

# **BY-LAWS OF THE AUTO PAINTERS ASSOCIATION**

(The Auto Painters Association is a not for profit and without capital stock) Amended and Restated as of May 2011.

## ARTICLE I CORPORATION PURPOSES AND POWERS

This corporation ("Association") is organized as a not for profit corporation under the Delaware general corporate law for the purposes set forth in the certificate of incorporation.

## ARTICLE II OFFICES

The executive offices of the Association shall be located in such place, within or without the State of Delaware, as the Board of Directors (hereinafter the "Board") shall from time to time determine or the business of the Association may require. The Association may also have offices at such other places both within and without the state of Delaware as the Board may from time to time determine or the business of the Association may require.

## ARTICLE III DEFINITIONS

Section 3.1 "Associates" shall mean and refer to all those persons who may wish to advertise in the Association newsletter or participate in other Association sponsored or endorsed programs or functions.

Section 3.2 "Association" shall mean and refer to the American Painters Association, Inc., a non-profit corporation organized and existing under the laws of the State of Delaware.

Section 3.3 "Board of Directors" or "Board" means those persons elected and acting collectively as the Directors of the Association.

Section 3.4 "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 3.5 "Committee" shall mean individual Members or Directors who are charged with investigating or considering so as to make recommendations and reports to the Board regarding a particular subject(s) leading the Board to decide to act/not act on behalf of the Association.

Section 3.6 "Committee of One" shall mean an individual Member or Director authorized to perform the functions of a Committee as provided in Section 3.5 of this Article and Article VII, Sections 7.11C, 7.11D, and 7.11E.

Section 3.7 "Director" or "Regional Council Chairperson" shall mean a person elected or appointed as Regional Council Chairperson by Regional Council Members, as provided in Article VI, Sections 6.2, and 6.3.

Section 3.8 "District" shall mean each geographical area determined by the Board from time to time that is a sub-unit of a Region and comprised of between 7 and 15 MAACO Franchisee shops. With respect to Shops that are geographically remote from other Shops, the President may create (subject to Board approval) temporary Districts (for not more than 2 years) of less than 7 Shops. If no Regional Council Member is elected or appointed for a District, the President may (subject to Board approval) combine such District with another District for not more than 2 years. Where practical, all Shops in a District must be contiguous and in the same DMA.

Section 3.9 "DMA" or "Designated Marketing Area" - A group of counties in which the commercial TV stations in the Metro/Central area achieve the largest audience share.

Section 3.10 "Manager" shall mean and refer to the person employed by the Board as a professional manager, pursuant to the provisions of the bylaws, to manage the affairs of the Association.

Section 3.11 "MAACO" shall mean MAACO as the franchisor

Section 3.12 "Member" shall mean and refer to those persons as meet the membership qualification requirements as provided in Article IV, Section 4.1. All Members will be a Member of their appropriate District, i.e., will be a "District Council Member".

Section 3.13 "Member in Good Standing"

A. "Member in Good Standing" shall mean any MAACO franchisee who has an open MAACO shop and is current with his Association fees, dues, assessments, fines or penalties and, in the opinion of the Board, has a good reputation for ethical practices, see Article IV, Section 4.1 for further requirements. Such a Member has a right to vote as provided in Article V, Section 5.8.

B. "Multi-shop Member in Good Standing" shall mean any MAACO franchisee who owns multiple franchises and who is current with his Association fees, dues, assessments, fines or penalties and, in the opinion of the Board, has a good reputation for ethical practices, see Article IV, Section 4.1 for further requirements. Such a Member has a right to vote as provided in Article V, Section 5.8.

Section 3.14 "Officer" shall mean the Association President, Vice President, Secretary, Treasurer and any other person so designated.

Section 3.15 "Person" shall mean or refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 3.16 "Qualifications Requirements for Regional Council Members, Regional Council Chairpersons, Committee Chairmen, and Officers" - A Member will be considered qualified so long as she/he is a Member, has an open location for twenty-

four (24) consecutive months prior to his/her nomination and is in good standing. Each and every nominee must be given a copy of the current Bylaws. See Article VI, Section 6.2 (A through D), for further requirements for District Council Members, Regional Council Chairpersons/Board Members, and Committee Chairpersons. See Article VIII, Section 8.2 (A through D), for further requirements for Officers of the Association.

Section 3.17 "Region" shall mean a geographical area of the U.S. as determined by the Board from time to time. Currently the Association is comprised of 8 Regions. Currently a Region is comprised of 10 Districts, except that the Board may permit 25% deviation, if necessary. Each Region will have approximately the same number of shops.

Section 3.18 "Regional Council Member" shall mean a person elected or appointed as a Member of one of the Regional Councils to represent his District at meetings of the appropriate Regional Council in accordance with Article V, Section 5.8 and Article VI, Sections 6.1 and 6.3.

Section 3.19 "Regular Meetings" of the Board, or the Regional Councils, shall mean two or more meetings per year at such time, place, and hour as fixed by resolution of the Board or by decision of the appropriate Regional Council. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 3.20 "Special Meetings"

A. "Special Meetings" of a Regional Council shall mean any meeting called by the Chairperson of the Board or President of the Association, by the Regional Council Chairperson, or by at least 1/2 of the Regional Council Members then in office, after not less than five (5) business days written notice to each Regional Council Member.

B. "Special Meetings" of the Board shall mean any meeting called by the Chairperson of the Board or President of the Association, or by at least 1/2 of the Directors then in office, after not less than five (5) business days written notice to each Director.

Section 3.21 "Voting Representative" shall mean the person designated as the official voting representative of each Member that is a partnership, corporation, limited liability corporation, or other legal entity. The majority owner or the operating partner shall serve as the Voting Representative and the Member.

#### ARTICLE IV MEMBERSHIP

Section 4.1 Qualifications. Membership in this Association is open only to those persons who meet the following qualifications:

- (i) are owners of a MAACO franchise;
- (ii) are a Member in Good Standing
- (iii) in the opinion of the Board, are financially sound and have a good reputation for ethical business dealings;
- (iv) are not under or subject to any subject or order of any federal or administrative agency which would, in the judgment of the Board, prohibit the applicants from functioning as a Member of the Association, or a participant in its programs;
- (v) agree, by execution of an application on a form acceptable to the Board with payment of the initiation fee, dues, and any assessments, fines or penalties, to be bound by the Association's certificate of incorporation and these Bylaws; and
- (vi) Multi-shop Member(s) shall be required to pay 100% of any fees, dues, and any assessments, fines or penalties required by the Association for the first four (4) shops; subsequent shops shall be

required to pay 25% of any fees, dues, assessments, fines or penalties required by the Association.

(vii) Each voting representative shall have one vote for each shop they represents up to a maximum of four.

Section 4.2 Associates. Associate membership in this Association is only open to those persons/vendors that meet the following qualifications:

(i) in the opinion of the Board, are financially sound and have a good reputation for ethical business dealings.

(ii) are not under or subject to any subject or order of any federal or administrative agency which would, in the judgment of the Board, prohibit the applicants from functioning as an associate of the Association, or a participant in its programs; and

(iii) agree, by execution of an application on a form acceptable to the Board with payment of \$100, the dues, and any assessments, fines or penalties to be bound by the Association's certificate of incorporation and these Bylaws.

Section 4.3 Membership Qualifications and Eligibility. May be amended by resolution of the Board and/or by any similarly prescribed rules and regulation, which the Board may promulgate. Any such resolution and/or rules and regulations relating to membership in the corporation shall be annexed to these Bylaws and shall be deemed to be a component part thereof.

Section 4.4 Membership Suspension and Termination will be determined by resolution of the Board and/or by any similarly prescribed rules and regulations, which the Board may promulgate. The Board may set the amount and manner of imposing and collecting assessments, fines, and penalties, if any, the manner of suspension or termination of the membership and

for reinstatement, if any, and, except as may in the certificate of incorporation or hereinafter be provided, the conditions, rights, liabilities and other incidents of membership. Any such resolution and/or rules and regulations relating to suspension, termination or reinstatement in the Association shall be annexed to these Bylaws and shall be deemed to be a component part thereof. Also, see Section 4.9 of this Article.

Section 4.5 Membership Fees. Any MAACO Franchisee who meets the requirements for membership, as set out in Article IV, Section 1 shall pay an initiation fee of \$100. The President may from time to time waive the initiation fee on a case by case basis. If the President waives the fee he will immediately inform the Board of his action and reasons for doing so.

Section 4.6 Associate Initiation Fee. Any vendor who meets the requirements for membership, as set out in Article IV, Section 2 shall pay an initiation fee of \$250. The President may from time to time waive the initiation fee on a case by case basis, if the President waives the fee he will immediately inform the Board of his action and reasons for doing so.

Section 4.7 Transfer of Membership. Membership in this Association is not transferable or assignable by the Member or Associate, except with the consent and approval of the Board and subject to such conditions and procedures as the Board may establish from time to time. No purported transferee or assignee is entitled to membership or to any other rights whatsoever in this Association, nor shall any person acquire a membership by purchase, inheritance, by operation of law or otherwise.

Section 4.8 Resignation of Members and Associates. By written notice to the Secretary of the Association, a Member or Associate may resign from the Association, but resignation does not relieve the Member of the obligation to pay initiation and fees or assessments or other charges accrued and unpaid, and automatically terminates all rights and privileges of such Member

or Associate and any and all right title and interest of the Member in any and all property of the Association. Resignation does not entitle the Member or Associate to a refund of any fees or assessment paid to the Association, or to receive any other payment from the Association.

#### Section 4.9 Termination and Suspension of Members and Associates.

A. A Member shall be automatically terminated from this Association upon any of the following events:

- (i) the selling of interest in MAACO franchise;
- (ii) the death of a Member who is a natural person;
- (iii) insolvency of the Member; or
- (iv) disqualification of the Member.

B. The Board may suspend or terminate a Member or Associate from this Association, upon:

- (i) a Member's or Associate's repeated and knowing violation of these bylaws;
- (ii) non-payment of any and all initiation fees, dues, assessments, fines and penalties:
  - (a) if monies owed are not paid within one (1) month of the day which they are due, the Member or Associate shall forfeit all rights of membership; the due date unless otherwise set by the Board shall be the first of the month of the anniversary of enrollment each year.
  - (b) membership rights may be reinstated upon payment in full of the current years dues and any other fees, dues, assessment, fines and penalties that may be owed;



( c) the decisions of the Board on such matters shall be conclusive and binding upon all persons.

C. The Board shall give the Member or Associate fifteen (15) days written notice stating the grounds for the purported action. The affected Member or Associate shall be afforded an opportunity to respond in writing or, at the Board's discretion, before the Board or a Committee of the Board. The Board may suspend a Member or Associate for a stated or indefinite period pursuant to the same procedure. A suspended Member or Associate may not vote, hold office or participate in the activities of the Association.

## ARTICLE V MEMBERSHIP MEETINGS

Section 5.1 Annual Meeting. The annual meeting of the Members shall be held each year at a time and place designated by the Board, for the purpose of seating the newly elected Directors and the transaction of other Association business. The Board may, at its discretion, hold the annual meeting in concert with a Board meeting or any other meeting.

Section 5.2 Special Meetings. The Board or the President may call a special meeting of the Members, and the Secretary shall call a special meeting upon receipt of written demand setting forth the purpose for which a special meeting is to be held, signed by at least 100 Members in good Standing or 20% of the Members (whichever is less).

Section 5.3 Notice.

A. Notice of a special meeting shall be given within ten (10) days after demand and the meeting shall be convened within thirty (30) days after notice is sent. Notice of a special meeting shall state the time, date, place and purpose of the meeting, and be given at least ten (10) days before the meeting.

B. Notice of an Annual meeting shall be given not less than ten

(10) days or more than sixty (60) days before the meeting and shall state the time, date and place of the meeting.

C. Notices may be given in any manner permitted by law; notice by mail may include overnight express, courier service or fax.

D. A Member may waive notice of the meeting of Members before, at or after the meeting. Attendance at a meeting of Members constitutes a waiver of notice of the meeting and consent to the place, time, notice and convening of the meeting, except where a Member states at the beginning of the meeting any objection to the transaction of business.

#### Section 5.4 Place of Meeting.

Annual and special meetings shall be held at such place, within or without the State of Delaware, as the Directors may, from time to time, fix. Whenever the Directors shall fail to fix such place, the meeting shall be held at the principle office of the Association.

#### Section 5.5 Call.

Annual and special meetings may be called by the Board or any Officer instructed by the Board to call meetings.

#### Section 5.6 Quorum.

A quorum, for any annual, regular or special meetings of the Members, consists of 10% of the total number of Members if the Association has 500 or fewer Members; or 50 Members if the Association has more than 500 Members. If a question has been submitted to a vote of the Members by mail, Members present in person or by mailed ballot shall be counted determining a quorum.

#### Section 5.7 Attendance At Member Meetings.

- A. Membership meetings are held for Association Members.
- B. Attendees must be Members, as prescribed in Article IV, Sections 4.1 and 4.5, prior to any membership meeting.
- C. Non-Members or Members shall not become Members in Good Standing at or during membership meetings. See Article III, Section 3.13. 8
- D. Non-Members may, at the discretion of the Board, attend Member meetings so long as the non-Members pay any fees, dues, assessment, fine or penalties. These monies shall be paid "at the door" via cash, company check, cashier's check or money order. Personal checks shall not be accepted.

#### Section 5.8 Voting.

- A. Each Member in Good Standing of the Association shall be entitled to one vote on matters that come before the membership, which may be cast in person, by mail or by proxy, as hereinafter provided.
- B. A Member in good standing that is a corporation or other entity must designate, in a writing filed with the Secretary, an officer of the corporation or entity who has personal responsibility to cast the Member's vote.

#### Section 5.9 Order of Business.

The following order of business, unless otherwise ordered at the meeting by the Chairperson, shall be observed wherever practicable and consistent with the purpose of the meeting:

- (i) Call of meeting to order.
- (ii) Presentation of proof of mailing of notice of the meeting and, if the meeting a special meeting, the call thereof.

- (iii) Presentation of proxies.
- (iv) Determination and announcement that a quorum is present.
- (v) Reading and approval, or waiver thereof, of the minutes of the previous meeting.
- (vi) Reports, if any, of Officers, Chairpersons, if any, or Committee persons, if any.
- (vii) Seating of new Directors, if meeting is an annual meeting or a special meeting for that purpose.
- (viii) Consideration of specific purpose(s) for which meeting has been called.
- (ix) Transaction of such other business as may properly come before the meeting. (x) Adjournment.

#### Section 5.10 Action Taken Without Meeting.

An action required or permitted to be taken by the Members, may be taken without a meeting, if Members in Good Standing holding not less than the minimum number of votes that would be necessary to authorize such action at a meeting, at which all Members in Good Standing were present, consent in writing to such action. Such consent shall have the same effect as a vote of the Members and shall be filed with the minutes of the proceedings of the Members. Prompt notice of taking an Association action without meeting by less than unanimous written consent shall be given to those Members in Good Standing who have not consented in writing.

### ARTICLE VI REGIONAL COUNCIL

Section 6.1 The Members of each District shall, on once every two year basis, elect one (1) Regional Council Member to sit on the Regional Council for the Region in which the District is

located. The Districts of even numbered Regions will hold their elections in even numbered years, and the Districts of odd numbered Regions will hold their elections in odd numbered years.

#### Section 6.2 Number, Selection, Term and Qualification of Regional Council Chairpersons.

A. During the appropriate Regional meetings on even numbered years the even numbered Regions shall elect a Regional Council Chairperson from their ranks. During the appropriate Regional meetings on odd numbered years the odd numbered Regions shall elect a Regional Council Chairperson from their ranks.

B. Selection of Regional Council Chairpersons shall be as follows: As the last business of the Regional Council prior to adjourning, the outgoing Regional Council Chairperson shall solicit nominations for Regional Council Chairperson for the next 2 years from all the Regional Council Members in attendance. The Regional Council Member receiving a simple majority of the votes of the Regional Council Members in attendance will be the new Regional Council Chairperson. In the event no Member receives a simple majority the two Members receiving the most ballots will have an immediate runoff. In the event of a tie, the outgoing Regional Council Chairperson will cast a vote to break the tie. The Regional Council Chairperson will serve a two-year term commencing immediately upon the counting of the ballots.

C. Regional Council Chairpersons shall not be reelected for more than two (2) consecutive terms, unless such Chairpersons receive at least  $\frac{2}{3}$  (66.7%) of the Regional Council votes cast or:

(i) in the event an incumbent receives less than the 66.7% of the vote, but receives at least 50% of the vote, the incumbent can request a run-off election.

(ii) in the event an incumbent waives the right to a run-off election the person who received the second highest number of votes shall be declared the elected Regional Council Chairperson;

(iii) in the event there is a tie between the second and third nominees - a run-off election shall be held for only those two nominees.

D. A Regional Council Chairperson must be a Member in Good Standing of the Association. A MAACO dealer, who is not a Member in Good Standing of the Association, as prescribed in Article III, Section 3.13 and Article IV, Section 4.1 herein, may not be considered for nomination or elected to the Board.

Section 6.3 Election for Regional Council Members will be conducted in the following manner: on or before August 1<sup>st</sup> of each applicable year the Association shall solicit nominations for Regional Council Members from all Members within each District in the applicable Region. In order to qualify, a nominee must be an owner or part owner of at least one Shop in the District for which he or she is being nominated and may not be nominated for more than one District within a Region. (An owner or part owner of multiple shops in more than one Region may be nominated for not more than one Regional Council Member seat for each such Region. Also, a part owner of multiple Shops within a Region may be nominated for a District in which any of such Shops are located, and any other part owner of such Shops may be nominated for another District in which any of such Shops are located.) All nominations must be received at the Association office by August 21<sup>st</sup>. On or before September 4<sup>th</sup> the Association will mail to each shop in each District a ballot with the name of each qualified nominee-Member in such District. All ballots must be properly completed and returned to the Association office by September 21. All ballots received or post marked by September 21<sup>st</sup> shall be counted; those that are post marked after September 21<sup>st</sup> shall not be counted. The

nominee-Member receiving a majority of the votes cast by Members on the basis of one vote per Shop in his/her District will serve a two-year term commencing with the next Regional Council Meeting. In the event of a tie, the Association will immediately announce a special runoff election to determine who shall be elected to serve as Regional Council Member. In the event of a further tie the then current Regional Council Chairperson shall cast the deciding vote. In the event there are no nominees for a District, the Regional Council may appoint the Regional Council Member for such District. For regions in which a Regional Council Chairperson is up for election, the regional council meeting shall occur no later than 30 days before the next scheduled Board meeting, all other regions must hold their meeting no later than 15 days prior to the next scheduled Board meeting. Every August 15th MDMSI shall provide to Association "manager" a list of franchisees that have not cured a notice of default from MDMSI. This list shall fulfill the Associations obligation under both these Bylaws and the Cooperation Agreement between the Association and MDMSI as regards MAACO Dealers being eligible to be elected to represent their Districts or Regions.

Section 6.4 Meetings. On a two times a year basis or more as deemed necessary by the respective Regional Council, the Regional Council Members from each region shall hold a Regional Council meeting to conduct normal business. In addition, the even numbered Regions shall elect a Regional Council Chairperson in even numbered years and the odd numbered Regions shall elect Regional Council Chairperson in odd years.

Section 6.5 Quorum and Vote at Meetings. At any meeting of a Regional Council, a majority of the Regional Council Members in that Region then in office shall constitute a quorum for the transaction of business. A majority of the votes cast at a meeting of a Regional Council, duly called and at which a quorum is

present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless the concurrence of a greater proportion is required for such action by the Delaware Corporation Law, the Certificate of Incorporation, or these Bylaws. If, at any meeting of a Regional Council, there shall be less than a quorum present, a majority of those present may adjourn the meeting, without further notice, from time to time until a quorum shall be present. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

#### Section 6.6 Notice; 'Waiver of Notice. '

Whenever any notice of a meeting of the Regional Council is required to be given under provisions of the Certificate of Incorporation or these Bylaws, such notice may be given in writing, by mail, addressed to each Regional Council Member at his or her address as it appears on the records of the Association and, unless otherwise provided in these Bylaws, at least ten (10) days before the date designated for such meeting. Notice to Regional Council Members may also be given personally, by telephone, or by facsimile. Notice shall be deemed given at the time when the same is personally delivered, deposited in the United States mail, with postage thereon prepaid, or sent by facsimile. 'Whenever the giving of notice is required by statute, the Certificate of Incorporation or these Bylaws, a waiver of notice in writing, signed by the person or persons entitled to such notice and filed with the records of the meeting, whether before or after the holding thereof, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the Regional Council need be specified in the notice or waiver of notice of such meeting. Presence at any meeting without objection also shall constitute waiver of any required notice.



## Section 6.7 Resignation, Removal, and Suspension of Regional Council Members.

Any Regional Council Member may resign from his/her Regional Council at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Chairperson of the applicable Regional Council. The acceptance of a resignation shall not be necessary to make it effective. Regional Council Members may be removed at any time with cause at any meeting of the Regional Council duly called and at which a quorum is present, by a supermajority (two-thirds) vote of the Regional Council Members present. Regional Council Members may also be removed at any time with cause by a supermajority (2/3) vote of the Members of the District which he or she represents. Any vacancy occurring as the result of a resignation or removal of a Regional Council Member shall be filled in accordance with Section 6.9 of this Article. The Regional Council may suspend a Regional Council Member (with a 2/3 vote to suspend) for a stated or indefinite period providing that a supermajority (i.e., two-thirds) of the Association Board approve the suspension and inform the District Members of the problem and request a vote of confidence in their Regional Council Member. A Regional Council Member is automatically suspended during any period that he/she fails to be a Member. A suspended Regional Council Member may not vote. A Regional Council Member who fails to attend two consecutive meetings shall be deemed to have resigned and shall automatically be removed from office.

## Section 6.8 Resignation, Removal, and Suspension of Regional Council Chairperson.

Any Regional Council Chairperson may resign from his/her Regional Council at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the President of the

Association. The acceptance of a resignation shall not be necessary to make it effective. Regional Council Chairpersons may be removed at any time with cause at any meeting of the Regional Council duly called and at which a quorum is present, by a supermajority (two-thirds) vote of ALL of the Regional Council Members of his/her Region. Any vacancy occurring as the result of a resignation or removal of a Regional Council Chairperson shall be filled in accordance with Section 6.2 of this Article, provided the President (or other a duly appointed Board representative) shall chair the selection process of the Regional Council Chairperson during the vote. A Regional Council Chairperson is automatically suspended during any period that he/she fails to be a Member. A Regional Council Chairperson may be removed by the Association Board as provided in Article VII, Section 7.6. A Regional Council Chairperson who fails to attend two consecutive meetings shall be deemed to have resigned and shall automatically removed from office.

#### Section 6.9 Vacancies.

Vacancies to fill the unexpired portion of the term of an existing Regional Council Member may be filled by means of a special election conducted in the same manner as prescribed in Article VI, Section 6.1, except that such election need not take place during the time frames associated with the Annual Meeting and may be conducted on an expedited basis. Each Regional Council Member so elected or appointed shall hold office until the next regularly scheduled election, and until his/her successor is elected and qualified, or until his/her earlier resignation or removal. If a District Council fails to elect a replacement, a Regional Council may appoint a replacement.

#### Section 6.10 Compensation.

Regional Council Members shall not be entitled to compensation for their services on the Regional Council. They shall be entitled, to the extent authorized by the Association Board, to

reimbursement for any reasonable expenses incurred in attending meetings of the Regional Council.

#### Section 6.11 Powers and Duties of Regional Council Chairpersons.

Each Regional Council Chairperson shall preside over all meetings of the Regional Council which selected him/her as a Regional Council Chairperson as well as fulfill his or her obligations as Director under Article VII.

### ARTICLE VII DIRECTORS

#### Section 7.1 General Powers.

The business and affairs of the Association shall be managed by or under the direction of its Board, except as may be otherwise provided in the certificate of incorporation or the Delaware general corporation law.

#### Section 7.2 Number, and Tenure.

A. The number of Directors shall be fixed as equal to the number of Regional Councils. The number of Regions may increase as the system grows to accommodate the increase in MAACO shops. A Director may not be nominated or elected if employed by MAACO or any other person or entity that is affiliated with the franchisor. The Board may, with a super majority vote of ninety percent (90%), allow an individual affiliated with the franchisor to sit on the Board. However, in no instance may such a Board Member vote on Board or Member business.

B. Directors shall hold office for a two (2) year term, each person who is or shall hereinafter become a Director of the Association shall hold office until his successor has been duly elected and qualified.

C. The number of Directors may be increased or decreased by a resolution of the Members or of the Directors. Any such changes shall be annexed to these bylaws.

### Section 7.3 Election and Term.

A. Directors shall hold their office until their successors are elected and qualified or until their earlier resignation or removal.

B. Any Director may resign at any time upon written notice to the Association.

C. Directors who are elected by Regional Council Members and Directors who are appointed in the interim to fill vacancies shall hold office until their successors are elected and qualified or until their earlier resignation or removal.

D. Directors for the odd numbered regions shall be nominated and elected in all odd numbered years. Directors for the even numbered regions shall be nominated and elected in all even numbered years.

E. In the interim between annual meetings of Members or special meetings of Members called for the election of Directors, and/or for the removal of one or more Directors, and for the filling of any vacancies in that connection, newly created Directorships and any vacancies in the Board of Directors, including vacancies resulting from the removal of Directors for cause which have not been filled by the Regional Council Members, may be filled by the vote of the majority of the remaining Directors then in office, although less than a quorum. For further provisions regarding election of Director to replace a Director who has been removed for cause. See Section 7.6 of this Article, below.

### Section 7.4 Committee and Report Requirements.

A. Each Director must serve as a Chairperson or active

Committee Member on at least one (1) Committee. Failure to participate and perform the duties of an active Member of a Committee may be considered cause for removal.

B. Each Committee chairperson must present a written report at regularly scheduled Board meetings. Failure to present the required reports may be considered grounds for removal.

C. No Director may serve as the Chairperson for more than one committee, unless no other Director agrees to chair such a committee.

#### Section 7.5 Directors' Regional Requirements.

A. Each Director/Regional Chairperson must conduct two Regional Council meetings a year at the direction of the President and in coordination with the Association. Notice of such meetings must be sent to each Regional Council Member no more than sixty (60) days and no less than twenty (20) days prior to the meeting. Regional Council Members should conduct their District meetings before their Regional Meeting takes place.

B. Notice of regional meetings may be given in any manner permitted by law.

C. Notice shall state the date(s) time and place of the meeting.

D. Failure to conduct the requisite regional meeting may be considered grounds for removal. Section 7.6 Removal of Directors.

A. Except as may otherwise be provided by the general corporation law of the State of Delaware, any Director may be removed, for cause, by a supermajority (two-thirds) of the Regional Council Chairpersons/Directors. The vacancy on the Board resulting from a Director being removed for cause, shall be filled by a Director who was elected by a vote of the Regional

Council Members from the region the removed Director represented, and the Director so elected shall serve until the end of the term of the Director so removed.

B. If a supermajority (two-thirds) of Directors determines that a Director is not duly qualified under these Bylaws at the commencement of or at any time during the Director's term, then such Director shall not be seated or shall be removed from the Board. A Regional Council Chairperson is not duly qualified if, among other things, that Director is a MAACO Dealer who divests himself/herself of their MAACO franchise(s), or has not or does not pay the initiation fee, dues or assessments that are required.

C. The Board may give the Director fifteen (15) days written notice stating the grounds for the purported action. The affected Director may be afforded an opportunity to respond in writing or, at the Board's discretion, before the Board or a Committee of the Board. The Board may suspend a Directorship for a stated or indefinite period pursuant to the same procedure. A suspended Director may not vote or hold office.

D. A Regional Council Chairperson may be removed by the Regional Council Members in the Regional Council Chairperson's region in the following manner:

(i) a recall petition signed by sixty six and two thirds (66 2/3%) of the Regional Council Members in Good Standing in the Regional Council Chairpersons region shall be considered a no confidence vote and the Regional Council Chairperson shall be automatically removed from the Regional directors position. See Section 7.6 in (A) this Article.

(ii) such a petition shall be forwarded to the Association Secretary who shall verify the petition and vote. Upon such verification a new election shall be performed under the direction of the Association Secretary.

## Section 7.7 Meetings.

A. The Board shall hold two (2) or more regular meetings during each calendar year. The Board, or any Committee thereof, may participate in a meeting of the Board, or such Committee, by means conference telephone or similar communication equipment, so long as all participants of the meeting can hear and speak to each other; such participation shall constitute a presence in person at such a meeting.

B. Meetings shall be held at such place within or without the State of Delaware, as shall be fixed by the Board from time to time.

C. Regular meetings of the Board may be held without notice, other than the adoption by the Board of the schedule of such meetings.

D. Special meetings of the Board may be called by the Chairperson of the Board, the President of the Association, or by one half (1/2) of the Directors then in office.

E. Members in Good Standing may attend Board meetings. However, such members shall not participate in any Board business, nor shall any such members be recognized by the Chairperson, or any Board member. Non-members shall not attend any Board meetings, unless there is unanimous Board approval. Non-members shall not be recognized by the Chairperson, or any Board member.

## Section 7.8 Notice of Meetings.

A. No notice shall be required for regular meetings for which the time and place have been fixed by resolution of the Board.

B. Notice of regular and special meetings of the Board, that have not been fixed by Board resolution, will state the date, time and

place of the meeting, and shall be delivered to each Director at his or her business address, or at such other address as he or she shall have previously specified in writing and directed to the Secretary of the Association:

(i) Notice, if by mail, shall be given no later than the fifth (5th) business day preceding the date of the meeting. The notice shall be deemed to be given when deposited in the United States Mail, duly addressed with postage prepaid.

(ii) Notice, if given by telegram, cable, telex, fax or similar communications, shall be given at least two (2) business days preceding the date of the meeting. Such notice shall be deemed to be given when delivered to the telegraph or cable company or, in the case of a telex or fax, or similar communications, when transmitted.

(iii) Notice may also be given in person or by telephone at least twenty-four (24) hours (business day) preceding the date of the meeting.

(iv) Both the business to be transacted at, and the purpose of, any regular or special meeting of the Board needs to be specified in the notice or in any waiver of notice of such meeting, otherwise required by law or these bylaws.

Section 7.9 Waiver of Notice. A Director may waive notice of a meeting before, at or after the meeting. Attendance of a Director at a meeting constitutes waiver of notice of such meeting and consent to place, time, notice and convening of a meeting, except when a Director states, at the beginning of the meeting, an objection to the transaction of business because the meeting is not lawfully called or convened.

Section 7.10 Quorum.

A. A majority of Board shall constitute a quorum for all regular



and special meetings of the Board. If a quorum is present at any meeting of Directors, a majority of the Directors present thereat, may adjourn the meeting from time to time without notice, other than announcement at the meeting of the time and place of such adjourned meeting.

B. The Board, or any Committee thereof, may participate in the meeting of the Board or such Committee by means of conference telephone call, or similar communication equipment, by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

C. Unless otherwise restricted by law or by the certificate of incorporation, any action required or permitted to be taken at any meeting of the Board, or of any Committee of the Board, may be taken without a meeting if all Members of the Board or Committee, as the case may be, consent thereto in writing. Each such consent in writing shall be filed with the minutes of the proceedings of the Board or Committee.

#### Section 7.11 Committees.

A. The Board may designate three or more officers or Directors to constitute an Executive Committee, which to the extent determined by the Board and allowed by law, shall have and exercise the authority of the Board in the management of the business of the Association.

B. The Executive Committee shall act only in the interval between meetings of the Board and shall be subject at all times to the control and direction of the Board.

C. The Board may also appoint one or more individual Members, who need not be Directors (except as otherwise provided), to serve on such other Committees as the Board may determine. Such other Committees shall have the power and duties as shall

from time to time be described by the Board.

D. A majority of the Members of any Committee shall constitute a quorum for the transaction of business by the Committee.

E. All Committees shall keep accurate minutes of their meetings, and such minutes shall be made available upon request to Members of that Committee and to any Director, or Officer of the Association. See Article IX for Committee details.

#### Section 7.12 Chairman of the Meeting.

The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the Executive Director of the Association or the President, if present and acting, or any other Director chosen by the Board shall preside.

#### Section 7.13 Reimbursement of Expenses.

Directors shall be reimbursed for any and all reasonable expenses relating to attending meetings of the Board, Regional Council business, and any other reasonable expenses incurred on behalf of the Association at the direction or on the specific authority of the Board, Board Chairperson, or President of the Association. All such expenses must be documented, actual and reasonable.

#### Section 7.14 Contracts.

The Board may authorize an Officer, a Committee, an employee or agent of the Association to execute and deliver a contract, agreement or instrument, in the name of the Association. The Board may authorize contracts by and between the Board and any person or firm, including persons who are Officers or Directors of the Association, except that no Officer or Director shall borrow money from the Association. The Association may borrow money or purchase goods or services from an Officer or

Director. The Board is expressly authorized to enter into contracts of employment with persons selected by the Board for the purpose of furthering the interest and growth of the Association. The Board is authorized to fix employees compensation and to designate powers and duties to such employee as the Board sees fit.

#### Section 7.15 Duties of the Board.

- A. To cause a complete record of all its acts (resolutions) and Association affairs and to present the statement thereof to the Members at an annual meeting of the Members or any special meeting when such is request in writing by a majority of the voting membership. 18
- B. To supervise all Officers, agents and employees of the Association and to see that their duties are properly performed.
- C. To employ, define the duties of, and discharge such management as the Directors deem necessary.
- D. Adopt an annual budget and authorize expenditures.
- E. To fix an amount for initiation fees, if any, from time to time.
- F. To fix an amount for dues from time to time.
- G. To insure that Directors and Officers liability insurance is in force.

#### Section 7.16 Indemnification.

The Association shall indemnify any [Officer,] Director, or Committee Member, or former [Officer,] Director or Committee Member, against expenses actually and necessarily incurred and for any amount paid in satisfaction of a judgment or in connection with an action, suit or proceeding, with a civil or criminal nature, in which he/she has been made a party, by

reason of being or having been such a[n Officer,] Director, or Committee Member of the Association, unless due to the willful misconduct or bad faith of such [Officer,] Director or Committee Member.

## ARTICLE VIII OFFICERS

### Section 8.1 Titles and Number.

Officers shall consist of a President, a Secretary, a Treasurer, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, a Chairperson of the Board, a Vice Chairperson of the Board, and such other offices with such titles as the resolution of the Board choosing them shall designate. The Board may elect to appoint such of the offices as it may deem necessary or desirable. Any number of the offices may be held by the same person, as the Directors deem necessary or desirable, except that no person may hold offices of President and Secretary simultaneously.

### Section 8.2 Tenure and Qualifications.

A. Unless otherwise provided in the resolution of the Board choosing him or her, each Officer shall be chosen for a 2-year term which shall continue until the 2nd annual meeting of the Board following the published results of the election of Directors and until his or her successor shall have been chosen and qualified.

B. No Officer shall serve for more than two (2) consecutive terms (in the same position) unless that Officer receives a 2/3 (66%) vote of the Board Members. However, in the event an incumbent receives less than the 66.7% of the vote, but at least 50% of the vote, the incumbent may request a run-off vote.

If the incumbent waives the right to a run-off - the person who receives the second highest number of votes shall be declared the

Officer elect.

In the event there is a tie between the second and third nominees for any particular office a run-off vote shall be held for only those two nominees.

C. A Officer must be a Member of the Association. A Maacodealer, who is not a Member in Good Standing of the Association, as prescribed in Article III, Section 3.13 and Article IV, Section 4.1 herein, may not be considered for nomination or elected to the Board.

D. A MAACO franchisee shall not be nominated, elected, or continue to hold any office within the Association unless:

(i) The person has had an open MAACO location for twenty-four (24) consecutive months prior to any nomination.

(ii) The person has been a Member in "Good Standing."

(iii) A super majority of the Board, seventy-five percent (75%), waive the requirements of ( I &/or ii) noted above.

Section 8.3 Removal.

A. Any Officer or agent appointed by the Board may be removed at any time by the Board with or without cause:

(I) An officer who sells his/her MAACO Franchise(s) shall no longer be a Member of the Association.

(ii) An officer who sells his/her MAACO franchise shall be removed from the Board.

B. The Board may give the Officer ten (10) days written notice stating the grounds for the purported action. The affected Officer may be afforded an opportunity to respond in writing, or at the Board's discretion, before the Board or a Committee of the

Board. The Board may suspend an Officer for a stated or indefinite period pursuant to the same procedure. A suspended Officer may not vote on Board matters or hold any other office.

#### Section 8.4 Vacancies.

A vacancy in any office may be filled by a majority of the Board.

#### Section 8.5 Chairperson of the Board.

The Chairperson of the Board shall preside at all meetings of the Members and the Directors, and he or she shall have such other powers and duties as the Board may from time to time prescribe.

#### Section 8.6 Executive Director.

The Executive Director, if any, and if there is not a elected Chairperson of the Board, shall preside at all meetings of the Members and the Directors, and he or she shall have such other powers and duties as the Board may from time to time prescribe.

#### Section 8.7 Vice Chairperson of the Board.

The Vice Chairperson of the Board, if the Chairperson or Executive Director are not present, shall preside at all meetings of the Members and the Directors, and he or she shall have such other powers and duties as the Board may from time to time prescribe.

#### Section 8.8 President.

The President shall be the Chief Executive Officer of the Association. He or she shall have general and active management of the affairs of the corporation, shall see to it that all resolutions and orders of the Board are carried into effect, and in connection therewith, shall be authorized to delegate to the other Executive Officers of the corporation, such as his or her powers and duties as the President, at such times and in such manners as he or she

may deem to be advisable. In the absence or disability of the Chairperson of the Board, or if there is no Chairperson, or no Vice Chairperson, or in the absence or disability of the Executive Director, the President shall preside at all meetings of the Members and of the Directors. The President shall be subject to the control of the Board.

#### Section 8.9 Vice President(s).

The Vice President(s), if any, shall assist the President in the management of the affairs of the Association and the implementation of resolutions and orders of the Board, at such times and in such manner as the President may deem to be advisable.

#### Section 8.10 Treasurer/Assistant Treasurer.

A. The Treasurer shall be responsible for the financial affairs of the Association under the direction of the Board and the supervision of the President. He or she shall supervise the activities of any controller or assistant treasurers or assistant controllers, reporting periodically to the Board concerning the financial condition of the Association, and shall perform such other duties as shall be ordered by the Board or President from time to time.

B. The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a Certified Public Accountant or by an audit Committee appointed by the Board, at the completion of each physical year. The Treasurer shall prepare an annual profit and loss and balance sheet statement to be presented to the Membership at its regular annual meeting. The Treasurer shall be the chairperson of the budget and finance Committee and shall be responsible for the annual budget. A Treasurer shall be responsible for the preparation and filing of such tax returns as may be required. The Treasurer will insure that two Officers of the Association co-

sign all checks.

#### Section 8.11 Secretary/Assistant Secretary.

A. The Secretary and/or Assistant Secretary, or his or her designee, shall attend all meetings of the Board and of the Members and record all the proceedings of the meetings of the Board and of the Members in books to be kept for that purpose. The Secretary shall perform like duties for other Committees of the Board when directed to do so by the Board. He or she shall give, or cause to be given, notice of all regular and, if required, special meetings of the Members, and meetings of the Board and shall perform other such duties as need be described by the Board or the President from time to time.

B. He or she shall be the custodian of the seal of the corporation, and, when authorized by the Board, shall cause the corporate seal to be affixed to any document requiring the seal.

#### Section 8.12 Ex Officio & Emeritus Chairpersons and Officers.

A. Any past Chairperson of the Board and past Association Presidents may be, upon a Board Resolution, entitled to remain on the Board with the status of Chairperson Emeritus or past President Emeritus.

B. Any elected officer or appointed Chairperson of a Committee who is not a Board Member shall be recognized as an Ex Officio of the Board.

C. No Emeritus or Ex Officio person shall be entitled to vote on any matters that come before the Board.

### ARTICLE IX STANDING COMMITTEES

#### Section 9.1

A. The Board shall appoint, from time to time, the following



Standing Committees and such other standing committees as the Board deems appropriate:

( i) Advertising Committee

(ii) Budget and Finance Committee

(iii) Computer Committee

(iv) Equipment Committee/Product Committee

(v) Insurance Committee (vi) Membership Committee/  
Nominating Committee

(vii) Newsletter Committee

B. Each Standing Committee shall consist of a Chairperson and two or more Members and shall include a Member of the Board of Directors for Board contact. The Committee Chairpersons shall be appointed by the President, subject to the approval of the Board, every [2] years. After obtaining the approval of the Board, an announcement of the appointments shall be made to the Membership. Such announcement shall be made within 30 days of the President nominated and Board approving such Chairpersons. The Chairperson shall appoint the members to the committee, subject to the approval of the Board. No Director or Officer may serve as the Chairperson for more than one Standing Committee, unless no other Director has agreed to Chair such a Committee.

Section 9.2 Budget and Finance Committee.

This Committee shall be chaired by the Treasurer and will work with other Committees whose areas of interest represent expense to the Association. The Committee shall meet from time to time and they shall be responsible for the preparation of the specified annual budget, as well as the annually required P&L and balance

sheet, as prescribed in Article VIII, Section 10(B).

Section 9.3 Each Committee shall have the power to appoint a Subcommittee from among its Membership and may delegate to any such Subcommittee any of its powers, duties and functions, otherwise in these Bylaws.

Section 9.4 It shall be the duty of each Committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall deal with such complaints as it deems appropriate and make reports available, on a quarterly basis, to the President and Executive Director, and any Board Member who requires or requests such a report.

## ARTICLE X MISCELLANEOUS

Section 10.1 Amendment or Repeal of Bylaws.

Except or otherwise provided by law or the certificate of incorporation, these Bylaws may be amended or repealed by the affirmed vote of the majority of the entire Board at any meeting of the Board.

Section 10.2 Indemnification of Officers, Directors, Employees and Agents.

The Association shall indemnify any Officer, Director, or Committee Member, or former Officer, Director or Committee Member, against expenses actually and necessarily incurred and for any amount paid in satisfaction of a judgment or in connection with an action, suit or proceeding, with a civil or criminal nature, in which he/she has been made a party, by reason of being or having been such an Officer, Director, or Committee Member of the Association, unless due to the willful misconduct or bad faith of such Officer, Director or Committee Member.

Section 10.3 Rules of Order.

Roberts Rules of Order, newly revised, shall govern the proceedings of any meeting of the Association in all cases not provided for in the certificate of incorporation or these bylaws. Failure to object to a deficiency in the parliamentary procedure at a meeting in which an action is taken as a waiver of any objection on parliamentary grounds to the form or validity of such action.

Section 10.4 Physical Year.

The physical year of the Association, shall be fixed, and shall be subject to change, by the Board.

Section 10.5 Corporate Seal.

The corporate seal shall be in such form as the Board shall prescribe or approve.

Section 10.6 Books and Records.

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any Members.

Section 10.7 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control.

CERTIFICATION

I, Dave Hamilton, do hereby certify that I am the duly elected, qualified or acting Secretary of the American Painters Association, Inc., a not-for-profit corporation organized under the laws of the State of Delaware, and that the forgoing is a true and correct copy of the Bylaws amended and adopted by written consent of the Board of said corporation effective

\_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.

Secretary of the Auto Painters Association, Inc.