

## AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between HERITAGE PALMS COMMUNITY DEVELOPMENT DISTRICT, a community development district established and existing pursuant to Chapter 190, Florida Statutes (the "CDD") and HERITAGE PALMS GOLF & COUNTRY CLUB, INC., a Florida not-for-profit corporation (the "HOA").

### RECITALS

WHEREAS on November 17, 1998, and at other times thereafter, U.S. Home Corporation declared and developed certain real property located in Lee County, Florida as a planned unit development of single-family homes, multi-family structures and related recreational and other common facilities and amenities known as Heritage Palms Golf & Country Club (hereinafter, the "Community"); and

WHEREAS, in connection with the development of the Community, U.S. Home Corporation conveyed certain real property and other property interests in the Community to the HOA and to the CDD. The real property owned by the HOA in fee simple is hereinafter referred to as the "HOA Common Areas". The real property which the CDD owns in fee simple or in which the CDD has an easement to permit maintenance of its facilities is hereinafter referred to as "CDD Property"; and

WHEREAS, the HOA and the CDD, by agreements dated May 25, 1999, April 27, 2009 and October 18, 2010 entered into certain agreements relative to the maintenance of the CDD Property (collectively, the "Prior Agreements"); and,

WHEREAS the HOA and the CDD have further agreed on the respective responsibilities as to HOA Property and the CDD Property and with respect to maintaining insurance on the HOA Properties and the CDD properties. This Agreement shall supersede and replace said Prior Agreements in their entirety.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CDD and the HOA agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
2. **Maintenance Standard Generally.** Within this Agreement, with respect to any maintenance obligation assumed by either the HOA or the CDD, all such maintenance shall be done to keep the asset or property to be maintained in good working order and appearance and any such maintenance shall be in compliance with all applicable statutes, ordinances, administrative rules and regulations, permit conditions and the reasonable rules, policies, practices and procedures of the other party.
3. **Maintenance of HOA Common Areas.** Except as may be otherwise specifically provided in this Agreement, the HOA shall be responsible for the maintenance, inspections,

reporting, testing, licensing or permitting, related payments and such other activities necessary to assure the maintenance, upkeep, replacement, repair and condition of the HOA Common Areas within the Community in good working order and appearance, and in accordance with all applicable laws, regulations, rules, and permit requirements.

4. **Maintenance of CDD Property.** Except as may be otherwise specifically provided in this Agreement, the CDD shall be responsible for the maintenance, inspections, reporting, testing, licensing or permitting, related payments and such other activities necessary to assure the maintenance, upkeep, replacement, repair and condition of the CDD Property in good working order and appearance, and in accordance with all applicable laws, regulations, rules, and permit requirements. Notwithstanding the foregoing, the HOA agrees to maintain at its cost and expense the following CDD Properties and any modifications thereto: Main Guard house, its contents and the gate; Penzance gates; Winkler gatehouse and gates; and, the irrigation pump house and its contents.

5. **Maintenance of the Preserve Areas.** The CDD has the responsibility to maintain at its cost and expense the wetland preserves throughout the Community.

6. **Maintenance of Roads, Access Driveways, Parking Areas and Sidewalks.**

6.1. All "Main Roads" (which are defined as those roads with an adjoining sidewalk/curb/gutters) throughout the Community shall be maintained by the CDD.

6.2. "Access Driveways" shall be defined as all other roadways in the Community which provide access to Neighborhoods, Veranda condominiums and Terrace Parking Areas. Maintenance of the Access Driveways (including the Access Driveways at Veranda I, II, V and VI of Fairway Isle, the Verandas at McArthur Palm Lane, Butterfly Palm Drive, and Bismark Palm Way) shall be the maintenance responsibility of the HOA. Notwithstanding this obligation, the CDD shall undertake the removal and replacement of the asphalt of the Access Driveways at Veranda I and Veranda II in 2014. Access Driveways do not include the individual driveways of the Single Family Homeowners and Villa Owners who are responsible for the maintenance of their respective driveways.

6.3. Parking Areas throughout the Community shall be maintained by the individual Neighborhood Associations.

6.4. The parking lots at the Lodge, the Clubhouse, swimming pools, the playground and the parking lot by the practice green by the first tee of Sabal shall be maintained by the HOA.

6.5. The CDD shall maintain the Main Road sidewalks and Main Road pavers throughout the Community.

6.6. The HOA shall maintain the traffic signage throughout the Community.

7. **Lake Quality, Storm Water Management System, Erosion Control; Aqua Range Bulkhead Project and Fishing Pier.**

7.1. As the owner of the lakes and ponds throughout the Community, the CDD has the responsibility not only to maintain these bodies of water but also the obligation to protect the shorelines abutting these bodies of water from erosion. This includes the obligation to maintain bulkheads and future bulkheads along shorelines as part of the Storm Water Management System. It is agreed that lot defining bulkheads are not the CDD responsibility as they are the responsibility of the individual property owner.

- 7.2. By separate agreement and for reference purposes, the HOA and the CDD have agreed to share in the cost of a new bulkhead which is being built to control soil erosion and to expand the Aqua Range. Following the completion of the Aqua Range bulkhead, the CDD will assume maintenance responsibilities as part of the Storm Water Management System.
- 7.3. The existing bulkhead at the lake near the front entrance to the Community is scheduled for replacement and repair by the HOA. Following the replacement project, the CDD will assume the maintenance and future replacement of the bulkhead as part of the Storm Water Management System.
- 7.4. The CDD shall maintain the newly constructed fishing pier as within its responsibilities of maintaining the Storm Water Management System.

8. **Perimeter Fencing.** The CDD shall maintain the perimeter fencing including chain link and barb wire fencing around the preserve areas and surrounding the Community. Notwithstanding the foregoing, the HOA shall maintain the decorative fencing along 6 Mile Cypress and the chain link and decorative fencing from 6 Mile Cypress to the northern end of the Community along Winkler Avenue Extension.

9. **Irrigation System.** The HOA shall maintain the irrigation system including the pump house, irrigation retention pond, the golf course irrigation system, the Common Areas irrigation system, the PRVs, and the lines to the respective Neighborhood Associations ("NAs") and Single Family Homes up to and including the isolation valve. The NAs and Single Family Home owners have responsibility for the maintenance of lines and the irrigation system on their respective property beyond the isolation valve.

10. **Insurance Provisions.** The HOA has placed and maintains insurance coverage for the buildings and properties owned by the HOA. The HOA and the CDD agree that the HOA will undertake the obligation to maintain insurance coverage and include the CDD as an additional named insured on the following buildings which are the CDD Property: Main Guard house, and contents and gates, Penzance gate house and gates, Winkler guardhouse and gates; irrigation pump house and contents (as to the applicable structures, "CDD Structures"). Should damage to any of the CDD Structures result in the receipt of insurance proceeds, the parties agree that any such proceeds shall be used to repair the damaged CDD Structures or to replace the damaged CDD Structures, as applicable. Should the insurance proceeds be inadequate to fund the repairs or replacement of the damaged CDD Structures, the shortfall shall be funded by the CDD. This obligation to apply insurance proceeds to the CDD Structures for any damage while this Agreement is in effect shall survive any termination of this Agreement.

11. **Shared Information.** The CDD and HOA will provide to one another all material information, inspection reports, communications with governmental authorities and the like, which information, reports, communications or the like reasonably could affect the properties or operations of the other ("Shared Information").

12. **Notices.** Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and either hand delivered, delivered by overnight courier, regular U.S. Mail or electronic mail addressed as follows:

If to CDD: Heritage Palms Community  
Development District  
Attn: District Manager  
Severn Trent Management Services  
5911 Country Lakes Drive  
Fort Myers, FL 33905  
Email: CTeague@sevemtrems.com

If to HOA: Heritage Palms Golf & Country Club, Inc.  
Attn: General Manager  
10420 Washington Palm Way  
Fort Myers, FL 33966  
Email: gm@hpgcc.com

and shall be deemed received (i) three days after depositing the notice in the United States Mail, postage prepaid, (ii) one business day after depositing notice with a nationally recognized overnight carrier; or (iii) upon delivery if hand delivered or sent by electronic mail. The addressees and addresses for the purpose of this Section may be changed by either party by giving written notice of such change to the other party in the manner provided herein. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last addressee and respective address stated herein shall be deemed to continue in effect for all purposes.

13. **Material Alterations/Emergency.** Because of the relationship between the CDD and the HOA, their service to the same Community, and the proximity and relationship of their respective assets and properties to one another, communication and cooperation in material alterations to the Community's common areas and the CDD Property would serve a substantial community benefit. In that regard, prior to any material capital replacements, alterations or changes of appearance to any CDD Property, the Shared Information shall be communicated per paragraph 11 above. The HOA shall not be authorized to make any material alterations or changes to the CDD Property without the prior written consent of the CDD. Notwithstanding the same, in the event of any emergency affecting the CDD Property which the HOA reasonably believes (i) poses an immediate threat of damage or injury to person or property or poses a substantial risk of interference with essential services and (ii) that such alteration or change must occur to prevent such injuries or interference prior to the ability to convene the CDD to take such action as is necessary to prevent the same, the HOA may enter upon the CDD Property and may take corrective action to prevent or abate such damage or injury or to avoid or abate such interference; provided that the HOA shall attempt to give the CDD such prior notice as is practicable under the circumstances (which notice may be oral); and the HOA, without further authorization, shall take only such steps as are reasonably necessary in order to prevent such damage or injury or interference with essential services.

14. **Modification/Termination.** This Agreement may only be amended in writing executed by both parties, and may be terminated by either party upon thirty (30) days written notice to the other party. Upon any termination of this Agreement, each party shall be responsible for maintaining its own properties.

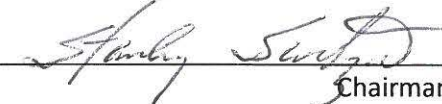
15. **Effective Date.** This Agreement shall become effective and immediately supersede the Prior Agreements upon execution by both the CDD and the HOA. The effective date of this Agreement (the "Effective Date") shall be the date on which the final agreed upon version of this Agreement has been fully executed by the parties and a fully executed copy delivered by the last party to sign to the other party.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. However, nothing expressed or implied by any provision of this Agreement shall supersede, contradict or impair any applicable law or any provision of the Club's Governing Documents.

17. **Counterparts.** This Agreement may be executed in several counterparts or by separate instruments, and all of such counterparts and instruments shall constitute one agreement, binding on all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this document the day and year first above written.

**HERITAGE PALMS COMMUNITY DEVELOPMENT DISTRICT**

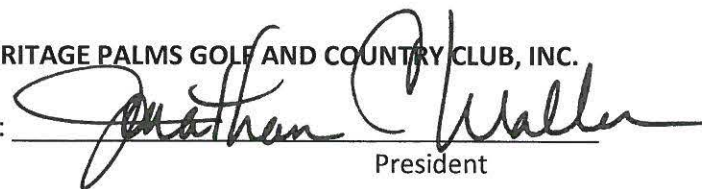
BY:   
Chairman

DATE: 3-24-14

ATTEST: 

DATE: 3/24/14

**HERITAGE PALMS GOLF AND COUNTRY CLUB, INC.**

BY:   
President

DATE: 3/27/14

ATTEST: 

DATE: 3/27/14