

MANAGEMENT AGREEMENT

This Agreement is entered into as of the ___ day of ____, 20__~~18~~ by and between HEATHER GARDENS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and the HEATHER GARDENS ASSOCIATION, a non-profit Colorado corporation (the "Association"). Together, the District and the Association may be referred to as the "Parties" or individually as a "Party."

WHEREAS, the District is metropolitan district, organized on April 6, 1983, in accordance with Title 32 of the Colorado Revised Statutes for the purpose of providing park and recreational facilities and improving and maintaining streets for the District, and the benefit of the public and inhabitants thereof; and

WHEREAS, the Association is a Colorado non-profit corporation, organized pursuant the Colorado Nonprofit Corporation Act as the homeowners' association for the owners of condominium units at Heather Gardens (herein called "Homeowners") pursuant to, among other things, the Amended and Restated Condominium Declaration for Heather Gardens recorded at Reception Number D5005871 in the Arapahoe County records (the "Declaration"); and

WHEREAS, the District owns or leases, or in the future will own or lease, certain real property, including without limitation recreational facilities, open space, grounds, roads and walkways, a golf course, a club house, a restaurant, a maintenance shop, a recreational vehicle parking lot, a community garden, storage units and other real estate, structures and improvements, and certain personal property located therein all located within the boundaries of the District (collectively the "Properties"); and

WHEREAS, the District and the Association are desirous of entering into this Agreement whereby the Association is to (i) operate and manage the day-to-day duties and affairs of the District and its enterprises, except for those duties which the State of Colorado requires the District to retain, or which the District has retained herein, and (ii) manage, operate, maintain, upgrade, rehabilitate, repair, retire, replace and otherwise deal with the Properties.

NOW, THEREFORE, in consideration of the covenants contained herein, plus other good and valuable consideration passing between the Parties hereto, the sufficiency and receipt of which is hereby acknowledged, the Parties mutually agree as follows:

MANAGEMENT OF DISTRICT AND ITS PROPERTIES

1. The District, as Principal, designates the Association, subject to the District's Board of Director's policies (hereinafter "policies" includes bylaws, rules and regulations, policies, and procedure memoranda adopted by the District's Board of Directors), budgeting, finances, ~~and oversight, and applicable laws~~, as the District's agent to (i) operate and manage the day-to-day duties and affairs of the District and its enterprises, including performance of all duties of the District except those duties reserved by and to the District herein and those duties which the District is required by law to retain (e.g., adoption of budgets, oversight of expenditures inclusive of compensation, finances, levying of taxes, issuance of debt, setting of rates, fees, tolls and charges, etc.) and (ii) manage, operate, maintain, and ~~otherwise deal with~~repair the Properties and, with the specific approval of the District, reassign use of, upgrade, modify, rehabilitate, renovate, retire, and/or replace the Properties (collectively the "Delegated Duties").

2. The Association hereby accepts this agency and agrees to perform the Delegated Duties, subject to available funding provided by the District and the Recreation Fees collected on behalf of the District (defined below), and to responsively and responsibly execute the Delegated Duties, and subject to limitations and restrictions in the Association's Amended and Restated Declaration of Condominium, its bylaws, "Rules" (as defined in Section 1.32 of the Declaration, to wit: "rules, regulations, procedures, procedure memoranda, policies and guidelines adopted by the Board" of the Association) policy and/or the Colorado Common Interest Ownership Act, Colorado Nonprofit Corporation Act and related employment laws and regulations.

3. In addition to those duties which by law are reserved to the District and its Board of Directors, the District expressly reserves unto its Board of Directors decisions regarding the following: (1) ~~Substantive~~ physical alteration of real property which is part of the Properties, or any part thereof; (2) ~~reassignment of access to~~, use and configuration of real property and appurtenances thereto which ~~are~~is part of the Properties, including, but not limited to office spaces, classrooms, meeting rooms, kitchen areas, storage areas, maintenance facilities, parking facilities, recreational vehicle lot, garden space, golf course, and other green or open space from its use as of the date of this Agreement or as later authorized by the District; and (3) sale, exchange, or other disposition of any part of the Properties without the advance written consent of the District's Board of Directors, by specific action or, in the case of personal property, by approved protocols for disposition. ~~For purposes of this Section 3, "substantive physical alteration" shall not include or refer to maintenance, or repairs that do not change access to the Properties.~~

4. ~~With regard to District functions,~~ tThe District President shall serve as the liaison between the District's Board of Directors and the Association's Chief Executive

~~Officer (CEO)–Manager (as that term is defined below).~~ The Association ~~Manager~~Association CEO shall ~~not be required to~~ take direction from ~~the District other than through~~ the District’s Board of Directors or the District’s President. Such direction shall not require a formal vote of the District’s Board of Directors, except as otherwise required by law. Except as provided below, the District shall not direct or give instruction to the Association’s staff, provided, however, the District may respond to direct requests from Association staff regarding District business and District directors may interact with any Association staff to discuss the operation, efficiency, or violation of the District’s policies. The District’s Treasurer may direct the Association’s Chief Financial Officer on matters specific to the District’s budget, appropriations, and expenditures. The District’s directors may interact with and direct the Association’s Administrative Manager, or such other staff designated by the Association from time-to-time, regarding District business. In addition, ~~t~~The Association Manager~~Association CEO~~ may, from time to time, authorize additional direct access for a District director to an Association staff member or members for such purposes as determined by the ~~Association Manager~~Association CEO. In such cases, it is understood and agreed that the District director concerned will, at all times, keep the Association’s ~~Manager-CEO~~ informed through the District’s President, regarding the substance of the transaction or communication.

5. The Parties acknowledge that the Association manages its affairs in accordance with a dynamic set of Rules. Nothing in this Agreement shall prevent the Association and the District from otherwise agreeing in writing to additional or alternative procedural documentation ~~for management to implement the Association’s execution of the Delegated Duties.~~

6. From time to time the District and the Association may form joint committees to advise the Board of Directors of both the District and the Association in areas of common interest, e.g., budgeting and finance.

a. When formed, such joint committees shall be governed by a procedure memorandum, approved by the District and the Association, which outlines the scope and membership of such committees.

b. A joint committee is dissolved when either the Board of Directors of the District or the Association take action to withdraw from a joint committee.

II **THE ANNUAL BUDGET AND FEES**

1. The Parties recognize that development of annual District and Association budgets supporting the costs associated with the Delegated Duties requires cooperation, timely preparation, review, and setting of the Recreation Fee and User Fee. “Recreation Fee” or “Recreation Fees” shall mean the monthly fee levied and collected by the Association from the Homeowners and their properties pursuant to the Declaration and

remitted to the District. "User Fee" or "User Fees" shall mean the fees adopted by the District for use or uses of the Properties, collected by the Association, on behalf of the District, and remitted to the District. The Parties further recognize that the Recreation Fee and User Fee must be annually determined in conjunction with one another, to the end that the combined revenues therefrom shall be sufficient to enable the District to meet its maintenance, operational, capital reserve, and financial responsibilities, in light of other revenues that may be available to the District. The District shall have no right to require the Association to determine, fix, or change the Recreation Fees outside of the annual budget process. Likewise, the Association shall have no right to require the District to determine, fix, or change the User Fees outside of the annual budget process. However, the District may determine, fix, or change the User Fees at any time. In connection herewith, the Parties shall timely perform the following tasks:

a. For the duration of this Agreement, the Association, as agent of the District, with the participation of and input from the District's committees, the cost center managers, and the District's Board of Directors, shall be the entity designated by the District's Board of Directors to prepare and submit to ~~that Board~~the District's Board of Directors a proposed budget, which shall be submitted no later than October 15th of the year prior to the budget year under consideration. The Association, as the District's agent, shall process the ensuing year's budget as required by law, and take or direct all actions necessary for the budget and the property tax levy thereunder to be valid and binding. The proposed budget shall show the Association's proposal for Recreation Fees in the budget year and the Association's projections for User Fees in the budget year, as well as other anticipated District revenues and all anticipated District expenditures and shall otherwise be in compliance with requirements of ~~State-all applicable laws.~~ The budgeting of a proposed expenditure is in no way an approval of the expenditure by the District's Board of Directors; except as may be otherwise provided in District policies, prior approval by the District's Board of Directors shall be required for all District expenditures.

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b. No later than November 15th of the year prior to the budget year under consideration, the Association will consult with the District's ~~s Board of Directors~~ Board of Directors and develop (i) an Association budget for Recreation Fees, (ii) a recommendation to the District for determining User Fees, and (iii) a recommendation to the District for its entire budget for the ensuing year, including all revenues and expenditures.

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c. No later than November 30th of the year prior to the budget year under consideration, the District, after review of the Association's recommendations as provided in Section II.1.b., will set a proposed budget and the Association's CEO cause publication of a notice of consideration thereof as required by ~~State-all applicable laws.~~ Neither the Association's recommendations nor the proposed budget shall bind the District.

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d. After the public hearing on the budget proposed for the ensuing budget year, and no later than December 15th of the year prior to the budget year, the District's Board of Directors shall adopt its budget, appropriate funds, and levy ad valorem property taxes. The District's Board of Directors may also determine, fix, or change the

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User Fees and set other rates, fees (other than Recreation Fees), tolls and charges in connection with its budget process or at such other times as it may find necessary.

e. All dates set forth in this Article II shall be adjusted as necessary, without any amendment to this Agreement being required, to comply with any changes in State-all applicable laws.

III RIGHTS AND DUTIES OF THE DISTRICT

1. a. The District shall plan and budget for those of its obligations not subject to management by the Association per this Agreement, including retirement of its outstanding bonded indebtedness included in the Delegated Duties.

b. The final responsibility and authority for all District funds and assets rests with the District and its Board of Directors, and nothing in this Agreement shall be construed to effect an unlawful delegation thereof to the Association. The budgeting of a proposed expenditure is in no way an approval of the expenditure by the District's Board of Directors; except as may be otherwise provided in District policies, prior approval by the District's Board of Directors shall be required for all District expenditures.

c. All furniture, fixtures, equipment, and machinery owned by the District presently used in or about the Properties shall be and remain the property of the District. The Association shall prepare and periodically update an inventory of all furniture, fixtures, equipment and machinery owned by the District valued at \$500.00 or more. The District shall review and suggest revisions, if any, to the inventory prepared by the Association of all furniture, fixtures, equipment and machinery owned by the District. The District shall also provide all machinery and equipment necessary for the care and maintenance of the Properties. Each Party shall be responsible for and bear the cost of acquisition, maintenance and repair of its own furniture, fixtures, equipment and machinery.

d. Where legal assistance is required in connection with District matters, such action shall be instituted by and through counsel designated by the District. The expense for such counsel shall be borne by the District, with approval of the District.

e. The District hereby authorizes the Association to make District deposits in deposit accounts suitable for a public entity under applicable State law, and, upon approval of the District's Treasurer, to arrange, as agent, for the payments of authorized by the District's budget and this Agreement District liabilities and other financial obligations. Further, the District authorizes the Association, upon approval of the District's Treasurer, to arrange for the District's timely payment to the holders of District debt and to meet other budgeted and valid financial obligations of the District.

IV
RIGHTS AND DUTIES OF THE ASSOCIATION

1. a. Subject the District's Board of Director's policies, budgeting, finances, and oversight, the Association shall make necessary day-to-day operational and management decisions relative to the execution of the Delegated Duties.

b. The Association shall take all necessary steps to levy the Recreation Fees, and to take commercially reasonable efforts to collect and enforce the collection of all Recreation Fees and all User Fees and timely remit the collected Recreation Fees and User Fees to the District.

c. The Association shall collect on behalf of, safeguard, account, hold in trust, transfer, and turn over to the District all revenues of the District, including the collected Recreation Fees and User Fees. The Association may pay from those revenues all expenses of the District approved by the District's Board of Directors and, at such intervals as may be set by the District, turn over to the District all receipts net of such approved expenses and provide the District with a monthly reconciliation thereof. The budgeting of a proposed expenditure is in no way an approval of the expenditure by the District's Board of Directors; except as may be otherwise provided in District policies, prior approval by the District's Board of Directors shall be required for all District expenditures. Any unbudgeted expenditure must be approved by the District's Board of Directors and budget in accordance with all applicable laws.

d. The Association shall maintain accurate records of all ~~moneys~~ monies received and disbursed in connection with this Agreement, including the operation and management of the Properties, and such records shall be open for inspection by the District ~~and its members~~ at all reasonable times, and as required by the Colorado Open Records Act.

e. All furniture, fixtures, equipment, and machinery owned by the Association presently used in or about the Properties shall be and remain the property of the Association. The Association shall prepare and periodically update an inventory of all furniture, fixtures, equipment and machinery owned by the District and the Association.

f. Where legal assistance is required in connection with Association matters, such action shall be instituted by and through counsel designated by the Association. The expense for such counsel shall be borne by the Association, with approval of the Association.

2. Subject to available funding, the Association shall do everything reasonably necessary, consistent with this Agreement, the Declaration, and the Rules, for the proper execution of the Delegated Duties, including, but not limited to, periodic inspections, supervision of maintenance and arranging for maintenance of such improvements, alterations and repairs as may be required for the Properties.

3. The Association shall follow the standards and guidelines outlined in its employee handbook as it relates to employees performing work to ensure the proper execution of the Delegated Duties. Notwithstanding the foregoing sentence, all employees, whether performing work on the Properties, under this Agreement for the District, or for the Association, are employees of the Association, and shall not be considered employees of the District. The Association agrees that its employees shall not violate the District's policies or engage in any conduct which may subject the District to liability. All matters concerning the employment of the Association's employees will remain confidential between the Association and its respective employees, and the Association shall have no obligation to disclose such confidential matters to the District. Nevertheless, The Association shall ~~report to~~ consult with the Board of Directors of the District regarding hiring, noteworthy disciplinary action, or proposed termination of employment of any key employees (e.g., managers or assistant managers of the cost centers) or groups of employees (i.e., when multiple employees are involved) performing work to ensure the proper execution of the Delegated Duties. ~~Said report may be delivered orally and shall be made on a quarterly basis in order to keep the District apprised of personnel issues, unless more frequent reporting would be necessary or appropriate as it relates to any particular circumstance, as it may be determined by the Association.~~

4. ~~The Association has the authority to engage independent contractors, within District budget constraints, on behalf of the District and in the District's name or in the Association's name to assist with the execution of the Delegated Duties; provided, however, that all contracts to upgrade, rehabilitate, retire, and/or replace the Properties shall require~~ Except as may otherwise be otherwise provided in District policies, prior approval of the Board of Directors of the District is required for all District contracts. The Association shall administer all such District contracts in accordance with the District policies.

5. The Association agrees that it has the duty and responsibility of an agent, and its agency is contained in the provisions of this Agreement. The Association shall perform this Agreement and manage the affairs and Properties of the District as an agent and in full compliance with the requirements of all applicable laws.

6. In its agency capacity, the Association shall have the right to occupy and utilize the management offices on the second floor of the Clubhouse as they now exist, and the maintenance building. All other the Properties shall be utilized for the use and benefit of those legally entitled thereto, i.e., the public, including Homeowners, lessees and occupants of condominium units at Heather Gardens with the approval of and in the discretion of the District's Board of Directors.

7. In the performance of its agency and duties hereunder, the Association shall employ ~~the~~ Association manager Association CEO (hereafter "Association Manager") and shall require, as part of his or her duties, that he/she responsively and responsibly serve the District, be responsible for advising ~~its~~ the District's Board of Directors and supervising the Delegated Duties in a manner consistent with this Agreement and the

policies of the District's Board of Directors. The Association shall act through its Board of Directors, or, at the direction of the Association's Board of Directors, through the ~~Association Manager~~ Association CEO. The Association shall also employ such other employees as the Association deems necessary to execute the Delegated Duties. However, a reduction in Association staff that reduces the services provided to or on behalf of the District or a reduction in services provided as Delegated Duties, must be done only with prior approval of the District's Board of Directors.

8. In consideration of the Association's undertakings in this Agreement and for the convenience of the District, during the term of this Agreement the Association is granted the right to occupy office space currently occupied by the Association in the Clubhouse located at 2888 Se. Heather Gardens Way, and the space presently occupied in the maintenance facility located at 2877 Se. Heather Gardens Way without payment of rent or any other monetary compensation. The District shall be provided an office space within the Clubhouse. Within its space, the Association will continue to provide space for District records and functions. The Association shall provide all necessary, along with the clerical and accounting services to execute the Delegated Duties in accordance with this Agreement. The Parties consider the value of space and services contributed by each to be of equal value. No charges shall be levied by either Party on the other in connection herewith.

V **INSURANCE AND INDEMNITIES**

1. a. Throughout the term of this Agreement, the Association shall keep in full force and effect for the mutual benefit of both Parties, (a) personal property casualty insurance on all furniture, furnishings, machinery and equipment used in, on or about the Properties; designating the District as loss payee, (b) real property casualty insurance, designating the District as loss payee, (c) a comprehensive general liability insurance for personal injury, death or property damage liability arising from the use occupancy and condition of the Properties, or adjacent areas or access ways, or arising from the Association's performance of this Agreement, and (d) such other coverage as is customary for the protection of the District (including without limitation, crime loss and pollution liability). Each coverage shall be in an amount sufficient to make whole the District in case of loss or claim, and under all circumstances in the minimum amount of \$1,000,000 for such injury or damage for any one accident or occurrence. The Association and the District shall each be named as an additional insured under each other's policies. The Association shall provide the District with evidence of insurance and provide the District with notice in the event of cancellation of any insurance. Nothing in this Section V or this Agreement shall be construed to be a waiver of the District's governmental immunity.

b. To the extent permitted by law, each Party shall indemnify and hold the other Party (including its directors and officers) harmless from and against any claim,

demand, damage, liability loss and expense arising out of the performance of this Agreement, except in the instance of gross negligence of the Party otherwise indemnified.

VI TERM OF THE AGREEMENT

1. The term of this Agreement shall be for a period commencing on the date hereof and shall continue in force and effect until the end of this calendar year. Thereafter, absent written notice by one Party to the other not less than ~~120~~480 days prior to the end of a calendar year, the Parties agree that this Agreement shall renew for additional calendar years on a similar basis, with each year constituting a separate contract for management.

2. This Agreement may be terminated by either Party for cause with 30 days' advance written notice of such termination after written notice of the breach of any material term of this Agreement is provided by the terminating Party to the non-terminating Party and the non-terminating Party failure to cure such breach within 30-days of the transmittal of such notice of breach.

VII DISPUTE RESOLUTION

1. a. In the event the District believes any of the Delegated Duties are not being properly executed by the Association, the District shall forthwith notify the Association in writing and request a joint meeting of the full Boards of Directors of the Association and the District to discuss the proper execution of the Delegated Duties in question.

b. The Parties agree that they shall in good faith attempt to settle any disputes arising pursuant to this Agreement as early as practicable by prompt discussion and negotiation.

c. If the Parties are unable to resolve the dispute themselves through discussion and negotiation, the Parties shall each select a mediator and the two mediators so selected shall be a person eligible to vote in Association and District elections. Such mediators shall serve without fee. The mediators shall choose a third mediator who shall be a professional mediator. The fees of the professional mediator and the associated costs of the mediation process shall be shared equally by the Parties.

d. Mediation shall be a condition precedent to litigation or, if agreed upon, arbitration.

e. The Parties agree that, to the extent permitted by law, in any dispute confidentiality will be maintained and no public statement concerning the areas of dispute

shall be issued prior to the completion of the above stated dispute resolution process. Violation of the foregoing confidentiality obligation may subject the offending Party to litigation, including injunction against further public statements, and assessment of attorney fees and costs incurred for enforcement. The nonoffending Party shall be entitled to reply to such public statement(s) in equal time and forum as mitigation of damages.

VIII MISCELLANEOUS PROVISIONS

1. a. For the purpose of this Agreement, and until changed by written notice to the other Party, the mailing addresses of the District and the Association for all purposes are as follows:

The District: Heather Gardens Metropolitan District
2888 So. Heather Gardens Way
Aurora, Colorado 80014

The Association: Heather Gardens Association
2888 So. Heather Gardens Way
Aurora, Colorado 80014

b. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the District and the Association, its successors or assigns.

c. This Agreement may be changed or modified only in writing, by an agreement approved by the respective Boards of Directors of the Parties and signed by authorized officers of each Party.

d. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

e. The Article and paragraph headings are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

f. Any provision to the contrary notwithstanding, none of the obligations of either Party to this Agreement will be enforceable by any person other than a Party to this Agreement or its permitted successors or assigns.

g. This Agreement will be deemed to have been made and will be construed and interpreted in accordance with the laws of the State of Colorado. The District's obligations hereunder are subject to annual appropriation and nothing herein shall be construed to attempt to restrict the legislative power of the District's Board of Directors.

h. Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.

i. This Agreement, in all respects terminates and supersedes the Management Agreement by and between the Parties dated ~~September 2, 2015~~August 23, 2018.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and sealed by their duly authorized officers as of the date first above written.

HEATHER GARDENS METROPOLITAN DISTRICT

By: _____
President

ATTEST

By: _____
Secretary

State of Colorado
County of _____

The foregoing instrument was acknowledged before on this (date) by _____, President of Heather Gardens Metropolitan District Board of Directors and _____, Secretary of Heather Garden Metropolitan District Board of Directors.

Notary's Official Signature

Commission Expiration

Notary Seal

HEATHER GARDENS ASSOCIATION

By: _____
President

ATTEST

By: _____
Secretary

State of Colorado
County of _____

The foregoing instrument was acknowledged before on this (date) by
_____, President of Heather Gardens Association Board
of Directors and _____, Secretary of Heather Gardens
Association Board of Directors.

Notary's Official Signature

Commission Expiration

Notary Seal