



**AFFIDAVIT IN COMPLIANCE WITH SECTION 202.006  
OF THE TEXAS PROPERTY CODE**

THE STATE OF TEXAS       §  
  §  
COUNTY OF FORT BEND   §

BEFORE ME, the undersigned authority, on this day personally appeared Sarah B. Gerdes, who, being by me duly sworn according to law, stated the following under oath:

“My name is Sarah B. Gerdes. I am over twenty-one (21) years of age and fully competent to make this affidavit. I have personal knowledge of all facts stated herein, and they are all true and correct.

I am the attorney for Heritage Grand Homeowners Association, Inc., a Texas non-profit corporation (the “Association”) and I have been authorized by the Association’s Board of Directors to sign this Affidavit.

The Association is a “property owners’ association” as defined in Section 202.001(2) of the Texas Property Code.

Attached hereto is the original of, or a true and correct copy of, the following dedicatory instrument, including known amendments or supplements thereto, governing the Association, which instrument has not previously been recorded: **Amended and Restated By-Laws of Heritage Grand Homeowners Association, Inc.**

Dedicatory instruments of the Association that have already been filed in the Real Property Records are as follows:

- 1) Heritage Grand, a subdivision in Fort Bend County, Texas, according to the map or plat thereof, described in and recorded under Fort Bend County Clerk's File Nos. 2002110671, 2002130629, 2003168462 and any and all Supplemental Declarations and Amendments, and Slide No. 2004-0217/2004-143041 of the Map Records of Fort Bend County, Texas, and all amendments to or replats of said maps or plats, if any.
- 2) Declaration of Covenants, Conditions and Restrictions for Heritage Grand filed October 10, 2002, under County Clerk’s File No. 2002110671 in the Official Public Records of Fort Bend County, Texas
- 3) Supplemental Declaration of Covenants Conditions, & Restrictions for Heritage Grand filed under County Clerk’s File No. 2003168462 in the Official Public Records of Fort Bend County, Texas.
- 4) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand filed under County Clerk’s File No. 2003169980 in the Official Public Records of Fort Bend County, Texas.

- 5) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand (Amendment) filed under County Clerk's File No. 2004150955 in the Official Public Records of Fort Bend County, Texas.
- 6) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand - Sections 10, 14, and 24 filed under County Clerk's File No. 2004026177 in the Official Public Records of Fort Bend County, Texas.
- 7) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand - Sections 10, 14, 24 filed under County Clerk's File No. 2004062994 in the Official Public Records of Fort Bend County, Texas.
- 8) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand - Sections 14 and 24 filed under County Clerk's File No. 2004094385 in the Official Public Records of Fort Bend County, Texas.
- 9) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand - Balance of Section 27 filed under County Clerk's File No. 2005138585 in the Official Public Records of Fort Bend County, Texas.
- 10) Supplemental Declaration of Covenants, Conditions, & Restrictions for Heritage Grand - Section 30 filed under County Clerk's File No. 2007120245 in the Official Public Records of Fort Bend County, Texas.
- 11) Additional Dedicatory Instrument for Heritage Grand Homeowners Association, Inc. - recorded document: Amended and Restated By-Laws of Heritage Grand Homeowners Association, Inc. filed June 16, 2011, under County Clerk's File No. 2011057142 in the Official Public Records of Fort Bend County, Texas.
- 12) Heritage Grand Homeowners Association, Inc. Resolution and Guidelines Regarding Regulation of Certain Roofing Materials, Policy Regarding Records Retention, Inspection & Production, Resolution and Guidelines Regarding Regulation of Flag Display, Resolution and Guidelines Regarding Regulation of Composting Devices, Rain Barrels, Harvesting Devices, and Irrigation Systems, Regulation and Guidelines Regarding Solar Energy Devices, Resolution and Guidelines Regarding Regulation of Display of Certain Religious Items, and Policy Regarding Alternative Payment Schedules recorded October 21, 2011, under County Clerk's File No. 2011105391 in the Official Public Records of Fort Bend County, Texas.
- 13) Clubhouse and Common Area Rules and Regulations of Heritage Grand Homeowners Association, Inc. recorded November 14, 2011, under County Clerk's File No. 2011114387 in the Official Public Records of Fort Bend County, Texas.
- 14) Architectural Review Committee (ARC) Rules and Regulations of Heritage Grand Homeowners Association, Inc. recorded November 14, 2011, under County Clerk's File No. 2011114388 in the Official Public Records of Fort Bend County, Texas.
- 15) Additional Dedicatory Instrument for Heritage Grand Homeowners Association, Inc. - recorded document: General Guidelines Regarding Items Covered by Association

Assessments for Heritage Grand Homeowners Association, Inc. filed December 1, 2011, under County Clerk's File No. 2011120018 in the Official Public Records of Fort Bend County, Texas.

16) Additional Dedicatory Instrument for Heritage Grand Homeowners Association, Inc. - recorded document: Association Rules and Regulations of Heritage Grand Homeowners Association, Inc. filed December 29, 2011 under County Clerk's File No. 2011130434 in the Official Public Records of Fort Bend County, Texas.

17) Additional Dedicatory Instrument for Heritage Grand Homeowners Association, Inc. - recorded document: Amended and Restated By-Laws of Heritage Grand Homeowners Association, Inc. filed November 14, 2013 under County Clerk's File No. 2013143741 in the Official Public Records of Fort Bend County, Texas.

18) Amended and Restated By-Laws of Heritage Grand Homeowners Association, Inc. filed March 13, 2018, under County Clerk's File No. 2018026262 Official Public Records of Fort Bend County, Texas.

SIGNED on this the 18<sup>th</sup> day of July 2018.

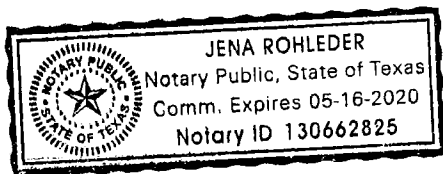
  
\_\_\_\_\_  
Sarah B. Gerdes, Attorney and Agent for  
Heritage Grand Homeowners Association, Inc.

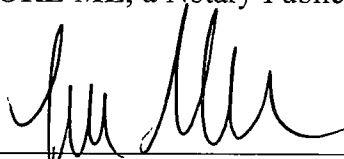
**VERIFICATION**

THE STATE OF TEXAS       §  
  §  
COUNTY OF FORT BEND   §

**BEFORE ME**, the undersigned authority, on this day personally appeared Sarah B. Gerdes, who, after being duly sworn stated under oath that she has read the above and foregoing Affidavit and that every factual statement contained therein is within her personal knowledge and is true and correct.

**SUBSCRIBED AND SWORN TO BEFORE ME**, a Notary Public, on this the 18<sup>th</sup> day of July 2018.



  
\_\_\_\_\_  
Notary Public – State of Texas

AFTER RECORDING, RETURN TO:



6548 GREATWOOD PKWY.  
SUGAR LAND, TEXAS 77479

**AMENDED AND RESTATED BY-LAWS**

**OF**

**HERITAGE GRAND HOMEOWNERS  
ASSOCIATION, INC.**

**(A TEXAS NON-PROFIT CORPORATION)**

**(ADOPTED JULY 9, 2018)**

**(TO BE EFFECTIVE UPON RECORDING IN  
FORT BEND COUNTY, TEXAS)**

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## Article I. Name, Membership, and Definitions

### Section 1. Name.

The name of the Association shall be Heritage Grand Homeowners Association, Inc. (hereinafter referred to as the "Association").

### Section 2. Membership.

The owner of record or owners of a Lot or Unit (Home) located within the Community are Members and have Membership in the Association.<sup>1</sup>

### Section 3. Definitions.

The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit. In the event of a conflict in a definition between the By-Laws and the Declaration, the definition in the Declaration shall take precedence.

**a) Action Request Form:** An Action Request Form is used in these By-Laws for two purposes:

- i) To request an Association Meeting on a particular subject or
- ii) To request a vote of the Association.

The Action Request Form must indicate: a) Whether it is a request for a meeting or a vote, b) State the specific reason for the meeting or vote, c) List the Action Request Form organizer or primary contact and, d) List the Name, Address, Phone and e-mail of thirty (30) homes that are supporting the request.

**b) Annual Meeting:** Each year the Board shall call for an Annual Homeowners' Meeting to review the previous year and allow Homeowners to ask questions of the Board.

**c) Association:** "Association" shall mean and refer to *Heritage Grand Homeowners Association, Inc., a nonprofit Texas corporation.*<sup>2</sup>

**d) Board:** The Board of Directors of Heritage Grand Homeowners Association.

**e) Board Members:** Board Members are Members that have been duly elected or appointed as a Director for the Heritage Grand Homeowners Association and are currently serving on the Board of Directors.

**f) Chair:** The Chair is the presiding officer of a meeting such as but not limited to Board Meetings, and Homeowner Meetings.

**g) Contract Employees:** Staff working at Heritage Grand who have been hired by and are managed by an outside agency.

**h) Declaration:** The Declaration of Covenants, Conditions, and Restrictions for Heritage Grand.

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<sup>1</sup> When the Association began there were (2) classes of Membership, Class "A" and "B", as is more fully set forth in that Declaration of Covenants, Conditions, and Restrictions for Heritage Grand. Now that 100% of the Lots or Units have been sold to and occupied by the Class 'A' Members, the Class 'B' Members no longer exist and no longer have Membership in the Association.

<sup>2</sup> "Article I. Definitions, (b) 'Association'," Declaration of Covenants, Conditions, and Restrictions for Heritage Grand, (10/4/2002) p 2.



i) **Direct Employees:** Staff working at Heritage Grand, who have been hired by and are managed by Heritage Grand.

j) **Election Year:** Intentionally omitted; no longer relevant.

k) **Governing Documents:** Governing documents bring the organization into being, define its purpose, and specify its powers and limitations. Federal, state and local laws may also offer governance of the Association.

l) **Home(s):** The Heritage Grand Community consists of 650 Homes. These Homes are made up of either a Unit or a Lot. There are approximately 552 Lots (single family lots) and 98 Units (duplex units; 49 duplexes). Although each Home may have multiple Members, Owners or Residents, each Home is entitled to only one vote per unit or lot. The term Home or Homes also refers to the person authorized to represent the single vote for that Home.

m) **Makeup of the Board:** Makeup of the Board is the way it is composed. If there are five (5) Board Members, these specific five Members constitute the current Makeup of the Board. If any of the five (5) Board Members are no longer Directors or if additional Directors are added, then the Makeup of the Board has changed. If the current Board of Directors changes Officers, it does not change the Makeup of the Board.

n) **Members:** A person who has membership in the Association. Every person who is an owner of record of a fee or undivided fee interest in any Lot or Unit (Home) that is subject to the Declaration shall be deemed to have a membership in the Association and is considered a Member.

o) **Open Meetings:** Open Meetings<sup>3</sup> *“means that non-board Members can attend the meetings. They do not have a right to participate in the meetings unless the board allows time for them to do so. However, they do have a right to attend the meetings, listen to the discussions, and hear how the board members vote.”*<sup>4</sup>

p) **Owners:** Owner shall mean and refer to the owner of record, whether one or more Persons, of the fee simple title to any Lot or any Unit located within the Community, including contract sellers but excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.<sup>5</sup>

q) **Petition:** A petition is a formal written request signed by owners, appealing to the Board with respect to a particular cause or issue.

r) **Residents:** Someone who lives at Heritage Grand. Residents are not necessarily Owners, but they may be.

s) **Speaker’s Box:** The Board, at its sole discretion, may designate a specific area or areas from which attendees at a meeting must address the Board or audience. This specific area is known as a Speaker’s Box.

t) **Texas Open Meetings Act:** The Texas Open Meetings Act is only applicable to homeowners associations that base their assessment on the appraised value of the property. As Heritage Grand does not base its annual assessment on the appraised value

<sup>3</sup> Please note that Homeowners’ Associations like Heritage Grand are not subject to the Texas Open Meeting Act.

<sup>4</sup> Robert McConnell Productions, Webster’s New World Robert’s Rules of Order Simplified and Applied Second Edition, (Indianapolis, Indiana: Wiley Publishing, Inc. 2001) 168.

<sup>5</sup> “Article I. Definitions, (o) ‘Owner’,” Declaration of Covenants, Conditions, and Restrictions for Heritage Grand, (10/4/2002) p 3.

of the property, it is not subject to the Texas Open Meetings Act. The Association is bound by the Texas Property Code, and specifically Section 209.00591 in regard to Board Membership.

**u) Voting Committee:** A Committee of Owners appointed by the Board of Directors to facilitate and oversee elections as well as any votes of the Association.

## **Article II. Association: Meetings, Notice, Quorum, Voting, Proxies**

### **Section 1. Place of Meetings.**

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

### **Section 2. Conducting the Association Meetings.**

All meetings of the Association shall be conducted by the Board of Directors.

When the Board allows discussion or comments from the audience, it is done under the direction of the Chair and the rules the Board has adopted. Debate is often limited and discussion must be kept relevant to the topic under discussion. Those who speak in such discussions must remember to direct their remarks to the Chair and not to the audience.<sup>6</sup>

### **Section 3. Annual Meeting.**

The Association shall conduct an Annual Homeowners' Meeting each fiscal year. The Annual Homeowners' Meeting shall be held during the 1<sup>st</sup> quarter of the fiscal year.

### **Section 4. Budget Review Homeowners' Meeting.**

Prior to November 20<sup>th</sup> of each year, the Association must hold a Special Homeowners' Meeting, called a Budget Review Homeowners' Meeting, for the sole purpose of discussing the budget and assessments. In the Meeting the Board must present the Members with the Operating Budget and the Projected Reserve Budget for the coming year. If applicable, the Board must also present and discuss any changes to the annual assessments.

Every Home should receive, at least five (5) days prior to the Budget Review Homeowners' Meeting, a written copy of the Operating Budget, Projected Reserve Budget and, if applicable, any changes to the annual assessments. The advance copy shall be delivered to the Homes as provided in Section 6. Notice of Meetings below.

At the Budget Review Homeowners' Meeting, the Board must make a motion to approve the budget.<sup>7</sup> If the motion is approved, the Board must send a letter prior to December 1<sup>st</sup> to each Home informing them that the Budget has been approved and inform the Residents of the Assessment amounts for the coming year.<sup>8</sup>

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<sup>6</sup> Robert McConnell Productions, Webster's New World Robert's Rules of Order Simplified and Applied Second Edition, (Indianapolis, Indiana: Wiley Publishing, Inc. 2001) 168.

<sup>7</sup> "Article IV. Assessments, Section 3. Computation/Annual Assessments, "... *the budget and the annual assessment shall become effective unless disapproved at a meeting by two-thirds of the total eligible votes of the Owners present in person or by proxy at such meeting which was called for the purpose of such vote.*," Declaration of Covenants, Conditions, and Restrictions for Heritage Grand, (10/4/2002) p 10.

<sup>8</sup> "Article IV. Assessments, Section 3. Computation/Annual Assessments, "... *The Board shall cause the budget and the annual assessments to be levied against each Lot and each Unit for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year.*," Declaration of Covenants, Conditions, and Restrictions for Heritage Grand, (10/4/2002) p 10.

### **Section 5. Special Homeowners' Meetings.**

The President may call a special meeting. In addition, it shall be the duty of the President to call a special meeting of the Association if

- a) so directed by resolution of a Majority of the Board of Directors or
- b) upon receiving a Petition signed by the Owners of twenty-five percent (25%) of the Homes specifically requesting a Special Homeowners' Meeting or vote of the Members which complies with Subsection 1 below.

The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

#### **Subsection 1. Vote requested by the Members**

It is the duty of the Board to call a vote of the Association upon a properly prepared and presented Petition specifically requesting a vote of the Association signed by at least twenty-five percent (25%) of the Homes. It is important that all Members have an opportunity to raise their issues to the Board.

When residents want the Board to take a vote of the Association, they must initiate a Petition by presenting an "Action Request Form".

##### **(a) Initiating a Petition**

If at least thirty (30) Homes submit an Action Request Form to the Board asking that a Petition be initiated the Board must initiate one.

##### **(b) Collecting Signatures for a Petition:**

Once the Board has a valid Action Request Form, the Board should instruct the Voting Committee to make a best effort to:

- i) Work with the Petition Sponsors to educate the community on the nature of the Petition and ensure that all views of any issues are fairly and equally represented.
- ii) Prepare a Petition and make it readily and easily available to the Members for signature at the Clubhouse and through the Managing Agent, including but not limited to a way to electronically sign the Petition.
- iii) Allow a minimum of 60 days for residents to sign the Petition and to obtain the required number of signatures on the Petition.
- iv) Inform the community that a Petition is available and encourage the Members that are interested in doing so to sign the Petition.

### **Section 6. Notice of Meetings.**

It shall be the duty of any member of the Board, the Board as a whole, or an agent designated by the Board, to mail via first class mail or to cause to be delivered to the Owner of record of each Home a notice of each Annual Homeowners' Meeting and/or Special Homeowners' Meeting of the Association stating the purpose of the meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Home, he or she shall have designated such other address by notice in writing to the Board.

The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice.

**Section 7. Waiver of Notice.**

Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order.

**Section 8. Quorum.**

For a meeting of the Association at which a Director will be elected, the Homes present, in person or by proxy, shall constitute quorum for the sole purpose of conducting elections. Unless otherwise provided in the Declaration, the presence, in person or by proxy, of ten percent (10%) of the Homes shall constitute a quorum at a duly called meeting of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Subsection 2. Quorum Not Present.**

If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than ten (10) nor more than sixty (60) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 9. Association Votes.**

The voting rights of the Members shall be as set forth in the Declaration and Texas Property Code Section 209.00591. The Declaration entitles each Home to one (1) vote.

All votes of the Association shall be managed by the Voting Committee. Any votes managed by Members other than the Voting Committee are not valid.

Vote Tabulator Qualification: A person who is a candidate in an election to the Board or who is otherwise the subject of an Association election, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots cast in that election except as provided by law. The person who tabulates votes in the election may not disclose to any other person how an individual voted. Only a person who tabulates votes or who performs a recount under Section 209.0057(c) of the Texas Property Code, may be given access to the ballots cast in the election or vote.

**Subsection 3. Ways to Vote****(a) Voting by Mail, FAX E-Mail or Absentee Ballot.**

The Board of Directors may authorize Members to vote by mail, FAX, e-mail or absentee ballot on the election of directors or on any other matter that may be voted on by the Members.

**(b) Votes in Person or by Proxy.**

At all meetings of the Association, each Member may vote in person. In addition, Members may vote by proxy at the Budget Review Homeowners' Meeting (pursuant to Article IV, Section 3 of the Declaration), in relation to special assessments in any one fiscal year exceeding \$500 per Home or Unit (pursuant to Article IV, Section 4A of the Declaration) and in relation to the dedication or transfer of all or any portion of the Common Property (pursuant to Article X, Section 1(a)(4) of the Declaration). When

allowed, all proxies shall be in writing, dated, and filed with the Board before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Home or upon receipt of notice by the Board of the death or judicially declared incompetence of a Member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

## Article III. Board of Directors: Number, Powers, Meetings

### *Part A. Composition and Selection.*

#### **Section 1. Governing Body: Composition.**

The affairs of the Association shall be governed by a Board of Directors. At least 3/4<sup>th</sup> of the Directors must reside in the Community; all Directors must be Members.

#### **Section 2. Number of Directors.**

The Board shall consist of five (5) Directors.

#### **Section 3. Board Requirements and Code of Conduct**

Per Texas Property Code Section 209.00591, if the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a Board Member has been convicted of a felony or crime involving moral turpitude not more than twenty (20) years before the date the board is presented with the evidence, the Board Member is immediately ineligible to serve on the Board of the Association, automatically considered removed from the Board, and prohibited from future service on the Board.

All candidates running for the Board and all Members on the Board are expected to adhere to the "Heritage Grand Code of Conduct for Board Members" published in the Association Rules and Regulations<sup>9</sup>.

#### **Section 4. Voting Committee.**

The board shall appoint a committee of Members to serve on the Voting Committee. The Voting Committee will manage any votes of the Association including but not limited to elections. The Voting Committee will serve at the direction of the Board to insure equal treatment and fairness for all views on all issues which require an Association vote. In addition, the Voting Committee shall perform any other duties as assigned by the Board. A member of the Voting Committee may not view or count ballots unless he/she also qualifies as a Vote Tabulator.

#### **Section 5. Board Election Process.**

The election process begins on May 1<sup>st</sup> when nominations for the Board are accepted and ends on June 25<sup>th</sup> or when the election results are announced to the community, whichever is earlier.

##### **Subsection 1. Nomination of Candidates.**

The nomination process must begin no later than May 1<sup>st</sup>. Self-nominations, Voting Committee and/or Board nominations will be taken until "Meet the Candidate Night," defined below.

The community should be notified of all nominations as soon as practicable.

Nominations for election to the Board of Directors shall be solicited as follows:

At least ten (10) days before the date the Association disseminates absentee ballots or other ballots to Members for the purpose of voting in a Board election, the Association must provide notice to the Members soliciting candidates interested in running for a position on the Board. The notice must contain instructions for an eligible candidate to notify the Association of the

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<sup>9</sup> Signing the Code of Conduct is not a requirement to run for or to be on the Board of Directors.

candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10<sup>th</sup> day after the date the Association provides the notice required by this section.

The notice required by this section must be mailed to each owner or provided by: (A) posting the notice in a conspicuous manner reasonably designed to provide notice to Members: (i) in a place located on the Association's Common Area or an Area of Common Responsibility or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any Internet website maintained by the Association or other Internet media; and (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

**Subsection 2. Campaigning.**

The Board must sponsor at least one Special Meeting (the "Meet the Candidates Night") to be held no later than June 15<sup>th</sup> for the sole purpose of introducing the candidates and allowing them equal time to present their platforms and answer questions from the community. Meet the Candidates Night may be scheduled in conjunction with the Board's regular June meeting.

All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

No campaigning, flyers or handouts are allowed in the Clubhouse or common areas including but not limited to the pool area unless approved by the Board or the Voting Committee.

**Subsection 3. Voting.**

Voting may begin no sooner than June 11<sup>th</sup> and must end no later than June 20<sup>th</sup>.

All elected Board Members take office July 1<sup>st</sup> and serve until the end of their term on June 30<sup>th</sup>.

**Subsection 4. Announcement of New Board Members.**

The winning candidates for the Board must be announced not later than June 25<sup>th</sup>.

**Subsection 5. Activities of New Board Members after Election.**

Prior to taking office, the newly elected Board Members, if not already serving on the Board, may sit with the Board in all meetings including Executive Sessions and may receive all communications from and to the Board. While attending any such meetings, the newly elected Board Members

- a) may not speak or participate in the meetings unless specifically asked to do so.
- b) may not respond to any Board communications or forward any Board communications.
- c) are held to the same expectation of confidentiality and professionalism as if they were serving on the current Board.
- d) may not vote on any issue.

**Subsection 6. Transition to Three-Year Terms of Office for Directors.**

On the effective date of this amendment to the Bylaws of the Association, five Directors are serving on the Board. Three Directors (herein called "Director A," "Director B" and "Director C") are serving two-year terms ending on January 31, 2019. Two Directors (herein called "Director D" and "Director E") are serving two-year terms ending on January 31, 2020.



No currently serving Director's term is being extended by this amendment. Instead, the terms of all currently serving Directors will end early in order to implement the new election process and three-year terms of office for Directors, as set forth in this amendment. Specifically, the terms of Directors A, B and C shall end on June 30, 2018, and the terms of Directors D and E shall end on June 30, 2019.

The 2018 election process will begin May 1, 2018 and end on June 30, 2018. In this election process, Directors A, B and C may stand for re-election to new terms beginning July 1, 2018. In any case, the three (3) candidates receiving the highest numbers of votes in the 2018 election process shall be elected to new terms beginning July 1, 2018; of those three (3) candidates, the two (2) candidates receiving the highest and second highest number of votes (hereinafter referred to as "Director A" and "Director B") shall be elected to three-year terms beginning July 1, 2018 and ending June 30, 2021; and the candidate receiving the third highest number of votes (hereinafter referred to as "Director C") shall be elected to a two-year term beginning July 1, 2018 and ending June 30, 2020. If there is a tie among the candidates receiving the three (3) highest number of votes in the 2018 election process, the candidates shall draw lots to determine which candidate shall be considered to be Director A, Director B and Director C for purposes of determining the term to be served by each newly elected Director.

The 2019 election process will begin May 1, 2019 and end June 30, 2019. In this election process, Directors D and E may stand for re-election to new three-year terms beginning July 1, 2019. In any case, the two (2) candidates receiving the highest and second highest number of votes in the 2019 election process (hereinafter referred to as "Director D" and "Director E") shall be elected to three-year terms beginning July 1, 2019 and ending June 30, 2022.

The 2020 election process will begin May 1, 2020 and end June 30, 2020. In this election process, Director C may stand for re-election to a new three-year beginning July 1, 2020. In any case, the one (1) candidate receiving the highest number votes in the 2020 election process (hereinafter referred to as "Director C") shall be elected to a new three-year term beginning July 1, 2020 and ending June 30, 2023.

For clarity, the election process for years 2021-2024 is set forth below in abbreviated form:

2021 – Terms of Director A and Director B end; new election for 3-year terms.

2022 – Terms of Director D and Director E end; new election for 3-year terms.

2023 – Term of Director C ends; new election for 3-year term.

The terms Director A, Director B, Director C, Director D and Director E are used in this amendment solely for purposes of defining and describing the election process to be used during the transition to three-year terms for Directors of the Association and are not intended to suggest any hierarchy or ranking among Directors.

## **Section 6. Term of Office**

The Term of Office is three (3) years. All Directors will begin their term on July 1<sup>st</sup> and end their terms three years later on June 30<sup>th</sup>.<sup>10</sup>

## **Section 7. Term Limits**

There are no term limits allowed due to the new POA law passed in September 2011 found in Texas Property Code Section 209.00591 and the Texas Residential Property Owners Protection Act.

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<sup>10</sup> As an example, a candidate who is elected to a three-year term in the 2018 elections would start his/her term on July 1, 2018 and would end his/her term three (3) years later on June 30, 2021.

## **Section 8. Removal of Directors.**

### **Subsection 1. Removal by the Members**

Any one or more of the Board Members may be removed, with or without cause, by a majority vote of the Homes.

Once a valid Action Request Form has been received calling for a vote of the Association to remove any Board Member(s), the Board must follow the process outlined in "Article II, Section 9. Association Votes."

A Board Member whose removal has been proposed by the Members must be given a reasonable opportunity to be heard at a Special Homeowners' Meeting called for that purpose. In addition, a Board Member whose removal has been proposed by the Members must be given a reasonable opportunity to include a one-page letter to the Members that will accompany any ballot sent to the Members asking for their vote to remove that Board Member.

### **Subsection 2. Removal by the Board**

In addition, a Board Member may be removed for cause by a majority vote of the Board of Directors at a Board meeting with a quorum being present for reasons including, but not limited to the following:

- a) if a Board Member has three (3) consecutive unexcused absences from Board Meetings; or
- b) if a Board Member presents a conflict of interest with the Association by:
  - i) threatening legal action in writing against the Association, the Board, or a Board Member acting on behalf of the Association or the Board in his/her capacity as a Member of the Board; or
  - ii) filing a legal action against the Association, the Board, or a Board Member acting on behalf of the Association or the Board in his/her capacity as a Member of the Board.

## **Section 9. Vacancies.**

Vacancies in the Board of Directors caused by any reason shall be filled by a vote of the Majority of the remaining Board Members, even though the remaining Board Members may not constitute a quorum. Each Person so selected shall serve the unexpired portion of the term affected by the vacancy.

## ***Part B. Board Meetings***

The Board of Director's Meetings are called and conducted in order to conduct business of the Community, take actions on behalf of the Community and keep the Members informed concerning Association business. There are two (2) types of Board meetings: 1) Regular Meetings and 2) Special Meetings or Actions. All Meetings, except the Special Meetings called Executive Session Meetings, are Open Meetings.

## **Section 10. Regular Meetings.**

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of a regular schedule shall constitute sufficient notice of such meetings. All Regular Meetings are Open Meetings.

**Subsection 1. Organization Meeting.**

The first Regular Meeting of the Members of the Board of Directors following the completion of the election process each year is called the Organization Meeting. The Organization Meeting shall be held in July at such time and place as shall be fixed by the Board. The Board of Directors may announce the Officers and any Committee Structure for the year at the Organization Meeting. All Organization Meetings are Open Meetings.

**Section 11. Special Meetings or Actions.**

Special Meeting are all meeting other than Regular Meeting and include but are not limited to:

- Executive Session Meetings
- Meetings and Actions By E-mail

Special meetings of the Board of Directors shall be held when requested by any one (1) Director. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonably be expected to communicate such notice promptly to the Director; (d) by telegram, charges prepaid; (e) by fax as long as confirmation of the fax transmission is received or (f) by e-mail. All such notices shall be given or sent to the Director's address, e-mail or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, e-mail or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting. All Special Meetings except Executive Session Meetings are Open Meetings.

**Subsection 1. Executive Session Meetings.**

Executive Session Meetings are a type of Special Meeting. In addition to calling an Executive Session Meeting as outlined above, the Board may also adjourn any Regular Meeting and immediately reconvene in Executive Session without previous notice.

Executive Session Meetings are called to discuss and vote upon personnel matters, specific property, specific people, litigation in which the Association is or may become involved, contract negotiations, matters of a sensitive nature and orders of business of a similar nature. Executive Sessions may be called to discuss matters of a sensitive nature that would not be appropriate in an Open Meeting. The majority of the Board will, at its sole discretion, decide what matters are of a sensitive nature and what matters will and will not be discussed in Executive Session. If a Board Member believes that an item is being discussed that is inappropriate for an Executive Session, they may make a "point of order" and have their objection noted in the minutes.

Attendance at an Executive Session Meeting is limited to the Board of Directors and any guests or Members specifically invited by the majority of the Board of Directors. Invited guest and Members may not participate or make comments in the Executive Session Meeting unless asked by the Chair to participate.

When practical, the nature of any and all business to be considered in an Executive Session Meeting should first be announced to the Association prior to the Executive Session Meeting. The general nature of any and all actions or motions considered in Executive Session Meetings must be documented in Minutes, approved by the Board, that are available to the Members. The Board, at its sole discretion, may choose not to include specific information in

the Minutes from an Executive Session Meeting such as but not limited to a specific name or specific address, however, the written, approved Minutes must be complete enough so that when the specific person, place or thing is known, the action or motion as written in the Minutes is fully understood. Actions or motions that are not documented in the Minutes are not binding.

Everything said at an Executive Session Meeting is confidential, and the Board Members as well as any guests or Residents who are invited to attend an Executive Session Meeting should respect that confidentiality.

**Subsection 2. Meetings by Telephone.**

The Board of Directors may hold a meeting by telephone conference-call as long as all persons participating in the meeting can hear each other and participate in any discussion or vote. The notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice. Participation of a person in a conference-call meeting constitutes presence of that person at the meeting. If the meeting is an Open Meeting, the notice to owners must provide instructions which allow the owner to call in and listen to the meeting.

**Subsection 3. Meetings and Actions By E-mail.<sup>11</sup>**

**(a) Meetings**

The Board may not, without prior notice to Owners, as specified below, consider or vote on:

- 1) fines;
- 2) damage assessments;
- 3) initiation of foreclosure actions;
- 4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- 5) increases in assessments;
- 6) levying of special assessments;
- 7) appeals for a denial or architectural control approval;
- 8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- 9) lending or borrowing money;
- 10) the adoption or amendment of a dedicatory instrument;
- 11) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;
- 12) the sale or purchase of real property;

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<sup>11</sup> Motion approved on 1/14/2013. Must follow Texas 2011 Property Owners' Association Law.

13) the filling of a vacancy on the board;

14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or

15) the election of an officer.

Before voting on items 1-15 above, the Board shall give Members notice of the date, hour, place, and general subject of the Board of Director's meeting, including a general description of any matter to be brought up for consideration at the meeting. The notice shall be:

(i) mailed to each Member not later than the 10th day nor earlier than the 60th day before the date of the meeting; or

(ii) provided at least 72 hours before the start of the meeting by:

a) posting the notice in a conspicuous manner reasonably designed to provide notice to the Members: in a place located on the Association's Common Areas; or, with the Member's consent, on other conspicuously located privately owned property within the subdivision; or on any internet website maintained by the Association or other Internet media; and

b) sending the notice by e-mail to each Member who has registered an e-mail address with the Association for this purpose.

**(b) Regular Action by E-mail.**

Subject to the forgoing exclusion, a motion may be acted upon if a majority of the Board Members vote by e-mail. Any Board Member may request consideration of a motion or action by e-mail. For a motion or action to be valid:

i) The e-mail request must specify a reply by date and time that gives all Board Members not less than 48 hours to respond.

ii) All Board Members must respond<sup>12</sup> within the given timeframe and

iii) No Board Members specifically objects to the action or motion being taken by e-mail.

If within the given timeframe a reply is not received on the subject by any single Board Member or if any Board Member specifically objects to taking this action by e-mail then the action or motion may not proceed and must be considered in a way other than by e-mail.

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<sup>12</sup> Any reply to the e-mail, other than stating specifically that the issues should not be considered by e-mail, means that that Board Member has agreed that the Board may consider the action or motion by e-mail.

As a further example: A Board member makes a motion to approve an expenditure. If four (4) of the five (5) Board Members respond within the timeframe and say they approve but the fourth Board Member either does not reply at all or replies after the established timeframe, the motion must be considered in a manner other than by e-mail.

**(c) Emergency Motion or Actions by E-mail.**

In addition, any action may be taken by e-mail if a majority of the Board Members agree that the action is an emergency and agree that an immediate decision is necessary. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. It is at the sole discretion of the majority of the Board to determine if an action is an emergency.

If a Board Member thinks that an emergency action is required they can call for an action by e-mail. The e-mail must have the words "Emergency Action" in the Subject Line. The body of the e-mail must state four (4) things:

- i) First, it must state that the action is an "Emergency Action".
- ii) Secondly, it must state why immediate action is needed.
- iii) Third, it must state a "reply by" date and time.
- iv) And lastly, it must state the action on which Board Members are voting.

In order for an emergency action by e-mail to pass a majority vote of the Board must agree with the fact that the action is an emergency action and the action itself must be approved unanimously.<sup>13</sup>

**Section 12. Waiver of Notice.**

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present or participates, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends or participates in the meeting without protesting publicly or in writing before or at its commencement about the lack of adequate notice.

**Section 13. Quorum of Board of Directors.**

At all meetings of the Board of Directors, a Majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.<sup>14</sup>

A quorum is required to transact business.<sup>15</sup>

**Section 14. Minutes.**

At the start of all Meetings of the Board of Directors someone should be designated to take Minutes and those Minutes must indicate who took the Minutes. The Minutes generally contain a record of what is done at the Meeting, not necessarily what is said.

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<sup>13</sup> Motion approved on 1/14/2013. Must follow Texas 2011 Property Owners' Association Law.

<sup>14</sup> As an example: If the Board consists of five (5) Directors, three (3) constitute a quorum. In this example, a duly called meeting may proceed as long as three Board Members are present and a vote of two (2) of those Board Members present represent a decision of the Board.

<sup>15</sup> As an example: If the Board consists of five (5) Directors. If three (3) Directors are initially present and one (1) of those three Director withdraws, the meeting no longer has the required quorum and must end.

The Minutes from any Meeting must be approved by the majority of the Board of Directors, signed and posted for the Community. The Meeting agenda, any relevant documents and any relevant contracts referenced at any Meeting of the Board of Directors must be attached to and made part of the Minutes. In addition, any action taken without a formal meeting must be read into the record of the next Regular Meeting and made a part of that Meeting's Minutes.

The Minutes must specify how each Director voted on any given issue or motion. Any action or motion approved by the Board is binding at the time it is passed. However, any action or motion not documented in the Minutes of the next Regular Board Meeting is not considered binding. The Board may, within sixty (60) days of the Board Meeting, amend the Minutes to include an action or motion which was unintentionally omitted.

If a motion is made to censure and that motion does not pass, no mention of the motion may be made in the Minutes. If a motion is made to censure and the motion passes, the Minutes must reflect the motion to censure and that the motion passed, however, the Minutes may not include the name of the person censured.

### **Section 15. Open Meetings.**

All meetings of the Board of Directors, except Executive Session Meetings, shall be open to all Members of the Community, but Members other than Directors may not participate in any discussion, may not make comments or participate in deliberations unless expressly so authorized by the Board.

Members attending Open Meetings have the right to listen to the discussion, and hear how the Board votes. In addition, the Members also have the right to read the approved Minutes from the Meeting.

People other than the Management Company, Residents and Owners may not attend Association Meetings unless specifically authorized to do so by a majority of the Board of Directors.

### **Section 16. Civility and Decorum at Meetings.**

All Members and all Directors should conduct themselves with civility and decorum at all Meetings of the Board and of the Association.

The Members at any Open Meeting may only speak when specifically granted permission by the Chair. The Board may, at its sole discretion, have Members speak only from a podium or from a designated Speaker's Box. When the Board allows discussion or comments from the audience, it is done under the direction of the Chair and under the rules the Board has adopted. Members must remember to direct their remarks to the Board of Directors and not to the audience.

It shall be in the sole discretion of a majority of the Board to determine if someone has disturbed a Meeting or broken the rules of decorum.

### **Section 17. Proxies.**

Board Members represent the community as a whole and not separate constituencies within the community. Because regular and emergency actions of the Board may be accomplished by telephone conference and email, proxy voting is not needed and, consistent with *Robert's Rules of Order*, is not allowed for any Board meeting or action.

**Section 18. Compensation.**

No Director shall receive any compensation from the Association for acting as a Board Member.<sup>16</sup>

**Section 19. Board Meeting Notice to Members.**

Members shall be given notice of the date, hour, place, and general subject of a regular or special Board of Directors meeting, including a general description of any matter to be brought up for deliberation in Executive Session. The notice shall be:

- (a) mailed to each Member not later than the 10th day nor earlier than the 60th day before the date of the meeting; or
- (b) provided at least 72 hours before the start of the meeting by:
  - (i) posting the notice in a conspicuous manner reasonably designed to provide notice to the Members: in a place located on the Association's Common Areas; or, with the Member's consent, on other conspicuously located privately owned property within the subdivision; or on any internet website maintained by the Association or other Internet media; and
  - (ii) sending the notice by e-mail to each Member who has registered an e-mail address with the Association for this purpose.

***Part C. Powers and Duties.*****Section 20. Powers.**

The Board of Directors shall be responsible for the affairs of the Association and shall have full power to perform duties necessary for the administration of the Association's affairs. As provided by law, the Board may conduct all business not directed to be carried out exclusively by the members pursuant to the Declaration, Articles, or By-Laws to be carried out exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power and responsibility for the following, in way of explanation, but not limitation:

**Subsection 1. Annual Budget.**

Preparation and adoption of an annual budget in which contributions of each Owner to the Association expenses shall be established. The annual budget shall also take into account the different assessments against the Lots and the Units;

**Subsection 2. Assessments.**

Making assessments to defray the common expenses, establishing the methods of collecting such assessments, and establishing the time period for installment payments of the annual assessment;

**Subsection 3. Maintenance.**


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<sup>16</sup> Article Six Restrictions and Requirements, "*The corporation shall not pay dividends or other corporate income to its members, director or officers or otherwise accrue distributable profits or permit the realization of private gain.*", Certificate of Incorporation of Heritage Grand Homeowners Association, Inc. Filing Number 800101801, (7/11/2002) p 1.



Providing for the operation, care, upkeep, and maintenance of all areas which are the responsibility of the Association;

**Subsection 4. Personnel.**

Working through a designated managing agent, or other similar firm to identify, hire, and dismiss the personnel necessary for the operation of the Association. In addition, where appropriate, the designated managing agent will reimburse authorized expenses incurred by any Contract Employees for the purchase of equipment, supplies, and material to be used in the performance of their duties;

**Subsection 5. Collect Assessments.**

Collecting and depositing of assessments and proceeds thereof in an approved bank depository and administering said funds within the Association as deemed necessary;

**Subsection 6. Rules and Regulations.**

Establishing and amending use restrictions and rules and regulations;

**Subsection 7. Bank Accounts.**

Opening of bank accounts on behalf of the Association and designating the signatories required;

**Subsection 8. Enforce Governing Documents.**

Enforcing the provisions of the Declaration, By-Laws, and the rules and regulations adopted by the Association, and initiating any resulting proceedings which may be brought about on behalf of or against the Owners concerning the Association;

**Subsection 9. Insurance.**

Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and pay the premium costs thereof;

**Subsection 10. Pay Services.**

Paying the cost of all services rendered to the Association or its Members which are not directly chargeable to Owners;

**Subsection 11. Keep Books.**

Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;

**Subsection 12. Contract with Persons.**

Contracting any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. All functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity; and

**Subsection 13. Maintain 55 Age Exemption.**

Collecting, managing and maintaining the data from the Owners as required by the Fair Housing Act and/or the Declaration to qualify for the Community's 55 years old and older exemption, initiating any actions the Board deems prudent and/or necessary to maintain such exemption under the Fair Housing Act or any successor statute.

**Section 21. Management Agent.**

The Board of Directors may employ a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The term of any management agreement shall not exceed two (2) years and shall be subject to termination by either party without cause and without penalty, upon ninety (90) days' written notice.

**Section 22. Borrowing.**

The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain Membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed Ten Thousand Dollars (\$10,000) outstanding debt per each one hundred (100) Units or Lots in the Association at any given time.

**Section 23. Fining Procedure.**

The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

**Subsection 1. Demand.**

Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- a) the alleged violation;
- b) the action required to abate the violation; and
- c) a time period, not less than ten (10) days, during which the violation may be abated without further sanctions

If the violation has occurred previously, the written demand may impose a fine. Further, the Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

**Subsection 2. Notice.**

Within six (6) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

- a) the nature of the alleged violation;
- b) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;
- c) that any statements, evidence, and witnesses may be produced by the alleged violator at the hearing; and
- d) that all rights to have the fine reconsidered are waived if a hearing is not requested within thirty (30) days of the date of the notice.

**Subsection 3. Hearing.**

If a hearing is requested, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

## **Article IV. Officers**

### **Section 1. Officers.**

The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two or more offices may be held by the same Person, excepting the offices of President and Secretary. All officers shall be elected from among the Members of the Board of Directors.

#### **Subsection 1. President.**

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Texas Non-Profit Corporation Act.

#### **Subsection 2. Vice President.**

The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

#### **Subsection 3. Secretary.**

The Secretary shall keep the minutes of all meetings of the Association and the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform or cause to be performed all duties incident to the office of the secretary of a corporation organized in accordance with Texas law.

#### **Subsection 4. Treasurer.**

The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association in such depositories as may from time to time be designated by the Board of Directors.

### **Section 2. Election, Term of Office, and Vacancies.**

The officers of the Association shall be elected annually by the Board of Directors at the Organization Meeting following completion of the election process. A vacancy in any office arising because of death, resignation, removal, or otherwise, may be filled by the Board of Directors appointing a replacement from among the Board for the unexpired portion of the term of the office affected by the vacancy.

### **Section 3. Parliamentarian.**

The President or Chair may, at their discretion, appoint a Parliamentarian. The position may not be given to a Board Member and is not a position of power. The Parliamentarian's role during a meeting is purely an advisory and consultative one, since parliamentary law gives to the chair alone the power to rule on questions of order or to answer parliamentary inquiries.

### **Section 4. Removal.**

Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

**Section 5. Resignation.**

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## Article V. Committees

### Section 1. General.

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

#### Subsection 1. Voting Committee

The Board is required to establish a Voting Committee to help the Board manage all Votes of the Association including but not limited to Board Elections<sup>17</sup>.

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<sup>17</sup> The specific structure and mission of the Voting Committee is up to the Board. The Board shall keep an arm's length from the Committee and allow the Voting Committee to operate independently from the Board so that there is no appearance of a conflict of interest.

## Article VI. Miscellaneous

### Section 1. Fiscal Year.

The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

### Section 2. Parliamentary Rules.

Robert's Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Texas law, the Articles of Incorporation, the Declaration, these By-Laws.

### Section 3. Conflicts.

If there are conflicts or inconsistencies between the provisions of Texas law, the Articles of Incorporation, the Declaration, and these By-Laws, then these aforementioned documents (in that order) shall prevail, provided however, any conflict between the Declaration, the By-Laws, the Articles of Incorporation and the Master Association CCR's (as defined in the Declaration) shall be decided in favor of the Master Association CCR's.

### Section 4. Amendment.

The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws<sup>18</sup>. In addition, these By-Laws may be amended by a majority vote of the Board of Directors.

### Section 5. Financials.

All financials of the Association must be audited by an outside firm each year.

The Reserve Study and assumptions must be reviewed by an outside firm at least every five (5) years starting no later than 2015 and have another review every five (5) years thereafter.

All audits, tax returns and reports must be made available at the Clubhouse and on the website, without a resident having to ask to see them.

### Section 6. Information.

At a minimum, the Board must keep the following documents updated, current and available to the community at the Clubhouse and on the website:

- a) All Governing documents and amendments to those documents including but not limited to:
  - i) Heritage Grand Declaration of Covenants, Conditions, and Restrictions (Declaration)
  - ii) Heritage Grand By-Laws
  - iii) Rules and Regulations

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<sup>18</sup> "Article XII. General Provisions, Section 4 Amendment, "In addition to the above, this Declaration may be amended at any time upon the affirmative vote or written consent ... then sixty-seven percent (67%) of the class 'A' members shall suffice." Declaration of Covenants, Conditions, and Restrictions for Heritage Grand, (10/4/2002) p 2.

- Architectural Review Committee (ARC) Rules and Regulations
- Clubhouse and Common Area Rules and Regulations
- Association Rules and Regulations

b) Other significant documents including but not limited to:

- i) Guidelines For What The Homeowner Assessments Cover
- ii) All Board and Committee Meeting Minutes
- iii) All Financials at a detailed, transaction level
- iv) Any reports, audits, legal opinions or reviews for which the Association pays

**Section 7. Employees of Heritage Grand.**

The Board should not hire any employees to work directly for the Association (known as “Direct Employees”). All paid employee working at Heritage Grand should work through the Managing Agent, a temporary employment agency or similar firm.



## **Article VII. Indemnification**

### **Section 1. When Indemnification is Required, Permitted and Prohibited.**

#### **Subsection 1. Officers, Committee Members, Employees or Agents**

The Association shall indemnify a director, officer, committee member, employee, or agent of the Association who was, is, or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Association. For the purposes of this article, an agent includes one who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise. However, the Association shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Association's best interests. In a case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Association shall not indemnify a person who is found liable to the Association or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

#### **Subsection 2. Termination Does Not Preclude Indemnification.**

The termination of a proceeding by judgment, order, settlement, conviction or on a plea of *nolo contendere* or its equivalent does not necessarily preclude the indemnification by the corporation.

#### **Subsection 3. Expenses.**

The Association shall pay or reimburse expenses incurred by a director, officer, Member, committee member, employee, or agent of the Association in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Association when the person is not a named defendant or respondent in the proceeding.

#### **Subsection 4. When indemnification is prohibited.**

In addition to the situations otherwise described in this paragraph, the Association may indemnify a director, officer, Member, committee member, employee or agent of the Association to the extent permitted by law. However, the Association shall not indemnify any person in any situation in which indemnification is prohibited by the terms of "Section 1. Subsection 1. Officers, Committee Members, Employees or Agents" above.

#### **Subsection 5. When to Pay Indemnification Expenses.**

Before the final disposition of a proceeding, the Association may pay indemnification expenses permitted by the bylaws and authorized by the Association. However, the Association shall not pay indemnification expenses to a person before the final disposition of a proceeding if: the person is a named defendant or respondent in a proceeding brought by the Association or one or more Members or the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

#### **Subsection 6. Reasonable Expenses.**

If the Association may indemnify a person under the bylaws, the person may be indemnified against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the

proceeding. However, if the proceeding was brought by or on behalf of the Association the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

## **Section 2. Procedure Relating to Indemnification Payments.**

### **Subsection 1. Determination of Indemnification.**

Before the Association may pay any indemnification expenses (including attorney's fees), the Association shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in "Section 2. Subsection 3. Written Affirmation" below. The Association may make these determinations and decisions by any one of the following procedures:

#### **(a) Vote of the Board.**

A majority vote of a quorum of the Board consisting of Board Members who, at the time of the vote, are not named defendants or respondents in the proceeding.

#### **(b) Vote if No Quorum.**

If such a quorum of Board Members cannot be obtained, a majority vote may still be held as long as there are at least two Board Members, who at the time of the vote, are not named defendants or respondents in the proceeding.

#### **(c) Determination by Legal Counsel.**

Determination by special legal counsel selected by the Board of Directors by vote as provided in

i) "Section 2. Subsection 1. (a) Vote of the Board", or

ii) "Section 2. Subsection 1. (b) Vote if No Quorum", or

iii) if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

#### **(d) Majority Vote of Members.**

Majority vote of Members at a meeting at which a quorum is present, excluding directors who are named defendants or respondents in the proceeding.

### **Subsection 2. Authorize Indemnification and Expense Reimbursement.**

The Association shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, the authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by "Section 2. Subsection 1. (c) Determination by Legal Counsel" above, governing the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, or a resolution of Members or the Board of Directors that requires the indemnification permitted by "Section 2. Procedure Relating to Indemnification Payments", above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

### **Subsection 3. Written Affirmation.**

The Association shall pay indemnification expenses before final disposition of a proceeding only after the Association determines that the facts then known would not preclude

indemnification and the Association receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under "Section 2, Subsection 1. Determination of Indemnification" above. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the bylaws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the Association if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.


**Subsection 4. Expense Advance.**

Any indemnification or advance of expenses shall be reported in writing to the Members of the Association. The report shall be made with or before the notice or waiver of notice of the next Membership meeting, or with or before the next submission to Members of a consent to action without a meeting. In any case, the report shall be sent within the 12-month period immediately following the date of the indemnification or advance.


**Article VIII. Adoption of and Certification of Amended and Restated By-Laws**

The foregoing Amended and Restated By-Laws of HERITAGE GRAND HOMEOWNERS ASSOCIATION, INC. are intended to fully and completely replace any and all previous By-Laws of the Association in their entirety.

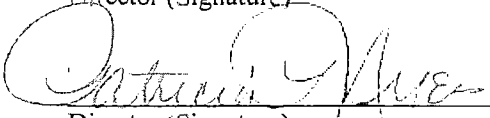
We the undersigned, representing a majority of the Directors of Heritage Grand Homeowners Association, Inc., do hereby certify that the within and foregoing Amended and Restated By-Laws were properly approved and adopted by a majority of the Board of Directors of HERITAGE GRAND HOMEOWNERS ASSOCIATION, INC., on July 9, 2018 as the By-Laws of HERITAGE GRAND HOMEOWNERS ASSOCIATION, INC., to be effective upon recording in Fort Bend County, Texas.

  
 \_\_\_\_\_  
 Director (Signature)

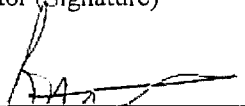
Carol Hankins  
 \_\_\_\_\_  
 Printed Name

  
 \_\_\_\_\_  
 Director (Signature)

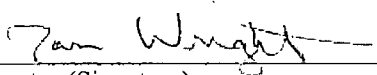
Preston Jones  
 \_\_\_\_\_  
 Printed Name

  
 \_\_\_\_\_  
 Director (Signature)

Pat Myers  
 \_\_\_\_\_  
 Printed Name

  
 \_\_\_\_\_  
 Director (Signature)

Gary Patton  
 \_\_\_\_\_  
 Printed Name

  
 \_\_\_\_\_  
 Director (Signature)

Jan Wright  
 \_\_\_\_\_  
 Printed Name

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