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RESOLUTION
2006-009

A RESOLUTION AMENDING RESOLUTION 92-29, AS AMENDED BY RESOLUTIONS 93-244, 98-0370A0, 98-0372A0, AND 2004-050 APPROVING THE DEVELOPMENT ORDER FOR TERN BAY, A DEVELOPMENT OF REGIONAL IMPACT; PROVIDING FOR THE INCORPORATION OF AGREEMENT 2005-005 INTO THE DEVELOPMENT ORDER; PROVIDING FOR ACCOUNTING AND REPORTING OF PROPORTIONATE SHARE CONSUMPTION AND IMPACT FEE CREDIT AVAILABILITY; PROVIDING A PHASING CHANGE IN THE CONSTRUCTION OF PREVIOUSLY APPROVED RECREATIONAL FACILITIES FOR EARLIER USE BY FUTURE TERN BAY RESIDENTS; FINDING THAT THIS AMENDMENT DOES NOT CONSTITUTE A SUBSTANTIAL DEVIATION AND PROVIDING AN EFFECTIVE DATE.

BARBARA T. SCOTT, CLERK, CHARLOTTE COUNTY
OR BOOK 2892, PGS 1527-1542, 16 pg(s)
INSTR # 1506071
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Cashiered By: MARGEC Doc. #: 1

RECITALS

WHEREAS, on February 18, 1992, pursuant to Section 380.06 Florida Statutes, the Board of County Commissioners of Charlotte County, Florida ("Board") approved and adopted Resolution 92-29, constituting the Caliente Springs Development of Regional Impact Development Order; and

WHEREAS, on April 3, 1992, the State of Florida Department of Community Affairs ("DCA") filed an appeal of the Development Order reflected in Resolution 92-29; and

WHEREAS, the Board considered the reports and recommendations of the Southwest Florida Regional Planning Council, Charlotte County staff, the Planning and Zoning Board, and the Department of Community Affairs, and in order to reconcile the appeal, certain changes were made to Resolution 92-29 and pursuant to a Settlement Agreement, the Board adopted Resolution 93-244 on August 17, 1993, that was executed on December 14, 1993 ("the Development Order"); and

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WHEREAS, the Board adopted Resolution 98-0370A0 on April 7, 1998 further amending Resolution 92-29, as amended by Resolution 93-244, to reflect the tolling of time during the pendency of the administrative proceedings; and

WHEREAS, the Board adopted Resolution 98-0372A0 on May 25, 1999, further amending Resolution 92-29, as amended by Resolution 93-244 and Resolution 93-0370A0, to extend the buildout dates for the Development Order by four years and three hundred sixty-four (364) days; and

WHEREAS, Resolution 92-29, as amended, required, prior to any onsite development, clearing of land or the receiving of any building permits for Phase I development within the Development of Regional Impact ("DRI"), demonstrations addressing potential impacts in the areas of drainage/water quality, hurricane evacuation, wastewater management, water supply, wetlands/vegetation and wildlife which demonstrations were to be part of a single, consolidated substantial deviation determination, presumed to create a substantial deviation; and

WHEREAS, Resolution 2004-050 adopted on March 9, 2004 amended the Development Order addressing the potential impacts to drainage/water quality, hurricane evacuation, wastewater management, water supply, wetlands/vegetation and wildlife, adopting a revised Map H, changing the project name from "Caliente Springs" to "Tern Bay," changing the peak hour peak season traffic analysis methodology to 100th hour methodology in order to be consistent with Charlotte County concurrency management procedures, modifying the phasing schedule and extending the development time frames by two (2) years; and

WHEREAS, Tern Bay, LLC, a Florida limited liability company, and the Tern Bay Community Development District, a local unit of special-purpose government organized and existing under and pursuant to Chapter 190, Florida Statutes, as amended, are the owners of the Tern Bay DRI ("Developer"); and

WHEREAS, on January 27, 2004, the Board unanimously approved and adopted Resolution 2004-017 that recommended to the State of Florida ("State") approval of the Tern Bay Community Development District ("CDD"); and

WHEREAS, the CDD was established on September 15, 2004 which provides a financing entity for roadway improvements that serve the Tern Bay DRI.

WHEREAS, the Transportation conditions of 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 Local Government Development Agreement pursuant to Florida Statutes Section 163.3220, setting forth the commitments by and between Tern Bay Development Co., LLC, a Florida limited liability company, and Charlotte County, a political subdivision of the State of Florida ("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, Tern Bay, LLC is the successor to Tern Bay Development Co., LLC.

WHEREAS, Developer worked cooperatively with Charlotte County Public Works staff on a Local Government Development Agreement; and

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

WHEREAS, the Charlotte County Planning and Zoning Board on January 10, 2005 reviewed and considered the Local Government Development Agreement and recommended approval, finding that the proposed agreement is consistent with the Development Order; and

WHEREAS, the Board on January 18, 2005 unanimously approved the Local Government Development Agreement, Agreement 2005-005, ("Development Agreement"); and

WHEREAS, Option 3 requires amendment of the specifics of the Development Agreement into the Development Order; and

WHEREAS, Developer submitted a Notice of Proposed Change ("NOPC") incorporating specifics of the Development Agreement into the Development Order and providing a phasing change in the construction of previously approved recreational facilities for earlier use by future Tern Bay residents; and

WHEREAS, the Southwest Florida Regional Planning Council determined that the specifics of the Development Agreement between Charlotte County and Developer do not appear to create a reasonable likelihood of additional regional impacts on regional transportation resources or facilities; and

WHEREAS, the Charlotte County Planning and Zoning Board made a finding that the specifics of the Development Agreement do not constitute a substantial deviation; and

WHEREAS, the Board has reviewed and considered the specifics of the Development Agreement incorporated into the Development Order, finds them consistent with the Charlotte County Comprehensive Plan, consistent with the previously approved Development Order for the Caliente Springs DRI, and consistent with the Development Agreement previously approved by the Board on January 18, 2005; and

WHEREAS, the Board desires that Developer also provide an accounting and reporting of proportionate share consumption and impact fee credit availability.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Charlotte County, Florida, that:

1. Finding of Fact/Conclusion of Law of Resolution 93-244, as it amends Resolution 92-29, and as it has itself been amended by Resolutions 98-0370A0, 98-0372A0 and 2004-050 shall be amended to read as follows (additions are shown as underlined, deletions are shown as ~~stricken through~~):

FINDING OF FACT/CONCLUSION OF LAW

- A. The development is a mixed-use project with 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 areas subject to further additions, a project total of 295.0 acres of impervious surfaces leaving a project total of 1,483 acres of open space (all natural pervious and all

vegetated pervious surfaces), and a sales and Community Development District (CDD) administration center and other amenities on 1,778 acres located in Southern Charlotte County between Burnt Store Road and Charlotte Harbor approximately three miles north of the Lee County line. The site will contain 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. Exhibit "A", revised and dated October 2003 is a copy of the approved and Revised Master Concept Plan, depicting all the above approved land uses.

The legal description of the property is described in Exhibit "B" which is attached hereto and made a part of this development order.

Approximately 865+/- acres of the site adjacent to Charlotte Harbor are considered saltwater wetlands and will be placed under a permanent conservation easement or else conveyed to the State of Florida. The development consists of approximately 205 acres of upland preservation areas in the form of buffers, wetland tributaries (2) and golf course roughs and a minimum of 105 acres of lakes for water management.

Water and wastewater services are proposed to be provided by Charlotte County Utilities (CCU) or its successors and assigns. This utility currently has available permitted and planned additional capacity to serve the entire Tern Bay DRI development. The project is planned in two phases, each six years and 364 days, with buildout January 17, 2012. Phase I buildout will be January 17, 2007 and Phase II buildout will be January 17, 2012; these dates each represent an extension to those dates reviewed in the ADA together with the time tolled during the pendency of administrative hearings (a period of 24 months and 18 days) and an extension of six (6) years and three hundred sixty-four (364) days granted for economic reasons and shall be considered cumulatively against any future proposed phase or project buildout date extensions for the purpose of calculating whether the statutory time frames are met or exceeded in paragraph 380.06(19)(c), F.S. The revised and updated phasing schedule dated July 2005, is attached as Exhibit "C".

2. Transportation and Monitoring Conditions of Resolution 93-244, as it amends Resolution 92-29, and as it has itself been amended by Resolutions

98-0370A0, 98-0372A0 and 2004-050 shall be amended to read as follows
(additions are shown as underlined, deletions are shown as ~~stricken through~~):

SPECIFIC CONDITIONS

6. TRANSPORTATION

- a. The applicant or his successor shall be fully responsible for site-related roadway and intersection improvements required within the Tern Bay DRI. The applicant shall be required to pay the full cost for any site-related intersection improvements (including but not limited to signalization, turn lanes and additional through lanes) found to be necessary by Charlotte County for the project's access intersections onto Burnt Store Road.
- b. The applicant shall pay to Charlotte County the impact fees that are in effect at the time building permits are issued for the development. These impact fee payments shall represent partial payments for necessary transportation improvements, including design and engineering, utility relocation, right-of-way acquisition, construction, construction contract administration and construction inspection necessary to maintain level of service "C" peak hour, based on a 100 hour design criteria, for the following significantly impacted regional roadways through project buildout by January 17, 2012:

Burnt Store Road

- Notre Dame Boulevard to project entrance
- Project entrance to Zemel Road
- Zemel Road to Burnt Store Marina entrance

- Burnt Store Marina entrance to SR 78*
- Notre Dame Boulevard to US 41

* Included for monitoring purposes

- c. Impact fee payments shall also represent partial share payments for the necessary improvements, including but not limited to, right-of-way, costs of signalization, turn lanes and other improvements deemed necessary by FDOT or Charlotte County, or other appropriate jurisdiction, to maintain level of service "D" on a peak hour (100th hour) basis for the following significantly impacted off-site regional intersections through project buildout:

- Burnt Store Road/Notre Dame Boulevard
- Burnt Store Road/Zemel Road

d. Developer's total proportionate share obligation from Tern Bay's anticipated traffic impacts based on the development parameters set forth in the Development Order is \$5,650,000.00 ("total proportionate share" herein). The term "proportionate share" shall have the same meaning as in Rule 9J-2.045(1)(h), Florida Administrative Code except that construction cost shall not include the cost of sidewalks, bike lanes, wildlife crossings, utility relocation, improvement relocations on other private lands (e.g., mail boxes, driveways and trees), landscaping and other urban design elements.

Developer is obligated to pay Charlotte County road impact fees that offset the total proportionate share at the time building permits are issued in accordance with Section 3-3.5 of the Charlotte County Code of Ordinances, as may be amended. To the extent that building permits are issued for uses as described in the Development Order, the road impact fees shall serve as a credit toward the proportionate share for Tern Bay.

Developer shall fulfill its proportionate share payment to Charlotte County in accordance with Local Government Development Agreement Resolution No. _____ ("Development Agreement" herein). Specifics of the Development Agreement are provided below:

1. The Burnt Store Road frontage between the northern and southern boundaries of Tern Bay of approximately 9,145 feet shall be improved as described herein. The Burnt Store Road frontage includes 5,250 feet within Phase I of the Tern Bay development ("Tern Bay Phase I Frontage" herein) and 1,385 feet within Phase II of the Tern Bay development ("Tern Bay Phase II Frontage" herein.) The remaining Burnt Store Road frontage of 2,510 feet consists of outparcels not owned by Tern Bay ("Outparcel Frontage" herein). Developer shall cooperate and assist Charlotte County in acquiring right-of-way for Outparcel Frontage consistent with the Development Agreement.
2. Developer will submit to Charlotte County design plans for a 60-foot two lane right-of-way along the Tern Bay Phase I Frontage, Tern Bay Phase II Frontage and the Outparcel Frontage (as defined herein as "Road Improvements"). The two new lanes will generally be constructed within the 60

feet of additional right-of-way dedicated to Charlotte County by Tern Bay (hereinafter the "Dedicated Right-of-Way") and shall become part of a four-lane divided right-of-way within Burnt Store Road. The Road Improvements shall include adequate turn lanes for the two 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 Charlotte County standards for a rural four-lane arterial and are subject to review and approval by the Charlotte County Public Works Division. All design costs will be paid by Developer.

3. 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.
4. Upon completion of the Road Improvements, Developer will dedicate to Charlotte County 60 feet of right-of-way (width) along the Tern Bay Phase I Frontage and the Tern Bay Phase II 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 described in the Development Agreement.
5. Construction of the Road Improvements shall proceed in phases. Commencement of the Road Improvements along the Tern Bay Phase I Frontage shall be within 12 months of receipt of all necessary permits for the Road Improvements or upon initiation of Tern Bay Phase I development, as such phase is defined in the Development Order, whichever is later. Commencement of the Road Improvements along the Tern Bay Phase II Frontage and the Outparcel Frontage shall be on or before initiation of Tern Bay Phase II development, as such phase is defined in the Development Order and subject to the acquisition by Charlotte County of sufficient right-of-way along the Outparcel Frontage. Developer shall pay all construction costs.
- e. If the transportation mitigation is provided in accordance with "d" above, Tern Bay will be deemed concurrent as to transportation through the buildout of Tern Bay consistent with the approved Development Order and Development Agreement with Charlotte County.

f. If Developer complies with the terms of the Development Agreement as expressed in Condition 6.d. 1 through 5, herein, then Developer shall not be required to comply with Condition 6.g. i, j and k herein. If, and only if, Developer fails to comply with the Development Agreement, Developer shall comply with Condition 6.g. i, j and "k" herein.

d-g. The improvements necessary to maintain the appropriate level of service for the roadways and intersections outlined in "b" and "c" above shall be made at the time that a rural road segment or intersection is projected to exceed level of service "C" peak hour based on a 100 hour design criteria, or an urban segment is projected to exceed level of service "D" peak hour based on a 100 hour design criteria. In order to help determine the existing and projected levels of service on regional facilities and the need for improvements in a timely manner, the applicant shall submit an annual monitoring report to Charlotte County, FDOT, the Florida Department of Community Affairs and the Southwest Florida Regional Planning Council for review and approval. The first monitoring report shall be submitted one year after the issuance of the first construction permits for the Tern Bay DRI. Reports shall be submitted annually thereafter until buildout of the project.

The monitoring report shall project the approved development's transportation impacts on the roadways and intersection identified in "b" and "c" above for the next year. The development's projections of project traffic shall be based on the total of existing occupied project development, the amount of building permits currently issued for unoccupied project development, and the projected amount of development to be requested within the next year. At a minimum, the monitoring report shall contain project p.m. peak hour (100th hour) trip generation estimates, non-project background counts and turning movements at each of the access intersections and the regional intersections listed above in recommendation "c" and a calculation of this year's and next year's project traffic, background traffic and the existing and next year's projected peak hour level of service, based on a 100 hour design criteria, at these intersections and on the road segments indicated above in recommendation "b".

The levels of service shall be calculated according to current professional standards and shall provide an indication of when level of service "C" or "D" peak hour, based on a 100 hour design criteria, is expected on impacted roadways and intersections, and an estimate of project impact on those facilities.

- e.h. Should the eventual development mix of the Tern Bay be such that the trip generation and external traffic of the project exceed the levels identified in the ADA by more than 15%, on a daily or p.m. peak hour (100th hour) basis, then the project shall go through a substantial deviation determination as outlined in Chapter 380.
- f.i. Based on the staff transportation assessment of significant project impacts, construction of the following transportation improvements shall be needed prior to, or coincident with, development of the Tern Bay DRI, if peak hour (100th hour) level of service "C" and "D" conditions are to be maintained through buildout (January 17, 2012) on regional road segments and intersections.

Phase I (January 17, 2007)

Burnt Store Road

- | | |
|--|------------------|
| - Notre Dame Boulevard to the project entrance | Widen to 4 lanes |
|--|------------------|

Buildout (January 17, 2012)

Burnt Store Road

- | | |
|---|------------------|
| - Notre Dame Boulevard to the project entrance | Widen to 4 lanes |
| - Project entrance to Zemel Rd. | Widen to 4 lanes |
| - Zemel Road to the Burnt Store Marina entrance | Widen to 4 lanes |
| - Burnt Store Marina entrance to SR 78* | |

* Included for monitoring purposes

~~g. If Zemel Road is scheduled for paving and/or widening prior to the start of the second phase of Tern Bay the traffic analysis shall be updated and the project impacts reassessed and the results incorporated into the development order following the procedural requirements of paragraph 380.06(19)(f), F.S., prior to the issuance of any building permits for Phase II. Any reanalysis shall include an assessment of impacts across the Lee County line and shall utilize the most recently available models or techniques suitable for assessing multi-county impacts.~~

h. j. If an annual monitoring report projects that project plus background peak hour (100th hour) traffic on a regional roadway segment or intersection listed in "b" and "c" above exceeds, or is projected to exceed during the next year, the peak hour (100th hour) level of

service standards adopted by the Charlotte County Comprehensive Plan and the project is, or will be, utilizing 5% or more of the peak hour (100th hour) level of service "D" maximum service volume for that urban area roadway/intersection or 5% of LOS "C" for rural areas, then no further building permits and certificates of occupancy shall be granted or issued for the Tern Bay development until a major roadway improvement restoring the level of service to peak hour (100th hour) level of service "D" (for urban roads intersections) or "C" (for rural roads/intersections) is operational or committed for construction. A committed roadway improvement for the purpose of meeting this requirement shall be either:

1. A roadway improvement scheduled for construction within the first year of the appropriate local government's Comprehensive Plan capital improvement element. A roadway construction improvement listed in and scheduled for construction to commence in or before the third year of Charlotte County's Comprehensive Plan capital improvements element will be recognized as a committed roadway improvement, with no additional amendment to this Development Order required, when Charlotte County amends its adopted comprehensive plan and the comprehensive plan amendment is found to be in compliance by final agency action with Rule 9J-5.0055(2)(c), Florida Administrative Code, except insofar as (2)(c) would allow concurrency to be satisfied by using the provision in Rule 9J-5.0055(2)(a)1., Florida Administrative Code or Rule 9J-5.0055(2)(b)1. and 2., Florida Administrative Code; or
2. A roadway construction improvement listed in, and scheduled for construction within, the current three years of the Florida Department of Transportation's adopted Five Year Work Program; or
3. Any alternative agreed upon by the Charlotte County, SWFRPC, FDCA, and the developer. The developer has the right to propose, as an alternative, the use of a Local Government Development Agreement pursuant to Section 163.3220, Florida Statutes, which contains commitments by the Applicant (potentially including a proportionate share payment) and the local government to provide the necessary improvements which ensures concurrency on all significantly impacted regional roads and inter-sections. The approval of either of these alternatives shall require amendment of their specifics into this Development Order.

In addition to this requirement, if any road within a three (3) mile radius of the entrance to Tern Bay becomes subject to a moratorium pursuant to Ordinance 89-43, then Tern Bay will also be subject to that moratorium and ordinance regardless of the percentage of capacity being utilized by Tern Bay traffic.

- ~~h~~ k. The transportation impacts to the roads and intersections above may be alternatively proposed by the applicant to be appropriately addressed consistent with Southwest Florida Regional Planning Council policies, and in accordance with Section 163.3220, F.S., which requires a commitment by the applicant and/or the local government to insure concurrency on all significantly impacted regional roads, through a substantial deviation determination and development order amendment incorporating the development agreement, pursuant to 380.06(19)(f), F.S.

Should the road impact fees be repealed, or made unenforceable by Court action, the traffic impacts of Tern Bay shall be immediately reanalyzed to determine appropriate alternative mitigation and the development order amended as appropriate to include such mitigation prior to the issuance of the subsequent building permits.

13. GENERAL CONSIDERATIONS

- b. The developer shall submit a DRI report every two years from the effective date of this revised development order on the development of regional impact to Charlotte County, the Southwest Florida Regional Planning Council, the Department of Community Affairs and all affected permit agencies as required in Subsection 380.06 (18), Florida Statutes and Section 9J-2.025(7)B-6, Florida Administrative Code, as amended. This does not affect the frequency of transportation monitoring reports pursuant to Transportation Conditions "d" "g" and "~~h~~" "i" herein. Developer shall provide for accounting and reporting of proportionate share consumption and impact fee credit availability. This report will be included with the DRI report every two years. Failure to include this report will result in a temporary suspension on the Development Order until this report is received and evaluated for sufficiency by Charlotte County.
- h. Nothing in this development order shall preclude or exempt the development from participating in any duly established MSTU, MSBU or Community Development District for the purpose of providing infrastructure and services, except that the development shall not be required to participate in any MSTU or MSBU for the

purpose of providing road infrastructure external to the development.

3. Exhibit "C", entitled "Tern Bay DRI Revised Estimated Land Use Distribution" of Resolution 93-244, as it amends Resolution 92-29, and as it has itself been amended by Resolutions 98-0370A0, 98-0372A0 and 2004-050 is hereby deleted in its entirety and replaced by the Exhibit "C" attached hereto and incorporated herein by this reference.

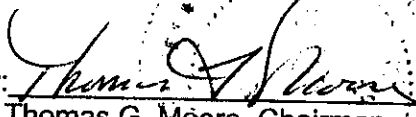
4. The amendments incorporated herein do not constitute a substantial deviation to the conditions of the Development Order.

5. All other terms and conditions of the Development Order, not affected by this resolution, shall remain unchanged and in full force and effect.

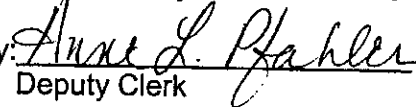
6. The Clerk of the Circuit Court is hereby directed to forward a certified copy of this resolution and its attachments to the Florida Department of Community Affairs, Community Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 and to Daniel Trescott, Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, Florida 33901.

PASSED AND DULY ADOPTED this 17 day of January, 2006.

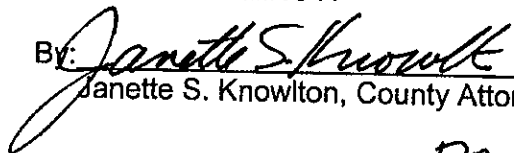
BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: 
Thomas G. Moore, 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

PB
LR 2005-737

Exhibit "C"
Tern Bay DRI
Revised and Updated Land Use Distribution, Dated July 2005

Land Use Type	Phase I	Phase II	Buildout Total
Single-family Residential	389 units	323 units	712 units
Multi-family Residential	604 units	494 units	1,098 units
Commercial	70,000 square feet	70,000 square feet	140,000 square feet
Office	15,000 square feet	15,000 square feet	30,000 square feet
Hotel	125 rooms	125 rooms	250 rooms
Golf Course	27 holes	0	27 holes
Country Club	20,000 square feet	0	20,000 square feet
Spa and Tennis Club	7,500 square feet	0	7,500 square feet
Tennis Courts	8 courts	0	8 courts
Welcome Center/Community Building	5,000 square feet	0	5,000 square feet

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