

RESOLUTION NO. 2007- 123

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING AN EASEMENT FOR UTILITIES FOR WATER AND SEWER SERVICE TO MARSHALL CREEK SUBDIVISION UNIT EV-7/EV-8 AND ACCEPTING A BILL OF SALE CONVEYING ALL PERSONAL PROPERTY ASSOCIATED WITH THE WATER AND SEWER SYSTEM.

RECITALS

WHEREAS, Marshall Creek, Ltd., a Florida limited partnership, has executed and presented to the County an Easement for Utilities, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, for water and sewer service to Marshall Creek Subdivision Unit EV-7/EV-8; and

WHEREAS, Marshall Creek Community Development District has executed and presented a Bill of Sale, attached hereto as Exhibit "B", incorporated by reference and made a part hereof, conveying all personal property associated with the water and sewer system; and

WHEREAS, St. Johns County Utility Department has reviewed and approved the documents mentioned above, as stated in a memo attached hereto as Exhibit "C", incorporated by reference and made a part hereof; and

WHEREAS, it is in the best interest of the County to accept the Easement for the health, safety and welfare of the citizens in the area.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The above described Easement for Utilities and Bill of Sale attached and incorporated hereto, is hereby accepted by the Board of County Commissioners.

Section 3. The Clerk of the Circuit Court is instructed to record the original Easement for Utilities and file the Bill of Sale in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 1st day of May, 2007.

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

By: Ben Rich
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Robert L. Looft
Deputy Clerk

RENDITION DATE 5/3/07

Exhibit "A" to Resolution

PREPARED BY:

STACI M. REWIS, ESQ.
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, SUITE 400
JACKSONVILLE, FL 32202

EASEMENT FOR UTILITIES
(MARSHALL CREEK)
Unit EV-7/EV-8

THIS EASEMENT executed and given this 5th day of April, 2007 by **MARSHALL CREEK, LTD.**, a Florida limited partnership, whose address is 605 Palencia Club Drive, St. Augustine, Florida 32095, hereinafter called "Grantor," to **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is c/o Clerk of Courts, P. O. Drawer 349, St. Augustine, Florida 32085, hereinafter called "Grantee."

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby agree as follows:

1. Grantor does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee a non-exclusive permanent easement and right-of-way to install, construct, operate, maintain, repair, replace and remove pipes and mains constituting the underground water distribution system and sewer collection system, (including lift stations if applicable) and all other equipment and appurtenances as may be necessary or convenient for the operation of the underground water and sewer utility services (hereinafter referred to as "Utility Lines and Associated Equipment") over and upon the real property described on **Exhibit A** attached hereto containing an area of approximately 2.54 acres (the "Easement Area"); together with rights of ingress and egress on and over the Easement Area as necessary for the use and enjoyment of the easement herein granted. This easement is for water and sewer utility services only and does not convey any right to install other utilities such as cable television service lines.

The easement herein granted is subject to covenants, restrictions, easements, liens and encumbrances of record, if any.

(a) Grantor reserves the right and privilege to use and occupy and to grant to others the right to use and occupy (i) the surface and air space over the Easement Area for any purpose which is consistent with the rights herein granted to Grantee; and (ii) subsurface of the Easement Area for other utility services or other purposes which do not interfere with the rights herein granted to Grantee, including, without limitation, the right to install, construct, operate, maintain, repair, replace and remove telecommunications, telephone, telegraph, electric, gas and drainage facilities and foundations, footing and/or anchors for surface improvements.

Unit EV-7/EV-8
(00149485.DOC.)

(b) All Utility Lines and Associated Equipment will be installed, operated and maintained at all times beneath the surface of the Easement Area provided that the same may be temporarily exposed or removed to the surface when necessary or desirable for the purpose of repairing and/or replacing the same. Provided, however, that Associated Equipment that is customarily installed above ground may be installed above ground subject to the right of Grantor, consistent with good engineering practices to approve the location of such above ground installation in its reasonable discretion.

(c) The easement granted by this instrument may be relocated to a location acceptable to the Grantee at any time upon Grantor's request provided that Grantor bears the cost of relocating the underground water and sewer utility lines and facilities located within the Easement Area. At Grantor's request, and upon relocation of such lines at Grantor's expense, Grantee and Grantor shall execute an instrument in recordable form relocating the easement hereby granted to the new Easement Area designated by and in the title of the Grantor.

(d) Grantee shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of residential or commercial improvements constructed upon the adjacent property owned by Grantor.

2. Grantee, by acceptance of this Easement, hereby agrees to maintain sewer force mains and gravity sewer lines located within the Easement Area. The Grantee's maintenance of gravity sewer lines shall extend "manhole to manhole", but shall not include a responsibility for maintenance of sewer service laterals. The Grantor or Grantor's successors and assigns shall be responsible for the maintenance of such sewer service laterals. Grantor hereby specifically indemnifies and holds Grantee harmless from and against costs and expenses associated with installation, maintenance, repair or replacement of sewer service laterals. The Grantee shall maintain all water mains and other elements of the water distribution system up to and including the water meter or meters. Grantor or Grantor's successors and assigns shall be responsible for maintaining any water lines between the water meter and the improvements served by the utility system.

3. After any installation, construction, repair, replacement or removal of any utility lines or equipment as to which easement rights are granted, Grantee shall refill any holes or trenches in a proper and workmanlike manner to the condition existing prior to such installation, construction, repair, replacement or removal, but Grantee shall not be responsible for restoration of sod, landscaping, planting, pavement or other similar surface improvements. Grantor or Grantor's successors and assigns shall be solely responsible for replacement of any such sod, landscaping, planting, pavement or other surface improvements which are required to be removed in connection with installation, construction, repair, replacement or removal of utility lines or equipment. Nothing in this section shall, however, relieve Grantee of liability for damage caused to improvements by Grantee's negligence.

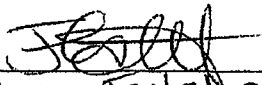
4. This Grant of Easement shall inure to the benefit of and be binding upon Grantee and its successors and assigns.

5. For the purposes of the terms and conditions of this Grant of Easement, "Grantor" means the owner from time to time of the Easement Area or any part thereof.

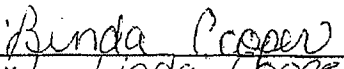
IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officer and its corporate seals to be hereunto affixed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

MARSHALL CREEK, LTD., a Florida limited partnership


Print Name: Fulshrut Patel

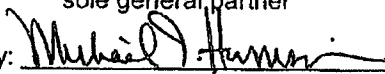
By: HINES/MARSHALL CREEK, LTD., a Florida limited partnership, as its sole general partner


Print Name: Linda Cooper

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

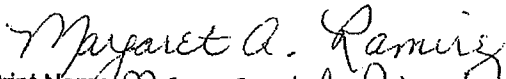
By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

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


Print: Michael T. Harrison
Title: Senior Vice President
Address: 5 Ravinia Drive
Atlanta, GA 30346

STATE OF Georgia
COUNTY OF Cobb } SS

The foregoing instrument was acknowledged before me this 5 day of April, 2007, by Michael T. Harrison, as Senior Vice President of HINES HOLDINGS, INC., a Texas corporation, as the sole general partner of HINES INTERESTS LIMITED PARTNERSHIP, a Delaware limited partnership, the sole member of HINES MANAGEMENT, L.L.C., a Delaware limited liability company, as the sole general partner of HINES/MARSHALL CREEK, LTD., a Florida limited partnership, as the sole general partner of MARSHALL CREEK, LTD., a Florida limited partnership, on behalf of the partnership.


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

Notary Public, Cobb County, Georgia
My Commission Expires February 13, 2009

EXHIBIT A to Easement

[Legal Description]

UNIT EV-7/EV-8

VALE DRIVE AND SENORA COURT, ALL AS SHOWN ON THE PLAT OF MARSHALL CREEK DRI UNIT EV-7/EV-8 RECORDED IN MAP BOOK 61, PAGES 59 THROUGH 62 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

CONSENT AND JOINDER TO EASEMENT

BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (the "Mortgagee") is the holder of that certain Amended and Restated Mortgage, Security Agreement and Fixture Filing (the "Mortgage") executed by **MARSHALL CREEK, LTD.**, in favor of Mortgagee dated December 17, 2003, and recorded in Official Records Book 2111, Page 28, as amended by that certain Mortgage Spreading Agreement dated September 29, 2004, and recorded in Official Records Book 2308, page 1562, as further amended by that certain Mortgage Spreading Agreement dated June 13, 2005, and recorded in Official Records Book 2472, page 735, as further amended by that certain Mortgage Spreading Agreement dated February 13, 2006, and recorded in Official Records Book 2646, page 1671, as further amended by that certain Mortgage Spreading Agreement dated January 12, 2007, and recorded in Official Records Book 2860, Page 1576, all of the current public records of St. Johns County, Florida, encumbering the real property described on Exhibit A of the Easement attached hereto to which this consent and joinder is attached (the "Easement") and has caused this instrument to be executed solely in evidence of its consent and joinder to the attached Easement.

Signed, sealed and delivered in the presence of:

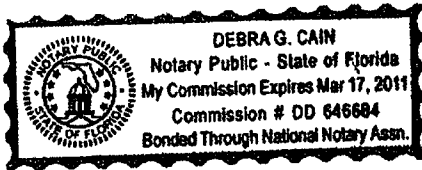
BRANCH BANKING AND TRUST COMPANY,
a North Carolina banking corporation

Debra G. Cain
Name Printed: Debra G. Cain
Joseph Carag
Name Printed: JOSEPH CARAG

By: John R. Lamb
Name: John R. Lamb
Its: Senior Vice President

STATE OF FLORIDA }
 }SS
COUNTY OF DUVAL }

The foregoing instrument was acknowledged before me this 30th day of March, 2007 by John R. Lamb, a Senior Vice President of **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation, on behalf of the banking corporation.



Debra G. Cain
(Print Name Debra G. Cain)
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 _____

BILL OF SALE

**UTILITY IMPROVEMENTS
FOR MARSHALL CREEK**

[Unit EV-7/EV-8]

The Marshall Creek Community Development District, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida (the "District"); for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, transfers, and delivers to **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, the following personal property:

The personal property, fixtures and equipment comprising the sewage collection and potable water distribution system (the "Improvements") for Improvements within the project. All of the Improvements are included on the following approved construction plan drawings prepared by England-Thims & Miller, Inc.:

Construction plan drawing titled "Marshall Creek (Palencia) EV-7 & EV-8B" was issued for construction on July 10, 2006, marked approved by St. Johns County on June 13, 2006. All of the Improvements are lying within the right-of-way of Vale Drive and Señora Court, all as shown on the plat of Marshall Creek DRI Unit EV-7/EV-8 recorded in Map Book 61, Pages 59 through 62 of the public records of St. Johns County, Florida.

Said personal property, fixtures and equipment being more particularly described on the attached **Schedule "A"**.

The District does, for itself and its successors and assigns, covenant to and with St. Johns County and its successors and assigns, that it is the lawful owner of said personal property; that the personal property is free of all encumbrances; that it has good right to sell the same; and that it will warrant and defend the sale of the personal property against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the District has caused this instrument to be duly executed and delivered by its duly authorized officer on this 4th day of April, 2007.

**MARSHALL CREEK COMMUNITY
DEVELOPMENT DISTRICT**


Its: Chairman

Print: Walter R. O'Shea


Its: Assistant Secretary

Print: Kim Shine

SCHEDULE of VALUES

V.J. Usina Contracting

Palencia EV7 & 8

Furnish & Install	Quantity	Unit	Unit Cost	Total Cost
WATER DISTRIBUTION				
8" DR 25 PVC	1900	LF	\$17.46	\$33,174.00
6" DR 25 PVC	160	LF	\$13.17	\$2,107.20
4" DR 25 PVC	100	LF	\$9.60	\$960.00
2" DR 21 PVC	200	LF	\$8.51	\$1,702.00
8" GV	5	EA	\$268.00	\$1,340.00
6" GV	6	EA	\$202.00	\$1,212.00
2" SJCUD flushing hyd assm w/box	1	EA	\$588.00	\$588.00
Services	33	EA	\$250.00	\$8,250.00
TOTAL WATER				\$49,333.20

SANITARY SEWER				
8" SDR 25	2352	LF	\$22.17	\$52,143.84
6" SDR 35	1428	LF	\$13.96	\$19,934.88
Type A MH	13	EA	\$3,100.00	\$40,300.00
Type B MH	2	EA	\$6,720.00	\$13,440.00
Services	33	EA	\$250.00	\$8,250.00
TOTAL SANITARY SEWER				\$134,068.72

LIFTSTATION/FORCE MAIN				
		ls		\$0.00
		ls		\$0.00
		ls		\$0.00
		ls		\$0.00
		lf		\$0.00
TOTAL LIFTSTATION/FM				\$0.00

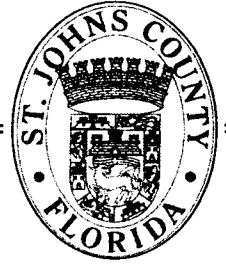
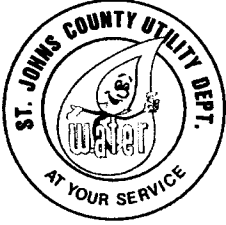
TOTAL			\$133,401.92
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SCHEDULE "A"

Schedule of Values

ST. JOHNS COUNTY, FLORIDA

Board of County Commissioners



P.O. Box 3006
St. Augustine, Florida 32085-3006
Phone: (904) 471-2161 • Toll Free: 1-877-837-2311
Administrative Fax: (904) 461-7619
Billing Dept. Fax: (904) 461-3995

INTEROFFICE MEMORANDUM

To: Nanette Bradbury, Real Estate Coordinator
From: Vickie Battell, Construction Tech III – Utility Engineering
Subject: Palencia EV 7 & 8 (Marshall Creek)
Date: April 17, 2007

Please present the easement documents to the Board of County Commissioners (BCC) for final approval and acceptance of Palencia EV 7 & 8 (Marshall Creek).

After acceptance by BCC, please provide the utility department with a copy of the executed resolution and a recorded copy of the Easement for the utilities for our files.

Your support and cooperation as always are greatly appreciated.