

RESOLUTION NO. 05- 295

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN IMPACT FEE CREDIT AGREEMENT WITH MARSHALL CREEK, LTD. AND THE MARSHALL CREEK COMMUNITY DEVELOPMENT DISTRICT**

**WHEREAS**, Marshall Creek, Ltd, a Florida limited liability company ("Marshall Creek"), is the Developer of that certain land contained within a Development of Regional Impact commonly referred to as Marshall Creek or Palencia, and more particularly described in St. Johns County Resolution No. 98-191, as amended, (the "Marshall Creek DRI/DO"); and

**WHEREAS**, the Marshall Creek Community Development District (the "CDD") was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating, and maintaining certain infrastructure, including recreation improvements; and

**WHEREAS**, St. Johns County Ordinance No. 87-58, as amended (the "Park Impact Fee Ordinance"), allows for impact fee credits to be granted by the Board of County Commissioners for property dedicated to St. Johns County and improvements ("the Park and Improvements") made as identified within the Impact Fee Agreement attached hereto and incorporated herein; and

**WHEREAS**, in accordance with the Impact Fee Ordinance and the Marshall Creek DRI/DO, Marshall Creek and the CDD are entitled to impact fee credits for the dedication of the Park and Improvements; and

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida that:

1. The County Administrator is hereby authorized to approve and execute an Impact Fee Credit Agreement with Marshall Creek and the CDD substantially in the form of that which is attached hereto and incorporated herein by reference for the Park and Improvements identified in the Impact Fee Agreement attached hereto which are eligible for impact fee credits.

2. Upon acceptance by the County Administrator, the Clerk is instructed to record said Impact Fee Credit Agreement in the Official Records of St. Johns County, Florida.

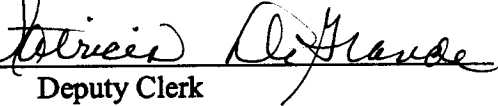
PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA THIS 4 DAY OF October, 2005.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

BY:   
Bruce A. Maguire  
ITS: Chairman

ATTEST:

Cheryl Strickland, Clerk

By:   
Deputy Clerk

RENDITION DATE 10-6-05



**IMPACT FEE CREDIT AGREEMENT  
("AGREEMENT")**

**Park Impact Fees**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2005 by and among the **BOARD OF COUNTY COMMISSIONERS** of St. Johns County, Florida ("County") and **MARSHALL CREEK LTD.**, whose address is 605 Palencia Club Drive, St. Augustine, Florida 32095, ("Marshall Creek") and the **MARSHALL CREEK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special purpose government organized and existing in accordance with Chapter 190, Florida Statutes, whose mailing address is 10300 N.W. 11<sup>th</sup> Manor, Coral Springs, Florida 33071, (the "CDD").

**RECITALS:**

A. Marshall Creek is the Developer of certain lands contained within the Marshall Creek DRI (the "DRI") as described and approved in St. Johns County Resolution No. 98-191, as amended (the "DRI/DO"). The CDD was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating, and maintaining certain infrastructure, including recreation improvements. Marshall Creek and the CDD qualify as Feepayers("Permit Applicants") under St. Johns County Ordinance 2005-27.

B. Marshall Creek has approval under the DRI/DO to develop the DRI as a mixed use project on the Property.

C. Under Specific Condition 33(a) of the DRI/DO ("SC-33(a)"), Marshall Creek or the CDD is required to construct an active park with athletic playing fields containing a minimum of ten acres (the "Athletic Park") which is more particularly described on the attached Exhibit "A" and to convey the Athletic Park to the County.

D. The CDD has constructed park improvements within the Athletic Park as required under SC-33(a) that are more particularly described on the attached Exhibit "B" (the "Park Improvements").

E. Marshall Creek and the CDD now desire to convey the Athletic Park and the Park Improvements to the County in satisfaction of SC-33(a).

F. SC-33(a) requires the County to maintain the Athletic Park for its intended active recreational uses and authorizes Marshall Creek, the CDD or an applicable property owner's association to provide enhanced maintenance or additional improvements after the dedication of the Athletic Park to the County. The County and the CDD may execute a separate Interlocal and Enhancement Agreement to provide for the enhancement; and improvement and of the Athletic Park.

G. SC-33(a) further provides for impact fee credits to be awarded to Marshall Creek and the CDD in accordance with St. Johns County Ordinance No. 87-58, as amended (the "Park Impact Fee Ordinance").

H. Pursuant to the Park Impact Fee Ordinance, the County requires any person who seeks to develop land within St. Johns County, as evidenced by such person's application for a building permit or certificate of occupancy ("Permit Applicant"), to pay a park impact fee ("Park Impact Fee"), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide parks within St. Johns County.

I. Section 13 of the Park Impact Fee Ordinance allows impact fee credits to be granted for certain dedications and improvements ("Park Impact Fee Credits").

J. Pursuant to the County requirements of the Land Development Code, Marshall Creek is dedicating land within the DRI and the CDD is dedicating park improvements, which are recognized as meeting the requirements for Park Impact Fee Credits.

K. The DRI/DO also provides that Marshall Creek and the CDD shall receive Park Impact Fee Credits for the dedication of the Athletic Park and the Park Improvements made by Marshall Creek and the CDD.

L. Pursuant to the terms of the Park Impact Fee Ordinance, the County, Marshall Creek and the CDD desire to set forth their agreement and a procedure for the applicant and treatment of such Park Impact Fee Credits.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Findings of Fact. The above stated Recitals are incorporated herein as Findings of Facts.

2. Impact Fee Credits. The Park Improvements as well as the cost/fair market value of the Park Improvements and land to be dedicated to St. Johns County pursuant to SC-33(a) is as set forth described on Exhibit "B." The Park Impact Fee Credit for the land to be dedicated by Marshall Creek is \$1,600,000.00 (One Million Six Hundred Thousand and 00/100) and the Park Impact Fee Credit for the Park Improvements to be dedicated by the CDD is \$1,238,764.69 (One Million Two Hundred Thirty Eight Thousand Seven Hundred Sixty Four and 69/100), for a total amount of Park Impact Fee Credit due to Marshall Creek and the CDD of \$2,838,764.69 (Two Million Eight Hundred Thirty Eight Thousand Seven Hundred Sixty Four 69/100) (the "Total Impact Fee Credit").

3. Impact Fee Credit Balance. Upon the County's acceptance of the Athletic Park and the Park Improvements, the County shall establish the Palencia Park Impact Fee Credit Account ("Impact Fee Credit Account") in the amount of \$2,838,764.69 (Two Million Eight Hundred Thirty Eight Thousand Seven Hundred Sixty Four 69/100).

4. Method of Issuance. From and after the date of the execution of this Agreement, so long as there is any balance remaining in the Impact Fee Credit Account, all Feepayers applying for building permits or certificates of occupancy in connection with any construction within the DRI as may be amended from time to time shall pay the amount due under the then-current Park Impact Fee Ordinance directly to Marshall Creek and the CDD. Then, for so long as the total Park Impact Fee Credits for which Marshall Creek and the CDD have issued vouchers under this Agreement is less than the total Park Impact Fee Credits authorized by this

Agreement, Marshall Creek and the CDD shall issue to such Feepayer a voucher evidencing full payment of the Park Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by Marshall Creek and the CDD shall contain a statement setting forth the amount of Park Impact Fee paid and shall be in substantially the same form as set forth on the attached Exhibit "C." Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer and shall deduct the amount of such voucher from the Impact Fee Credit Account.

5. Apportionment of Impact Fee Credit Balance. Marshall Creek and the CDD agree that Marshall Creek is entitled to 56.4% of the Impact Fee Credit Account for its dedication of the land and the CDD is entitled to 43.6% of the Impact Fee Credit Account for its dedication of the Park Improvements. So long as there is any Impact Fee Credit Balance remaining, Marshall Creek and the CDD shall require all Feepayers to pay 56.4% of all Park Impact Fee payments to Marshall Creek and 43.6% to the CDD. Both Marshall Creek and the CDD will execute the vouchers provided to the Feepayers evidencing full payment of the Park Impact Fees and upon presentation of the jointly-executed vouchers to the County by the Feepayers, the County will deduct the total amount paid to Marshall Creek and the CDD from the Impact Fee Credit Account balance. Marshall Creek and the CDD agree that the Impact Fee Credit Account is a joint account and the County shall have no responsibility for the apportionment of any Park Impact Fee payments made by Feepayers to Marshall Creek or the CDD.

6. Transfer of Interest. In the event that Marshall Creek or the CDD determines to sell or convey all or part of the DRI, Marshall Creek or the CDD may sell, transfer, assign or convey any of its interest in part of the Park Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within the DRI for such consideration as Marshall Creek or the CDD in its sole discretion, determines. In such event, Marshall Creek or the CDD shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting the Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of Park

Impact Fee Credits, if any, shall remain vested in Marshall Creek and the CDD. The Parties agree that no impact fee credit may be used or applied to development outside the DRI as may be amended from time to time without the specific approval of the County, and that such approval may be denied based on factors including, but not limited to the relationship of the dedication and improvements to the particular development to which credits are transferred.

7. Annual Accounting. On or before January 31 of each year, so long as there remains an Impact Fee Credit Account balance, Marshall Creek and the CDD shall prepare and deliver to Planning Department an annual report setting forth the amount of the Park Impact Fee payments made by Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Park Impact Fee Credits.

8. Completion. At such time as the Park Impact Fee Credits provided for hereunder have been exhausted, Marshall Creek, the CDD or a Feepayer seeking building permits or certificates of occupancy within the DRI shall pay the County the Park Impact Fees as are then due and payable under the Park Impact Fee Ordinance in effect at that time. Until such time, any Feepayer within the project shall be instructed by the County to pay its Park Impact Fees directly to Marshall Creek and the CDD.

9. Miscellaneous Provisions.

a. This Agreement shall be constructed and governed in accordance with the laws of the State of Florida. All parties to this Agreement have participated fully in the negotiation and preparation hereof, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. All parties agree particularly that this Agreement is bound by the terms of the County's Park Impact Fee Ordinance and other applicable Ordinances. Any and all applicable terms of those ordinances are to be considered incorporated herein by reference. If there is any inconsistency found between this Agreement and such Ordinances or applicable law, those Ordinances or law shall prevail and be applicable.

b. The Parties agree that the Park Impact Fee Ordinance, Section 13, limits the total amount of impact fee credits given to an amount not greater than the total amount of

impact fees due for the Project. The parties further agree that they will not challenge in any judicial proceeding and will accept the interpretation of the County Attorney's Office that the Park Impact Fee Credits identified or granted by this Agreement are limited to the amount of Impact Fees which are due or become due within the Development.

c. In construing the Agreement, the singular shall be held to include the plural, and plural shall include the singular, the use of any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

d. All of the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.

e. The Agreement, and any Exhibits and/or addendum made a part hereof constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties hereto.

f. This Agreement is made for the sole benefit and protection of the parties and no other persons shall have any right of action hereunder. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

g. All covenants, agreements, representation and warranties made herein shall be deemed to have been materially and relied on by each party to this Agreement.

h. This agreement is recognized as being subject to the laws of Florida and the Ordinances of St. Johns County, Florida and therefore all applicable provisions thereof are incorporated herein and if any provision hereof is inconsistent with such provisions, such provision shall apply.



i. Marshall Creek, the CDD or an applicant for a building permit or certificate of occupancy within the Project must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.

j. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

k. Any notices or reports required under this Agreement shall be sent to the following:

For the County: County Administrator  
St. Johns County  
P.O. Drawer 349  
St. Augustine, FL 32085-0349  
FAX (904) 823-2507

For Marshall Creek Michael Harrison  
Hines  
5 Ravina Drive  
Atlanta, GA 30346  
FAX (770) 206-5325

With a copy to: Project Manager  
Marshall Creek, Ltd.  
605 Palencia Club Drive  
St. Augustine, FL 32092  
FAX (904) 810-0525

With a copy to: Kathryn F. Whittington, Esq.  
Pappas Metcalf Jenks & Miller, P.A.  
245 Riverside Avenue, Suite 400  
Jacksonville, FL 32202  
FAX (904) 353-5217

With a copy to: Jonathan T. Johnson, Esq.  
Hopping Green & Sams PA.  
P.O. Box 6526, 32314  
Tallahassee, FL 32301  
FAX (850) 224-8551

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

**ST. JOHNS COUNTY**

By: \_\_\_\_\_  
Ben W. Adams  
County Administrator

**ATTEST: Cheryl Strickland, Clerk**  
By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA        }  
                                  }SS  
COUNTY OF ST. JOHNS    }

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2005, by **BEN W. ADAMS**, the County Administrator of **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, on behalf of St. Johns County, Florida.

\_\_\_\_\_  
(Print Name \_\_\_\_\_)  
NOTARY PUBLIC  
State of Florida at Large  
Commission # \_\_\_\_\_  
My Commission Expires:  
Personally Known \_\_\_\_\_  
or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced  
\_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**MARSHALL CREEK, LTD.**, a Florida limited partnership

By: HINES/MARSHALL CREEK, LTD., a Florida limited partnership, as its sole general partner

By: HINES MANAGEMENT, L.L.C., a Delaware limited liability company, as its sole general partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, as its sole general partner

By: \_\_\_\_\_

Print: Michael T. Harrison

Its: Senior Vice President

Address: Five Ravinia Drive  
Atlanta, Georgia 30346-2102

**STATE OF FLORIDA  
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Michael T. Harrison, the Senior Vice President of HINES HOLDINGS, INC., a Texas corporation, the sole general partner of Hines Interests Limited Partnership, a Delaware limited partnership, the sole member of Hines Management, LLC, a Delaware limited liability company, the sole general partner of Hines/Marshall Creek, Ltd., a Florida limited partnership, the sole general partner of Marshall Creek, Ltd., a Florida limited partnership, on behalf of the partnership.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

NOTARY PUBLIC

State of Florida at Large

Commission #: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Personally known \_\_\_ or Produced ID \_\_\_\_\_

[check one of the above]

Type of Identification Produced \_\_\_\_\_

**MARSHALL CREEK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Its: Chairman  
Print: Walter R. O'Shea

\_\_\_\_\_  
Its: Assistant Secretary  
Print: \_\_\_\_\_

STATE OF FLORIDA        }  
                                  }SS  
COUNTY OF ST. JOHNS    }

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2005, by Walter R. O'Shea, the Chairman of MARSHALL CREEK COMMUNITY DEVELOPMENT DISTRICT, on behalf of the CDD.

(Print Name \_\_\_\_\_)  
NOTARY PUBLIC  
State of Florida at Large  
Commission #  
My Commission Expires:  
Personally Known \_\_\_\_\_  
or Produced I.D. \_\_\_\_\_  
[check one of the above]

Type of Identification Produced  
\_\_\_\_\_

**EXHIBIT "A"**

[Legal Description]

## EXHIBIT "B"

<b>I.</b>	<b>Appraised Value of Athletic Park Property (10.06 Acres)</b>	<b>\$1,600,000.00</b>
<b>II.</b>	<b>Athletic Park Improvements</b>	
	1. Contractor Mobilization (Permitting, Layout)	\$ 76,863.45
	2. Demolition/ Site Preparation	\$155,055.31
	3. Pavement and Concrete Work	\$ 83,976.99
	4. Drainage Construction	\$172,052.58
	5. Site Furnishings (Lighting, Athletic Equipment)	\$ 83,657.55
	6. Site Utilities	\$ 15,467.92
	7. Vertical Improvements (Trellis, Pavilion, Signage, etc.)	\$187,134.27
	8. Landscape and Irrigation	\$178,148.43
	9. Additional Items (Basketball Court Package)	\$143,486.79
	10. Change Orders	\$279,759.80
	11. Less Non-Qualified Costs Related To Storm Water, Ponds and Related Infrastructures	<u>(\$136,838.40)</u>
	<b>Total Cost of Athletic Park Improvements</b>	<b><u>\$1,238,764.69</u></b>
	<b>TOTAL VALUE OF ATHLETIC PARK LAND AND IMPROVEMENTS</b>	<b>\$2,838,764.69</b>

**EXHIBIT "C"**

Voucher # \_\_\_\_\_

**IMPACT FEE VOUCHER  
(Marshall Creek DRI a/k/a Palencia)**

1. Name and address of Grantor:
  
2. Name and Address of Grantee:
  
3. Legal Description of subject Property: See Attached Exhibit A.
  
4. Subdivision or Master Development Plan Name:

The undersigned Grantors confirm that they have received from \_\_\_\_\_  
 on \_\_\_\_\_, 200\_\_ funds sufficient for the impact fees for:  
 Parks-Ordinance #87-58, as amended, in the amount of \$ \_\_\_\_\_

Grantors give Notice to St. Johns County, Florida that above sums should be deducted from the Palencia Impact Fee Credit Account.

**MARSHALL CREEK, LTD.**

\_\_\_\_\_  
 Print: \_\_\_\_\_  
 Its: \_\_\_\_\_

**MARSHALL CREEK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
 Its: Chairman  
 Print: Walter R. O'Shea

\_\_\_\_\_  
 Its: Assistant Secretary  
 Print: \_\_\_\_\_