

ORDINANCE NO. 2873

AN ORDINANCE
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, ESTABLISHING HERITAGE PALMS COMMUNITY DEVELOPMENT DISTRICT; DESCRIBING THE EXTERNAL BOUNDARIES OF THE DISTRICT; NAMING THE INITIAL MEMBERS OF THE BOARD OF SUPERVISORS; NAMING THE DISTRICT; CONFIRMING THE DISTRICT CHARTER SET FORTH IN FLORIDA STATUTES SECTIONS 190.006 -190.041, PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS: U.S. Home Corporation has petitioned the City Council, City of Fort Myers, to establish HERITAGE PALMS COMMUNITY DEVELOPMENT DISTRICT; and

WHEREAS: The City Council, after proper published notice, conducted a local public information-gathering hearing as required by law and finds as follows:

1. The petition is complete in that it meets the requirements of Florida Statutes Section 190.005(1)(a), and all statements contained within the petition are true and correct.
2. The City staff and City Attorney have reviewed and approved the petition for establishment of the proposed district.
3. The costs to the City and government agencies from establishment of the district are nominal. There is no adverse impact on competition or employment from district establishment. The persons affected by establishment are the future landowners, present landowners, City of Fort Myers and its taxpayers, and the State of Florida. There is a net economic benefit flowing to these persons from district establishment as the entity to manage and finance the statutory services identified. The impact of district establishment and function on competition and the employment market is marginal and generally positive, as is the impact on small business. None of the reasonable public or private alternatives, including an assessment of less costly and less intrusive methods and of probable costs and benefits of not

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adopting the rule, is as economically viable as establishing the district. Methodology is set forth in the economic impact statement on file. The statement of estimated regulatory costs of the petitioner on district establishment is adequate.

4. Establishment by ordinance of the proposed district, created by general law and whose charter is Florida Statutes Section 190.006 – Section 190.041, is not inconsistent with the City of Fort Myers Comprehensive Plan and is not inconsistent with the State Comprehensive Plan.

5. The area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

6. The district is the best alternative available for delivering community development services and facilities to the area that will be serviced by the district.

7. The community development systems, facilities and services of the district will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

8. The area that will be served by the district is amenable to separate special district government.

9. The proposed district, once established, may petition the City Council for consent to exercise one or more of the powers granted by charter in Florida Statutes Section 190.012 (2), the exercise of which has been reviewed and assessed as of the effective date of this ordinance. Nothing herein constitutes consent by the City of the exercise by the district of any one of the special powers set forth in Florida Statutes, Section 190.012(2).

10. That upon the effective date of this Ordinance, the proposed Heritage Palms Community Development District shall be duly and legally established and created, authorized to exist and to exercise all of its general and special powers limited by its general law charter; and that consent by the City of Fort Myers in any future ordinance to any special power in Florida

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Statutes Section 190.012(2), does not in any way revisit the question of establishment of the district and its authority and power to exercise its limited powers under law.

11. All notice requirements of law were met and complete notice was timely given.

BE IT ENACTED BY THE CITY COUNCIL OF CITY OF FORT MYERS, FLORIDA, that:

SECTION 1: DISTRICT NAME. The community development district herein established shall henceforth be known as Heritage Palms Community Development District.

SECTION 2: AUTHORITY FOR ORDINANCE. This Ordinance is adopted pursuant to Florida Statutes Section 190.005, and other applicable provisions of law governing city ordinances.

SECTION 3: ESTABLISHMENT OF HERITAGE PALMS COMMUNITY DEVELOPMENT DISTRICT. Heritage Palms Community Development District, created by law, is hereby established within the boundaries of the real property described in Exhibit "A" attached hereto and incorporated by referenced.

SECTION 4: DESIGNATION OF INITIAL BOARD MEMBERS.
The following five (5) persons are herewith designated to be the initial members of the Board of Supervisors:

- a. Peter R. Comeau, Regional Vice President
US Home Inc.
10491 Six Mile Cypress Parkway
Suite 104
Fort Myers, FL 33912
Telephone No.: (941) 278-1177
Fax No.: (941) 279-1914
- b. Tim Martin, Vice President
US Home Inc.
5975 Cattlemen Lane
Sarasota, FL 34232
Telephone No.: (941) 379-4911
Fax No.: (941) 379-5521

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- c. Brian Sabean, Vice President Controller
US Home Inc.
10491 Six Mile Cypress Parkway
Suite 104
Fort Myers, FL 33912
Telephone No.: (941) 278-1177
Fax No.: (941) 279-1914
- d. Jeff Ledward, CPA
6249 Presidential Court, Suite B
P.O. Box 06576
Fort Myers, FL 33906
Telephone No.: (941) 489-1011
- e. Steven Kushner, P.A.
1375 Jackson Street, Suite 202
Fort Myers, FL 33901
Telephone No.: (941) 337-0800
Fax No.: (941) 337-7909

SECTION 5: STATUTORY PROVISIONS CONSTITUTING HERITAGE PALMS DISTRICT CHARTER. Heritage Palms Community Development District is a single and special purpose local government whose charter is in the general law, Florida Statutes Section 190.006 - Section 190.041.

SECTION 6: INTERLOCAL AGREEMENT REGARDING DELIVERY OF WATER, SEWER, REUSE AND SOLID WASTE SYSTEMS. This Heritage Palms Community Development District is hereby established subject to and with the filing of a jointly executed Interlocal Agreement between City Council and the Heritage Palms Community Development District concerning the delivery of water, sewer, reuse and solid waste systems, facilities and services, said Agreement to be executed within ninety (90) days after establishment of the Heritage Palms Community Development District; if no such Agreement is forthcoming, then City Council will initiate action under Florida Statutes Section 190.046, by unilateral non-emergency ordinance to take over all of the systems, facilities and services constituting the special powers of the District under its uniform charter.

SECTION 7: CONFLICT AND SEVERABILITY. In the event this Ordinance conflicts with any other ordinance of the City of Fort Myers or other applicable law, the more restrictive shall apply as long as not inconsistent with

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or prohibited by Florida Statutes Section 190. If any phase or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION 8: EFFECTIVE DATE. This ordinance shall become effective immediately upon adoption.

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PASSED IN PUBLIC SESSION of the City Council of the City of Fort
Myers, Florida, this 21st day of September, A.D., 1998.

AYE

Dr. W. Robert Anderson

Veronica S. Shoemaker
Veronica S. Shoemaker

AYE

Ann M. Knight
Ann M. Knight, Ed.D.

AYE

Richard G. Bashaw
Richard G. Bashaw

AYE

Brenda S. Brewer
Brenda S. Brewer
Council Members

APPROVED this 21st day of September A.D., 1998, at 6:46 o'clock
p.m.

Bruce T. Grady
Bruce T. Grady, Mayor

FILED in the Office of the City Clerk this 21st day of September, A.D.,
1998.

Marie Adams
Marie Adams, City Clerk

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EXHIBIT "A"

Banks Engineering, Inc.

10501 Six Mile Cypress Parkway - Suite 104
Fort Myers, Florida 33912
Ph: (941) 939-5490
Fax: (941) 939-2523

DESCRIPTION OF A PARCEL OF
LAND LYING SECTIONS 4 AND 5,
TOWNSHIP 45 SOUTH, RANGE 25 EAST

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTIONS 4 AND 5, TOWNSHIP 45 SOUTH, RANGE 25 EAST, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A 6" X 6" CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 25 EAST, THENCE N.01°05'26"W. ALONG THE WEST LINE OF THE SOUTH QUARTER (S 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 5 FOR 661.09 FEET TO THE NORTH LINE OF SAID FRACTION, PASSING THROUGH A 4" X 4" CONCRETE MONUMENT ("STARNES NO. 2465") AT 631.08 FEET; THENCE N.88°24'52"E. ALONG THE NORTH LINE OF SAID FRACTION FOR 2583.90 FEET TO A 4" X 4" CONCRETE MONUMENT AND THE NORTHEAST CORNER OF SAID FRACTION, PASSING THROUGH A 4" X 4" CONCRETE MONUMENT AT 675.98 FEET; THENCE N.00°14'53"W. ALONG THE WEST LINE OF THE WEST HALF (W 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 5 FOR 1317.99 FEET TO A 4" X 4" CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF TRACT 18, DEER RUN FARMS, UNRECORDED; THENCE S.88°30'22"W. ALONG THE SOUTH LINE OF SAID TRACT 18 FOR 650.81 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 18, PASSING THROUGH A 4" X 4" CONCRETE MONUMENT AT 620.81 FEET; THENCE N.00°27'33"W. ALONG THE WEST LINE OF SAID TRACT 18 AND THE WEST LINE OF THE EAST QUARTER (E 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 5 FOR 329.82 FEET TO THE NORTHWEST CORNER OF SAID TRACT 18; THENCE N.88°31'44"E. ALONG THE NORTH LINE OF SAID TRACT 18 FOR 652.02 FEET TO A 4" X 4" CONCRETE MONUMENT MARKING THE NORTHEAST CORNER OF SAID TRACT 18, PASSING THROUGH A 4" X 4" CONCRETE MONUMENT AT 30.00 FEET; THENCE N.00°14'53"W. ALONG SAID WEST LINE OF THE WEST HALF (W 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 5 FOR 329.90 FEET TO A 5/8" IRON ROD (LB 6690) MARKING THE NORTHWEST CORNER OF SAID FRACTION; THENCE N.00°14'53"W. ALONG THE WEST LINE OF THE WEST HALF (W 1/2) OF THE NORTHEAST QUARTER (NE 1/4) FOR 150.03 FEET TO A 5/8" IRON ROD (LB 6690) MARKING AN INTERSECTION WITH A LINE PARALLEL WITH AND 150.00 FEET NORTH OF (AS MEASURED ON A PERPENDICULAR) THE SOUTH LINE OF SAID FRACTION; THENCE N.88°33'05"E. ALONG SAID LINE FOR 1209.68 FEET TO A 5/8" IRON ROD (LB 6690) MARKING AN INTERSECTION WITH A LINE PARALLEL WITH AND 100.00 FEET WEST OF (AS MEASURED ON A PERPENDICULAR) THE EAST LINE OF SAID FRACTION; THENCE N.00°01'17"E. ALONG SAID LINE FOR 2485.02 FEET TO A 5/8" IRON ROD (LB 6690) MARKING AN INTERSECTION WITH THE NORTH LINE OF SAID FRACTION; THENCE N.88°47'24"E. ALONG SAID NORTH LINE FOR 100.02 FEET TO A 4" X 4" CONCRETE MONUMENT ALONG THE NORTHEAST QUARTER OF SAID FRACTION; THENCE N.88°47'24"E. ALONG THE NORTH LINE OF THE EAST HALF (E 1/2) OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 5 FOR 1321.29 FEET TO A 6" X 6" CONCRETE MONUMENT MARKING THE CORNER COMMON TO SECTIONS 4 AND 5; THENCE N.88°50'02"E. ALONG THE NORTH LINE OF THE

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NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 4 FOR 1800.92 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF WINKLER AVENUE EXTENSION AS SHOWN IN OFFICIAL RECORDS BOOK 2364 AT PAGE 3521 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.09°05'44"E. ALONG SAID RIGHT-OF-WAY LINE FOR 4.79 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1507.40 FEET; THENCE SOUTH EASTERLY ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 45°15'08" FOR 1190.54 FEET; THENCE S.54°20'52"E. ALONG SAID RIGHT-OF-WAY LINE FOR 193.17 FEET; THENCE S35°39'24"W FOR 300.00 FEET; THENCE S54°20'52"E FOR 727.00 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SIX MILE CYPRESS PARKWAY SHOWN IN OFFICIAL RECORDS BOOK 1194 AT PAGE 944 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.35°39'24"W. ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF SIX MILE CYPRESS PARKWAY FOR 4345.84 FEET TO A 5/8" IRON ROD MARKING THE INTERSECTION OF SAID RIGHT-OF-WAY LINE AND THE SOUTH LINE OF SAID SECTION 4; THENCE S.88°55'10"W. ALONG SAID SECTION LINE FOR 425.46 FEET TO A 6" X 6" CONCRETE MONUMENT MARKING THE CORNER COMMON TO SECTIONS 4 AND 5; THENCE S.88°50'15"W. ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 5 FOR 2645.06 FEET TO A 3" X 4" CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF SAID FRACTION, PASSING THROUGH A 3" X 3" CONCRETE MONUMENT AT 1322.53 FEET; THENCE S.88°22'05"W. ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 5 FOR 2574.22 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 524.25 ACRES, MORE OR LESS.

PARCEL SUBJECT TO EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS AND RESERVATIONS OF RECORD.

PARCEL SUBJECT TO RIGHT-OF-WAY EASEMENTS AS SHOWN IN OFFICIAL RECORDS BOOK 1300 AT PAGES 1118, 1125, 1138 AND 1142.

PARCEL SUBJECT TO A ROADWAY EASEMENT AS SHOWN IN OFFICIAL RECORDS BOOK 1324 AT PAGES 2195 AND 2196.

BEARINGS ARE BASED ON THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 4 AS BEARING N.89°08'38"E.

DESCRIPTION PREPARED JANUARY 16, 1998.

FILE: 1135.70

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