

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.**  
(a Delaware Nonstock Corporation)

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Revised as of January 1, 2016

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**NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.**  
**A Delaware Nonstock Corporation**

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ARTICLE I.

Membership

Section 1. Eligibility and Election.

(a) Any Person actively engaged in the business of publishing music (whether as the Copyright Owner or Copyright Administrator, as defined below) in the United States of America, whose musical works have been used or distributed on a commercial scale and who assumes the financial risk involved in the commercial exploitation of musical works, shall be eligible as a member of the National Music Publishers' Association, Inc. (the "NMPA").

(b) Members shall be elected by a majority vote of the Board of Directors of the NMPA (the "Board"). The NMPA shall have three classes of members: executive members, general members and inactive members. A member shall be an executive member if its Gross Revenue, as hereinafter defined, is equal to or in excess of the Threshold, as hereinafter defined, in the prior calendar year (an "Executive Member"). A member shall be a general member if its Gross Revenue is less than the Threshold in the prior calendar year (a "General Member"). Notwithstanding the foregoing, a member shall be an inactive member if it has not paid all of its dues, computed as determined in accordance with Section 4 of this Article I, for the current calendar year (an "Inactive Member"). Except as otherwise expressly provided in these By-Laws, no member shall, in its capacity as a member, hold different rights, preferences, privileges or obligations than any other member by virtue of its status as an Executive Member or General Member.

(c) The following terms, as used in these By-Laws, shall have the following meanings:

(i) “Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person. With respect to any natural Person, a member shall be an “Affiliate” with another member who is a member of said member’s immediate family, any family limited partnership for said member and any trust, voting or otherwise, of which said member is a trustee or of which said member or any of said member’s immediate family is a beneficiary. The Board may from time to time make a determination of whether any members are Affiliates, and upon making any such determination which affects the voting rights of any member, shall notify the member so affected.

(ii) “Business Day” means any day other than a Saturday, a Sunday or a legal holiday on which commercial banking institutions in Delaware are authorized to close for business.

(iii) “Control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise which shall include (a) any member that directly or indirectly owns more than five percent (5%) of any class of capital stock or other equity interest of said member, or (b) any officer, director, manager, proprietor, partner, employee, trustee or beneficiary of said Person. “Controlled”, “Controlling” and “under common Control with” have correlative meanings.

(iv) “Copyright Administrator” means a Person engaged in the business of commercially exploiting musical compositions through various types of licensing activities, but who does not acquire ownership of such musical compositions but does not include a law, accounting or management firm.

(v) “Copyright Owner” means a Person who owns in whole or in part and/or Controls musical compositions and whose business is to commercially exploit such compositions through various types of licensing activities.

(vi) “Gross Revenue” means a Person's music publishing revenue, including but not limited to the gross "publisher" and "writer" shares (as those terms are

used and understood in the music publishing industry) of mechanical reproduction, public performance, synchronization, and lyric licensing revenue, derived from the distribution or other exploitation in the United States of America of all musical works owned, controlled, or administered, directly or indirectly, by such Person or its Affiliates, determined on the cash method accounting and certified in accordance with Section 3, paragraph b of this Article I.

(vii) “Person” means an individual, corporation, partnership (including a general partnership, limited partnership or limited liability partnership), limited liability company, association, trust or other entity or organization.

(viii) “Threshold” means One Hundred Million Dollars (\$100,000,000) unless the Board, by a majority vote thereof, in its sole and absolute discretion establishes a different amount. If the Board established a different amount, then that amount shall thereafter be the “Threshold” unless and until the Board establishes another amount.

Section 2. Representation of Members: Affiliated Groups.

(a) A member which is a partnership, limited liability company, corporation, or other entity or organization shall only be entitled to act at any meeting of the NMPA by one of its duly authorized officers, directors, general partners, managers or other comparable authorized Person.

(b) Any members which are Affiliates shall be considered as one member for the purpose of determining the number of votes to be accorded and the amount of dues to be assessed and for all other purposes of the NMPA. Two (2) or more Persons or entities acting as one (1) member pursuant to this Section shall be entitled to act at any meeting of the NMPA by any Person who would be entitled to act for any one of them.

(c) Any Person claiming the right to vote on behalf of any member may be required, as a condition of voting, to furnish such evidence of his/her authorization as may be specified in reasonable rules adopted from time to time by the Board at least ten (10) Business Days before the meeting or adjourned meeting to which such rules shall apply.

Section 3. Voting.

(a) With respect to any matter to be voted on by members, except as otherwise provided by applicable law, each member shall have one (1) vote for each One Hundred Thousand Dollars (\$100,000) of Gross Revenue of such member (including its Affiliates); provided that (i) each member shall have at least one (1) vote, and (ii) with respect to a particular calendar year, each Executive Member shall have no more than the number of votes held by the General Member with the greatest number of votes for such year.

(b) Each member shall deliver a written report to the NMPA, in such form as determined by the NMPA, containing such information and requiring a certification or other verification of the amount of such member's Gross Revenue with respect to a particular calendar year by no later than April 1<sup>st</sup> of the subsequent calendar year. Each written report and the information contained therein shall be held by the NMPA and its agents in the strictest of confidence and may only be reviewed by the then serving President of the NMPA and a firm of independent certified public accountants who are appointed by the then serving President of the NMPA.

(c) Reasonable rules and regulations for implementation of the foregoing provisions established by the Board from time to time shall be binding on all members.

Section 4. Dues and Special Assessments.

(a) In the event that there are four Executive Members, the annual dues in the aggregate of the Executive Members shall be seventy-five percent (75%) of that year's operating budget. The seventy-five percent (75%) share shall be allocated amongst the Executive Members in accordance with each Executive Member's Gross Revenue as a percentage of the aggregate Gross Revenue of all of the Executive Members. In the event that the number of Executive Members changes, the annual dues in the aggregate of the Executive Members shall be determined by majority votes of the Board of Directors and the Executive Committee. Such aggregate dues shall be allocated amongst the Executive Members in accordance with each Executive Member's Gross Revenue as a percentage of the aggregate Gross Revenue of all of the Executive Members.

(b) In the event that there are four Executive Members, the annual dues in the aggregate of the General Members who have Gross Revenue of more than One Hundred Thousand Dollars (\$100,000) in the prior calendar year shall be twenty-five percent (25%) of the current years' operating budget. The twenty-five percent (25%) share shall be allocated amongst the General Members who have Gross Revenue of more than One Hundred Thousand Dollars (\$100,000) in accordance with the General Member's Gross Revenue as a percentage of the aggregate Gross Revenue of all of the General Members who have Gross Revenue of more than One Hundred Thousand Dollars (\$100,000). In the event that the number of Executive Members changes, the annual dues in the aggregate of the General Members who have Gross Revenue of more than One Hundred Thousand Dollars (\$100,000) shall be determined by majority votes of the Board of Directors and the Executive Committee. Such aggregate dues shall be allocated amongst the General Members in accordance with each General Member's Gross Revenue as a percentage of the aggregate Gross Revenue of all of the General Members. The annual dues of each General Member who has Gross Revenue of Fifty Thousand Dollars (\$50,000) up to and including One Hundred Thousand Dollars (\$100,000) in the prior calendar year shall be Five Hundred Dollars (\$500). The annual dues of each General Member who has Gross Revenue of less than Fifty Thousand Dollars in the prior calendar year shall be Two Hundred and Fifty Dollars (\$250).

(c) The Board and the Executive Committee, by majority votes thereof, may in their joint and absolute discretion change the amounts provided in Section 4, paragraphs (a) and (b) of this Article I.

(d) The NMPA shall send an invoice to each member for its dues on or about May 1<sup>st</sup> of each year. The dues for each fiscal year of the NMPA shall be payable annually in advance on or before June 1<sup>st</sup> of each year. The dues for the fiscal year of the NMPA in which a member is elected to membership shall be payable within thirty (30) days after written notice of election is sent to such member.

(e) The Board may, in its sole and absolute discretion, impose special assessments on (i) those members who choose to participate in a particular litigation, to the

extent amounts received by the NMPA from the “Late Fee Settlement” or any other settlements are insufficient to fund any particular litigation, and (ii) all of the members, on the same basis as dues to fund the operating budget are allocated, to the extent reasonably necessary to fund the costs of proceedings with the United States Copyright Royalty Board.

Section 5.     Resignations.

Any member in good standing may resign at any time from membership in the NMPA by giving written notice to the President or to the Secretary of the NMPA. Such resignation shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.     Failure to Qualify After Election as Member.

Any Person elected to membership who shall default for thirty (30) days in the payment of dues for the fiscal year of the NMPA in which such election shall occur, shall be considered to have declined the election and the same shall thereupon become null and void.

Section 7.     Nonpayment of Dues.

If any member shall default in the payment of dues, said member shall not be entitled to take part in any of the activities of the NMPA, to vote at any meeting of its members and, in the case of Executive Members, to appoint a director to the Board, unless the Board determines otherwise and until such dues have been paid. Furthermore, the Board, by a majority vote thereof, may at its option expel such member from the NMPA. Said member, however, shall be liable to the NMPA for the full amount of dues which had become payable prior to such member’s expulsion.

Section 8.     Suspension or Expulsion for Cause.

Any complaint against any member by reason of the alleged violation of any of the provisions of these By-Laws or any duly adopted rules or regulations of the NMPA shall be immediately investigated by the Board at a meeting called for that purpose, and if said member shall have been found guilty of violating any provisions of these By-Laws or rules or regulations of the NMPA, the Board, by a majority vote thereof, may suspend such

member from the NMPA for a limited period of time, as determined by the Board to be fair and equitable in light of the nature of such violation, or in its discretion expel such member from the NMPA.

## ARTICLE II.

### Meetings of Members

#### Section 1. Annual Meeting.

An annual meeting of the members of the NMPA shall be held at the office of the NMPA, or at such other place as may be fixed in the notice or waiver of notice thereof, at such hour and on such business day in June or such other month as may be determined by the Board and designated in the notice or waiver of notice thereof, for the purpose of the transaction of any business as may properly be brought before the meeting.

#### Section 2. Special Meetings.

A special meeting of the members of the NMPA may be called at any time by the Chair of the Board, the President (with the consent of the Executive Committee), or by the Board. If such meeting shall not be called within five (5) Business Days after such request shall have been delivered at the office of the NMPA, the Persons sending such request may appoint a Chair who may be designated in such request and who may call a meeting by notice given as provided in the following Section.

#### Section 3. Notice of Meetings; Participation by Conference Telephone.

(a) Except as hereinafter in this Section provided, or as may be otherwise required by law, written notice of the time and place of holding each annual or special meeting of the members of the NMPA shall be delivered in accordance with the requirements of the Delaware General Corporation Law (the "DGCL") not less than ten (10) nor more than sixty (60) days before such meeting, to each member entitled to vote at such meeting. If mailed, it shall be deposited in the mails within the above mentioned period and directed to such member at his/her address as it appears on the records of the NMPA, unless he/she shall have filed with the Secretary of the NMPA a written request that notices to him/her be mailed to some other address, in which case it shall be directed



to him/her at such other address. If transmitted electronically, such notice is given when directed to the member's electronic mail address as supplied by the member to the Secretary of the NMPA or as otherwise directed pursuant to the member's authorization or instructions. Notice of any meeting shall state the number of votes the member to whom such notice is sent is entitled to cast at such meeting and the aggregate number of votes entitled to be cast at such meeting by all members. The notice of each special meeting shall state the time and place of such meeting and shall state briefly the purpose or purposes thereof, and no business other than that specified in such notice or germane thereto shall be transacted at the meeting except with the unanimous consent in writing of every member entitled to vote at such meeting.

(b) Notice of any meeting of members shall not be required to be given to any member who shall attend such meeting in person or by proxy or who shall waive notice thereof in accordance with the requirements of the DGCL whether before or after such meeting is held. Notice of any adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken.

(c) One or more Persons may participate in a meeting of the Members by means of conference telephone or similar communications equipment. The NMPA shall implement reasonable measures to provide such Persons a reasonable opportunity to participate in such a meeting and to vote, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 4. Place of Meeting.

Every meeting of the members of the NMPA shall be held at the office of the NMPA, or at such other place within or without the State of Delaware as shall be specified or fixed in a notice thereof.

Section 5. Quorum.

At all meetings of the members of the NMPA except as otherwise required by law, one-third of the members, or one-third of that number of the members who in the aggregate represent a majority of the total number of votes entitled to be cast at the meeting (but in no event less than [nine (9)] members), shall constitute a quorum for the transaction of business. In the absence of a quorum, the meeting shall be adjourned from time to time until a quorum is obtained. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 6. Organization.

At every meeting of the members of the NMPA, the Chair of the Board, or in the absence of the Chair of the Board, the President, or in the absence of the President, a Vice President, and in case more than one Vice President shall be present, that Vice President designated by the Board or in the absence of any such designation, the most senior Vice President present, shall act as Chair of the meeting. The Secretary, or in his/her absence the Assistant Secretary, shall act as Secretary of the meeting. In case none of the officers above designated to act as Chair or Secretary of the meeting, respectively, shall be present, a Chair or a Secretary of the meeting, as the case may be, shall be chosen by a majority of the votes cast. For purposes of this Article II, Section 6 only, seniority among Vice Presidents shall be determined by how long each Vice President has served as an officer of the NMPA, and in the event of a tie, by duration of membership in the NMPA.

Section 7. Voting.

The vote of members entitled to vote may be given by the member entitled thereto in person or by proxy duly attended by an instrument in writing subscribed by such member or by his/her attorney thereunto duly authorized and delivered to the Secretary of the meeting, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for a period therein limited. At all meetings of the members, a quorum being present, all matters, except as

otherwise required by applicable law or the By-Laws, shall be decided by a majority of the number of votes cast.

Section 8. Action Without a Meeting.

Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing setting forth the actions so taken shall be signed by the members having not less than the minimum number of votes otherwise required to authorize or take such action, filed with the Secretary of the NMPA and, if not signed by all of the Members, notice of such action is promptly given to the Members that did not consent to such action. The consent may be written, signed and dated in any manner authorized by applicable law.

Section 9. Inspector of Election.

At least two (2) months before each annual meeting of the members of the NMPA, the President shall appoint an inspector for the election, if any, of Directors at such meeting. Such inspector shall first take and subscribe an oath or affirmation faithfully to execute the duties of the inspector with strict impartiality and according to the best of its ability. Such inspector shall be either a representative of a firm of independent certified public accountants, or of an independent institution which as a part of its regular services provides the services of inspectors of election.

### ARTICLE III.

#### Board of Directors

Section 1. General Powers, Duties and Number of Directors.

The entire charge and control of the NMPA and its affairs, funds and property shall be vested in a Board of eighteen (18) Directors. The Board shall have charge, control and management of the affairs, property and funds of the NMPA and shall have the power and authority to do and perform all acts and functions not inconsistent with these Bylaws, the Certificate of Incorporation and applicable law, in each case, as amended from time to time, including determining how payments to members should be allocated.

Section 2. Qualifications and Term of Office.

(a) Each Director shall be Affiliated with a member of the NMPA and in the case of Directors who have not previously served as such, shall be the then serving chief executive officer of such member (or if there is no chief executive officer in the United States, the highest ranking officer in the United States of such member), provided, that no more than one (1) Director may be Affiliated with the same member. For purposes of this Article, a Director shall be deemed to be Affiliated with a member if the Board determines that such Director is an officer, director, manager, proprietor, partner or employee, trustee or beneficiary of a member of the NMPA or any music publisher which is deemed to be Affiliated with such member by the Board for the purpose of determining the number of votes to be accorded and the amount of dues to be assessed and for all other purposes of the NMPA. The Board may from time to time make a determination of whether any Directors are Affiliated with any member, and upon making any such determination which affects the qualification of any Director, shall notify each Director so affected.

(b) The Directors shall be elected for two (2) year terms and each Director shall hold office until the next annual meeting of the NMPA held for the election of Directors, and until his/her successor shall have been elected and shall qualify, or until his/her death or removal, or until he/she shall resign.

Section 3. Election of Directors.

(a) At least four (4) months prior to each annual meeting at which Directors are to be elected, the Chairman of the Board shall appoint a nominating committee of not less than three (3) or more than five (5) members. A majority of the nominating committee shall constitute a quorum, and action concurred in by a majority of the nominating committee present at a meeting with a quorum shall constitute the action of the nominating committee. The nominating committee shall nominate a slate of candidates determined in good faith to be representative of the various music publishing interests and viewpoints of the various types of members of the NMPA, provided, that not more than one (1) candidate nominated on such date shall be Affiliated with any one member. The number of candidates so nominated may not exceed the number of Directors to be elected by more

than one-half of the number of Directors to be elected (assuming for the purposes of this Section 3(a) that the Board consists of fourteen (14) Directors who are subject to election by the members). The nominating committee shall deliver a list of the candidates nominated for Directors and their membership affiliations to the Executive Committee of the NMPA not later than two (2) months before each such annual meeting, such list to be mailed to each member with the notice of such annual meeting.

(b) Each Executive Member shall be entitled to appoint one (1) Director to the Board, by providing written notice to the Chair of the Board and the President of the NMPA.

(c) At each meeting of the members for the election of Directors at which a quorum is present, the individuals nominated by the Executive Members and the other individuals receiving a plurality of the votes cast by the members entitled to vote shall be Directors. All voting for Directors shall be by any method permitted by applicable law and shall contain the membership affiliation of each candidate for Director thereon.

#### Section 4. Resignations.

(a) Any Director of the NMPA shall immediately cease to be a Director if such Director ceases to be Affiliated with the member with which he/she was Affiliated at the time of his/her nomination for Director. If the Board determines that two (2) or more Directors are Affiliated with the same member, within ten (10) days following notice thereof by the Board, such member may designate in writing to the Board one (1) Director Affiliated with it to remain on the Board, and all other Directors Affiliated with it shall cease to be Directors, provided, that if such member does not make such designation within such time, it shall be made, with the same effect, by a majority of the Board without participation in such decision by the Directors so Affiliated.

(b) Any Director of the NMPA may resign at any time by giving written notice to the Chair of the Board, the President or to the Secretary of the NMPA. Such resignation shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies.

Subject to the membership affiliation requirements provided for in this Article, any vacancy in the Board because of death, resignation, removal, disqualification, increase in number of Directors, or other cause, may be filled (i) in the case of a Director appointed by an Executive Member, by the Executive Member that appointed such Director, and (ii) otherwise, by a vote of a majority of the Directors then in office, or by a plurality of the votes cast at a meeting of the members called for that purpose. A Director elected to fill a vacancy shall hold office until the next annual meeting of the members at which Directors are to be elected is held. Until any vacancy is filled, the Directors in office shall continue to act as the Board.

Section 6. Removal of Directors.

Except for a Director appointed by an Executive Member, any Director (i) may be removed with or without cause at any time by two-thirds of the number of votes cast by the members of the NMPA at a special meeting of members called for that purpose or at an annual meeting of members, or (ii) shall be removed if such Director has been absent (without an appropriate explanation) from four (4) consecutive regular meetings of the Board. A Director appointed by an Executive Member may only be removed by such Executive Member upon written notice to the Chair of the Board and the President of the NMPA.

Section 7. Annual Meeting.

After each annual meeting of members where Directors are elected, the Board shall meet at the next designated, scheduled meeting of the Board for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting need not be given. Such meeting may be held at any other time which shall be specified in a notice given as hereinafter provided for special meetings of the Board, or in a consent and waiver of notice thereof signed by all of the Directors.

Section 8. Regular Meetings.

Regular meetings of the Board shall be held four (4) times each year.. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding Business Day. Notice of regular meetings of the Board need not be given except as otherwise required by applicable law or these By-Laws.

Section 9. Special Meetings.

Special meetings of the Board shall be held whenever called by the Chair of the Board, the President or by any three (3) of the Directors in good standing. Notice of the time, and place which may be within or without the State of Delaware, and purpose of each such meeting shall be given to each Director in accordance with the requirements of the DGCL, but in any event at least two (2) Business Days before the day on which the meeting is scheduled to be held. No business except that of which notice shall have been given in the call therefor shall be transacted at any such special meeting.

Section 10. Waiver of Notice of Meeting.

Notice of any meeting of the Board need not be given to any Director if such notice shall be waived by him/her in writing whether before or after such meeting is held, or if he/she shall be present at the meeting, and any meeting of the Board shall be a legal meeting without any notice having been given or regardless of the giving of any notice or the adoption of any resolution in reference thereto if all the Directors shall be present thereat or shall have so waived notice thereof.

Section 11. Quorum.

The greater of (a) a majority of the Directors in office at the time of any meeting of the Board, and (b) one-third ( $\frac{1}{3}$ ) of the total number of Directors which the NMPA would have then serving if there were no vacancies, shall constitute a quorum for the transaction of business at such meeting. Once a quorum is established, subsequent withdrawal of individuals to less than a quorum shall not affect the validity of any subsequent action taken

at the meeting. In the absence of a quorum the majority of the Directors present at any meeting may adjourn such meeting from time to time until a quorum is present.

Section 12. Action by the Board.

(a) The act of a majority of the Directors present at a meeting at which a quorum is present shall be necessary and sufficient to take any action by the Board, except as otherwise required by applicable law or these By-Laws. Members of the Board may participate in any meeting of the Board by means of conference telephone or other communications equipment by means of which all individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(b) Unless otherwise restricted by the Certificate of Incorporation or By-Laws of the NMPA, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 13. Compensation.

No Director of the NMPA shall receive, directly or indirectly, any salary, compensation or emolument from the NMPA as a Director or in any other capacity unless authorized by the concurring vote of two-thirds ( $\frac{2}{3}$ ) of all the Directors including the Directors appointed by the Executive Members.

ARTICLE IV.

Executive Committee and Other Committees

Section 1. Executive Committee.

The Board shall elect from among its members an Executive Committee which shall consist of seven (7) Directors, including the Chair of the Board and each of the



Directors appointed by the Executive Members. Except as otherwise provided for in Section 141(c)(1) of the DGCL, the Board shall authorize and empower the Executive Committee to have and to exercise any and all powers of the Board in the management of the business and affairs of the NMPA. Notwithstanding anything contained or implied in these By-Laws to the contrary, the consent by five (5) members of the Executive Committee shall be required to (i) approve, amend or terminate any operating budget, and (iii) commence, join in, or settle any claim, action, suit or proceeding with the Copyright Royalty Board. The Chair of the Board or, in the absence of the Chair of the Board, one of the members of the Executive Committee designated by the Committee, shall preside at all meetings of the Executive Committee.

Section 2. Negotiating, International and Other Committees.

The Chair of the Board may appoint, with the approval of the Board, from among the members of the Board, Negotiating, International and other committees, provided that each Director appointed by the Executive Members shall be entitled to serve on each of such committees. The International Committee shall consist of not less than three (3) or more than seven (7) Directors. The Board may authorize and empower such committees to have and to exercise such powers as are appropriate for such committees, in all cases subject to Section 1 of this Article.

Section 3. Powers and Action.

In addition to the limitations set forth in Section 1 of this Article, no committee designated by the Board pursuant to this Article shall have the power to select its members or the power to fill vacancies in it or the Board. A majority of any such committee shall constitute a quorum for the transaction of business (except that five (5) members shall constitute a quorum for the transaction of business for the Executive Committee), and any action taken by a majority of the members of such committee present at a meeting at which a quorum is present shall constitute the act of such committee. Members of any such committee may participate in any meeting thereof by means of conference telephone or similar communications equipment by means of which all individuals participating in the

meeting can hear each other, and such participation shall constitute presence in person at such meeting.

## ARTICLE V.

### Officers

#### Section 1. Number.

The officers of the NMPA shall be a Chair of the Board, a President, such Vice Presidents as the Board may determine (who may be designated by the Board by descriptive words or phrases to indicate areas of special competence or for purposes of identification), a Secretary, a Treasurer, and such Assistant Secretaries and Assistant Treasurers, if any, as the Board may determine.

#### Section 2. Election: Term of Office: Qualification.

The officers of the NMPA shall be chosen by the Board as soon as practicable after the annual meeting of members. The Chair of the Board shall be chosen from the Directors of the NMPA. The Vice Presidents shall be chosen from the Directors of the NMPA, with the exception, at the option of the Board, of those Vice-Presidents, who shall not be required to be Directors of the NMPA, and who shall not be members of the Executive Committee of the NMPA. The Treasurer shall be chosen from the Directors of the NMPA. Each officer shall hold his/her office until his/her successor shall have been duly chosen and shall qualify, or until his/her death, or until he/she shall resign or shall have been removed in the manner hereinafter provided.

#### Section 3. Removal.

Any officer, agent or employee of the NMPA may be removed either with or without cause by a majority of the Board.

#### Section 4. Resignations.

Any officer may resign at any time by giving written notice to the Board, or to the Chair of the Board, or to the President or to the Secretary of the NMPA. Any such

resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term in the manner described in these By-Laws for the regular election to such office or as otherwise permitted by applicable law.

Section 6. Powers and Duties of the Chair.

The Chair of the Board shall, if present, preside at all meetings of the members of the NMPA, of the Board and of the Executive Committee. He/she may sign and execute in the name of the NMPA deeds, mortgages, bonds, contracts and other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by the By-Laws to some other officer or agent of the NMPA, or shall be required by law otherwise to be signed or executed; and, in general, he/she shall perform all duties incident to the office of Chair of the Board and such other duties as from time to time may be assigned to him/her by the Board.

Section 7. Powers and Duties of the President.

The President shall be the chief executive officer of the NMPA and shall have general supervision over the business and affairs of the NMPA, subject, however, to the control of the Board and any duly authorized committee of directors. He/she shall attend all meetings of the Board and of all committees, and shall, in the absence of the Chair of the Board and if present, preside at Board meetings. The President shall, in the absence of the Chair of the Board and if present, preside at meetings of the members of the NMPA. The President may sign and execute in the name of the NMPA deeds, mortgages, bonds, contracts and other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by the By-Laws to some other officer or agent of the NMPA, or shall be required by law otherwise to be signed or executed; and, in general, he/she shall be vested with all the powers necessary for the carrying on of the

business and the promotion of the objects, purposes and welfare of the NMPA, and shall perform such other duties as from time to time may be assigned to him/her by the Board.

Section 8. Powers and Duties of the Vice Presidents.

At the request of the President, or in the absence or disability of the President, at the request of the Board or of the Chair of the Board, the Vice Presidents shall, in such order as may be designated by the Board or in the absence of any such designation in order of seniority, perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon the President. The Vice Presidents shall perform such duties as from time to time may be assigned to them by the Board or by the President. For purposes of this Article II, Section 8 only, seniority among Vice Presidents shall be determined by how long each Vice President has served as an officer of the NMPA, and in the event of a tie, by duration of membership in the NMPA.

Section 9. Powers and Duties of the Treasurer.

(a) The Treasurer shall have charge and custody of and be responsible for all funds and securities of the NMPA, and shall deposit all such funds in the name of, and to the credit of the NMPA, in such banks, trust companies or other depositories as shall be designated by the Board. The Treasurer shall regularly enter or cause to be entered in books to be kept by him/her or under his/her direction, for this purpose a full and adequate account of all moneys received and paid by him/her for the account of the NMPA. The Treasurer shall exhibit his/her books of account and records to any of the Directors of the NMPA at any time upon request at the office of the NMPA where such books and records are kept, and shall render a detailed statement of his/her accounts and records to the Board as often as it shall require the same; and, in general, shall perform all other duties incident to the office of Treasurer, and such other duties as from time to time may be assigned to him/her by the Board.

(b) The Treasurer shall prepare an annual operating budget, which shall be consistent with any operating plan or financial plan adopted or approved by the Board and then in effect. The Treasurer shall also prepare a litigation budget and extraordinary litigation budget when requested by the Board or the President.

Section 10. Powers and Duties of the Secretary.

The Secretary shall attend all meetings of the members of the NMPA and the Board and of all committees, and shall keep correct minutes of the proceedings of such meetings. The Secretary shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law. The Secretary shall be the custodian of the records and of the seal of the NMPA and shall see that the seal is affixed to all documents, the execution of which on behalf of the NMPA under its seal is duly authorized in accordance with the provisions of these By-Laws. The Secretary shall keep a register of the post-office address of each member and shall make proper changes in such register. The Secretary shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed and, in general, shall perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned to him/her by the Board.

Section 11. Assistant Secretaries and Assistant Treasurers.

Assistant Secretaries and Assistant Treasurers shall perform such duties as shall be assigned to them by the Secretary or by the Treasurer, respectively, or by the Board, the Chair of the Board or the President.

Section 12. Salaries.

The salary of the President, the Vice President(s) and other officers of the NMPA shall be fixed by a majority vote of the Board.

ARTICLE VI.

Reliance; Limitation on Liability; Indemnification

Section 1. Reliance.

In performing his or her duties, each Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (a) one or more officers or employees of the NMPA whom the Director reasonably believes to be reliable and competent in the matters presented; (b) counsel, public accountants or other Persons

as to matters which the Director reasonably believes to be within the professional or expert competence of such Persons; and (c) a committee of the Board of the NMPA upon which the Director does not serve, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

Section 2. Limitation on Liability.

Neither the Members nor any Director of the NMPA shall be personally liable for monetary damages for any action taken, or any failure to take any action, provided however, that this provision shall not eliminate or limit the liability of any Member or any Director to the extent that such elimination or limitation of liability is expressly prohibited by applicable law, as in effect at the time of the alleged action or failure to take action by such Members or Director.

Section 3. Preservation of Rights.

Any repeal or modification of this Article VI shall not adversely affect any right or protection existing at the time of such repeal or modification to which any Member, Director or former Member or Director may be entitled under this Article VI. The rights conferred by this Article VI shall continue as to any Person who has ceased to be the Members or a Director of the NMPA and shall inure to the benefit of the successors, heirs, executors, and administrators of such Person.

Section 4. Indemnification.

(a) The NMPA shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he/she is or was a Director or officer of the NMPA, or is or was serving any corporation or any partnership, joint venture, trust or other enterprise, in any capacity at the request of the NMPA, to the fullest extent and in the manner set forth in and permitted by the DGCL, as from time to time in effect. Such right of indemnification shall not be deemed exclusive of any other rights to which such Director or officer may be entitled apart from the foregoing provisions.

(b) The NMPA shall pay expenses (including attorneys' fees) incurred by a Director or officer of the NMPA referred to in Section 4(a) of this Article VI in defending or appearing as a witness in any civil or criminal action, suit or proceeding described in Section 4(a) of this Article VI in advance of the final disposition of such action, suit or proceeding. The expenses incurred by such Director or officer shall be paid by the NMPA in advance of the final disposition of such action, suit or proceeding only upon receipt of an undertaking by or on behalf of such Director or officer to repay all amounts advanced if it shall ultimately be determined that the Director or officer is not entitled to be indemnified by the NMPA.

(c) The foregoing provisions of this Article VI shall be deemed to be a contract between the NMPA and each Director and officer who serves or served in such capacity at any time while this Article VI and the relevant provisions of the DGCL, if any, are in effect, and, except to the extent otherwise required by law, any repeal or modification thereof shall not affect any rights or obligations then existing or thereafter arising with respect to any state of facts then or theretofore existing or thereafter arising or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

(d) The Board in its discretion shall have power on behalf of the NMPA to indemnify any Person, other than a Director or officer, made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he/she is or was an employee of the NMPA.

(e) The Board in its discretion shall have the power to purchase and maintain insurance in accordance with, and subject to, the provisions of Section 145 (g) of the DGCL.

## ARTICLE VII.

Contracts, Checks, Drafts,  
Bank Accounts. Etc.

Section 1.     Execution of Contracts.

The Board may authorize any officer or officers, agent or agents, in the name of and on behalf of the NMPA, to enter into any contract or execute and deliver any instrument, and such authority may be granted or confined to special instances, and unless so authorized by the Board or expressly authorized by these By-Laws, no officer or agent or employee shall have any power or authority to bind the NMPA by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or in any amount.

Section 2.     Checks. Drafts. Etc..

All checks, drafts and other orders for the payment of money out of the funds of the NMPA, and all notes or other evidences of indebtedness of the NMPA, shall be signed on behalf of the NMPA in such manner as shall from time to time be determined by resolution of the Board.

Section 3.     Deposits.

All funds of the NMPA not otherwise employed shall be deposited from time to time to the credit of the NMPA in such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, agent or agents of the NMPA to whom such power may from time to time be delegated by the Board, and for the purpose of such deposit. The Chair of the Board, the President, any Vice President, the Treasurer, the Secretary, or any officer, agent or employee of the NMPA to whom such power may be delegated by the Board, may endorse and deliver checks, drafts and other orders for the payment of money which are payable to the order of the NMPA.

ARTICLE VIII.

Certificates of Membership

The NMPA is hereby authorized to issue to each duly elected member a certificate of membership in such form as shall be approved by the Board. Every certificate shall be signed by (i) the President of the NMPA and (ii) the Chair of the Board or the Secretary of



the NMPA and the seal of the NMPA shall be affixed thereto. The certificate of membership shall at all times belong to and be the property of the NMPA, and upon request of the NMPA in the event of the termination of membership for any reason whatsoever, the certificate of such member shall be immediately returned to the NMPA.

#### ARTICLE IX.

##### Seal

The Board shall provide a corporate seal which shall be in the form of a circle and shall bear the full name of the NMPA and the words and figures “Incorporated 1974 Delaware”, or words and figure of similar import.

#### ARTICLE X.

##### Amendments

These By-Laws, or any of them, may be altered, amended or repealed, or new By-Laws may be made by the Board or by the members.