

November 16, 2017

**TO:** Board of Directors

**FROM:** Adam Fine

**RE:** Bylaws Amended and Restated for Final Review

---

**Background:**

ArtStream's Bylaws were last revised March 12, 2013. An amendment changing the terms from 2 years to three years and updating the role of the Treasurer and Secretary to current practice, was approved October 6, 2016 (addendum 2). Discussion at the September 6, 2017 Board meeting (addendum 1) resolved to:

- (a) Add a new section on the powers of the Board to **Article IV. Board of Directors:**
- (b) Add more specifics about how a Director may be removed to **Article IV. Section 4.05. Removal:**
- (c) Add a new statement regarding nondiscrimination to **Section IV. 4.07. Composition.**
- (d) Add a new section describing the Board's role in managing the Executive Director to **Article V. Elected Officers of the Corporation.**
- (e) Specify how many Directors are needed to call a special meeting of the Board in **Article VI. Section 6.03. Special Meetings.**
- (f) Add new section to define how many people are needed to take an action in writing without a meeting in **Article VI. Meetings. Section 6.04. Notice of Meetings**
- (g) Change the "simple majority" to allow a 2/3 vote to amend the bylaws in **Article XV. Amendments.**

Following the September 6, 2017 discussion, Adam Fine reviewed the Bylaws and recommended two additional changes:

- 1) Revise **Article IV, Section 4.07. Composition** and **Article XVI. Non-Discrimination** to match, and expand them to include "other characteristics protected by law".
- 2) Add the role of President who shall also serve as the Chair of the Board in **Article V. Section 5.01. Election/Vacancies** and **Article IV. Section 5.07. The Duties of the President.**

**Recommendation:**

Approve the amended and restated Bylaws as written.

**Rationale:**

After thorough discussion at the September 6, 2017 Board meeting, the Bylaws now clarify how the board operates, define roles and responsibilities, and simplify procedures such as votes and meetings. This also brings us one step closer to applying for the Maryland Standards of Excellence accreditation.

## **ADDENDUM 1: From the September 6, 2017 Board Meeting Minutes**

### **Add a new section on the powers of the Board to Article IV. Board of Directors:**

The business and affairs of ArtStream shall be managed by its Board of Directors. The Board of Directors shall have all powers and responsibilities conferred upon the Board of Directors of a nonprofit corporation by the State of Maryland, as now or hereinafter amended, except as such powers or responsibilities may be limited by the Articles of Incorporation or these Bylaws.

### **Add more specifics about how a Director may be removed to Article IV. Section 4.05. Removal:**

A director may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum. In addition, any member of the Board of Directors may be removed by the majority vote of the Board of Directors for a substantial cause, including but not limited to the following: A Director who (1) has been declared of unsound mind; (2) has been convicted of a felony; (3) has been found by a final court order to have breached a duty as a Director; (4) has missed three (3) or more meetings in any twelve-month period without being excused; or (5) is in violation of the ArtStream conflict of interest policy. A vote for removal may occur at any meeting of the Board of Directors convened in compliance with these bylaws, provided that written notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

### **Add a new statement regarding nondiscrimination to Section IV. 4.07. Composition.**

The Board does not discriminate on the basis of race, color, disability, national or ethnic origin or citizenship, religion, sexual orientation, age, or gender in its review and election of candidates for election to the Board.

### **Add a new section describing the Board's role in managing the Executive Director to Article V. Elected Officers of the Corporation.**

- (a) In addition to the other Officers of ArtStream specified in these Bylaws, the Board of Directors may appoint an Executive Director. The Executive Director shall be the chief executive Officer of ArtStream and report to the Board of Directors. The Executive Director shall, subject to the direction of the Board, (1) be responsible for general supervision of the business and affairs of ArtStream, (2) be responsible for providing leadership and direction to ArtStream and (3) establish and maintain management systems needed to ensure and report on the implementation of policies established by the Board of Directors.
- (b) The Executive Director, who shall serve at the will of the Board, shall be appointed by a majority of the Directors of ArtStream then in office. The Executive Director may be removed, with or without cause, by a two-thirds majority of the Directors. The Executive Director shall report to the Board and between Board meetings to the Chair.
- (c) In the event that the current Executive Director is unable to fulfill his or her duties for an extended period of time, the Board may appoint an acting Executive Director whose responsibilities and authority shall terminate upon the return of the Executive Director

### **Specify how many Directors are needed to call a special meeting of the Board in Article VI. Section 6.03. Special Meetings.**

Special meetings of the Board shall be held at any time and at any place when called by the Chairperson or by at least three Directors or twenty-five percent (25%) of the Board, whichever is greater. Business transacted at special meetings shall be confined to the purposes of the meeting stated in the notice of the meeting.

Add new section to define how many people are needed to take an action in writing without a meeting in **Article VI. Meetings. Section 6.04. Notice of Meetings**

Any action required or permitted by the articles of incorporation or bylaws, or the laws of the State of Maryland, to be taken at a meeting of the Directors of ArtStream, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by two thirds of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a vote of the Board of Directors, and may be described as such.

Change the “simple majority” to allow a 2/3 vote to amend the bylaws in **Article XV. Amendments.** These bylaws may be amended by two thirds (2/3) vote of the Board of Directors present and entitled to vote at a meeting at which a quorum is present. Any proposed amendment(s) must be submitted to the Directors in writing with written notice of the meeting to decide on the proposed amendment(s) at least ten (10) days prior to the meeting date.

## ADDENDUM 2: From the October 6, 2016 Board Meeting Minutes

### BYLAWS AMENDMENTS

Board members reviewed the following proposals for amendments to the March 12, 2013 Bylaws:

**ARTICLE IV. Section 4.04. Term.** ~~The initial Board members shall be divided into two approximately equal groups, one half (1/2) of the members to serve for an initial term of one (1) year and one half (1/2) to serve an initial term of two (2) years or until a successor is duly elected.~~ No person shall serve more than ~~three (3)~~ two (2) consecutive full terms on the Board of Directors. Persons serving an initial term of less than ~~two (2)~~ three (3) years may serve for ~~two (2)~~ one (1) additional ~~two~~ three (3) year term. After serving the maximum time allowed, a person may again serve after being off the Board of Directors for one year.

**ARTICLE V. Section 5.02. Term.** Officers shall serve a term of ~~two (2)~~ one (1) year and until their successors are elected, or until they are removed for cause.

**ARTICLE V. Section 5.08. The Duties of the Secretary.** The Secretary shall keep or cause to be kept, accurate minutes of the Board's meetings, see that all notices are duly given in accordance with the provisions of these Bylaws or as required, ~~by custodian of ArtStream's records, keep a register of the post office address of each Board member,~~ and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chair or by the Board.

**ARTICLE V. Section 5.09. The Duties of the Treasurer.** The Treasurer ~~oversee the deposit of funds of ArtStream into the proper accounts; the reconciliation of all receipts and disbursements from such account or accounts; assure the bookkeeper is keeping accurate records of the finances of ArtStream; prepare a financial accounting for each Board meeting; and oversee all end of the year accounting~~ shall oversee the implementation of the Financial and Investment Policies and the performance of an annual audit by a certified public accountant; assure that all federal and state tax reports are filed; and, further, shall report on the financial condition of ArtStream at all regular meetings of the Board of Directors and at all other times as determined by the President of the Board.

Board members agreed to remove the Board Officers from the actual business management of ArtStream. Members discussed implementing three, three-year terms. It was agreed that outgoing Board members' service is valuable on committees or advisory boards, so two, three-year terms will work best.

A motion was made to approve the Bylaws Amendments as written. The motion carried without dissent.

# AMENDED AND RESTATED

## BYLAWS

OF

ARTSTREAM, INC.

### ARTICLE I NAME AND PURPOSE

The name and purposes are set forth in the Articles of Incorporation.

### ARTICLE II OFFICES

The principal office of ArtStream shall be located within or without the State of Maryland at such place as the Board of Directors shall from time to time designate. ArtStream may maintain additional offices at such other places within or without the State of Maryland as the Board of Directors may designate.

### ARTICLE III MEMBERS

The Directors of ArtStream shall constitute the members of ArtStream.

### ARTICLE IV BOARD OF DIRECTORS

**Section 4.01. Authority.** The business and affairs of ArtStream shall be managed by its Board of Directors. The Board of Directors shall have all powers and responsibilities conferred upon the Board of Directors of a nonprofit corporation by the State of Maryland, as now or hereinafter amended, except as such powers or responsibilities may be limited by the Articles of Incorporation or these Bylaws.

**Section 4.02. Role/Number.** ArtStream, Inc. shall be governed by a Board of Directors which shall be composed of no more than twenty-five (25) persons and no less than five (5) persons.

**Section 4.03. Timing of Election/Vacancies.** At each annual meeting, the Directors to serve for the ensuing term shall be elected by a majority vote of the existing Directors. Vacancies occurring between annual meetings may be filled for the balance of the term by election by a majority vote of the remaining members of the Board of Directors.

**Section 4.04. Term.** Except as otherwise provided in these Bylaws, each Director shall serve for a term of three (3) years. Director terms begin at the first meeting following election. No person shall serve more than two (2) consecutive full terms on the Board of Directors. Persons serving an initial term of less than three (3) years may serve for one

(1) additional three (3) year term. After serving the maximum time allowed, a person may again serve after being off the Board of Directors for one year.

**Section 4.05. Removal.** A Director may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum. In addition, any member of the Board of Directors may be removed by the majority vote of the Board of Directors for a substantial cause, including but not limited to the following: A Director who (1) has been declared of unsound mind; (2) has been convicted of a felony; (3) has been found by a final court order to have breached a duty as a Director; (4) has missed three (3) or more meetings in any twelve-month period without being excused; or (5) is in violation of the ArtStream conflict of interest policy. A vote for removal may occur at any meeting of the Board of Directors convened in compliance with these Bylaws, provided that written notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

**Section 4.06. Resignation.** A Director may resign only by submitting a written resignation to the Chair or, to the other Directors, if the resigning Director is the Chair. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or the Chair, and the acceptance of the resignation shall not be necessary to make it effective.

**Section 4.07. Composition.** The Board does not discriminate against any person on the basis of age, sex, race, color, national origin, sexual preference, disability, political or religious opinion or affiliation, or other characteristics protected by law in its review and election of candidates for election to the Board.

## **ARTICLE V ELECTED OFFICERS OF THE CORPORATION**

**Section 5.01. Election/Vacancies.** The officers of the corporation shall be a Chair of the Board, a President, a Vice President, a Secretary, a Treasurer, and any other officers as the Board may appoint, who will exercise the powers and perform the duties as determined from time to time by the Board. The President will also serve as the Chair of the Board. The officers shall be elected by the Board of Directors, from among the members of the Board.

**Section 5.02. Term.** Each officer of the corporation will be elected annually by the Board and will serve for one year, and thereafter until his/her successor has been chosen and qualified or until his/her death, resignation, or removal.

**Section 5.03. Removal.** An officer may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum.

**Section 5.04. Resignation.** An officer may resign only by submitting a written resignation to the Chair or, to the other Directors, if the resigning officer is the Chair.

**Section 5.05. Authority and Duties.** The Officers shall have the authority and responsibility delegated by the Board and as stated in these Bylaws.

**Section 5.06. The Duties of the Chair.** The Chair of the Board will preside at all meetings of the Board and will perform the other duties and have the other powers as may be vested in the Chair by the Board.

**Section 5.07. The Duties of the President.** The President shall be the principal executive officer of ArtStream and, subject to the control of the Board, shall in general supervise and control all of the business and affairs of ArtStream. He or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time. In the absence of an Executive Director, the President shall be the chief executive officer of the corporation.

**Section 5.08. The Duties of the Vice President.** The Vice President shall perform the duties of the President if the President is unable to do so or absent; shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board.

**Section 5.09. The Duties of the Secretary.** The Secretary shall keep or cause to be kept, accurate minutes of the Board's meetings, see that all notices are duly given in accordance with the provisions of these Bylaws or as required, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

**Section 5.10. The Duties of the Treasurer.** The Treasurer shall oversee the implementation of the Financial and Investment Policies, the performance of an annual audit by a certified public accountant; assure that all federal and state tax reports are filed; and, further, shall report on the financial condition of ArtStream at all regular meetings of the Board of Directors and at all other times as determined by the Chair of the Board.

**Section 5.11. Other Officers.** Other Officers appointed by the Board shall perform such duties as may be specified by the Board or by officers given authority over them.

**Section 5.12. Executive Director.** In addition to the other Officers of ArtStream specified in these Bylaws, the Board of Directors may appoint an Executive Director.

(a) The Executive Director shall be the chief executive officer of ArtStream and report to the Board of Directors. The Executive Director shall, subject to the direction of the Board, (1) be responsible for general supervision of the business and affairs of ArtStream, (2) be responsible for providing leadership and direction to ArtStream and (3) establish and maintain management systems needed to ensure and report on the implementation of policies established by the Board of Directors.

(b) The Executive Director, who shall serve at the will of the Board, shall be appointed by a majority of the Directors of ArtStream then in office. The Executive Director may be removed, with or without cause, by a two-thirds majority of the Directors. The Executive Director shall report to the Board and, between Board meetings, to the President.

(c) In the event that the current Executive Director is unable to fulfill his or her duties for an extended period of time, the Board may appoint an acting Executive Director whose responsibilities and authority shall terminate upon the return of the Executive Director.

## **ARTICLE VI MEETINGS**

**Section 6.01. Annual Meeting.** The Annual Meeting of ArtStream shall be held at such date and time as is determined by the Board of Directors.

**Section 6.02. Regular Board Meetings.** Regular meetings of the Board shall be held at least quarterly and may be scheduled more often by the Chair.

**Section 6.03. Special Meetings.** Special meetings of the Board shall be held at any time and at any place when called by the Chair or by at least three Directors or twenty-five percent (25%) of the Board, whichever is greater. Business transacted at special meetings shall be confined to the purposes of the meeting stated in the notice of the meeting.

**Section 6.04. Notice of Meetings.** Notice of regular Board meetings, including the annual meeting, shall be in writing and delivered at least seven (7) days before the day of the meeting. Notices of special meetings shall state that it is a special meeting being called and may be given orally or in writing at least 48 hours prior to the meeting time. Failure of notice to any member shall not invalidate the meeting or any action taken at the meeting. Notice is given to a Director when it is delivered personally to the Director, left at the Director's residence or usual place of business, or sent by facsimile or e-mail, at least 48 hours before the time of the meeting or, in the alternative, by U.S. mail to the Director's address as it shall appear on the records of the Corporation. Notwithstanding the foregoing, a Director may waive notice of any meeting of the Board of Directors by written statement filed with the Secretary, or by oral statement at any such meeting. Attendance at a meeting of the Board of Directors shall also constitute a waiver of notice, except where a Director states that he or she is attending solely for objecting to the conduct of business on the ground that the meeting was not lawfully called or convened.

Any action required or permitted by the articles of incorporation or bylaws, or the laws of the State of Maryland, to be taken at a meeting of the Directors of ArtStream, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by two thirds of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a vote of the Board of Directors, and may be described as such.

**Section 6.05. Quorum and Decision of the Board of Directors.** At any meeting of the Board of Directors, the presence of a majority of those Directors entitled to vote shall constitute a quorum. The act of the majority of the Board of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise provided by law or in these bylaws. No business may be transacted at any meeting without a quorum present. Meetings can be held through use of conference telephone, electronic video screen communication, or other communications equipment as long as all members participating in such meeting can hear one another and as long as there is some means of verifying that (i) a person participating in the meeting is a Director entitled to participate in the meeting, and (ii) all actions of, or votes by, are taken or cast only by the Directors and not by persons who are not Directors. For purposes of these Bylaws a “majority” shall be defined as fifty percent (50%) plus one (1) of those required.

**Section 6.06. Executive Session.** At any meeting of the Board of Directors, where a quorum is present, the Board of Directors may, by a majority vote, decide to enter an executive session in which only voting Directors and other persons invited by the Board of Directors may be present. The decision to enter executive session shall be recorded in the minutes, and actions taken may be recorded in the minutes. Executive session minutes may be kept separately and confidentially, and need not include the discussion, only actions taken.

## **ARTICLE VII COMMITTEES**

The Board of Directors may create such committees with such powers as it deems necessary. The Chair shall appoint persons to chair and serve on those committees, including persons who are not Directors of ArtStream. All such appointments must be approved by the Board either prior to the appointment or ratified at the next Board meeting.

## **ARTICLE VIII DUALITY OF INTEREST**

The Board of Directors shall adopt a conflict of interest policy that covers board members, staff members, and volunteers with significant decision making authority with respect to the resources of ArtStream. The conflict of interest policy should identify the types of conduct or transactions that raise conflict of interest concerns, set forth procedures for disclosure of actual or potential conflicts, and should provide for review of individual transactions by the uninvolved Directors. Approval by the disinterested Directors shall be by vote of a majority of Directors in attendance at a meeting at which a quorum is present. An interested party shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of Directors in attendance. The policy should also require that the minutes of the meeting shall reflect that the conflict disclosure was made, the vote taken and, where applicable, the abstention from voting and participation by the interested party.

## **ARTICLE IX INDEMNIFICATION**

ArtStream shall indemnify its directors and officers, persons that serve or have served either ArtStream or any other entity at the request of ArtStream, in any capacity, while an agent, employee, officer or trustee of ArtStream, to the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, including the advancement of related expenses, upon a determination by the Board of Directors or independent legal counsel appointed by the Board of Directors (who may be regular counsel for the corporation) made in accordance with applicable statutory standards; provided, however, such indemnification shall be to the extent permitted of organizations which are exempt from Federal income tax under section 501 (c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).

## **ARTICLE X EXONERATION**

To the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no director or officer of ArtStream shall be personally liable to ArtStream or its members for money damages; provided, however, that the foregoing limitation of director and officer liability shall only be to the extent permitted of organizations which are exempt from Federal income tax under section 501 (c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law). No amendment of the Articles of Incorporation or repeal of any of its provisions shall limit or eliminate the benefits provided to directors and officers under this provision with respect to any act or omission which occurred prior to such amendment or repeal.

## **ARTICLE XI INSURANCE**

ArtStream shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of ArtStream, or who, while a director, officer, employee or agent of ArtStream is or was serving any of the entity at the request of ArtStream, and in any capacity, against any liability, asserted against and incurred by such person in any such capacity or arising out of such person's position, whether or not ArtStream would have the power to indemnify him or her against such liability under the provisions of the Article.

## **ARTICLE XII COMPENSATION**

The members of the Board of Directors of ArtStream shall serve without compensation for their services as board members. Directors and officers may be reimbursed for all expenses reasonably incurred on behalf of ArtStream in accordance with the Financial Policies and Procedures. In addition, nothing in this paragraph is intended to preclude a

Director from receiving compensation for his/her service to ArtStream in some other capacity.

**ARTICLE XIII  
SIGNATURE AUTHORITY**

All checks, notes, acceptances, and orders for payment of money over an amount determined in the policies and procedures, shall be signed by any two of the President, Vice President, or Treasurer, or other agents of ArtStream designated by the Board of Directors. All contracts, leases and deeds of any kind shall be signed by the President, Vice President or any other agent of ArtStream designated by the Board of Directors.

**ARTICLE XIV  
FISCAL YEAR**

The fiscal year of ArtStream shall be from September 1st to August 31st.

**ARTICLE XV  
AMENDMENTS**

These bylaws may be amended by two-thirds (2/3) vote of the Board of Directors present and entitled to vote at a meeting at which a quorum is present. Any proposed amendment(s) must be submitted to the Directors in writing with written notice of the meeting to decide on the proposed amendment(s) at least ten (10) days prior to the meeting date.

**ARTICLE XVI  
NON-DISCRIMINATION**

ArtStream shall not discriminate against any person on the basis of age, sex, race, color, national origin, sexual preference, disability, political or religious opinion or affiliation, or other characteristics protected by law in any of its policies procedures or practices.

**ARTICLE XV  
DISSOLUTION**

ArtStream may be dissolved by a two-thirds vote of the Directors then serving provided that notice of the proposed dissolution has been submitted to the Directors in writing with written notice of the meeting date to decide on the proposed dissolution at least thirty (30) days prior to the meeting date. In the event of dissolution, the Board of Directors shall dispose of all of the net assets of ArtStream exclusively to such organization(s) which are organized and operated exclusively for charitable or educational purposes as shall at the time qualify as an exempt organization under 501 (c)(3) of the Internal Revenue Code. Any remaining assets not disposed of by the Board shall be disposed of by the Court in the jurisdiction in which the principal office of ArtStream is then located, exclusively for such purposes or to such organizations.

The foregoing Amended and Restated Bylaws were adopted by the Board on November 16, 2017.

\_\_\_\_\_  
Name:

Title: Secretary