

## MANAGEMENT AGREEMENT

This Agreement is entered into as of the <sup>20</sup>23 day of AUGUST, 2018 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 affairs of the District except for those duties which the State of Colorado requires the District to retain, and (ii) manage, operate, maintain, upgrade, rehabilitate, 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:

I  
**MANAGEMENT OF DISTRICT AND ITS PROPERTIES**

1. The District, as Principal, designates the Association, subject to the District's Board of Director's policies, budgeting, finances, and oversight, as the District's agent to (i) operate and manage the affairs of the District, 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, finances, levying of taxes, issuance of debt, setting of rates, fees, tolls and charges, etc.) and (ii) manage, operate, maintain, and otherwise deal with the Properties and, with the specific approval of the District, upgrade, rehabilitate, 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 (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 use of real property which is part of the Properties from its use as of the date of this Agreement or as later authorized by the District; and (3) sale 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, the District President shall serve as the liaison between the District's Board of Directors and the Association Manager (as that term is defined below). The Association Manager shall not be required to take direction from the District other than through the District's Board of Directors or the District's President. Except as provided below, the District shall not direct or give instruction to the Association's staff. The Association Manager may, from time to time, authorize direct access for a District director to Association staff for such purposes as determined by the Association Manager. In such cases, it is understood and agreed that the District director concerned will, at all times, keep the Association's Manager informed 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.

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. 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, shall be the entity designated by the District's Board of Directors to prepare and submit to that Board a proposed budget, which shall be submitted no later than October 15 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 law.

b. No later than November 15 of the year prior to the budget year under consideration, the Association will consult with the District 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.

c. No later than November 30 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 cause publication of a notice of consideration thereof as required by State law. Neither the Association's recommendations nor proposed budget shall bind the District.

d. After public hearing on the budget proposed for the ensuing budget year, and no later than December 15 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 set 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 law.

### 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.

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.

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. 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 State law, and to arrange, as agent, for the payments authorized by the District's budget and this Agreement. Further, the District authorizes the Association 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 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 remit the collected Recreation Fees and User Fees to the District.

c. The Association shall collect on behalf of, safeguard, account, 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.

d. The Association shall maintain accurate records of all moneys 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. 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 the Board of Directors of the District regarding noteworthy disciplinary action or proposed termination of employment of any key employees (e.g., 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 prior approval of the Board of Directors of the District. The Association shall administer all such contracts.

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 Properties 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.

7. In the performance of its agency and duties hereunder, the Association shall employ an Association manager (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 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. The Association shall also employ such other employees as the Association deems necessary to execute the Delegated Duties.

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 So. Heather Gardens Way, and the space presently occupied in the maintenance facility located at 2877 So. Heather Gardens Way without payment of rent or any other monetary compensation. Within its space, the Association will continue to provide space for District records and functions, along with the clerical and accounting services. 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 180 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.

## **VII** **DISPUTE RESOLUTION**

1. a. In the event the District believes any of the Delegated Duties are not being properly executed, the District shall forthwith notify the Association in writing and request a joint meeting 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 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.



**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.

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: Craig Baldwin  
President

ATTEST

By: Gary Hizer  
Secretary

State of Colorado  
County of ARAPAHOE

8/23/18

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

Stephanie Wyche  
Notary's Official Signature

STEPHANIE WYCHE  
Notary Public  
State of Colorado  
Notary ID # 20084019923  
My Commission Expires 03-15-2021

3-15-2021  
Commission Expiration

Notary Seal

HEATHER GARDENS ASSOCIATION

By: Kay A Sawyer  
President

ATTEST

By: Mel Rawles  
Secretary

State of Colorado  
County of ARAPAHOE

The foregoing instrument was acknowledged before on this (date) by 8/23/18  
KAY SAWYER, President of Heather Gardens Association Board  
of Directors and MEL RAWLES, Secretary of Heather Gardens  
Association Board of Directors.

Stephanie Wyche  
Notary's Official Signature

STEPHANIE WYCHE  
Notary Public  
State of Colorado  
Notary ID # 20084019923  
My Commission Expires 03-15-2021

3-15-2021  
Commission Expiration

Notary Seal