



Heather Gardens Metropolitan District

BYLAWS OF THE HEATHER GARDENS METROPOLITAN DISTRICT APRIL 14, 2016

- Amended **11.17.2016** – Article II. Organization, Section 4. Meetings, Items C&D & Article IV. Standing & Special Committees, Section 11. Standing Committees; Item B. Golf)
- Amended **1.12.17** – Article VII. General, Added new Section 3. HGMD attorney. Modification to Bylaws previously Section 3 re-numbered to Section 4.
- **8.31.17** – Motion approved to rescind Bylaw changes made on January 10, 2017 and March 10, 2017, Article VII. General, Section 3. HGMD Attorney removed from Bylaws.

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ARTICLE I – APPLICATION OF BYLAWS

Section 1. Authority. Heather Gardens Metropolitan District (District) is a quasi-municipal corporation and political subdivision of the State of Colorado with those powers specifically authorized by, and in compliance with the Special District Act, Article 1 of Title 32, C.R.S. (Special District Act).

Section 2. Purpose. It is hereby declared that the Bylaws hereunder set forth will service a public purpose.

Section 3. Policies of the Board. It shall be the policy of the Board of Directors of the District (Board), consistent with the availability of revenues, personnel and equipment, to use its best efforts to provide the services authorized to be provided by the District.

ARTICLE II – ORGANIZATION

Section 1. All powers, privileges and duties vested in, or imposed upon the District by law shall be exercised and performed by and through the Board, whether set forth specifically or impliedly in these Bylaws.

- A.** The Board may delegate to officers, contractors or employees of the District any or all administrative or ministerial duties.
- B.** The Board may delegate to an agent, through execution of a Management Agreement, any or all administrative and ministerial duties.

Section 2. Powers and Duties. Without restricting the general powers conferred by these Bylaws, it is hereby expressly declared that the Board shall have the following powers and duties.

- A.** To choose, remove or suspend agents upon such terms and conditions as may seem fair and just and in the best interests of the District.
- B.** To determine and designate, except as otherwise provided by law or these Bylaws, who shall be authorized to sign contracts and other documents.
- C.** To create standing or special committees and to delegate such authority thereto as the Board deems necessary and proper for the performance of such committee's functions and obligations.
- D.** To request its agent(s) to prepare and submit to the District monthly and annual financial reports, the statutory annual audit and to complete and file all statutory reports. Such reports shall be made available for

inspection by the public as provided by law. (See also Article V, Section 2.K).

Section 3. Office.

- A. Business Office.** The principal business office of the District shall be at 2888 South Heather Gardens Way, Aurora, Colorado 80014, until otherwise designated by the Board.
- B. Establishing Other Offices and Relocation.** The Board, by resolution, may from time to time, designate, locate and relocate its executive and business office and such other offices as, in its judgment are necessary to conduct the business of the District.

Section 4. Meetings.

- A. Regular Meetings.** Regular meetings of the Board shall be conducted on the Thursday after the second Monday of each month at 1:00 p.m. and held at the business office, unless otherwise noticed and posted.
- B. Public Meeting.** All meetings of the Board, other than executive sessions, shall be open to the public.
- C. Notice of Meetings.** Section 4.a shall constitute formal notice of regular meetings to the Board members, and no other notice shall be required to be given to the Board. Written waivers of notice by Board members are not necessary. As required by law, notice of meetings and agendas will be posted in at least three locations within the District and the Office of the Clerk and Recorder of Arapahoe County as well as sent to the Community at large an email blast for those Residents who have chosen to participate in that form of communication.
- D. Special Meetings.** Special meetings of the Board may be called upon seventy-two (72) hours written notice, which shall be posted in at least three locations within the District and at the Office of the Clerk and Recorder of Arapahoe County as well as sent to the Community at large an email blast for those Residents who have chosen to participate in that form of communication.
- E. No Informal Action by Directors/Executive Sessions.** All official business of the Board shall be conducted at regular or special meetings. Executive sessions may be called at regular or special meetings, and conducted according to the following guidelines:

1. Calling the Executive Sessions.

- a. The topic for discussion in the executive session shall be announced in a motion, and the specific statute that authorizes the executive session shall be cited.
- b. The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session.
- c. An affirmative vote of two-thirds (2/3) of the quorum present shall be required to go into executive session.

2. Conducting the Executive Session.

- a. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall take place in an executive session. The discussion in executive session shall be limited to the reasons for which the executive session was called.
- b. A record of the actual contents of the discussion in the executive session, using the same manner and media as are used to record minutes of regular sessions, shall be used.
- c. If handwritten notes of the executive session are kept, minutes of the executive session shall be created and shall contain a signed statement by the President that the minutes substantially reflect the substance of the discussion during the executive session.
- d. No record is necessary to be kept for any portions of the discussion, which the District's attorney reasonably believes, constitute attorney-client privileged communication.
- e. If minutes of the executive session are electronically recorded, the attorney shall state on the record when any portion of the executive session is not recorded as an attorney-client privileged communication.
- f. If minutes of the executive session are recorded in writing, then the attorney shall sign a statement to the same effect when any portion of the written minutes is not recorded in writing as an attorney-client privileged communication.

- g. The record of any executive session shall be retained by the District for ninety days and then destroyed or erased. Minutes or recordings of the executive session shall not be released to the general public for review under any circumstances, except as required by law.

3. Adjournment and Continuance of Meetings. When a regular or special meeting is for any reason continued to another time and place, notice need not be given of the continued meeting if the time and place of such meeting are announced at the meeting at which the continuance is taken, except as required by law. At the continued meeting, any business may be transacted which could have been transacted at the original meeting.

4. Emergency Meetings.

- a. Notwithstanding any other provisions in this Section 4, emergency meetings may be called by the President or any two (2) Board members in the event of an emergency that requires the immediate action of the Board in order to protect the public health, safety and welfare of the property owners and electors of the District, without notice if notice is not practicable.
- b. Notice of such emergency meeting may be given to the Board by telephone or whatever other means are reasonable to meet the circumstances of the emergency.
- c. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action taken at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting of the Board at which the emergency issue is on the public notice of the meeting.
- d. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded as of the date of such subsequent meeting.

Section 5. Conduct of Business.

- A. Quorum.** All official business of the board shall be transacted at a regular or special meeting at which a quorum (more than one-half of the number of directors serving on the Board at that time) shall be present in person or telephonically, except as provided in Section 5B.
- B. Vote Requirements.** Any action of the Board shall require the affirmative vote of a majority of the directors present and voting. When special or emergency circumstances affecting the affairs of the District and the health, safety and welfare of District residents so dictate, then those directors available at the time may undertake whatever action is considered necessary and may so instruct the District's employees, agents and contractors. The Board shall later ratify such actions.
- C. Order of Business.** The business of all regular and special meetings of the Board shall be transacted, as far as practicable, as outlined in the District's policy manual.
- D. Motions and Resolutions.** Each and every action of the Board necessary for the governance and management of the affairs of the District, for the execution of the powers vested in the District, and for carrying into effect the provisions the Special District Act shall be taken by the passage of motions or resolutions.
- E. Minute Book.** Within a reasonable time after passage, all resolutions, motions and minutes of Board meetings shall be recorded in a book kept for that purpose and shall be attested by the Secretary.

 - 1. Minutes of all regular and special meetings shall be available for public review as soon as practicable after approval by the Board.
 - 2. Minutes of executive sessions shall be kept separate from minutes of regular and special meetings as described in Article II, Section 2, Subsections (f) and (g).
- F. Legal Assistance.** From time to time the Board may engage the services of legal counsel and the President of the Board and District management are hereby authorized to contact legal counsel when necessary and advise the Board.

ARTICLE III – DIRECTORS AND OFFICERS

- A. Directors.**

1. Director Qualifications and Terms. Directors shall be eligible electors of the District. The term of each Director shall be determined by relevant statutory provisions with elections held in even number years and conducted in the manner prescribed by the Special District Act, the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S. and the Colorado Local Government Election Code, Article 13.5 of Title 1, C.R.S.

2. Director's Performance of Duties. A director of the District shall perform all duties of a director, including duties as a member of any committee of the Board upon which the director may serve, in good faith, in a manner which the director reasonably believes to be in the best interest of the District. Directors have a common-law fiduciary obligation to the District. As a fiduciary, each director has the duty to exercise the utmost good faith, business sense and astuteness on the District's behalf and is prohibited from taking personal advantage of a situation to benefit himself or to prejudice the District.

In performing the director's duties, director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data. Those programs and groups upon whose information, opinion, reports, and statements a director is entitled to rely on are outlined in the District's policy manual. The director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

3. Oath of Office and Bond. As required by law, each director shall take an oath of office within thirty days after his or her election or appointment to fill a vacancy and, at the expense of the District, furnish a faithful performance surety bond in the sum of not less than \$1,000.

4. Vacancies. Any vacancy occurring on the Board shall be filled by an affirmative vote of a majority of the remaining directors, as prescribed by law. The appointed individual must meet the statutorily prescribed qualifications for directors and shall serve until the next regular election.

5. Resignation and Removal. Directors may be removed from office only by recall as prescribed by law. Any director may resign at any

time by giving written notice to the Board, and acceptance of such resignation shall not be necessary to make it effective, unless the notice so provides.

6. **Disclosure of Conflict of Interest.** A potential conflict of interest of any director shall be disclosed in accordance with law, particularly Article 18 of Title 24, C.R.S., and Sections 32-1-902(3) and 18-8-308, C.R.S.
7. **Compensation.** Members of the Board shall not receive any compensation for their service. No member of the Board shall receive any compensation as an employee of the District. No contract for work or material including a contract for services, regardless of the amount, shall be entered into between the District and a member of the Board unless a notice has been published for bids and such member submits the lowest responsible and responsive bid. The District shall allow reimbursement of reasonable and actual expenses of the directors while acting on behalf of the District.

B. Officers.

1. **Election of Officers.** The Board shall elect from its membership a chairman of the Board and president of the District, one of its members as a treasurer of the Board and a secretary who may be a member of the Board, or the secretary and treasurer may be one individual, who in such case is a member of the Board., the Board may also elect one or more assistant secretaries to serve in the absence of the secretary.
 - a. The officers shall be elected by a majority of the directors voting at such meeting at which the election of officers is considered.
 - b. Election of officers shall be conducted annually at the first regular or special meeting held in May.
 - c. Each officer shall serve for a term of one year, which term shall expire upon the election of a successor or upon being re-elected to that office.

C. President. The President shall preside at all meetings. The President is authorized to sign all Board approved contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District.

D. Secretary.

1. In the absence of the president, the secretary shall preside at all meetings.
2. The secretary shall be responsible for the records of the District; may act as secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a minute book kept for that purpose, which shall be an official record of the Board; and shall perform all duties incident to that office.
3. The secretary shall be the designated election official of the District, unless otherwise determined by the Board.
4. The secretary shall have the authority to affix the District seal to and attest to all contracts and instruments authorized to be executed by the Board.

E. Treasurer.

1. The treasurer shall be authorized to invest all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board.
2. The treasurer shall keep or cause to be kept strict and accurate accounts of all money received by and disbursed for and on behalf of District in permanent records.
3. The treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board but not less than \$5,000, conditioned on the faithful performance of the duties of the Treasurer's office.
4. The treasurer shall be responsible for the presentation of the Budget to the District.

F. Recording Secretary. The Board shall have the authority to appoint a recording secretary who need not be a member of the Board of Directors, and who will be responsible for recording all votes and composing a record of the proceedings of the Board in the minute book and will be the

custodian of the seal of the District. The recording secretary shall not be required to take an oath of office, nor post a performance bond.

- G. Additional Duties.** The officers of the Board shall perform such other duties and functions as may from time to time be required by the Board; the Bylaws or rules and regulations of the District; law; or special exigencies, which shall later be ratified by the Board.
- H. Selection of Contractors or Agents.** The selection of agents, contractors, engineers, accountants, special consultants and attorneys of the District by the Board will be as outlined in the District's policy manual.

ARTICLE IV – STANDING AND SPECIAL COMMITTEES

Section 1. Functions. The primary purpose of a committee or special committee is to recommend courses of action to the Board. To do this, it conducts open meetings which provide opportunities for input from Management of the District, residents of the District and members of the public. In particular, Committees:

- A.** Monitor, in cooperation with Management of the District, or designated staff, the effectiveness of policies and rules within the committee's area of concern.
- B.** Review and/or make recommendations concerning the policies of the District for its area of concern.
- C.** Review and/or make recommendations concerning fees, if any, for its area of concern.
- D.** Make recommendations to assist in the preparation of the annual budget for its assigned area of concern.

Section 2. Open Meetings. All committee meetings shall be open to the public. At open meetings, members of the public are normally allowed to speak before the committee takes formal action on any item under discussion.

Section 3. Committee Composition. Each committee consists of a Chair and up to seven eligible electors of the District. Eligible electors of the District may apply for membership on committees by completing an application obtained in the business office and submitting it to the Chair of the committee on which membership is desired.

Section 4. Committee Chairs. The Chair of each standing or special Committee shall be a director of the Board appointed by the President, subject to approval by the Board.

Section 5. Duties of the Chair.

- A. Enroll members in the committee as required to insure that all members meet the criteria of these bylaws and act in the best interest of the District. Once seated, and with the recommendation of the chair, committee members may be removed with or without cause and in the best interest of the District by a vote of the Board.
- B. Facilitate effective committee meetings.
- C. Ensure that the committee carries out the key responsibilities as set forth in these Bylaws.

Section 6. Substitute Chairs. Chairs of standing committees shall arrange for another director of the District to chair any meeting of the committee at which the chair will be unable to attend.

Section 7. Tenure of Committee Members. Members of standing committees may serve for a maximum of four consecutive years and may only be removed by a vote of the Board. After a one year's break in service such person may return to the committee at the recommendation of the chair and after approval by the Board. Approval for a member to be permitted to exceed this limitation may be granted on a case-by-case basis by the Board. Such extensions will be valid for only one year at a time and should normally be requested and approved because of one or both of the following circumstances:

- A. Losing the member will reduce membership below the minimums specified in these Bylaws.
- B. The member has professional experience (e.g., finance, law, engineering, etc.) that is particularly valuable to the committee.

Any member of a committee may be removed by the Board for cause or without cause at any time.

Section 8. Cohabitants. No two persons living in the same unit shall be permitted to serve on the same committee.

Section 9. Attendance. Missing three regular committee meetings in one calendar year is grounds for removal from a committee. With the exception of the chair, substitutes are not permitted to represent absent committee members.

Section 10. Committee Quorum. A committee's quorum is a majority of its minimum number of voting members, including the chair.

Section 11. Standing Committees. The following standing committees with composition and concerns as follows are hereby created by the Board.

A. Clubhouse/Restaurant.

- 1. Composition.** The chair, the District's Agent (without vote), the Clubhouse Manager (without vote), the Restaurant Manager (without vote), and a minimum of four and a maximum of seven eligible electors of the District.
- 2. Concern.** Policy recommendations and financial recommendations to the Board.

B. Golf.

- 1. Composition.** The chair, the Golf Course Superintendent (without vote), the Golf Professional (without vote), and a minimum of four and a maximum of seven eligible electors of the District.
- 2. Concern.** Policies that ensure a cost-effective, safe, well maintained and attractive golf course. Review of the operating and capital repair and replacement budgets with recommendations to the Board.

C. Foundation.

- 1. Composition.** The chair and a minimum of four and a maximum of seven eligible electors of the District.
- 2. Concern.** Select and recommend to the Board projects for funding that benefit the Heather Gardens Community. Solicit, review and approve all donations to the District; maintain the record book and publicize the activities of The Heather Gardens Foundation.

D. Adding/Dissolving Standing Committees. The Board, at its discretion, may from time to time form additional standing committees or dissolve a standing committee. The duration, membership, purpose, duties and responsibilities of any standing committee of the Board shall be as defined by the Board and may be amended from time to time by Board action.

Section 12. Special Committees. From time to time a project outside the concerns of the standing committees may occur, in which case the Board, may create a special committee for such project. The duration, membership, purpose, duties and responsibilities of any special committee of the Board shall be as defined by the Board and may be amended from time to time by Board action The President shall assign a

Board member to chair these committees. Once the project is completed the special committee may be dissolved.

1. **Composition.** The Chair, the District's Agent or his designated staff member (without vote), and eligible electors of the District, the number of which will be determined by the Board by the type of project involved.
2. **Concern.** Concern shall be detailed by the President when the committee is formed and a project is assigned.

ARTICLE V – ADMINISTRATION

Section 1. Administrator. The District's Agent shall be appointed by the Board as outlined in Article II, Section 1(a) and (b) and shall perform all duties as outlined below.

- A. The District's Agent shall have general supervision over the administration of the affairs and business of the District and shall be charged with the hiring and discharging of employees and the management of District properties.
- B. The District's Agent shall have the care and custody of the general funds of the District and shall deposit same in the name of the District in such banks or savings associations as the Board may select.
- C. The District's Agent will approve all vouchers, orders and checks for payment.
- D. The District's Agent shall keep regular books of account of all District transactions and shall obtain, at the District's expense, such bond for the faithful performance of its duties as the Board may designate.

Section 2. Financial Administration.

- A. **Fiscal Year.** The fiscal year of the District shall commence on January 1 of each year and end on December 31.
- B. **Budget.** The District's Agent in cooperation with the treasurer of the Board shall be responsible for preparation and presentation of the annual budget for the District as follows:
 1. On or before October 15th, the District's Agent shall prepare and submit to the District Board a proposed budget for the ensuing fiscal year.

2. The proposed budget shall set forth the total proposed expenditures and the total anticipated income or other means of financing the proposed budget for the ensuing fiscal year, as contrasted with the corresponding figures for the last completed fiscal year and the current fiscal year.
 3. The budget shall be accompanied by a statement which shall describe the important features of the budget plan and by a general summary.
 4. The proposed budget shall be supported by explanatory schedules or statements classifying the expenditures contained therein by services, subjects and funds.
 5. The anticipated income of the District shall be classified according to the nature of the receipts.
- C. Budget Notice.** The Board shall cause to be published a notice that the proposed budget is open for inspection by the public at the business office; that the Board will consider the adoption of the proposed budget at a public hearing on a certain date; and that any interested elector may inspect the proposed budget and file or register any objections thereto at any time prior to its final adoption. Notice shall be posted or published in compliance with law.
- D. Adoption of Budget.** On the day set for consideration of such proposed budget, the Board shall review the proposed budget and revise, alter, increase or decrease the items, as it deems necessary. The Board shall then adopt the budget by resolution. The Board shall provide for sufficient revenues to finance expenditures in the budget with special consideration given to the proposed property tax levy.
- E. Filing of Budget.** On or before January 30 of each year, the Board shall cause a certified copy of such budget to be filed with the Division of Local Government in the State Department of Local Affairs.
- F. Levy and Collection of Taxes.** On or before December 15th of each year the Board shall certify to the Board of County Commissioners of the County in which the District is located, the mill levy established for the ensuing fiscal year, in order that, at the time and in the manner required by law for the levying of taxes, such Commissioners will levy such tax upon the assessed valuation of all taxable property within the District.

G. Appropriating Resolution.

1. At the time of adoption of the budget, the Board shall enact a resolution making appropriations for the ensuing fiscal year. The amounts appropriated there under shall not exceed the amounts fixed therefor in the adopted budget.
2. The income of the District, as estimated in the budget and as provided for in the mill levy certification and other revenue and borrowing resolutions, shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation.
3. The Board may make an appropriation to and for a contingent fund to be used in cases of emergency or other unforeseen contingencies.

H. Contingencies.

1. In cases of emergency caused by a natural disaster, public enemy, or other contingency, which could not reasonably have been foreseen at the time of the adoption of the budget, the Board may authorize the expenditure of funds in excess of the budget by resolution duly adopted by a two-thirds vote of the Board. Such resolution shall set forth in full the facts concerning the emergency and shall be included in the minutes of such meeting.
2. If so enacted, a copy of the resolution authorizing additional expenditures shall be filed with the Division of Local Government in the State Department of Local Affairs and shall be published in compliance with statutory requirements.

I. Payment of Contingencies.

1. If there is unexpended or uncommitted money in funds other than those to which the emergency relates, the Board shall transfer such available money to the fund from which the emergency expenditure is to be paid.
2. To the extent that transferable funds are insufficient to meet the emergency appropriation, the Board may obtain a temporary loan to provide for such excess expenditures. The total amount of the temporary loan shall not exceed the amount which can be raised by a two-mill levy on the total assessed valuation of the taxable

property within the limits of the local government of such governing..

J. Contracts. The Board shall have no authority to enter into any contract, or otherwise bind or obligate the District to any liability for payment of money for the purposes, for which provision is not made in the appropriation resolution, including any legally authorized amendment thereto, in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to this Section shall be void *ad initio*, and no District funds shall be expended in payment of such contracts, except as stated in Article V, Section 2.I.1. and 2.

K. Annual Audit.

1. The Board shall cause an annual audit to be made at the end of each fiscal year of all financial affairs of the District through December 31 of such fiscal year. In all events, the audit report must be submitted to the Board within six (6) months of the close of such fiscal year. Such audit shall be conducted in accordance with generally accepted auditing standards by a registered or certified public accountant, who has not maintained the books, records and accounts of the District during the fiscal year. The auditor shall prepare, and certified as to its accuracy, an audit report, including a financial opinion or qualified opinion with explanations, and a full disclosure of any violation of State law pursuant to statutory requirements.
2. A copy of the audit report shall be maintained by the District as a public record for public inspection at all reasonable times.
3. A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements.

ARTICLE VI – INDEMNIFICATION

Section 1. Indemnification. The District shall defend, hold harmless and indemnify any director, officer, agent or employee, whether elective or appointive, against any tort or liability, claim or demand, without limitation, arising out of any alleged act or omission occurring during the performance of official duty, as a more fully defined by law or by any indemnification resolution. The provisions of this Section shall be supplemental and subject to and, to the extent of any inconsistency therewith, shall be modified by the provisions of the Colorado Governmental Immunity Act, 24-10-101, *et seq.*, C.R.S.

Section 2. Directors and Officers Insurance. The District shall purchase and maintain insurance on behalf of any person who is or was a member of the Board, the Administrator, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against the person by virtue of the person's actions on behalf of the District or at the direction of the Board, whether or not the District would have the power to indemnify the person against liability under provision of this Article.

ARTICLE VII – GENERAL

Section 1. Corporate Seal. The seal of the District Shall be a circle containing the name of the District and shall be used on all documents and in such manner as public and private corporations generally use seals. The secretary shall have custody of the seal and shall be responsible for its safekeeping and care.

Section 2. Bidding and Contracting Procedures. Except in cases in which (a) the District will receive aid from a government agency or purchase through the state purchasing program a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of \$60,000 or more of District funds. The District may reject any and all bids, and if it appears that the District can perform the work or secure material for less than the lowest bid, it may proceed to do so. All other statutory requirements relating to performance bonds, retainage, and similar matters shall also be complied with.

Section 3. Modification of Bylaws. These Bylaws may be altered, amended or repealed at any regular or special meeting of the full Board by an affirmative vote of four (4) Directors to become effective immediately or at a subsequent date.

ADOPTED this 14th day of April, 2016, by the Board of Directors of Heather Gardens Metropolitan District.

HEATHER GARDEN METROPOLITAN DSITRICT

Craig Baldwin, President

ATTEST:

Gary Hizer, Secretary