

N.B.: Delaware Symphony Association is a Delaware domestic charitable nonstock corporation (as such term is defined in Section 114(d)(1) of the General Corporation Law of the State of Delaware), state file number 0412004, first incorporated March 20, 1947 as Wilmington Symphony Orchestra, Inc., and renamed Delaware Symphony Association by amendment on April 28, 1971. A Restated Certificate of Incorporation was filed April 22, 1988, and an Amended and Restated Certificate of Incorporation was filed on October 17, 2014. The Association's registered agent is YCS&T Services LLC, 1000 North King Street, Wilmington, Delaware, 19801, telephone (302) 571-6600.

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AMENDED AND RESTATED BYLAWS OF  
DELAWARE SYMPHONY ASSOCIATION

As adopted October 14, 2014

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**AMENDED AND RESTATED BYLAWS  
OF  
DELAWARE SYMPHONY ASSOCIATION**

***Article I. Name; Offices; Purposes***

Section 1.1. Name of Corporation. The name of the Corporation<sup>1</sup> is Delaware Symphony Association.

Section 1.2. Registered Agent. The registered agent of the Corporation shall be the Individual or entity appointed to such position by the Corporation and designated as its registered agent in filings with the Secretary of State of the State of Delaware.

Section 1.3. Purposes of Corporation.

(a) The purposes of the Corporation shall be as fully set forth in the Amended and Restated Certificate of Incorporation of Delaware Symphony Association, to be filed and effective on October 17, 2014 (the “Certificate of Incorporation”), and as the same may be amended from time to time.

(b) Subject to the Certificate of Incorporation and Section 1.3(a), the Corporation shall have the power and authority to engage in any lawful act or activity for which a charitable nonstock corporation may be organized under the laws of the State of Delaware; provided, however, that the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

***Article II. Conditions of Membership; Rights of Members; Record Date***

Section 2.1. Conditions of Membership. At any given time, the members of the Corporation (as the term “members” is used in Section 215 of the DGCL and in Article FIFTH of the Certificate of Incorporation) shall consist of only those Individuals with respect to each of whom the following condition is satisfied at such time (each such Individual, a “Member,” and collectively, the “Members”): during the present Fiscal Year or during the immediately preceding Fiscal Year, such Individual has donated at least Three Hundred

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<sup>1</sup> Capitalized terms are defined in Section 10.8 or in the sections cross-referenced in Section 10.8.

Dollars (\$300) to the Corporation. For the avoidance of doubt, (a) no Individual shall be a Member other than during the time when the foregoing condition is satisfied as to such Individual, and (b) any Individual who is a Member shall automatically, without notice from the Corporation, cease to be a Member when the foregoing condition ceases to be satisfied as to such Individual.

Section 2.2. Rights of Members. There shall be one class of Members, and each Member's voting and other rights as a Member shall be the same as those of every other Member as a Member. Subject to Section 2.4, each Member shall be entitled to one (1) vote on any matter submitted to a vote of the Members or on which the Members are otherwise entitled to vote pursuant to the Certificate of Incorporation or the DGCL.

Section 2.3. Restrictions on Transfers and Proxies. To the fullest extent permitted by law, under no circumstances may the rights of a Member as a Member, including voting rights, be (a) transferred, including by operation of law, or (b) exercised through a proxy or other agent, including a trustee, executor, personal representative, or attorney-in-fact.

Section 2.4. Record Date. The record date for the determination of the Members entitled to notice of, and to vote at, the Annual Meeting shall be May 31 of the Fiscal Year in which the Annual Meeting is held.

### ***Article III. Meetings of the Members***

#### **Section 3.1. Annual Meeting.**

(a) The annual meeting of the Members for the election of directors and the consideration of such other business as is properly placed before the Members in accordance with these Bylaws (such meeting, the "Annual Meeting") shall be held each year in the month of June, at a place in New Castle County, Delaware, that shall have been designated by the Board.

(b) Notice of the place, date, and time of the Annual Meeting shall be given by the Corporation at least twenty (20) days prior to the date of the Annual Meeting to each Member entitled to such notice.

(c) At the Annual Meeting, the agenda shall include reports by the officers and committee chairs as requested by the Board, and the election by the Members of Individuals to serve in the class of directors whose terms expire at such Annual Meeting.

(d) Nominations of Individuals for election to the Board, and the proposal of other business to be considered by the Members, may be made at an Annual Meeting only (i) by or at the direction of the Board, or (ii) by a Member who is entitled to vote at such Annual Meeting and who shall have complied with the notice procedures set forth in this Section 3.1(d). For any nominations or other business to be properly brought before an Annual Meeting by a Member, such Member must have given timely notice thereof in writing to the President or the Secretary, and any such proposed business (other than nominations of Individuals for election to the Board) must constitute a proper matter for Member action. To be timely, a Member's notice shall be delivered to the attention of the President or the Secretary at the address of the Corporation's registered agent in the State of Delaware not later than the fourteenth (14th) day before the Annual Meeting. Such Member's notice shall contain (I) as to each Individual whom the Member proposes to nominate for election as a director, the name of such Individual, the résumé or curriculum vitae of such Individual, and representations that such Individual consents to being nominated and to serving as a director if elected, and that such Individual is qualified (or will be qualified at the time of taking office) to serve as a director if elected; (II) as to any other business that such Member proposes to bring before the Annual Meeting, a brief description of such business, the text of any resolutions proposed for consideration, and the reasons for proposing such business and any such resolutions; and (III) as to the Member giving the notice, the name of such Member and a representation that such Member is entitled to vote at such Annual Meeting and intends to attend such Annual Meeting to nominate such Individual or propose such business. Notwithstanding the foregoing provisions of this Section 3.1(d), if the Member does not attend the Annual Meeting to nominate such Individual or propose such business, such nomination shall be disregarded and such proposed business shall not be considered.

Section 3.2. Presiding Officer. Any meeting of the Members shall be presided over by a presiding officer, who shall be one of the following, here listed in the order of preference: (a) the President; or (b) in the President's absence, a Vice-President; or (c) in the absence of the foregoing Individuals,



the Individual designated to serve as the presiding officer by the Board; or (d) in the absence of any such designation, a presiding officer chosen by vote of the Members at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence, the presiding officer of the meeting shall appoint a secretary of the meeting.

Section 3.3. Rules of Conduct. Subject to and to the extent permitted by law, the Board may adopt by resolution such rules and regulations for the conduct of meetings of the Members as it shall deem appropriate. Except to the extent inconsistent with law or such rules and regulations as may be adopted by the Board, the presiding officer of any meeting of the Members shall have the authority to prescribe such rules, regulations, and procedures, and to do all such acts, as in the judgment of such presiding officer are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include the following: (a) the establishment of an agenda or order of business for the meeting and announcement of the opening and closing of the polls for each matter upon which the Members will vote at the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to Members entitled to vote at the meeting and such other individuals as the presiding officer of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Meetings of the Members shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 3.4. Special Meetings. Special meetings of the Members may be called exclusively by the Board. Any such meeting shall be held at the place, date, and time designated by the Board (with such place to be in New Castle County, Delaware). Notice of any such meeting shall be given to the Members entitled to such notice not fewer than ten (10), nor more than sixty (60), days prior to the date of such meeting.

Section 3.5. Quorum. Except as may otherwise be required by law, the Certificate of Incorporation, or these Bylaws, the presence, in person, at any meeting of the Members, of ten percent (10%) of all of the Members entitled to vote at such meeting shall constitute a quorum for the conduct of business; provided, however, that in the absence of a quorum, the presiding officer of the meeting may adjourn the meeting, from time to time, in the manner provided in Section 3.6, until a quorum is secured.

Section 3.6. Adjournments. Any meeting of the Members may be adjourned at the meeting, from time to time, by the presiding officer of the meeting for an announced proper purpose, to reconvene at a later time and at the same or some other place. Unless otherwise required by law, notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Members may transact any business that might have been transacted at the original meeting.

#### ***Article IV. Board of Directors***

Section 4.1. Management Authority. The business and affairs of the Corporation shall be governed and controlled by the board of directors of the Corporation (the “Board”). To the fullest extent permitted by the DGCL, whenever the Certificate of Incorporation or these Bylaws provide that a determination shall or may be made, or an action shall or may be taken, by the Board, such determination or action may be made or taken, with like effect and validity, by any committee of the Board having the necessary authority to so determine or so act pursuant to these Bylaws or a resolution of the Board.

#### Section 4.2. Qualifications and Term of Directors.

(a) (i) Only Members shall be qualified to serve as directors. If a director ceases to be a Member, such director shall thereupon be disqualified to serve as a director, and his or her term as a director shall cease.

(ii) It shall be a qualification for service as a director not to fail to attend more than two (2) consecutive regular Board Meetings, without excuse, during such director’s term. If a director fails to attend three (3) consecutive regular Board Meetings, without excuse, during such director’s term, such director shall thereupon be disqualified to serve as a director, and his or her term as a director shall cease. As used in the foregoing provisions of this Section 4.2(a)(ii), “without excuse” means that such director’s failure to attend a meeting is not excused by the President.

(iii) The Board may, at any time and from time to time, establish written qualifications for service as a director in addition to the qualifications contained in subsections (i) and (ii) of this Section 4.2(a). If a director fails to satisfy any such additional qualifications, such director shall thereupon be disqualified to serve as a director, and his or her term as a

director shall cease; provided, however, that no director's term as a director shall cease by reason of such director's failure to satisfy a qualification that is adopted (I) after such director's election to such term and (II) before such term expires and such director's successor is elected and qualified.

(b) Subject to the provisions of Section 4.2(c), an Individual may succeed himself or herself as a director not more than two (2) times. Any disqualification pursuant solely to the immediately preceding sentence shall cease to apply to an Individual beginning on the date of the next Annual Meeting following the Annual Meeting at which such Individual's most recent term as a director was scheduled to expire.

(c) An Individual may succeed himself or herself as a director three (3) times (but not more than three (3) times) if such Individual is serving as a duly elected officer of the Corporation at a time when, pursuant to Section 4.2(b) and in the absence of this Section 4.2(c), he or she would be disqualified from succeeding himself or herself as a director. If such Individual is duly nominated and reelected to succeed himself or herself a third (3rd) time as a director, it shall be a qualification of such Individual's continued service as a director to continue to serve as a duly elected officer of the Corporation, and if such Individual ceases to serve as a duly elected officer of the Corporation during his or her fourth (4th) consecutive term as a director, he or she shall thereupon cease to be qualified to serve as a director, and his or her term as a director shall cease. Any disqualification pursuant to the foregoing provisions of this Section 4.2(c) shall cease to apply to an Individual beginning on the date of the next Annual Meeting following the Annual Meeting at which such Individual's most recent term as a director was scheduled to expire.

#### Section 4.3. Number of Directors.

(a) The total number of directors constituting the Board shall be no fewer than nine (9), and no more than thirty (30), directors. The exact number of directors constituting the total number of directors shall be as determined from time to time by the Board; provided, however, that any reduction in the total number of directors shall not by itself cause any incumbent director or directors to be removed from the Board.

(b) At any time when the Board is divided into classes, any increase or decrease in the total number of directors constituting the Board shall be apportioned among such classes as determined by majority vote of the total

number of directors then in office, unless the vote of a greater number is required by law; provided, however, that any such apportionment must maintain the number of directors in each class as nearly equal as possible to the number of directors in each of the other two classes; and provided further that in no case shall any such apportionment of a decrease in the total number of directors constituting the Board shorten the term of any incumbent director.

(c) If the Board shall not have determined the exact number of directors constituting the total number of directors, and such number is not fixed in these Bylaws, then, until such time as the Board shall so determine or these Bylaws shall so fix, such number shall be deemed to be (i) the number of directors serving on the Board immediately before the most recent Annual Meeting, or (ii) the number of directors serving on the Board immediately after the most recent Annual Meeting, whichever number is greater.

Section 4.4. Resignation of Directors. A director may resign at any time upon notice to the President or the Secretary. Unless specified otherwise in such notice, it shall take effect upon delivery, without the need for acceptance. When one or more directors resign effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations become effective, and each director so chosen shall hold office as provided in these Bylaws for the filling of other vacancies.

Section 4.5. Vacancies. Any vacancy in the Board, whether because of resignation, removal, disqualification, an increase in the total number of directors, or another cause, may be filled only by a majority vote of the remaining directors, even if such remaining directors are less than a quorum. Each Individual so elected and qualified as a director shall serve until the expiration of the term of office of the director whom he or she has replaced and until his or her successor is elected and qualified, or until the earlier of his or her resignation, disqualification, or removal. If at the end of such partial term such Individual is elected to a full term as a director, such Individual shall not, for purposes of Section 4.2(b)-(c), be deemed to have succeeded himself or herself solely as a result of such election to a full term.

Section 4.6. Board Observers. Each of the Music Director and the General Manager shall, by virtue of such office, be given notice of, and be permitted

to attend and observe, any Board Meeting; provided, however, that, as a condition to permitting each of the Music Director and the General Manager to attend Board Meetings, the Board may exclude either or both of such officers from any Board Meeting, or any portion thereof, if the Board determines (a) that the presence of either or both of such officers could (i) result in a waiver of the attorney-client privilege with respect to any matters to be discussed, or (ii) cause the Corporation to violate obligations with respect to confidential or proprietary information of third parties, or (b) that the exclusion of either or both of such officers is necessary or appropriate in view of the confidential, proprietary, or otherwise sensitive nature of the matters to be discussed. In order to give effect to the foregoing proviso, the presiding officer at a Board Meeting shall, acting alone, have the authority to exclude either or both of the Music Director and the General Manager from any portion of a Board Meeting during which the directors determine whether to exclude either or both of such officers pursuant to the foregoing proviso. Notwithstanding the foregoing provisions of this Section 4.6, and for the avoidance of doubt, (x) no Board Meeting, and no action taken at any Board Meeting, shall be invalid or ineffective solely because notice of such Board Meeting was not given to or received by either or both of the Music Director and the General Manager, and (y) the permission afforded the Music Director and the General Manager to attend Board Meetings shall not entitle such officers to participate in Board Meetings, or to be given notice of, attend, or participate in any meeting of any committee of the Board, in each case unless the Board or such committee, as the case may be, determines otherwise.

Section 4.7. Musician Representative. A Musician Representative suggested by the Delaware Symphony Orchestra musicians, if one be so named, shall serve as a representative of the musicians to the Board.

#### ***Article V. Meetings of the Board of Directors***

Section 5.1. Regular Meetings. Regular Board Meetings shall be held at such places, dates, and times as the President shall determine. A schedule of regular Board Meetings shall be provided to each director as soon as reasonably possible after the commencement of each Fiscal Year, and no further notice of regular Board Meetings shall be required. The purpose of any regular Board Meeting need not be communicated to the directors before such Board Meeting.

Section 5.2. Special Meetings. Special Board Meetings may be called by the President and shall be called by the President if requested by one-third (1/3) of the directors then in office. Notice of the date, time, and place of a special Board Meeting shall be given by or at the direction of the Individual or Individuals calling the meeting. Unless otherwise stated in the notice thereof, any and all business may be transacted at any such meeting without specification of such business in such notice. Any such notice shall be given not less than forty-eight (48) hours before the meeting.

Section 5.3. Quorum. One-third (1/3) of the total number of directors shall constitute a quorum for the transaction of business by the Board, but a smaller number may adjourn from time to time, without further notice, until a quorum is secured.

Section 5.4. Vote Necessary to Act. The vote of a majority of the directors present at a duly called Board Meeting at which a quorum is present shall be the act of the Board, except as may otherwise be provided by law, the Certificate of Incorporation, or these Bylaws. For the avoidance of doubt, no director may attend, participate in, or vote at any Board Meeting, or at any meeting of any committee of the Board, by proxy, or sign a written director consent by proxy. Meetings of the Board or any committee of the Board shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 5.5. No Compensation. No director shall receive compensation for his or her service as a director.

Section 5.6. Participation by Remote Communication. Any director may participate in a Board Meeting, or a meeting of any committee of the Board, by conference telephone or other communications equipment by means of which all Individuals participating in such meeting can hear each other. Participation in any such meeting pursuant to the immediately preceding sentence shall constitute presence in person at such meeting.

## ***Article VI. Officers***

### **Section 6.1. Election and Number.**

(a) All officers of the Corporation shall be elected by the Board by vote of a majority of a total number of directors. If more than two (2) Individuals seek to be elected to the same office, and if the Board's initial

vote on such Individuals does not result in any of such Individuals receiving a majority, then a runoff election shall be held between the two (2) Individuals who received the greatest number of votes. If two (2) Individuals seek to be elected to the same office (whether in a runoff election or otherwise), and if the Board's vote on such two (2) Individuals does not result in either of such Individuals receiving a majority, then, notwithstanding the first sentence of this Section 6.1(a), the Individual who received in such vote the greater number of votes shall be deemed elected.

(b) The Board shall elect a President, Vice-President, Secretary, Treasurer, Music Director, and General Manager (by those or any other functionally equivalent executive titles), and may elect other officers, including an additional Vice-President. No officer other than the President, Vice-President(s), Secretary, and Treasurer need be a director or a Member. Any number of offices may be held by the same Individual; provided, however, that neither the Music Director nor the General Manager shall hold any other office.

#### Section 6.2. Term; Resignation; Removal; Vacancy; Oversight.

(a) Each officer of the Corporation other than the Music Director and the General Manager shall hold office for a term of two (2) years and until his or her successor is chosen and qualifies, or until his or her earlier resignation, disqualification, or removal. Each of the Music Director and the General Manager shall hold office (i) pursuant to the terms of any agreement between such officer and the Corporation, subject in each case to removal in accordance with Section 6.2(b), or (ii) in the absence or silence of any such agreement, until the earlier of such officer's resignation or removal.

(b) Any officer may resign at any time by notice to the President or the Secretary; provided, however, that such resignation shall be without prejudice to the contract rights, if any, of the Corporation. Any officer may be removed immediately, with or without cause, at any time, by vote of a majority of the total number of directors; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the officer removed.

(c) If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board in the same manner as any officer of the Corporation is otherwise chosen. If at any time the office of President is vacant or the President is for any reason disabled from acting, and it

becomes necessary or convenient to the Corporation that a determination or action within the authority of the President pursuant to these Bylaws be made or taken, such determination or action may be made or taken by a Vice-President or, in the absence of the Vice-President(s), by the Secretary.

(d) Except as may be otherwise provided in the Certificate of Incorporation, these Bylaws, or a resolution of the Board, each officer of the Corporation shall report directly to, and be subject to the supervision of, the Board.

Section 6.3. President. The President shall preside at Board Meetings unless he or she is absent, in which case a Vice-President shall preside. The President shall *ex officio* be a member of all committees of the Board; provided, however, that any committee may exclude the President from any meeting of such committee, or any portion thereof, whenever such committee determines, by vote of a majority of its members other than the President, that the best interests of the Corporation are reasonably likely to require that the President be so excluded. The President shall preside at meetings of the Members pursuant to Section 3.2. The President shall have the authority, in the name and on behalf of the Corporation, to sign and deliver all contracts that have been authorized by the Board, and to transfer, endorse, sell, assign, set over, and deliver any shares of stock, bonds, certificates of deposit, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by the Corporation, as directed or approved by the Board. The President shall perform such other duties as the Board may from time to time determine.

Section 6.4. Vice-President. The Vice-President or Vice-Presidents, as the case may be, shall assist the President in the performance of his or her duties, shall preside at meetings of the Members pursuant to Section 3.2 and at Board Meetings pursuant to Section 6.3, and shall perform such other duties as the Board may from time to time determine.

Section 6.5. Secretary. The powers and duties of the Secretary shall be (a) to act as secretary at all Board Meetings, meetings of the Executive Committee, and meetings of the Members, to record the proceedings of such meetings in a book or books to be kept for that purpose, and to distribute minutes of meetings of the Executive Committee to the entire Board; (b) to see that all notices required to be given by the Corporation are duly given; (c) to act as custodian of the seal of the Corporation, if any, and affix the seal or cause it to be affixed to all documents whose execution on behalf of



the Corporation under its seal is duly authorized by the Board; (d) to have charge of the books, records, and papers of the Corporation and see that the reports, statements, and other documents required by law to be kept and filed are properly kept and filed; (e) to maintain a record of each director's name, notice address, and term(s) of service; and (f) to perform such additional duties as the Board may from time to time determine. At the end of a Secretary's term in office, he or she shall deliver to the next Secretary the corporate seal, if any; all minute books of the Corporation; and all other records of the Corporation in his or her custody.

Section 6.6. Treasurer. The Treasurer shall maintain adequate and correct books of account for the Corporation and shall supervise and be responsible for all the funds of the Corporation; the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation; compliance with the provisions of all indentures, agreements, and instruments governing borrowings to which the Corporation is a party; and the disbursement of funds of the Corporation. The Treasurer shall have the authority, in the name and on behalf of the Corporation, to transfer, endorse, sell, assign, set over, and deliver any shares of stock, bonds, certificates of deposit, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by the Corporation, as directed or approved by the Board. In addition, the Treasurer shall invest the funds of the Corporation as directed by the Board and shall perform such additional duties as the Board may from time to time determine. At the end of a Treasurer's term in office, he or she shall deliver to the next Treasurer custody of all books, monies, and other property of the Corporation in his or her custody. The Board may require the Treasurer to give such security as it may determine for the faithful performance of the Treasurer's duties.

Section 6.7. General Manager.

(a) Subject to Section 6.7(b), the General Manager shall serve as chief operating officer of the Corporation and shall have the authority customarily associated with such office in an organization similar in size, purposes, and operations to the Corporation. The General Manager shall supervise the expenditure of corporate funds in accordance with budgets approved by the Board and shall report to the Board as requested regarding any activity that lies within the General Manager's area of responsibility. The General Manager shall maintain (i) a regularly updated list of the Members that shall include each Member's name, the date(s) and amount(s) of such Member's donation(s) to the Corporation, and the postal or

electronic address that such Member has provided for notice purposes, and (ii) regularly updated records of any consents, and any revocations of consents, that may be given by Members to notice by electronic transmission pursuant to Section 232 of the DGCL. The General Manager, if a Member, shall have no vote at any meeting of the Members.

(b) The General Manager shall have no authority to take, for or on behalf of the Corporation, any of the actions specified in this Section 6.7(b), or to bind the Corporation in respect of the same, except and only to the extent that such actions may be specifically authorized by the Board in an approved budget or on a case-by-case basis:

(i) Opening or closing bank or investment accounts or arrangements, or designating individuals with authority to sign or give instruction with respect to any accounts of the Corporation;

(ii) Drawing any check or other order for the payment of money unless such check or other order is co-signed by the Treasurer or another officer of the Corporation to whom the Board shall have given the appropriate signing authority, provided, however, that any check or other order for the payment of money drawn by the General Manager in an amount exceeding Five Thousand Dollars (\$5,000) must be co-signed by the Treasurer or another officer of the Corporation to whom the Board shall have given the appropriate signing authority, regardless of whether such disbursement is specifically authorized by the Board;

(iii) Borrowing or loaning money, issuing or accepting evidences of indebtedness in connection therewith, increasing or decreasing the amount of, modifying, amending, or changing the terms of, or extending the time for the payment of, any indebtedness or obligation of or to the Corporation, or securing indebtedness by mortgage, deed of trust, pledge, grant of a security interest in, or other lien on, or otherwise encumbering, any property of the Corporation, tangible or intangible;

(iv) Selling, exchanging, leasing, or otherwise disposing of any property of the Corporation, tangible or intangible, or any interest therein, except that this subsection (iv) shall not restrict the authority of the General Manager to make disbursements in accordance with subsection (ii) of this Section 6.7(b);

(v) Compromising any claims or liabilities in favor of or against the Corporation, admitting liability or fault on the part of the Corporation or any of its employees or agents, or confessing a judgment against the Corporation;

(vi) Making or revoking any election permitted to the Corporation by any taxing authority;

(vii) Retaining legal counsel, auditors, or any other professionals;

(viii) Hiring any employee;

(ix) Guaranteeing or acting as surety for the payment of money or the performance of any contract or obligation;

(x) Filing or causing to be filed any certificate, statement, instrument, or other document (whether in paper or electronic form) with the Secretary of State of the State of Delaware or any similar public filing office of any federal, state, or local jurisdiction; or

(xi) Entering into any contract, agreement, or other undertaking, oral, written, or implied, whether or not specified in any of the preceding subsections of this Section 6.7(b), involving an amount exceeding Twenty-Five Thousand Dollars (\$25,000.00).

Section 6.8. Music Director. The Music Director shall serve as chief artistic officer of the Corporation. The Music Director shall report to the Board as requested regarding any activity that lies within the Music Director's area of responsibility. The Music Director shall have direct responsibility for the selection, development, and replacement of musicians, subject in each case to any then-applicable collective bargaining agreement and to salary and other employment terms and parameters as may be established from time to time by the Board. The Music Director, if a Member, shall have no vote at any meeting of the Members.

## ***Article VII. Board Committees***

### Section 7.1. Executive Committee.

(a) The Board shall designate a committee composed of the President, Vice-President(s), Secretary, and Treasurer (the "Executive Committee").

Except as otherwise provided in the Certificate of Incorporation, these Bylaws, the DGCL, or resolutions of the Board, the Executive Committee shall manage the business and affairs of the Corporation during periods between Board Meetings. Subject to, and to the fullest extent permitted by, the immediately preceding sentence, whenever the Certificate of Incorporation or these Bylaws provide that a determination shall or may be made, or an action shall or may be taken, by the Board, or refer to a determination or action made or taken by the Board, such determination or action may be made or taken, with like effect and validity, by the Executive Committee, except that the Executive Committee shall not have the authority to reverse, or to make a determination or take an action inconsistent with, any prior determination or action by the Board.

(b) Meetings of the Executive Committee shall be called by the Secretary at the request of the President or of three members of the Executive Committee. The President shall be the chair of the Executive Committee. Unless otherwise expressly restricted by law, by resolution of the Board, or by these Bylaws, the Executive Committee shall establish its own procedures.

(c) A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business. Minutes of its meetings shall be taken by the Secretary and distributed promptly to the entire Board.

Section 7.2. Nominating and Governance Committee. The Board shall designate a committee of at least three (3) directors, which committee shall identify, and propose for nomination by the Board, qualified candidates for election as directors and officers (the “Nominating and Governance Committee”). The Nominating and Governance Committee shall have such other authority as the Board may determine from time to time. The President shall designate the chair of the Nominating and Governance Committee. The Nominating and Governance Committee shall cause minutes of its meetings to be kept but in all other respects, unless otherwise expressly restricted by law, by resolution of the Board, or by these Bylaws, shall establish its own procedures.

Section 7.3. Additional Committees. The Board may designate, and delegate authority to, other committees of directors pursuant to Section 141(c) of the DGCL. The President shall designate the chair of any such committee.

## ***Article VIII. Conflicts of Interest***

Section 8.1. Conflicts of Interest Policy. The Corporation, and its directors and officers, shall comply with the conflicts of interest policy set forth in Addendum A to these Bylaws.

## ***Article IX. Indemnification; Advancement; Insurance***

Section 9.1. Right of Indemnification and Advancement. Each Individual who was or is made a party to, or is threatened to be made a party to, or was or is involved in any action, suit, or alternative-dispute-resolution procedure, or any other threatened, pending, or completed proceeding, whether civil, criminal, administrative, or investigative, including any action by or in the right of the Corporation (any of the foregoing, a “Proceeding”), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation or of a partnership, limited liability company, joint venture, trust, or other entity, including service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action in an official capacity as such director, officer, employee, or agent, or in any other capacity while serving as such director, officer, employee, or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment), against all expense, liability, and loss (including attorneys’ fees, judgments, fines, other expenses and losses, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such Individual in connection therewith, and such indemnification shall continue as to an Individual who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of his or her heirs, executors, and administrators; provided, however, that except as provided in Section 9.2, the Corporation shall indemnify any such Individual seeking indemnification in connection with a Proceeding (or part thereof) initiated by such Individual only if such Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article IX shall be a contract right and, solely in the case of a director or an officer who does not receive (or at the time of the conduct forming the basis

of the Proceeding, did not receive) a salary from the Corporation (a “Volunteer Officer”), shall include the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any such Proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director or Volunteer Officer in his or her capacity as a director or Volunteer Officer (and not in any other capacity in which service was or is rendered by such Individual while a director or Volunteer Officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, which undertaking shall itself be sufficient without the need for further evaluation of any credit aspects of the undertaking or with respect to such advancement, by or on behalf of such director or Volunteer Officer, to repay all amounts so advanced if it shall ultimately be determined by a final, non-appealable order of a court of competent jurisdiction that such director or Volunteer Officer is not entitled to be indemnified under this Article IX or otherwise.

Section 9.2. Right of Claimant to Bring Suit. If a claim under Section 9.1 is not paid in full by the Corporation within sixty (60) days after a written claim, together with reasonable evidence as to the amount of such claim, has been received by the Corporation, except in the case of a claim for advancement of expenses (including attorneys’ fees), in which case the applicable period shall be twenty (20) days, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expense, including attorneys’ fees, of prosecuting such suit. It shall be a defense to any such suit, other than a suit brought to enforce a claim for advancement of expenses where the required undertaking, if any is required, has been tendered to the Corporation, that the claimant has not met the standards of conduct that make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or the Members) to have made a determination prior to the commencement of such suit that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the Members) that the claimant has not met such applicable standard of conduct,

shall be a defense to the suit or create a presumption that the claimant has not met the applicable standard of conduct. In any suit brought to enforce a right to indemnification or to advancement of expenses hereunder, or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that an Individual is not entitled to such indemnification, or to such advancement of expenses, under this Article IX or otherwise, shall be on the Corporation.

Section 9.3. Non-Exclusivity of Rights. The rights to indemnification and advancement of expenses conferred in this Article IX shall not be exclusive of any other right that any Individual may have or hereafter acquire under any statute, provision of the Certificate of Incorporation or these Bylaws, agreement, by vote of disinterested directors, or otherwise.

Section 9.4. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of the Corporation against any such expense, liability, or loss, whether or not the Corporation would have the power to indemnify against such expense, liability, or loss under the DGCL.

Section 9.5. Subrogation. In the event and to the extent that any claimant receives indemnification or advancement of expenses pursuant to this Article IX, (a) the Corporation shall be subrogated, to the fullest extent permitted by law, to any right of action that such claimant may have against any third person respecting the loss so indemnified or the expenses so advanced, and (b) such claimant shall hold in trust for, and pay to, the Corporation any amounts that such claimant may recover in damages or settlement from any third person respecting the loss so indemnified or the expenses so advanced.

Section 9.6. Amendment or Repeal. The rights to indemnification and advancement of expenses conferred in this Article IX shall not be eliminated or impaired by an amendment to or repeal of the Certificate of Incorporation or these Bylaws after the occurrence of the act or omission that is the subject of the Proceeding for which indemnification or advancement of expenses is sought.

## ***Article X. Other Provisions***

Section 10.1. Fiscal Year. The Corporation's fiscal year (the "Fiscal Year") shall begin on July 1 and end on June 30 of the following calendar year.

Section 10.2. Audits. After the close of each Fiscal Year, the activities of the Corporation shall be audited by an independent certified public accountant, as directed by the Board.

Section 10.3. Calendar Days. In the calculation of periods of time pursuant to these Bylaws, calendar days shall be used unless expressly provided otherwise.

Section 10.4. Severability. Whenever possible, each term and provision of these Bylaws shall be interpreted in such a way as to be effective and valid under applicable law. If any term or provision of these Bylaws is found to be unlawful, or if the application thereof to any person or any circumstance shall to any extent be judicially determined to be invalid or unenforceable, the remainder of these Bylaws, or the application of such term or provision to persons or circumstances other than those to which its application is judicially determined to be invalid or unenforceable, shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 10.5. Manner of Notice. Except as otherwise provided in these Bylaws or permitted by law, notices to Members shall be in writing and delivered personally or mailed to the Members at their addresses appearing on the books of the Corporation, or shall be delivered by electronic transmission to the extent permitted by the Certificate of Incorporation and Section 232 of the DGCL. Notice to directors may be given by telephone, e-mail, or other means of electronic transmission.

Section 10.6. Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation, or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

Attendance of a person at a meeting (including any meeting of the Members, any Board Meeting, and any meeting of any committee of the Board) shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Members, directors, or members of a committee of the Board need be specified in any written



waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

Section 10.7. Rules of Construction. As appropriate in context, whenever the singular number is used in these Bylaws, the same includes the plural, and whenever the plural number is used in these Bylaws, the same includes the singular. As used herein, “include,” “includes,” and “including” shall be deemed to be followed by “without limitation.” The article and section headings in these Bylaws are provided for convenience and identification only; do not define or limit the scope, extent, or intent of these Bylaws or any of the provisions hereof; and are not intended to affect the interpretation or construction of these Bylaws.

Section 10.8. Defined Terms. The following terms have the meanings set forth below or in the sections of the these Bylaws set forth below:

- (a) “Annual Meeting” has the meaning given thereto in Section 3.1.
- (b) “Board” has the meaning given thereto in Section 4.1.
- (c) “Board Meeting” means any meeting of the Board.
- (d) “Bylaws” means these bylaws of the Corporation.
- (e) “Certificate of Incorporation” has the meaning given thereto in Section 1.3(a).
- (f) “Corporation” means Delaware Symphony Association, a Delaware corporation, which is the corporation governed by these Bylaws.
- (g) “Delaware Symphony Orchestra” means the orchestra operated by the Corporation.
- (h) “DGCL” means the General Corporation Law of the State of Delaware, as amended from time to time.
- (i) “Executive Committee” has the meaning given thereto in Section 7.1(a).
- (j) “Fiscal Year” has the meaning given thereto in Section 10.1.
- (k) “General Manager” means the officer of the Corporation whose duties are set forth in Section 6.7.

- (l) “Individual” means a natural person.
- (m) “Member” has the meaning given thereto in Section 2.1.
- (n) “Music Director” means the officer of the Corporation whose duties are set forth in Section 6.8.
- (o) “Musician Representative” means a representative of the musicians pursuant to Section 4.7.
- (p) “Nominating and Governance Committee” has the meaning given thereto in Section 7.2.
- (q) “President” means the officer of the Corporation whose duties are set forth in Section 6.3.
- (r) “Proceeding” has the meaning given thereto in Section 9.1.
- (s) “Secretary” means the officer of the Corporation whose duties are set forth in Section 6.5.
- (t) “Treasurer” means the officer of the Corporation whose duties are set forth in Section 6.6.
- (u) “Vice-President” means an officer of the Corporation whose duties are set forth in Section 6.7.
- (v) “Volunteer Officer” has the meaning given thereto in Section 9.1.

## ADDENDUM A

### DELAWARE SYMPHONY ASSOCIATION

#### CONFLICTS OF INTEREST POLICY

##### **Article I**

##### **Purpose**

The purpose of this Conflicts of Interest Policy (the “Policy”) is to protect the interest of Delaware Symphony Association, a Delaware charitable nonstock corporation (the “Organization”), when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This Policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

##### **Article II**

##### **Definitions**

**1. Interested Person.** An Interested Person is any (a) director, (b) principal officer, or (c) member of a committee with board-delegated powers, in each case who has a direct or indirect Interest as defined below.

**2. Interest.**

(a) A person has an Interest if the person, directly or indirectly, through business, investment, or family:

(i) Has an ownership or investment interest in any entity with which the Organization has a transaction or arrangement;

(ii) Has a Compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement;

(iii) Has a potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement; or

(iv) Is a member, director, or officer of an organization with which the Organization has entered into or is contemplating entering into a transaction or arrangement.

(b) An Interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has an Interest may have a conflict of interest only if the board or appropriate board committee decides that a conflict of interest exists. A transaction is not prohibited simply because a conflict of interest exists.

**3. Compensation.** Compensation includes direct and indirect remuneration, as well as significant gifts, favors, or contributions.

### **Article III** **Procedures**

**1. Duty to Disclose.** In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of his or her Interest and must be given the opportunity to disclose all material facts to the full board (or to a board committee if such committee is charged with considering the proposed transaction or arrangement giving rise to the actual or possible conflict of interest).

**2. Determining Whether a Conflict of Interest Exists.** At a board or board committee meeting (as applicable), after the Interested Person's disclosure of the Interest and all material facts, any additional presentation that the Interested Person may wish to make, and any discussion with the Interested Person, the Interested Person shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board members (or board committee members, if applicable) shall decide if a conflict of interest exists.

**3. Procedures for Addressing the Conflict of Interest.**

(a) The presiding officer at the board or board committee meeting shall, if appropriate, appoint a disinterested person or committee of disinterested persons to investigate alternatives to the proposed transaction or arrangement giving rise to the actual or possible conflict of interest.

(b) After exercising due diligence, the board or board committee shall determine whether the Organization can 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.

(c) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board or board committee shall determine, by a majority vote of the disinterested directors, whether the transaction or arrangement is in the Organization's best interest, is for the Organization's own benefit, and is fair and reasonable to the Organization. The board or board committee shall decide whether to enter into the transaction or arrangement in accordance with such determination.

#### **4. Violations of the Conflicts of Interest Policy.**

(a) If the board or board committee has reasonable cause to believe a person has failed to disclose an actual or possible conflict of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the person's response and after making such further investigation as may be warranted in the circumstances, the board or board committee determines the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

### **Article IV** **Records of Proceedings**

The minutes of the board and all board committees shall contain:

(a) The names of 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 Interest, any action taken to determine whether a conflict of interest was present, and the board's or board committee's decision as to whether a conflict of interest in fact existed; and

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## **Article V**

### **Compensation**

**1. Voting on Compensation Matters.** A director who receives Compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that director's Compensation, whether such matters come before the full board or before a board committee of which such director is a member.

**2. Service on Compensation Committee.** Any director who receives Compensation, directly or indirectly, from the Organization for services is precluded from serving on any board committee with the authority to make decisions or recommendations regarding Compensation.

**3. Providing Information Regarding Compensation.** No director who receives Compensation, directly or indirectly, from the Organization is prohibited from providing information to the full board or any board committee regarding Compensation.

**4. Procedure for Establishing Compensation of Interested Persons.**

(a) Compensation of any Interested Person shall be approved by a majority of the full board other than such Interested Person or a board committee that is composed entirely of directors unrelated to and not subject to the control of such Interested Person.

(b) Such Interested Person may provide information to the board or board committee in connection with the consideration of such Interested Person's Compensation, but such Interested Person shall not be present during any discussion of and vote on such Interested Person's Compensation.

(c) The board or board committee making Compensation decisions shall obtain and rely upon appropriate data as to comparability of Compensation, including but not limited to such things as:

(i) Compensation levels paid by similarly situated organizations, both tax-exempt and non-tax-exempt, for functionally comparable positions;

(ii) The location of the Organization, including the availability of similar specialties in its geographic area;

(iii) Independent compensation surveys by nationally recognized independent firms; and

(iv) Actual written offers from similar institutions competing for the services of the Interested Person.

(d) The board or board committee shall document the basis for its determination, which documentation shall be made a part of the permanent minutes and records of the board or board committee.

## **Article VI** **Annual Statements**

Each director and officer shall annually sign a statement that affirms that such person:

- (a) Has received a copy of this Policy,
- (b) Has read and understands this Policy,
- (c) Has agreed to comply with this Policy,
- (d) Has disclosed all known actual and possible conflicts of interest involving such director or officer and his or her family members, and
- (e) Understands that the Organization is charitable and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **Article VII** **Periodic Reviews**

To ensure the Organization operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether Compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's-length bargaining;
- (b) Whether acquisitions of services result in inurement or impermissible private benefit;

(c) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Organization's charitable purposes, and do not result in inurement, impermissible private benefit, or an excess benefit transaction; and

(d) Whether agreements for services and agreements with organizations, employees, and third-party payers further the Organization's charitable purposes and do not result in inurement, impermissible private benefit, or an excess benefit transaction.

**Article VIII**  
**Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside experts. If outside experts are used, their use shall not relieve the board of its responsibility to ensure that periodic reviews are conducted.