



Charlotte County Government

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MEMORANDUM

Date: January 2, 2013

To: Planning and Zoning Board

From: Daniel E. Gallagher, Assistant County Attorney

Subject: Reinstatement and Amendment to the Tern Bay DRI Development Agreement between the Tern Bay Community Development District (CDD) and Charlotte County.

Request the Planning and Zoning Board approve the Reinstatement and Amendment to the Tern Bay DRI Development Agreement between the Tern Bay Community Development District (CDD) and Charlotte County. The parties wish to reinstate and extend the original Agreement in order to allow the CDD and the County to process additional amendments to the Development Order and to come to a new agreement as to the traffic mitigation necessary to satisfy the concurrency requirements of Tern Bay at buildout.

P:\WPDATA\ DAN\CommDev\TernBay\P&ZMemo

COUNTY ATTORNEY'S OFFICE
JANETTE S. KNOWLTON, COUNTY ATTORNEY

18500 Murdock Circle, Suite 573 | Port Charlotte, FL 33948-1068
Phone: 941.743.1330 | Fax: 941.743.1550

**REINSTATEMENT AND AMENDMENT TO THE TERN BAY DRI DEVELOPMENT
AGREEMENT BETWEEN THE TERN BAY COMMUNITY DEVELOPMENT DISTRICT
AND CHARLOTTE COUNTY, FLORIDA**

This Reinstatement and Amendment to the Tern Bay DRI Development Agreement (hereinafter collectively the "Amendment") is entered into this _____ day of _____, 2013, by and between the Tern Bay Community Development District ("CDD") and Charlotte County, a political subdivision of the State of Florida ("County").

RECITALS

WHEREAS, on January 18, 2005, the Tern Bay Development Co., LLC, a Florida limited liability company ("Developer") and the County entered into a Development Agreement ("Agreement"), a copy of which is attached hereto and incorporated herein by this reference, to provide for the transportation mitigation for the Developer's project known as the Tern Bay Development of Regional Impact ("Tern Bay"); and

WHEREAS, on February 18, 1992, the County approved and adopted Resolution 92-29, the Development Order for the Caliente Springs, now Tern Bay, Development of Regional Impact ("Development Order"); and

WHEREAS, the County has through various resolutions so amended that Development Order; and

WHEREAS, Tern Bay is located immediately proximate to Burnt Store Road; and

WHEREAS, the County is currently in the process of widening Burnt Store Road from U.S. 41 to the Charlotte-Lee County line; and

WHEREAS, the transportation conditions of approval set forth in the Development Order approving the Tern Bay development presented various options for fulfilling the requirement that roadway improvements identified in the Development Order remain at specified levels of service; and

WHEREAS, Developer is now defunct and under the terms of the Agreement Developer has assigned its rights and obligation thereunder to the CDD; and

WHEREAS, pursuant to the terms of the Agreement, the Agreement was to continue in force until January 1, 2013 ("Termination Date"); and

WHEREAS, the Termination Date has passed but the parties wish to revive,

reinstate and extend the Agreement in order to further revise the terms of the Development Agreement to complete the terms of the Development Order; and

WHEREAS, Charlotte County conducted two public hearings prior to entering into this Amendment in accordance with Florida Statutes Section 163.3225(1); and

WHEREAS, all public hearings were properly noticed by publication in a newspaper of general circulation and readership in Charlotte County and by mailed notice to affected property owners in accordance with Florida Statutes Section 163.3225(2).

NOW THEREFORE, for and in consideration of the premises and in reliance on the mutual promises, covenants, undertakings, recitals and other matters contained herein, the parties hereby covenant and agree as follows:

1. The above Recitals are hereby incorporated herein and specifically made a part of this Amendment.
2. The parties hereto mutually agree to revive and reinstate the Agreement and any and all amendments thereto in its entirety, and further amend the Agreement by extending the expiration date of the Agreement from January 1, 2013, to July 1, 2013, in order to allow the CDD and the County to process additional amendments to the Development Order and to come to a new agreement as to the traffic mitigation necessary to satisfy the concurrency requirements of Tern Bay at buildout.
3. This Amendment incorporates and includes all prior negotiations, correspondence, agreements or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Amendment that are not contained in this document.
4. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
5. This Amendment shall be binding on the parties, their representatives, successors and assigns. Neither party shall assign this Amendment or the rights or obligations hereto to any other person or entity without the prior written consent of the other party.
6. In the event any provision of this Amendment shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

7. This Amendment shall be governed and construed in accordance with Florida law.

IN WITNESS WHEREOF, County and the CDD have executed this Amendment which shall be effective on the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: _____
Christopher G. Constance, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney
LR 12-1531

TERN BAY COMMUNITY DEVELOPMENT DISTRICT

1st Witness
Print Name: _____

By: _____
John Reisman

2nd Witness
Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by John Reisman, as Managing Member, Parker Tern Bay LLC as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public

TERN BAY DRI
DEVELOPMENT AGREEMENT

This Agreement is entered into this 18th day of JANUARY, 2005, by and between Tern Bay Development Co., LLC, a Florida limited liability company ("Developer") and Charlotte County, a political subdivision of the State of Florida ("County").

RECITALS

WHEREAS, Developer is developing a project known as the Tern Bay Development of Regional Impact ("Tern Bay") and formerly known as the Caliente Springs Development of Regional Impact; and

WHEREAS, Tern Bay is located immediately proximate to Burnt Store Road; and

WHEREAS, Tern Bay, in combination with two outparcels not owned by the Developer, has a frontage along Burnt Store Road for approximately 9,145 feet; and

WHEREAS, Developer has petitioned the Florida Land and Water Adjudicatory Commission for the creation of a Community Development District to be known as the Tern Bay Community Development District ("CDD"); and

WHEREAS, on January 27, 2004, the Board of County Commissioners of Charlotte County, Florida ("Board") unanimously approved and adopted Resolution 2004-017 that recommended to the State approval of the CDD; and

WHEREAS, the CDD was established on September 15, 2004; and

WHEREAS, on February 18, 1992, the Board approved and adopted Resolution 92-29, the Development Order for the Caliente Springs Development of Regional Impact ("Development Order"); and

WHEREAS, on October 15, 1991, the Board approved and adopted Resolution 91-262 (PD-90-6) which rezoned Tern Bay to Planned Development and which approved a conceptual development plan; and

WHEREAS, the Board adopted Resolution 93-244 on August 17, 1993, Resolution 98-0370AO on April 7, 1998, Resolution 98-0372AO on May 25, 1999 and Resolution 2004-050 on March 9, 2004 all amending Resolution 92-29; and

WHEREAS, Resolution 2004-050 modified the Planned Development conceptual development plan approved in Resolution 91-262 (PD-90-6) to make it consistent with Revised Map "H", the Revised Master Concept Land Use Plan which is attached as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the Tern Bay development has been found to be consistent with the Charlotte County Comprehensive Plan and the Charlotte County land development regulations; and

WHEREAS, the County, recognizing a public safety concern over the existing condition of Burnt Store Road without any Tern Bay project traffic, has authorized construction of shoulder and other safety improvements; and

WHEREAS, the County is participating in an on-going corridor study for Burnt Store Road involving other jurisdictions and transportation agencies to identify regional strategies for the widening of Burnt Store Road to a four-lane cross section; and

WHEREAS, the County has hired a transportation consultant to prepare the preliminary design and evaluation for the four-lane improvement of Burnt Store Road from U.S. 41 to the Charlotte/Lee County line; and

WHEREAS, the County assesses a road impact fee at the time of building permit issuance in accordance with Section 3-3.5 of the Charlotte County Code of Ordinances; and

WHEREAS, the Transportation conditions of approval set forth in the Development Order present three options for fulfilling the requirement that roadway improvements identified in the Development Order remain at specified levels of service; and

WHEREAS, Option 3 allows the right of the Developer to enter into a Development Agreement setting forth the commitments by the Developer and the County to provide the necessary improvements which ensures concurrency on all significantly impacted regional roads and intersections as identified in the Development Order; and

WHEREAS, Charlotte County conducted two public hearings prior to entering into this Agreement in accordance with Florida Statutes Section 163.3225 (1); and

WHEREAS, all public hearings were properly noticed by publication in a newspaper of general circulation and readership in Charlotte County and by mailed notice to affected property owners in accordance with Florida Statutes Section 163.3225(2).

NOW THEREFORE, for and in consideration of the premises and in reliance on the mutual promises, Covenants, undertakings, recitals and other matters contained herein, the parties hereby covenant and agree as follows:

1. Land Subject to the Agreement.

The land subject to this agreement is commonly known as the Tern Bay Development of Regional Impact and is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference ("Tern Bay property").

2. Ownership

Tern Bay Development Co., LLC is the owner or authorized agent for Tern Bay. All references herein to "Developer" shall be understood to mean Tern Bay Development Co., LLC, the CDD or their successors or assigns.

3. Permitted Development Uses.

a) The Development Order for Tern Bay approves a total of 1,810 residential dwelling units, 30,000 gross square feet of office space on 5 acres, 140,000 gross square feet of retail space on 15.7 acres with 710 parking spaces, a 250 room hotel, 865 acres of wetland preservation areas, a minimum of 205 acres of upland preservation areas and buffer area, a project total of 295.0 acres of impervious surfaces leaving a project total of 1,483 acres of open space, a sales and Community Development District administration center, three nine hole golf courses on 215 acres, a maximum 20,000 gross square foot golf clubhouse with restaurants, an exercise area and 150 parking spaces, a maximum 7,500 gross square foot building(s) for a tennis clubhouse, fitness center and spa, eight tennis courts, swimming pools, bike and walk trails, a small fishing pier, canoe launch and docks, look out tower and approved governmental uses. A copy of the Master Concept Plan, Map "H" is provided in Exhibit "A".

b) The residential mix and densities approved for Tern Bay are as follows:

Single Family Lots Estate	1.0 U/A
Single Family Lots Premium	2.0 U/A
Single Family Lots Standard	3.0 U/A
Single Family Lots Executive	4.0 U/A
Single Family Lots Patio	5.0 U/A
Coach Homes Condominiums	8.0 U/A
Carriage Homes Condominiums	11.0 U/A
Garden Condominiums	18.0 U/A
Midrise Condominiums	24.0 U/A
Hotel	60 rooms/acre

U/A = Units per Acre

c) Pursuant to Section 12.f. of the Development Order, site development standards shall be determined at final detail plan approval.

- d) Exhibit "A" shows two controlled accesses from Burnt Store Road to Tem Bay and a potential 60-foot wide potential ROW to accommodate the future four-lane cross section of Burnt Store Road.

4. Public Facilities.

Tem Bay will receive water and sanitary sewer service from Charlotte County Utilities. Fire control, rescue services, solid waste removal and disposal will be provided by Charlotte County or its assigns.

5. Reservation, Dedication or Conveyance of Land

All proposed reservations, dedication, or conveyances of land within the project for traffic purposes are identified in this Agreement under Developer responsibilities.

6. County Development Permits

The following is a list of the local development approvals that have been granted to date and those that may be required for the development of the land:

1. Tem Bay Development Order, Resolution 92-29, as amended;
2. Planned Development Rezoning and Concept Plan Approval, Resolution 91-262;
3. Final detail plan approval;
4. Preliminary and final plat approval;
5. Construction plan approval;
6. Right-of-way permit

7. Consistency

The County finds that the development plan for Tem Bay, as depicted in Revised Map "H" (Exhibit "A") is consistent with the Charlotte County Comprehensive Plan and with the Charlotte County land development regulations.

8. Terms of the Agreement

a. General

1. The Developer's total proportionate share obligation is \$5,650,000.00. The total proportionate share is derived from Tem Bay's anticipated traffic impacts based on the development parameters set forth in the Development Order.

principal Tern Bay entrances and appropriate four-lane to two-lane temporary transitions within the Dedicated Right-of-Way to the existing Burnt Store Road north and south of the Road Improvements. The design plans shall be consistent with County standards for a rural four-lane arterial and are subject to review and approval by the Charlotte County Public Works Division. The County will provide comments within 21 days of each submission. All design costs will be paid by Developer.

2. Developer will prepare, submit and process all necessary permits for the Road Improvements. Developer will be identified as the applicant for all permits. All permit fees, application fees and other expenses will be paid for by Developer.
3. Upon completion of the Road Improvements, Developer will dedicate to County 60 feet of right-of-way (width) along the Tern Bay Phase 1 Frontage and the Tern Bay Phase 2 Frontage, for a total area of approximately 9.14 acres (the "Dedicated Right-of-Way"). The value of the Dedicated Right-of-Way will be based on fair market value as established by the average of two independent appraisals (one each from the County and the Developer). If the difference between the two independent appraisals is greater than ten percent (10%), then the two appraisers shall together select a third appraiser. The value of the Dedicated Right-of-way will then be based on fair market value as established by the average of the three independent appraisals.
4. Construction of the Road Improvements shall proceed in phases. Commencement of the Road Improvements along the Tern Bay Phase 1 Frontage shall be within 12 months of receipt of all necessary permits for the Road Improvements or upon initiation of Tern Bay Phase 1 development, as such phase is defined in the Development Order, whichever is later. Commencement of the Road Improvements along the Tern Bay Phase 2 Frontage and the Outparcel Frontage shall be on or before initiation of Tern Bay Phase 2 development, as such phase is defined in the Development Order and subject to the acquisition by County of sufficient right-of-way along the Outparcel Frontage. Developer shall pay all construction costs.

d. Community Development District

1. At the sole discretion of Developer, Developer's obligations under this agreement may be undertaken by the CDD.

e. **County Obligations**

1. **The Developer may use such County property as is necessary to design, permit, install, construct and complete the Road Improvements.**
2. **County shall utilize its best efforts to acquire from third parties the Outparcel Frontage and all other right-of-way necessary for the Road Improvements. Developer shall cooperate and assist the County in the acquisition of the necessary right-of-way.**
3. **County shall cooperate, to the extent reasonable and practicable, in Developer's permitting requests with local, regional, state and federal agencies, including the required Notice of Proposed Change ("NOPC") for incorporation of this Agreement into the Development Order.**
4. **County shall accept the dedication of right-of-way consistent with the terms set forth herein.**
5. **Developer and County may enter into a mutually acceptable agreement for the Developer to maintain landscaping, at County's expense, within the Burnt Store Road median along the Tern Bay Phase 1 Frontage, the Tern Bay Phase 2 Frontage and the Outparcel Frontage.**
6. **In addition to the Road Improvements, County may require the inclusion of sidewalks, bike lanes, wildlife crossings, utility relocation, improvement relocations on other private lands (e.g., mail boxes, driveways and trees), landscaping and/or other urban design elements (hereafter cumulatively "Urban Design Elements"). County shall reimburse Developer for the cost of constructing any Urban Design Elements.**
7. **If the total cost of design, permitting and construction of the Road Improvements exceeds the Developer's proportionate share, as identified in Paragraph 8.a.1, above, the County shall reimburse Developer for the difference between the total cost of design, permitting and construction of the Road Improvements and the Developer's proportionate share contribution.**
8. **Developer and its successors and assigns, shall be exempt from any transportation-related assessment that may be imposed by County for the four-laning of Burnt Store Road and any associated improvements thereto.**

f. **Impact Fees**

1. **Developer shall receive road impact fee credits equal to the total value of the design, permitting and construction of the Road Improvements and the Dedicated Right-of-Way. Developer shall additionally receive road impact fee credits equal to the total value of the design, permitting and construction of other road and intersection Improvements as authorized or required by County.**
2. **Should the Outparcel Frontage be acquired by Developer rather than by the County, then upon completion of the Road Improvements, Developer will dedicate 60 feet of additional right-of-way along the Outparcel Frontage to County ("Outparcel Frontage Right-of-Way"). In this instance, Developer shall receive road impact fee credits equal to the total value of the Outparcel Frontage Right-of-Way. The value of the Outparcel Frontage Right-of-Way will be based on fair market value as established by the average of two independent appraisals (one each from the County and the Developer). If the difference between the two independent appraisals is greater than ten percent (10%), then the two appraisers shall together select a third appraiser. The value of the Outparcel Frontage Right-of-Way will then be based on fair market value as established by the average of the three independent appraisals.**
3. **Impact fee credits shall be issued by County upon receipt of signed and sealed as-built plans for each phase of the Road Improvements and upon conveyance of the Dedicated Right-of-Way.**
4. **Developer may assign impact fee credits to a third party. Assignments must be in writing in substantially the same form as Exhibit "D." Such impact fee credits may be used anywhere within the South County District.**

9. **Concurrency**

If the transportation mitigation is provided in accordance with Paragraph 8.c. of this Agreement, Tern Bay will be deemed concurrent as to transportation through the buildout of Tern Bay consistent with the approved Development Order. Concurrency for the buildout of Tern Bay will be made available immediately upon the execution by all parties of this Agreement and will remain in effect provided there is continuing compliance with the terms of this agreement by the

Developer and the County.

10. Failure to Comply with the Requirements

- a. If the Developer fails to comply with the terms of this agreement, then County may withhold building permits for the units or square footage for which no mitigation has been provided.
- b. The parties shall have all rights available by law to enforce this Agreement.

11. Other Provisions

- a. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer of the necessity of complying with the law governing those permitting requirements, conditions, terms or restrictions.
- b. The terms of this Agreement may not supersede the procedural requirements of Florida law under Chapter 380.06 and 163.3220 *et seq.*, Florida Statutes.
- c. County, Developer or their successors or assigns may file an action for injunctive relief in the Circuit Court of Charlotte County to enforce the terms of this Agreement.
- d. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior written or oral representations or agreements.
- e. If any provisions of this Agreement are contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid. The remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect.
- f. The parties agree that suits or actions at law arising from the provisions, performance, or breach of this Agreement shall initially be brought in Charlotte County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.

- g. This Agreement shall not be construed more strictly against any party.

12. Duration of Agreement

- a. This Agreement shall be effective upon execution of all parties and shall continue in force until January 1, 2013.
- b. This Agreement is executed in order to satisfy the concurrency requirements of Tern Bay through its buildout. Section 163.3229, Florida Statutes currently limits a development agreement to a maximum term of ten (10) years. However, provided that there are no prior acts of default or termination, the parties contemplate that this Agreement will be renewed at regular intervals until the Project is built out. This Agreement may be extended by mutual consent of the County and Developer, subject to a public hearing in accordance with Section 163.3225, Florida Statutes.
- c. If Developer has fully complied with the terms of this Agreement upon the termination date, and County has not yet performed its obligations on the termination date, County is obligated to perform in accordance with the terms of this Agreement as though it had not expired.

13. Amendment of Agreement

This Agreement may only be amended in writing by mutual consent of the parties or their successors in interest.

15. Successors and Assigns

This agreement shall inure to the benefit of and be obligatory upon the parties hereto and their respective successors and assigns.

16. Counterparts

This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

(This space intentionally left blank)

IN WITNESS WHEREOF, County and Developer have executed this Agreement on the date first above written.

Tem Bay Development Co., LLC

Carol L. Wirebaugh
1st Witness
Print Name: Carol L. Wirebaugh

By: [Signature]
John Reisman
Managing Member, Parker Tem Bay LLC
Managing Member, Tem Bay Development Co., LLC

Elaine C. Sparling
2nd Witness
Print Name: ELAINE C. SPARLING

1st Witness
Print Name: _____

By: _____
David Nash
Managing Director, IME Resorts LLC
Managing Member, Tem Bay Development Co., LLC

2nd Witness
Print Name: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 1ST day of DEC., 2004 by John Reisman, as Managing Member, Parker Tem Bay LLC as Managing Member, Tem Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

(Notary Seal)  Elaine C. Sparling
Commission # DD055965
Expires Sep. 10, 2005
Bonded Thru Atlantic Bonding Co., Inc.

Elaine C. Sparling
Signature of Notary Public
ELAINE C. SPARLING
Printed Name of Notary Public
My commission expires on 9-10-05

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day

IN WITNESS WHEREOF, County and Developer have executed this Agreement on the date first above written.

Tern Bay Development Co., LLC

1st Witness
Print Name: _____

By: _____
John Reisman
Managing Member, Parker Tern Bay LLC
Managing Member, Tern Bay Development Co., LLC

2nd Witness
Print Name: _____

Kim Marie Mangeri
1st Witness
Print Name: *KIM MARIE MANGERI*

By: *David Nash*
David Nash
Managing Director, IME Resorts LLC
Managing Member, Tern Bay Development Co., LLC

Manon Negrey
2nd Witness
Print Name: *MANON NEGREY*

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2004 by John Reisman, as Managing Member, Parker Tern Bay LLC as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public
My commission expires on _____

STATE OF FLORIDA
COUNTY OF *Charlotte*

The foregoing instrument was acknowledged before me this *2* day
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of DEC 2004 by David Nash, as Managing Director, IME Resorts LLC, as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

Joan E. Vennerstrom
Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public
My commission expires on _____



This Agreement is passed and duly adopted this 18th day of JANUARY 2005.

**BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA**

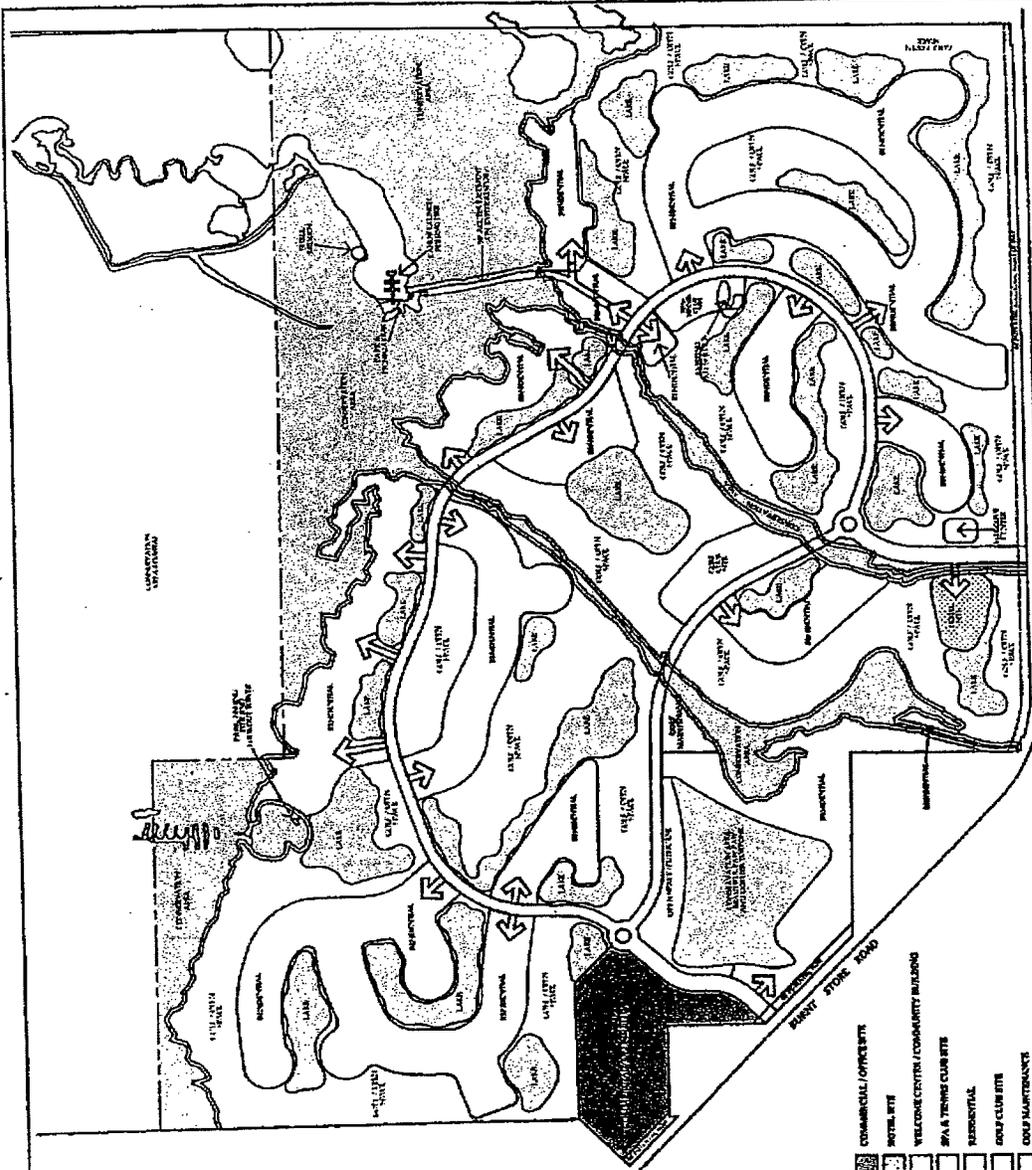
By: Sara Devos
Sara Devos, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: Anne L. Pfahler
Deputy Clerk 1-18-05

Approved as to form and legal sufficiency:

Janette S. Knowlton
Janette S. Knowlton, County Attorney



REVISED
MAP H

TERN BAY

Commercial Site	20.70 AC±
Tennis Site	4.30 AC±
Welcome Center/Community Building	4.00 AC±
Residential	10.00 AC±
Golf Club Site	7.00 AC±
Golf Maintenance	2.00 AC±
Spa & Tennis Club Bite	3.30 AC±
Main Boulevard	3.00 AC±
Additional Light-Rampway	31.00 AC±
Golf Cart Bay/Conservation Area	402.00 AC±
Conservation Area Courts	114.00 AC±
Conservation Area	96.00 AC±
Conservation Area	86.00 AC±
Total Acres	1,776.00 AC±
Total Residential Units	1,275 Units

Individual residential pools may include single-family, five, garden, ranch, homes, high and mid-rise multi-family, and other types of residential units. The Conservation Area includes a beautiful Pine Saw and Cypripedium Conservation Area consisting of a minimum of 22 acres.

Notes:

1. Other documents may be prepared to this Land Use plan pursuant to Section 161.04(1)(c), Florida Statute.
2. Final license will vary based on detailed site planning and permitting.
3. Additional lakes and stormwater facilities may incorporate wetland features and other open space areas as required to provide hydrologic protection.

Developmental Check:

1. The minimum number of residential units shall not exceed 1,200. Of that total, no more than 715 single-family residential units shall be constructed. The remaining units will be multi-family units with no more than 100 units per building containing common areas over parking.
2. Open spaces shall be a minimum of 50% area.
3. The minimum acreage of improvements within shall not exceed 200.0 acres.
4. The location of access points to Burnt Stone Road.

Variable Density Residential Check:

1. Variable Density Residential units shall be multi-family residential units within the individual residential development pools.
2. Types and mix of single-family and multi-family units within the individual residential development pools.
3. Stormwater flow locations and easement lines.
4. Golf cartway locations and easement lines.
5. Final road alignment and access.

- COMMERCIAL / OFFICE BITE
- HOTEL BITE
- WELCOME CENTER / COMMUNITY BUILDING
- SPA & TENSIS CLUB BITE
- RESIDENTIAL
- GOLF CLUB BITE
- GOLF MAINTENANCE
- MAIN BOULEVARD
- ADDITIONAL LIGHT-RAMPWAY
- GOLF CART BAY / PUBLIC USE
- CONSERVATION AREA
- CONSERVATION AREA COURTS
- LAIR

TERN BAY
COUNTRY CLUB RESORT
LAND USES
TERN BAY DEVELOPMENT COMPANY LLC
OCTOBER 2003

tabblier

"B"

DESCRIPTION (PER TITLE COMMITMENT):

TRACT 1: THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 23 EAST, LESS STATE ROAD RIGHT-OF-WAY, CHARLOTTE COUNTY, FLORIDA.

TRACT 2: THE SOUTH 1/2 OF NORTH 1/2 OF SOUTHWEST 1/4 OF NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 23 EAST, LYING WEST OF STATE ROAD RIGHT-OF-WAY, CHARLOTTE COUNTY, FLORIDA.

TRACT 3: A TRIANGULAR TRACT OF LAND CONTAINING THREE ACRES MORE OR LESS, SITUATED IN THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 23 EAST, DESCRIBED AS :

BEGINNING AT A POINT WHERE THE EAST-WEST CENTERLINE OF SAID SECTION 20 INTERSECTS THE NORTHWESTERLY RIGHT-OF-WAY LINE OF BURNT STORE ROAD AS THE SAME WAS LOCATED PRIOR TO ENTRY OF ORDER OF TAKING ON CONDEMNATION SUIT NUMBER 68-346 HERETOFORE PENDING IN THE CIRCUIT COURT OF CHARLOTTE COUNTY, FLORIDA; THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 300 FEET; THENCE TO THE RIGHT AT AN ANGLE OF 80 DEGREES, GOING NORTHWESTERLY 473 FEET, MORE OR LESS, TO THE EAST-WEST CENTERLINE OF SAID SECTION 20; THENCE EASTERLY ALONG SAID EAST-WEST CENTERLINE 869 FEET, MORE OR LESS TO THE POINT OF BEGINNING, LESS STATE ROAD RIGHT-OF-WAY, CHARLOTTE COUNTY, FLORIDA.

TRACT 4: THE NORTH 1/2 OF NORTH 1/2 OF SOUTHWEST 1/4 OF NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 23 EAST, LYING WEST OF STATE ROAD RIGHT-OF-WAY, CHARLOTTE COUNTY, FLORIDA.

TRACT 5: ALL OF THE FRACTIONAL SECTION 13, TOWNSHIP 42 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA.

TRACT 6: SECTION 17, LESS THE NORTH 100 FEET THEREOF AND LESS STATE ROAD RIGHT-OF-WAY IN TOWNSHIP 42 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA.

TRACT 7: ALL OF THE FRACTIONAL SECTION 18, LESS THE NORTH 100 FEET THEREOF IN TOWNSHIP 42 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA.

TRACT 8A: THE EAST 950 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/2 OF SECTION 13.

TRACT 8B: THE NORTH 1/2 OF FRACTIONAL SECTION 19, LESS THE EAST 950 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/2 OF SECTION 19, LESS OFF SHORE RIGHT TO COTTON KEY IN TOWNSHIP 42 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA.

TRACT 8: THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 42 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA, ROAD RIGHT-OF-WAY, CHARLOTTE COUNTY, FLORIDA.

SURVEYOR'S DESCRIPTION (OVERALL):

A parcel of land lying in Section 17, fractional Section 19, fractional Section 13, fractional Section 18, and Section 20, Township 42 South, Range 23 East, Charlotte County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Section 17; thence, North 89°24'04" West, along the North line of said Section 17, a distance of 55.00 feet to the Westerly right-of-way line of Burnt Store Road according to the Florida Department of Transportation Right-of-Way Map of State Road No. S-785 (Burnt Store Road) Section 01540-2601; thence, South 00°17'16" West, along said right-of-way line, a distance of 100.00 feet, for a Point of Beginning; thence, South 00°17'16" West, along said right-of-way line, a distance of 157.76 feet; thence, South 89°42'44" East, along said right-of-way line, a distance of 15.00 feet; thence, South 00°17'16" West, along said right-of-way line, a distance of 1820.00 feet; thence, South 89°42'44" East, along said right-of-way line, a distance of 1.00 feet; thence, South 00°17'16" West, along said right-of-way line, a distance of 10.00 feet; thence, North 89°42'44" West, along said right-of-way line, a distance of 1.00 feet; thence, South 00°17'16" West, along said right-of-way line, a distance of 220.00 feet; thence, South 89°42'44" East, along said right-of-way line, a distance of 3.00 feet; thence, South 00°46'19" West, along said right-of-way line, a distance of 361.28 feet; thence, South 00°17'16" West, along said right-of-way line, a distance of 2304.01 feet to a point on a circular curve concave northwesterly, having as elements a radius of 1110.92 feet, a central angle of 14°05'30" and a chord bearing of South 12°46'18" West; thence, Southwesterly, along said right-of-way and the arc of said curve, a distance of 273.23 feet; thence, North 70°10'57" West, along said right-of-way line, a distance of 15.00 feet to a point on a circular curve concave northwesterly, having as elements a radius of 1095.92 feet,

SURVEYOR'S DESCRIPTION (OVERALL) CONTINUED:

a central angle of 05°52'03" and a chord bearing of South 22°45'05" West; thence, Southwesterly, along said right-of-way and the arc of said curve, a distance of 112.23 feet to the South line of said Section 17; thence, North 89°36'39" West, along said South line, a distance of 1175.79 feet to the Northeast corner of the Northwest 1/4 of the Northeast 1/4 of said Section 20; thence, South 01°10'04" West, along the East line of said Northwest 1/4, of the Northeast 1/4 of Section 20, a distance of 1295.74 feet to the Southeast corner of the Northwest 1/4 of the Northeast 1/4; thence, South 01°25'14" West, along the East line of said North 1/2 of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 20, a distance of 26.65 feet to the said Westerly right-of-way line of Burnt Store Road; thence, South 44°54'56" West, along said right-of-way line, a distance of 883.62 feet to the South line of the South 1/2 of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 20; thence, South 89°34'53" West, along said South line a distance of 708.29 feet to the East line of the Northwest 1/4 of said Section 20; thence, South 00°48'01" West, along said East line, a distance of 654.15 feet to the North line of the South 1/2 of said Section 20; thence, North 89°08'41" East, along said North line, a distance of 61.00 feet to the said Westerly right-of-way line of Burnt Store Road; thence, South 44°54'56" West, along said right-of-way line, a distance of 500.42 feet; thence, North 45°05'57" West, perpendicular to said right-of-way line, a distance of 489.78 feet to the said South line of the Northwest 1/4 of said Section 20; thence, South 89°18'11" West, along said South line, a distance of 2015.19 feet to the Southwest corner of the Northwest 1/4 of said Section 20; thence, South 89°24'20" West along the South line of the North 1/2 of said fractional Section 19, a distance of 950.17 feet; thence, continue along the south line of the North 1/2 of said fractional Section 19; a distance of 3686.76 feet, to a point on the west line of said fractional Section 19; thence, along the west line of said fractional Section 19, North 04°47'10" West, 2757.78 feet to the Southeast corner of said fractional Section 13; thence, South 03°48'00" East, 112.91 feet; thence, South 89°15'00" East, parallel with and 100.00 feet South of the North line of said fractional Section 18, a distance of 5294.27 feet to a point on the West line of said Section 17; thence, South 89°24'04" East, parallel with and 100.00 feet South of the North line of said Section 17, a distance of 2653.60 feet; thence, South 89°23'24" East, parallel with and 100.00 feet south of the North line of said Section 17, a distance of 2599.92 feet to the Point of Beginning.

Said land containing 1778.97 acres, more or less.

Said land situate, lying and being in Charlotte County, Florida.

PREPARED FOR:

TERN BAY DEVELOPMENT CO., L.L.C.

FILE NO. 02-03-25P-SOD

DATE OF SKETCH: 2/20/04

THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY

STRAYER SURVEYING & MAPPING, INC.
LICENSED SURVEYOR BUSINESS NO. 6639

DATE

B. GREGORY RIETH
FLORIDA SURVEYOR & MAPPER REG'N NO. 5228

"NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER."

Strayer Surveying & Mapping, Inc.



763 Shamrock Boulevard
Venice, Florida 34293
(941) 496-9488
Fax (941) 497-6186

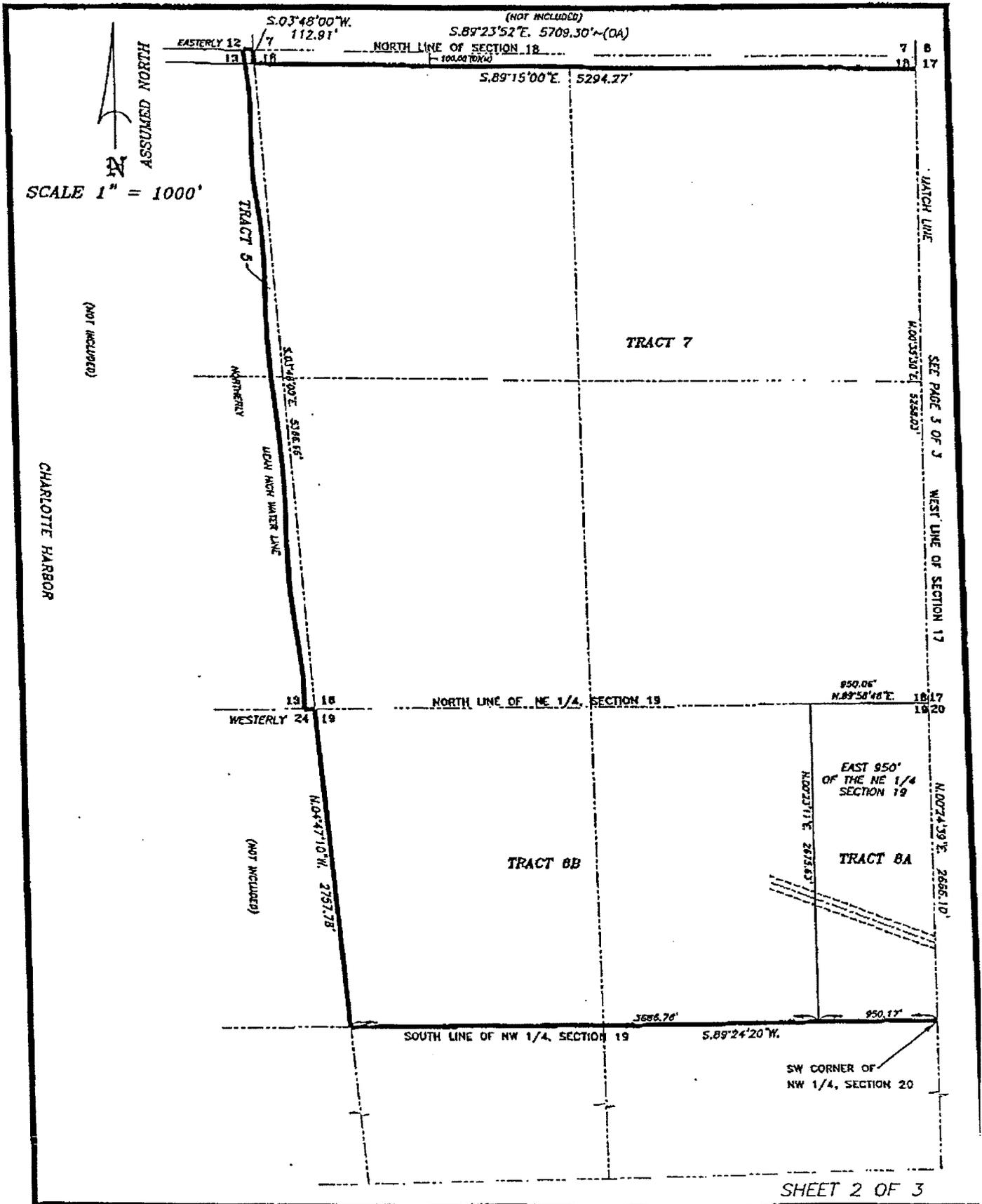
335 Tamiami Trail
Port Charlotte, Florida 33953
(941) 624-4900
Fax (941) 624-3471

e-mail address - strayersurveyingmap@comcast.net

e-mail address - pgstrayer@comcast.net

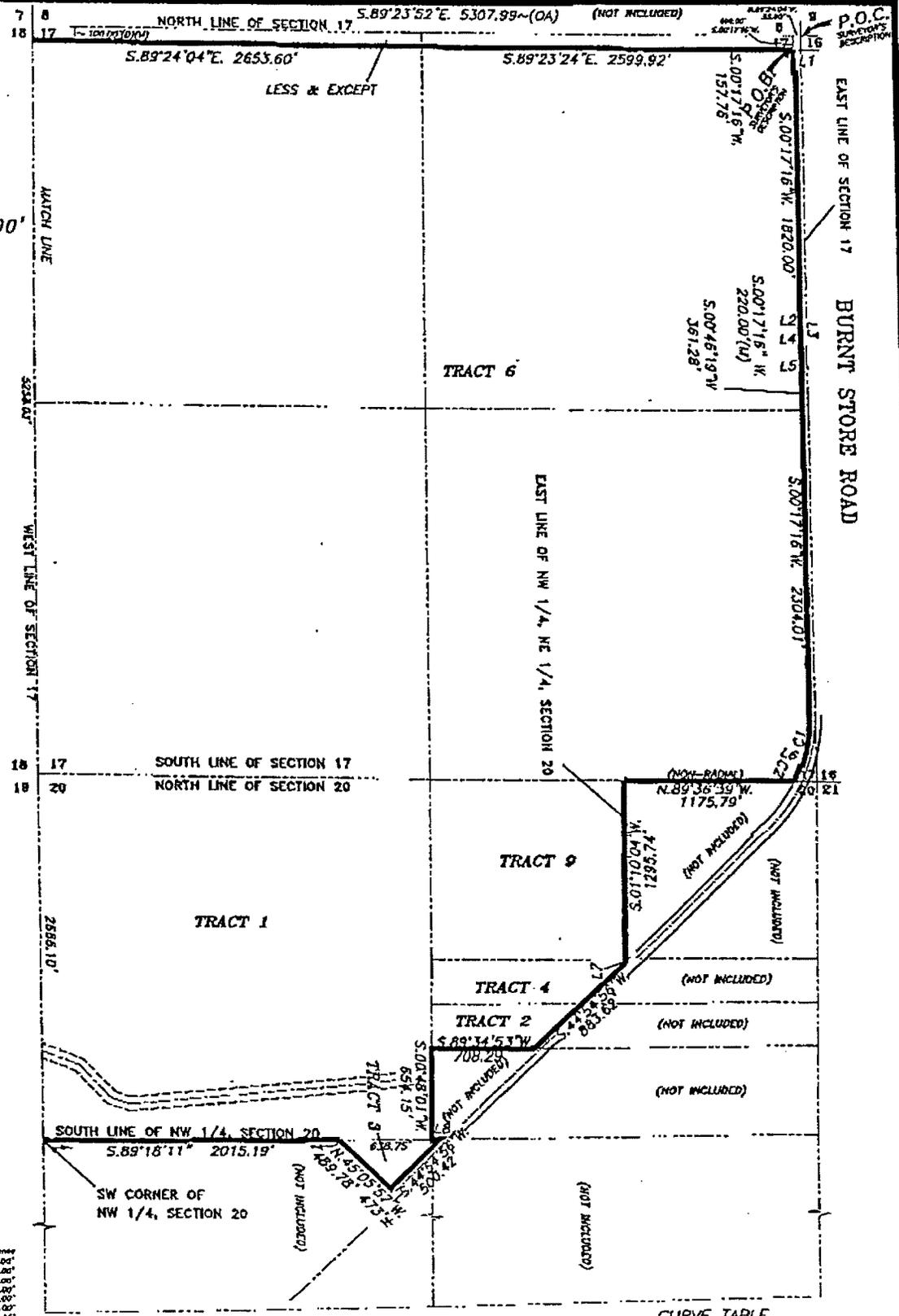
SHEET 1 OF 3

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ASSUMED NORTH
SCALE 1" = 1000'

SEE PAGE 2 OF 3

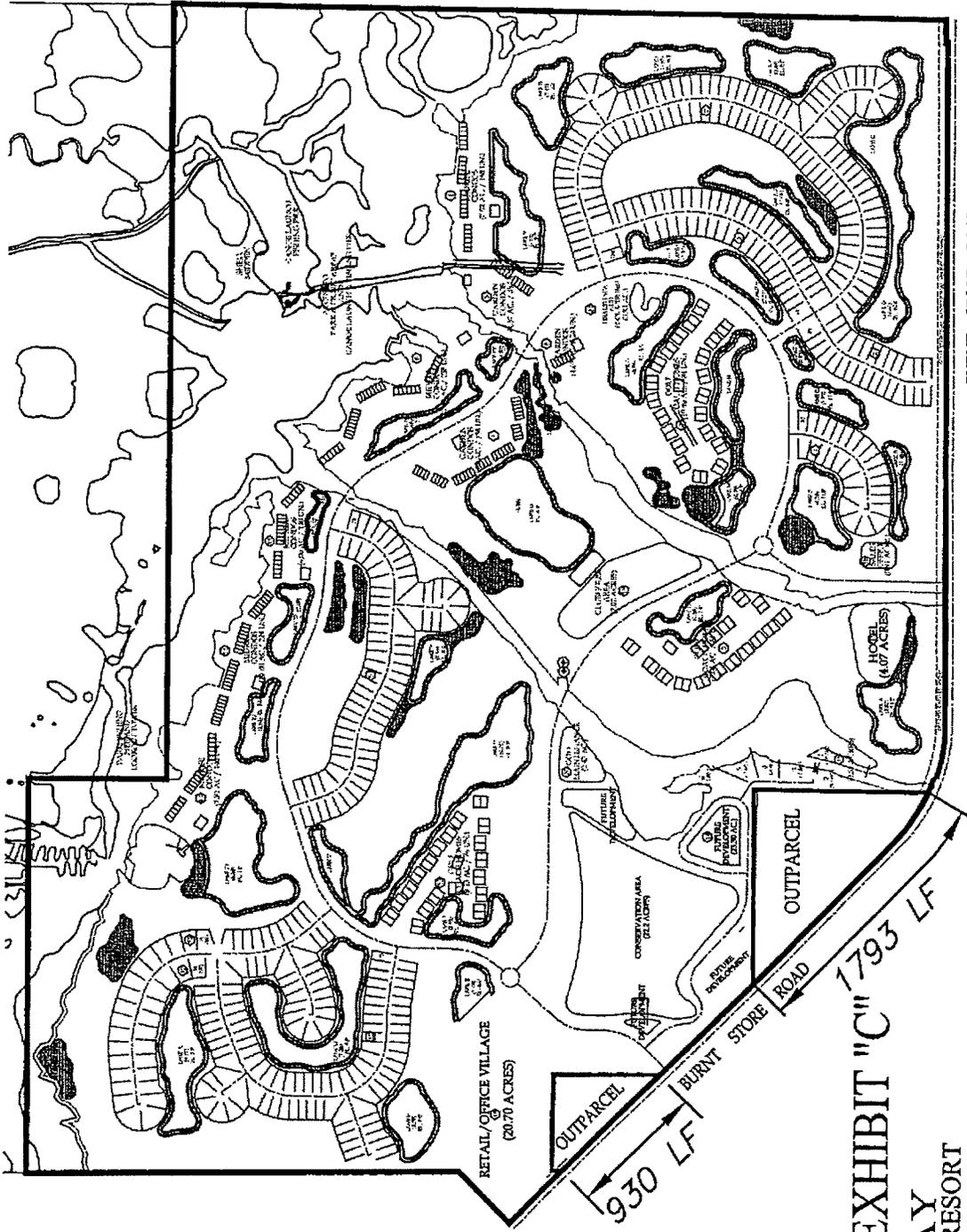


LINE TABLE

LINE	Bearing	Distance
L1	S 89°42'44" E	15.00'
L2	S 89°42'44" E	1.00'
L3	S 00°17'10" W	10.00'
L4	S 89°42'54" W	1.00'
L5	S 89°42'14" E	15.00'
L6	N 70°10'57" W (M)	15.00'
L7	S 01°25'14" W	24.65'
L8	N 89°04'41" E	21.00'

CURVE TABLE

Curve C1	Curve C2
Radius = 1110.92'	Radius = 1095.55'
Bearing = 140°23'30"	Bearing = 85°23'05"
PC = 272.54'	PI = 112.53'
Chord = 272.54'	Chord = 112.18'
Chord Ang. = S 174°16' W	Chord Ang. = S 32°45' W



BURNT STORE ROAD

OUTPARCELS EXHIBIT "C"

TERN BAY
COUNTRY CLUB RESORT

TERN BAY DEVELOPMENT COMPANY LLC



Exhibit "D"

Assignment of Credits for Charlotte County Road Impact Fees

Assignment Number : _____

THIS IS AN ASSIGNMENT of road impact fee credits by Tern Bay Development Co., LLC to _____. The authority for this assignment is that certain development agreement known as the Tern Bay DRI Development Agreement executed by Tern Bay Development Co., LLC and Charlotte County on _____, 20____. Tern Bay Development Co., LLC is authorized to assign road impact fee credits to any developer, purchaser or lessee within that portion of Charlotte County located south of the Peace River.

NOW THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by _____ to Tern Bay Development Co., LLC, Tern Bay Development Co., LLC does hereby assign, transfer, convey and relinquish to _____, its entitlement, right and interest to road impact fee credits issued by Charlotte County in the amount of \$_____.

IN WITNESS WHEREOF we have set our hands and seals this _____ day of _____, 20_____.

TERN BAY DEVELOPMENT CO., LLC

1st Witness
Print Name: _____

By: _____
Print Name: _____
Title: _____

2nd Witness
Print Name: _____

State of Florida
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____ as _____ of Tern Bay Development Co., LLC, on behalf of the LLC. He _____ is _____ is not personally known to me and did not take an oath.

Seal

Notary Public
Print Name: _____

ACCEPTANCE OF ASSIGNMENT

_____ hereby accepts the assignment of credits as set forth in this Assignment from Tern Bay Development Co., LLC.

By: _____
Print Name: _____
Title: _____

BURNT STORE ROAD FOUR-LANE IMPROVEMENT

**Agreement for Water Quality Treatment, Storage,
Floodplain Compensation and Wetland Mitigation**

This Agreement is entered into this 18th day of JANUARY, 2005, by and between Tern Bay Development Co., LLC, a Florida limited liability company ("Developer") and Charlotte County, a political subdivision of the State of Florida ("County").

RECITALS

WHEREAS, the County is participating in an on-going corridor study for Burnt Store Road involving other jurisdictions and transportation agencies to identify regional strategies for the widening of Burnt Store Road to a four-lane cross section; and

WHEREAS, the County has hired a transportation consultant to prepare the preliminary design and evaluation for the four-lane improvement of Burnt Store Road from U.S. 41 to the Charlotte/Lee County line; and

WHEREAS, any four-lane improvement of Burnt Store Road will require off-site stormwater management and off-site mitigation for wetland impacts; and

WHEREAS, the County and its consultant has neither quantified the acreage needs nor identified the locations for off-site stormwater management and wetland mitigation to support the four-lane improvement of Burnt Store Road as of the date of this Agreement.

WHEREAS, Developer is developing a project known as the Tern Bay Development of Regional Impact ("Tern Bay") and formerly known as the Caliente Springs Development of Regional Impact; and

WHEREAS, Developer petitioned the Florida Land and Water Adjudicatory Commission for the creation of a Community Development District to be known as the Tern Bay Community Development District ("CDD"); and

WHEREAS, the CDD was established on September 15, 2004; and

WHEREAS, Tern Bay is located immediately proximate to Burnt Store Road; and

WHEREAS, Tern Bay, in combination with two outparcels not owned by the Developer, has a frontage along Burnt Store Road for approximately 9,145 feet ("Tern Bay and Outparcel Frontages"); and

WHEREAS, pursuant to Resolution No. 92-29, as amended ("Tern Bay Development Order"), Developer and County have entered into a separate development agreement for the Developer to design, permit and construct a 60-foot two lane right-of-way along the combined Tern Bay and Outparcel Frontages which shall become part of a four-lane divided right-of-way within Burnt Store Road.

WHEREAS, Tern Bay may have excess capacity for water quality treatment, storage, and floodplain compensation to support the four-lane improvement of Burnt Store Road outside the Tern Bay and Outparcel Frontages (herein "County's four-lane improvement of Burnt Store Road"); and

WHEREAS, Tern Bay has within its boundaries coastal wetland and marsh areas, the enhancement of which may provide wetland mitigation credits to support County's four-lane improvement of Burnt Store Road; and

WHEREAS, Developer desires to assist the County, where reasonable and practicable, in meeting the County's needs for water quality treatment, storage, floodplain compensation and wetland mitigation to support the County's four-lane improvement of Burnt Store Road.

NOW THEREFORE, for and in consideration of the premises and in reliance on the mutual promises, Covenants, undertakings, recitals and other matters contained herein, the parties hereby covenant and agree as follows:

1. **Recitals.** The parties acknowledge that the above recitals are true and correct.
2. **Terms of the Agreement**
 - a. Developer shall provide, to the extent reasonable and practicable, water quality treatment, storage, floodplain compensation or a combination thereof associated with the County's four-lane improvement to Burnt Store Road.
 - b. Developer shall, to the extent reasonable and practicable, make a portion of the wetlands existing within Tern Bay available to the County for wetland mitigation and management associated with the County's four-lane improvement to Burnt Store Road.
 - c. For the purposes of this Agreement, the term "to the extent reasonable and practicable" means no adverse impact to the Developer in complying with the Tern Bay Development Order and local, regional, state and federal permits issued for Tern Bay.
 - d. County will notify Developer of any off-site needs within Tern Bay to support the County's four-lane improvement to Burnt Store Road.

County's design, permitting, construction and compensation for County's use and management of Tern Bay lands will be addressed through either a separate agreement or amendment to this Agreement.

- e. Developer will assume all liability for any injury or damage to the person or property of third parties which may occur on Tern Bay arising from Developer's ownership of Tern Bay.

2. Other Provisions

- a. The parties shall have all rights available by law to enforce this Agreement.
- b. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior written or oral representations or agreements.
- c. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid. The remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect.
- d. The parties agree that suits or actions at law arising from the provisions, performance, or breach of this Agreement shall initially be brought in Charlotte County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.
- e. This Agreement shall not be construed more strictly against any party.

4. Duration of Agreement

This Agreement shall be effective upon execution of all parties and shall continue in force until January 1, 2013.

5. Amendment of Agreement

This Agreement may only be amended in writing by mutual consent of the parties or their successors in interest.

6. **Successors and Assigns**

This agreement shall inure to the benefit of and be obligatory upon the parties hereto and their respective successors and assigns.

7. **Counterparts.**

This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

IN WITNESS WHEREOF, County and Developer have executed this Agreement on the date first above written.

Tern Bay Development Co., LLC

Carol L. Wrehauf
1st Witness
Print Name: Carol L. Wrehauf

By: [Signature]
John Reisman
Managing Member, Parker Tern Bay LLC
Managing Member, Tern Bay Development Co., LLC

Elaine C. Sparling
2nd Witness
Print Name: ELAINE C. SPARLING

1st Witness
Print Name: _____

By: _____
David Nash
Managing Director, IME Resorts LLC
Managing Member, Tern Bay Development Co., LLC

2nd Witness
Print Name: _____

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 1st day of DEC., 2004 by John Reisman, as Managing Member, Parker Tern Bay LLC as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known

to me or has produced _____ as identification.



(Notary Seal)

Elaine C. Sparling
Commission # DD 055965
Expires Sep. 10, 2005
Bonded Thru
Atlantic Bonding Co., Inc.

Elaine C. Sparling
Signature of Notary Public

ELAINE C. SPARLING
Printed Name of Notary Public

My commission expires on 9-10-05

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2004 by David Nash, as Managing Director, IME Resorts LLC, as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public
My commission expires on _____

This Agreement is passed and duly adopted this ____ day of _____, 20 ____.

**BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA**

By: _____
Sara Devos, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: _____
Deputy Clerk

Approved as to form:

Jeanette Knowlton, County Attorney

6. Successors and Assigns

This agreement shall inure to the benefit of and be obligatory upon the parties hereto and their respective successors and assigns.

7. Counterparts.

This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

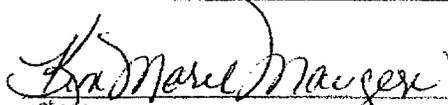
IN WITNESS WHEREOF, County and Developer have executed this Agreement on the date first above written.

Tern Bay Development Co., LLC

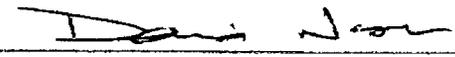
1st Witness
Print Name: _____

By: _____
John Reisman
Managing Member, Parker Tern Bay LLC
Managing Member, Tern Bay Development
Co., LLC

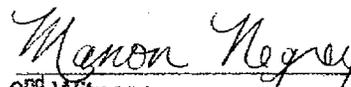
2nd Witness
Print Name: _____



1st Witness
Print Name: KIM MARIE MAUGER

By: 

David Nash
Managing Director, IME Resorts LLC
Managing Member, Tern Bay Development
Co., LLC



2nd Witness
Print Name: MANON NEGREY

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by John Reisman, as Managing Member, Parker Tern Bay LLC as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known

to me or has produced _____ as identification.

Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public
My commission expires on _____

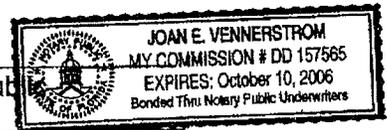
STATE OF FLORIDA
COUNTY OF Charlotte

The foregoing instrument was acknowledged before me this 2 day of DEC, 2004 by David Nash, as Managing Director, IME Resorts LLC, as Managing Member, Tern Bay Development Co., LLC, a Florida limited liability company, on behalf of the limited liability company. The above named person is personally known to me or has produced _____ as identification.

Signature of Notary Public

(Notary Seal)

Printed Name of Notary Public
My commission expires on _____



This Agreement is passed and duly adopted this 18th day of JANUARY 2005.

BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA

By: Sara Devos
Sara Devos, Chairman

ATTEST:

Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: Anne L. Bahler
Deputy Clerk 1-18-05

Approved as to form and legal sufficiency:

Janette S. Knowlton, County Attorney

[Handwritten initials]

IMAGED
2-11-05
AP