

MANAGEMENT AGREEMENT

This Agreement is entered into as of the 2 day of Sept., 2015 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 and of which all property owners at Heather Gardens (herein called "Homeowners") are members pursuant to, among other things, the Amended and Restated Condominium Declaration for Heather Gardens; 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 recreational vehicle parking lot, a community garden, storage units and other real estate, structures and improvements, and certain personal property located therein (the "Properties"), all forming a portion of a condominium complex, and dedicated to the nonexclusive use and enjoyment of the public, including the Homeowners and their lessees and occupants of condominium units at Heather Gardens (the "Heather Gardens Condominium Complex"); and

WHEREAS, the boundaries of the Heather Gardens Condominium Complex are coterminous with the boundaries of the District; and

WHEREAS, the Association maintains active management and administration of property and activities throughout the Heather Gardens Condominium Complex, retains employees for those purposes and is authorized to contract with the District as an independent contractor to manage and administer the various activities of the District; and

WHEREAS, the District and the Association are desirous of entering into this Agreement whereby the Association is to (i) manage performance of all of the duties of

the District except those duties reserved by and to the District and those duties which the District is required by law to retain (e.g. preparation of budgets, levying of taxes, issuance of debt, setting of rates, fees, tolls and charges etc.) 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 Directors' direction, budgeting 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 (excepting those duties expressly reserved by and to the District and those duties which the District may not by law delegate) 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. The Association accepts this agency.

2. 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 and non-residents of the Heather Gardens Condominium Complex.

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 the use of the Properties or change access to the Properties.

4. In the performance of its agency and duties hereunder, the Association shall employ an Association general 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 execution of the affairs, operation and management of the District in a manner consistent with this Agreement and the policies and directives of the District's Board of Directors.

5. The Parties acknowledge that the Association manages its affairs in accordance with a dynamic set of "Rules," as defined in Section 1.32 of the Amended and Restated Condominium Declaration for Heather Gardens (to wit: "rules, regulations, procedures, procedure memoranda, policies and guidelines adopted by the Board" of the Association), and the Association agrees that it will responsively and responsibly manage, operate, maintain, and otherwise deal with the Properties and, with the specific approval of the District and subject to available funding provided by the District, upgrade, rehabilitate, retire, and/or replace the Properties of the District. Nothing in this Agreement shall prevent the Association and the District from otherwise agreeing in writing to additional or alternative procedural documentation for management.

II THE ANNUAL BUDGET AND FEES

1. The Parties recognize that development of annual Association and District budgets supporting the operation of the District and the Properties requires cooperation and timely preparation and review, and timely establishment of recreation and user fees. "Recreation Fee" or "Recreation Fees" shall mean the monthly fee levied by the Association upon and collected from Homeowners and their properties pursuant to the Amended and Restated Condominium Declaration for Heather Gardens. "User Fee" or "User Fees" shall mean charges associated with use or uses of the Properties. The Parties further recognize that the Recreation Fee must be annually determined, in conjunction with User Fees associated with use or uses of the Properties, to the end that both such fees shall be of sufficient magnitude to enable the District to meet its maintenance, operational, capital reserve and financial responsibilities, in light of other funds that may be available to the District. The District shall have no right to require the Association to determine or fix Recreation Fees outside of the annual budget process. In this connection, 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 manager, 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 for publication a proposed budget and cause publication thereof as required by State law. Neither the Association's commitment, 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, tolls and charges in connection with its budget process or at such other times as it may find convenient.

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 Colorado law.

III

RIGHTS AND DUTIES OF THE ASSOCIATION

1. a. Subject to District policies, the Association shall make necessary operational decisions relative to the use, operation and maintenance of the District Properties.

b. The Association shall take all reasonable steps to collect and enforce the collection of all Recreation Fees and all User Fees and remit same to the District.

c. The Association shall collect on behalf of, safeguard, account, transfer, and, upon request, turn over to the District all revenues of the District. 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 management of the Properties, and such records shall be open for inspection by the District at all reasonable times.

2. The Association shall do everything reasonably necessary, consistent with this Agreement and the Rules, for the proper management of the Properties, including, but not limited to, periodic inspections, supervision of maintenance and arranging for maintenance of such improvements, alterations and repairs as may be required. In the event the District believes the property is not so maintained as to preserve its value and

integrity, the District shall forthwith notify the Association in writing and request corrective action.

3. 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 performance of the Association's obligations under this Agreement. Within budget constraints, the Association shall negotiate, submit to the Association Board of Directors for approval, execute as agent upon approval, and administer all such District contracts.

4. The Association agrees that it has the duty and responsibility of an agent, and its agency is contained to 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.

IV 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 and fixtures presently used in or about the Properties shall be and remain the property of the District. The District shall also provide all machinery and equipment necessary for the care and maintenance of the Properties. The cost of maintenance and repair of said furniture, fixtures, equipment and machinery shall be borne by the District.

d. Where legal assistance is required in connection with the management of the Properties, 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.

f. 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 insureds under these coverages. 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 or the operation of the Properties, 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 an additional calendar year, with each year constituting a separate contract for management.

VII
DISPUTE RESOLUTION

1. a. 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.
- b. 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.
- c. Mediation shall be a condition precedent to litigation or, if agreed upon, arbitration.

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.

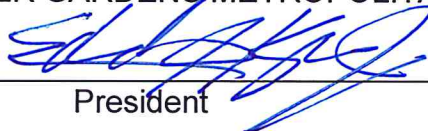
g. This Agreement will be deemed to have been made and will be construed and interpreted in accordance with the laws of the State of Colorado. The District's obligations hereunder are subject to annual appropriation and nothing herein shall be construed to attempt to restrict the legislative power of 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 June 15, 2000.

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

HEATHER GARDENS ASSOCIATION

By:  _____
President

ATTEST

By:  _____
Secretary

State of Colorado
County of Arapahoe

The foregoing instrument was acknowledged before on this ^{9/2/2015} (date) by
Edward Kurtz, President of Heather Gardens Metropolitan
District Board of Directors and Twyla Gaugenmaier, Secretary of
Heather Garden Metropolitan District Board of Directors.

State of Colorado
County of Arapahoe

The foregoing instrument was acknowledged before on this ^{9/2/2015} (date) by
Forrest McClure, President of Heather Gardens Association Board
of Directors and Kay Sawyer, Secretary of Heather Gardens
Association Board of Directors.

Stephanie Wyche
Notary's Official Signature

June 24, 2014
Commission Expiration

Notary Seal

