

<p>DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112</p> <hr/> <p><i>Plaintiff:</i> HEATHER GARDENS METROPOLITAN DISTRICT</p> <p>v.</p> <p><i>Defendant:</i> HEATHER GARDENS ASSOCIATION</p> <hr/> <p><i>Attorneys for Plaintiff Heather Gardens Metropolitan District</i></p> <p>Peter C. Forbes, #14081 Kamper &amp; Forbes, LLC 730 Seventeenth Street — Suite 700 Denver, Colorado 80202 303 893-1815 (telephone) 303 893-1829 (facsimile) <a href="mailto:pforbes@csmkf.com">pforbes@csmkf.com</a></p>	<hr/> <p>Case Number:</p> <p>Division:</p>
<p>COMPLAINT</p>	

Plaintiff Heather Gardens Metropolitan District (the “District”), through its undersigned counsel, states the following for its Complaint against defendant Heather Gardens Association (the “Association”):

STATEMENT OF THE CASE

1. This is an action to terminate a contract between District and the Association based on the Association’s breaches of a management agreement between the parties, including the Association’s ongoing breach of its obligations as an agent to act in the best interests of the District and to make full disclosure to the District of all matters related to the scope of the Association’s agency.

## PARTIES AND VENUE

2. The District is quasi-municipal corporation and political subdivision of the State of Colorado duly formed pursuant to Title 32 of the Colorado Revised Statutes with its principal place of business in this judicial district.

3. The Association is a Colorado non-profit corporation with its principal place of business in this judicial district.

4. Venue is proper pursuant to C.R.Civ.P. 98(c)(1) because this is an action for breach of contract and the sole defendant's principal place of business is in this judicial district.

## FACTUAL ALLEGATIONS

5. Heather Gardens is the name of an active adult age-restricted community located in Aurora with over 2,400 housing units, including patio homes, townhomes, and multi-story condominium buildings.

6. Among other things, the District owns a public nine-hole executive golf course located within the Heather Gardens community; a 50,000-square foot clubhouse that includes a restaurant, an indoor pool, meeting rooms, a state-of-the-art exercise facility, a multi-use auditorium, and a full-service restaurant; an RV storage lot; a maintenance building with offices, storage, and service bays; garden plots; and perimeter landscaping areas (collectively the "Properties").

7. The Association serves as the homeowners association for the approximately 4,000 residents of Heather Gardens, and is responsible for, among other things, maintaining certain common areas within the Heather Gardens community.

8. On or about August 23, 2018, the District and the Association entered into a management agreement (the “Management Agreement”) that replaced and superseded all prior agreements between them.

9. Pursuant to Art. I, Sec. 1 of the Management Agreement, the Association was appointed as the District’s agent for the purpose of operating and managing the District’s affairs, except those duties reserved by law or the terms of the Management Agreement to the District; was appointed as the District’s agent to manage, operate, maintain, and otherwise deal with the Properties; and, with the specific approval of the District, was appointed as the District’s agent for the purpose of upgrading, rehabilitating, retiring, and/or replacing the Properties.

10. Pursuant to Art. 1, Sec. 2 of the Management Agreement, the Association agreed to serve as the District’s agent for the foregoing purposes, subject to the terms of the Management Agreement, the Association’s charter and bylaws, and otherwise applicable Colorado law.

11. Pursuant to Art. IV, Sec. 5 of the Management Agreement, the Association agreed that it had the “duty and responsibility of an agent,” that its “agency was contained in the provisions of this Agreement,” and that it would “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.”

12. Pursuant to Art. II, Sec. 1(b) of the Management Agreement, the final responsibility and authority for all District funds and assets was vested in the District and its Board of Directors.

13. Pursuant to Art. II, Sec. 1(e) of the Management Agreement, the Association was only authorized to deposit District funds in a deposit account suitable for a public entity under Colorado law.

14. Pursuant to Art. IV, Sec. 1(a) of the Management Agreement, all operational and management decisions made by the Association in carrying out its duties thereunder would be subject to the policies, budgeting, finances, and oversight of the District's Board of Directors.

15. Pursuant to Art. IV, Section 1(c) of the Management Agreement, the Association was required to safeguard, account for, and turn over to the District all revenues it collected on behalf of the District, along with a monthly reconciliation showing amounts collected and approved expenses paid; was required to maintain accurate records of all monies received and disbursed; and was required to make such records open for inspection by the District and its members "at all reasonable times, and as required by the Colorado Open Records Act."

16. Pursuant to Art. IV, Sec. 4 of the Management Agreement, while the Association had the authority to engage independent contractors to perform its duties thereunder, all contracts to "upgrade, rehabilitate, retire, and/or replace the Properties" required prior approval of the District's Board of Directors.

17. The Association has breached its obligations under the Management Agreement in material ways, including without limitation by (1) refusing to provide the District with the information necessary to determine if the District has been charged excessive amounts for Association employees performing services on behalf of the District, (2) agreeing to contracts involving the upgrade and/or rehabilitation of property belonging to the District without the

District's consent, including agreeing to a contract involving the installation of fiber optic cable for property belonging to the District; (3) failing to maintain funds belonging to the District in a separate account containing only funds of other governmental entities as required by Colorado law; (4) failing to provide substantiation that bills incurred with respect to the management and operation of the District's property have been timely paid; (5) failing to seek competitive bids for work to be performed on behalf of the District; (6) demolishing certain property belonging to the District without the District's consent and agreeing to a contract to replace such property without the District's consent and without competitive bidding; (7) failing to provide sufficient information concerning a checking account into which District funds have been deposited to confirm that District funds are only being used for the uses permitted by the Management Agreement and that amounts being remitted to the District from that account are correct; (8) failing to provide the administrative services required by the District to perform its functions, including without limitation failing to prepare timely notices of District Board meetings, timely Board packets, and timely minutes of District Board meetings; (9) refusing to acknowledge and honor the provisions of the Management Agreement stating that all operational and management decisions made by the Association in carrying out its duties thereunder would be subject to the policies, budgeting, finances, and oversight of the District; and (10) refusing to acknowledge and honor the provisions of the Management Agreement stating that the final responsibility and authority for all District funds and assets was vested in the District.

18. The foregoing breaches have deprived the District of the material benefit of the Management Agreement because, among other things, those breaches have (a) made it impossible for the District to determine whether District funds are being used solely for authorized purposes under the Management Agreement; (b) made it impossible for the District to

determine whether the charges made to the District by the Association are appropriate and authorized by the Management Agreement; (c) resulted in District funds being placed into accounts containing non-governmental funds in violation of Colorado law; (d) resulted in an ongoing violation of the Association's obligation as an agent of the District to act with utmost faith and loyalty on behalf of, and solely for the benefit of, the District; and (e) resulted in an ongoing violation of the Association's obligation as an agent of the District to make full and complete disclosure of all material facts relative to the scope of the Association's agency.

19. Art. VII, Secs. 1(a) and (b) of the Management Agreement provide that in the event the District believes the Association is not properly executing its duties thereunder the District is required to notify the Association in writing and request a joint meeting of the parties to attempt a good faith resolution of such disputes.

20. Art. VII, Secs. 1(c) and (d) of the Management Agreement provide that if discussions between the parties are unable to resolve their disputes, they will engage in mediation, which mediation "shall be a condition precedent to litigation or, if agreed upon, arbitration."

21. The District complied with the requirements of Art. VII, Secs. 1(a) and (b) of the Management Agreement by providing written notice to the Association that it believed the Association was not properly executing its duties under the Management Agreement and engaging in good faith discussions with the Association, including meeting with representatives of the Association's Board and its attorney on July 19, 2023, August 3, 2023, and August 16, 2023 and, at the suggestion of the Association, drafting proposed changes to the Management Agreement to address the District's concerns.

22. Despite preparing such proposed changes at the Association's request, the Association refused to discuss those changes but, instead, proposed that certain aspects of the parties' dispute be resolved by the District hiring its own employees rather than having the Association provide services through its employees.

23. In a continued effort to resolve its dispute with the Association without resorting to litigation, the District agreed to pursue this concept and redirected its efforts to research and planning related to hiring its own employees. Before the District could present that proposal, the Association changed gears yet again and requested mediation.

24. The District then engaged in mediation with the Association as required by Art. VII, Sec. 1(c) of the Management on November 16, 2023. That mediation did not resolve the parties' dispute.

25. Therefore, because the District has not agreed to arbitration of its dispute with the Association, all conditions precedent to bringing this action have been satisfied or have occurred.

FIRST CLAIM FOR RELIEF  
(Breach of Contract)

26. The allegations of the foregoing paragraphs 1-25 are incorporated herein by reference.

27. The District terminated the Management Agreement effective December 31, 2024 by providing written notice of termination pursuant to Art. VI, Sec. 1 thereof.

28. Due to the delay in the effective date of the District's termination pursuant to Art. VI, Sec. 1 of the Management Agreement, the District will continue to suffer injury by virtue of the Association's ongoing breaches absent a ruling by this Court that the District is entitled to terminate the Management Agreement immediately due to the Association's ongoing

material breaches of its duties thereunder, including its duties as an agent of the District to act in the District's best interest and make full disclosure to the District with respect to all matters concerning the scope of the Association's agency.

29. Accordingly, the District requests that this Court issue its declaration that the Association has materially breached its obligations under the Management Agreement and that accordingly the District is entitled to terminate that agreement immediately, and that in connection with that declaration the Court order such other and further ancillary relief as it finds just and appropriate, including without limitation an accounting of the Association's use of District funds, an accounting of the payment status of all bills related to the operation and management of District-owned facilities, disclosure of the salaries used to determine employee expenses charged to the District, and transfer of all District funds to an account containing only funds belonging to governmental entities as required by Colorado law.

30. Alternately, if the Court finds that the Association has breached its obligations under the Management Agreement but that such breaches are not sufficiently material to authorize immediate termination of that agreement, the District requests such relief as may be available at law or in equity for such breaches, including without limitation an accounting of the Association's use of District funds, an accounting of the payment status of all bills related to the operation and management of District-owned facilities, disclosure of the salaries used to determine employee expenses charged to the District, and transfer of all District funds to an account containing only funds belonging to governmental entities as required by Colorado law.

*Wherefore*, the District requests that the Court grant the relief requested above along with such other and further relief the Court finds just and appropriate in the circumstances.



Dated: December 22, 2023  
Denver, Colorado

Respectfully submitted,

KAMPER & FORBES, LLC

*s/Peter C. Forbes*

By: \_\_\_\_\_

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