

RESOLUTION NO. 2008- 212

**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.**

WHEREAS, Marshall Creek, Ltd. ("MCL") is the Developer of certain lands contained within the Marshall Creek Development of Regional Impact, (the "Project") as described and approved in St. Johns County Resolution No. 1998-191, as amended by Resolutions 1998-220, 2002-103, 2004-24, 2004-154, and 2005-232; and

WHEREAS, Section 13 of St. Johns County Road Impact Fee Ordinance No. 87-57, as amended, ("Road Impact Fee Ordinance") allows for impact fee credits to be granted by the Board of County Commissioners for the contributions and improvements made or funded as identified within the Impact Fee Agreement attached hereto and incorporated herein; and

WHEREAS, in accordance with the County Road Impact Fee Ordinance, MCL is entitled to certain impact fee credits for certain improvements and contributions.

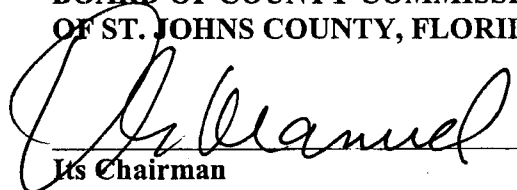
NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:

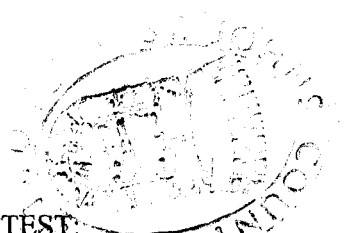
Section 1. The County Administrator is hereby authorized to approve and execute an Impact Fee Credit Agreement with MCL substantially in the form of that which is attached hereto and incorporated herein by reference for those improvements identified within the Road Impact Fee Ordinance which are eligible for impact fee credits.

Section 2. Upon acceptance by the County Administrator, the Clerk is instructed to record the 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 5th day of August, 2008.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**


Its Chairman


ATTEST
Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

RENDITION DATE 8/8/08

IMPACT FEE CREDIT AGREEMENT
("AGREEMENT")

ROAD IMPACT FEES

THIS AGREEMENT is made this 8th day of August, 2008, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County") and **MARSHALL CREEK, LTD.**, a Florida limited partnership, whose address is 605 Palencia Club Drive, St. Augustine, Florida 32095 ("MCL").

Recitals

- A. MCL is the Developer of certain lands within the Marshall Creek Development of Regional Impact (the "Project") as described and approved in St. Johns County Resolution No. 1998-191, as amended by Resolutions 1998-220, 2002-103, 2004-24, 2004-154, and 2005-232 (the "DRI/DO"). The term MCL as used herein shall include its representatives, successors, transferees, and assigns.
- B. Under Specific Condition 29(a)(i) and (ii) of the DRI/DO ("SC-29"), the developer of the Project is required to contribute the total pipelined amount of \$3,622,000.00 in funded transportation improvements (the "Funded Improvements") to offset the impacts of the Project to the regional transportation system.
- C. The Funded Improvements under SC-29 include (i) the improvement of International Golf Parkway as more particularly described in SC-29 and Exhibit 9 of the DRI/DO and are as depicted on Exhibit "B" attached hereto (the "IGP Improvement") with an estimated allocated cost of \$1,975,000.00, including right-of-way acquisition expenses associated with the IGP Improvement, and (ii) an estimated cash contribution of \$1,647,000.00 (or whatever funds remain after the IGP Improvement has been completed) (the "Cash Contribution") to the proposed long range improvements to the Interstate 95/County Road 210 Interchange (the "Interchange") as more particularly described in SC-29, for a total pipelined amount due to the County of \$3,622,000.00.
- D. SC-36 of the DRI/DO provides for Impact Fee Credits to be awarded in accordance with St. Johns County Ordinance No. 87-57, as amended ("Road Impact Fee Ordinance") for any contribution of land, money (including, but not limited to contributions or construction pursuant to the "pipelining" requirements of the DRI/DO).
- E. Pursuant to the Road 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 ("Feepayer"), to pay a road impact fee ("Road Impact Fee"), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide roads within St. Johns County. MCL qualifies as a Feepayer under St. Johns County

Ordinance 2005-27.

- F. Section 13 of the Road Impact Fee Ordinance allows impact fee credits to be granted for certain dedications and/or improvements ("Road Impact Fee Credits").
- G. Pursuant to the requirements of SC-29, MCL or its successors or assigns is contributing, dedicating, and/or making the Funded Improvements, which is recognized as meeting the requirements for Road Impact Fee Credits.
- H. Pursuant to the terms of the Road Impact Fee Ordinance, the County and MCL desire to set forth their agreement and a procedure for the applicant and treatment of such Road Impact Fee Credits due for the Funded Improvements.

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

1. The above stated Recitals are incorporated herein as Findings of Facts.
2. The County will establish a Road Impact Fee Credit account in favor of MCL for the Funded Improvements in the amount of \$3,622,000.00 (the "IFC Account").
3. Road Impact Fee Credits will be credited to the IFC Account as the Funded Improvements are (1) either bonded or constructed (and the construction and right-of-way acquisition expenses paid with proof of payment presented to the County Administrator) or (2) the Cash Contribution is paid to the County.
4. MCL has provided to the County Bond No. 104821539, a copy of which is attached hereto as Exhibit "C," in the amount of One Million Thirty-three Thousand Eight Hundred Fifty-five and 32/100 dollars (\$1,033,855.32), which is the estimated remaining construction cost of the IGP improvement as of this date (the "Bonded Improvements to Date").
5. Upon approval by the County of this Agreement, the IFC Account will be credited in the amount of One Million Thirty-three Thousand Eight Hundred Fifty-five and 32/100 dollars (\$1,033,855.32) for the Bonded Improvements to Date, which is calculated as the sum shown on Exhibits "C" (Construction Bond) and "D" (Opinion of Probable Cost) attached hereto.
6. Upon presentation to the County Administrator of a bond or proof of payment for right-of-way acquisition expenses or additional construction costs (including engineering, design, permitting and other associated construction costs) for the IGP Improvement or when the Cash Contribution is paid to the County, the County Administrator will automatically credit such amounts to the IFC Account until the maximum Road Impact Fee Credit amount of \$3,622,000.00 has been credited to the IFC Account.

7. The Cash Contribution will be paid to the County upon approval of the as-builts for the Funded Improvements and dedication to the County of the right-of-way necessary to construct the Funded Improvements. The IFC Account will be automatically credited for the amount of the Remaining Funds upon proof of payment to the County Administrator.
8. From and after the date of this Agreement, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Project as may be amended from time to time shall pay the amount due under the Road Impact Fee Ordinance directly to MCL. Then, for so long as the total Road Impact Fee Credits for which MCL has issued vouchers under this Agreement is less than the total Road Impact Fee Credits authorized by this Agreement, MCL shall issue to such Feepayer a voucher evidencing full payment of Road Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by MCL shall contain a statement setting forth the amount of Road Impact Fee paid and shall be in substantially the same form as set forth on the attached Exhibit "A". 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 applicable Impact Fee Credit Account.
9. In the event that MCL has sold or determines to sell all or part of the Project, MCL may sell, transfer, assign or convey any or all of its interest in the Road Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within the Project for such consideration as MCL, in its sole discretion, determines. In such event, MCL shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting the Road Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of the Impact Fee Credits, if any, shall remain vested in MCL. The Parties agree that no Impact Fee Credit may be used or applied to development outside the Project 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 to the particular development to which credits are transferred. The Parties agree that the Impact Fee Credit will apply to land within the Project and to any land that is added to the Project pursuant to a Notice of Proposed Change approved by the County.
10. On or before January 31 of each year, so long as there remains any Road Impact Fee Credit in the IFC Account, MCL or its assignees or transferees shall prepare and deliver to the County Planning Department an annual report setting forth the amount of Road Impact fee payments made by the Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Road Impact Fee Credits.
11. At such time as the Road Impact Fee Credits provided for hereunder have been exhausted, MCL or the Feepayer seeking building permits or certificates of

occupancy within the Project shall pay the County the Road Impact Fees as are then due and payable under the Road 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 Road Impact Fees directly to MCL.

12. 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 Road 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 Road 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's Attorney's Office that the Road Impact Fee Credits identified or granted by this Agreement are limited to the amount of the impact fees which are due or become due within the Project.
- c. In construing this Agreement, the singular shall be held to include the plural, and the plural shall include the singular, the use of any gender shall include every other and all gender and captions and paragraph headings shall be disregarded.
- d. All exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.
- e. This 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 material and relied on by each party to this Agreement.

- h. This Agreement is recognized as being subject to the laws of the State 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. MCL or an applicant for a building permit or certificate of occupancy within the Project must be a Feepayer as referenced in Ordinance 2005-27 to receive impact fee credits under this Ordinance.
- j. Nothing in this Agreement shall act to allow an entity to receive impact fee credits for contributions provided by a government entity including, but not limited to, a Community Development District.
- k. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the County:

County Administrator
St. Johns County
Post Office Drawer 349
St. Augustine, Florida 32085-0349

If to MCL:

Marshall Creek, Ltd.
Attn: Michael T. Harrison
5 Ravinia Drive
Atlanta, Georgia 30346-2102

With a copy to:

Marshall Creek, Ltd.
Attn: Project Manager
605 Palencia Club Drive
St. Augustine, Florida 32085

With a copy to:

Kathryn F. Whittington, Esq.
Pappas Metcalf Jenks & Miller, P.A.
245 Riverside Avenue, Suite 400
Jacksonville, Florida 32202

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date set forth above.

Attest: Cheryl Strickland

ST. JOHNS COUNTY, FLORIDA

Print: _____
Deputy Clerk

By: _____
Name: _____
County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, County Administrator for St. Johns County, Florida, a political subdivision of the State of Florida, **on behalf of St. Johns County, Florida.** He [] is personally known to me or [] has produced _____ as identification.

Notary Public
Print Name: _____
My Commission Expires: _____

ATTEST:


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:  WP
Print: Michael T. Harrison
Its: Senior Vice President
Address: Five Ravinia Drive
Atlanta, Georgia 30346-2102

STATE OF Georgia
COUNTY OF Cobb

The foregoing instrument was acknowledged before me this 8 day of August, 2008, 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.


Notary Public
Print Name: Margaret A. Ramirez
My Commission Expires: _____
Personally Known
or Produced I.D. _____
[check one of the above]
Type of Identification Produced _____

EXHIBIT "A"

**ST. JOHNS COUNTY IMPACT FEE VOUCHER
(MARSHALL CREEK, LTD.)**

Voucher No. _____

1. Name and Address of Grantor: **MARSHALL CREEK, LTD.**
Attn: Project Manager
605 Palencia Club Drive
St. Augustine, Florida 32085

2. Name and Address of Grantee: _____

3. Legal Description of Subject Property: _____

4. Subdivision or Master Development Plan Name: _____

The undersigned confirms that it has received from _____
on _____, 200__, funds sufficient for the following impact fees required under
the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Grantor
gives notice to St. Johns County, Florida, that the following sums should be deducted from the
applicable Impact Fee Credit Account of the MARSHALL CREEK, LTD.

X Roads

Ordinance #87-57 in the amount of \$ _____

ATTEST:

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