by these bylaws. The PHS will make these financial statements available to the Massachusetts Attorney General and members of the public for inspection no later than 30 days after their preparation by the Certified Public Accounting firm hired by the PHS to prepare them.

#### **10.5 Reports**

The Board will ensure an annual report is sent to all directors within 30 days after they are prepared by the Certified Public Accounting firm the PHS hired to prepare them. The Annual report will contain the following information.

- a) The assets and liabilities, including trust funds, of this corporation at the end of the fiscal year.
- b) The principle change in assets and liabilities, including trust funds, during the fiscal year.
- c) The expenses or disbursements of the PHS for both general and restricted purposes during the fiscal year.
- d) The information required by Non-Profit Corporation /Organization Act concerning certain self-dealing transactions involving more than \$50,000 or indemnifications involving more than \$10,000 which took place during the fiscal year.

The report will be accompanied by any pertinent report from an independent accountant or, if there is no such report, the certificate of an authorized officer of the PHS that such statement was prepared without audit from the books and records of the PHS.

#### **ARTICLE II - FISCAL YEAR**

The fiscal year for this Corporation/Organization will end on April 30.

#### **11.1 Budget**

Beginning in January 1 of each year, all departments must prepare a budget with priorities for the fiscal year. This will be presented to the Board for approval in March and to the full membership in May at the annual meeting.

#### **ARTICLE 12 – AMENDMENTS AND REVISIONS**

To amend these bylaws, a two-thirds majority vote of the current directors is needed. Such action is authorized only at a meeting of the Board of Directors for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations, is given.

A recommendation of the proposed bylaw change, revision, amendment, is then forwarded to the membership of the PHS for consideration in either of the two following ways:

1. These Bylaws may be changed, revised, amended, by a two-thirds vote of all members present and voting at an annual meeting. Notice of the intended change will be mailed, hand delivered, or if requested by the member, electronically mailed to the member not less than 20 days in advance of the vote.

2. These Bylaws may be changed, amended, revised by a two-thirds vote of all members present and voting at any general meeting of the PHS membership, provided notice of the intended amendment be mailed, hand delivered, or if so requested by the member, electronically mailed to the member not less than 20 days in advance of the vote.

#### **ARTICLE 13 – CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the Non-profit Corporation Act as amended from time to time will govern the construction of these bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter; the singular number includes the plural and the plural number includes the singular, and the term “person” includes the PHS as well as a natural person. If any competent court of law will deem any portion of these bylaws invalid or inoperative, then so far as is reasonable and possible (i) the remainder of these bylaws will be considered valid and operative, and (ii) effect will be given to the intent manifested by the portion deemed invalid or inoperative.

**CERTIFICATE OF SECRETARY**

I, \_\_\_\_\_, certify that I am the current elected and acting Secretary of the PHS, and the above bylaws are the bylaws of this as adopted by the Board of Directors on May 13, 2020, and ratified by a majority of the membership at the annual meeting on May 13, 2020 and that they have not been amended or modified since the above.

**EXECUTED**, on this day, \_\_\_\_\_ in the County of Essex in the State of Massachusetts.