

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. 2009-~~370~~
AN AMENDED AND RESTATED DEVELOPMENT ORDER
FOR
MARSHALL CREEK
A DEVELOPMENT OF REGIONAL IMPACT

LET IT BE KNOWN that, pursuant to Section 380.06 of the Florida Statutes, the St. Johns County Board of County Commissioners heard at a public hearing convened on October 13, 1998, an Application for Development Approval (“ADA”) for Marshall Creek, to be developed in the manner described in the ADA and Response to Request for Additional Information filed by Hines Interest Limited Partnership for said development; and

WHEREAS, the Board of County Commissioners of St. Johns County has previously concluded at duly noticed public hearings five (5) previous Notices of Proposed Change (“NOPC’s”) to the original Development Order, and, in each case considered the report and recommendations of the Northeast Florida Regional Council, the St. Johns County staff, the documents and comments upon the record made before the St. Johns County Board of County Commissioners; and

WHEREAS, the original Development Order was approved by the St. Johns County Board of County Commissioners by Resolution 98-191, and each of the NOPC’S was approved, respectively, by Resolutions 98-220, 2002-103, 2004-24, 2004-154 and 2005-232; and

WHEREAS, Hines Interests Limited Partnership, hereinafter “Applicant” has filed a Notice of Proposed Change dated September 26, 2007 for further amendment to the Development Order; and

WHEREAS, the Board of County Commissioners of St. Johns County, by Resolution, approved Applicant’s request to reflect all approved amendments to the

Development Order since its adoption and to restate the terms and conditions of the Development Order, in full; and

WHEREAS, the Applicant has acquired two of the outparcels surrounded by the DRI known as the "Platt Parcel" containing approximately .92 acres and the "Thomas Parcel" containing approximately 2.40 acres (collectively, the "Added Outparcels") and wishes to incorporate the Added Outparcels into the East Village of the Marshall Creek Development of Regional Impact (the "DRI"); and

WHEREAS, the DRI is a proposed mixed use development located on approximately 2,678 acres located near St. Augustine in St. Johns County, Florida, consisting of approximately 1,353 acres, including the Added Outparcels, as described in the original Development Order and prior NOPCs, together with approximately 1,325 acres of land that was added to the DRI under Resolution 2005-232 (the "Added Lands"), as collectively described in the updated legal description of the DRI set forth on Exhibit "1" attached hereto; and

WHEREAS, Applicant is the Applicant of record for the Marshall Creek DRI;
and

WHEREAS, the Applicant has previously provided complete copies of the ADA and all information for a sufficiency response to the Florida Department of Community Affairs, Northeast Florida Regional Council, and St. Johns County; and

WHEREAS, the Applicant has provided copies of all previous NOPC's and the current NOPC to the Florida Department of Community Affairs, Northeast Florida Regional Council and St. Johns County; and

WHEREAS, the authorized agent for the Applicant is Pappas Metcalf Jenks & Miller, P.A., 245 Riverside Avenue, Suite 400, Jacksonville, Florida 32202; and

WHEREAS, the ADA was reviewed by the Northeast Florida Regional Council as required by Section 380.06, F.S. (2004), and the Council recommended that the Application be approved, with conditions; and

WHEREAS, the St. Johns County Board of County Commissioners duly noticed and on October 13, 1998, held a public hearing on the application as required by Section 380.06, F.S. (2004), and afforded the public and all affected parties an opportunity to be heard and to present evidence; and

WHEREAS, the St. Johns County Board of County Commissioners has duly noticed and on December 15, 2009, held a public hearing on the NOPC resulting in this Amended and Restated Development Order and afforded the public and all affected parties an opportunity to be heard and present evidence; and

WHEREAS, implementation of the Master Plan for Marshall Creek will create a variety of distinct residential neighborhoods or villages buffered from one another by preserved wetlands, uplands and the golf course with access linkages to a Village Center, conveniently located within walking or biking distance of many of residential neighborhoods; and

WHEREAS, the Village Center, with its recreational, civic and commercial uses, including the golf course clubhouse, sales center, and swim and tennis facility, as well as various housing options, will ultimately be a community focal point and will provide an identity for the project and a community gathering destination for its residents and visitors; and

WHEREAS, the Applicant is seeking to provide a high quality of life for families within the Marshall Creek DRI while protecting the beauty and benefit of the natural characteristics of the property for future generations; and

WHEREAS, The Applicant has assembled a team of engineers, environmental consultants, architects and planners with a history of environmental sensitivity and is committed to design and develop joint strategies with permitting agencies and local government to ensure the protection of water quality of the adjacent Tolomato River and Marshall Creek.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The proposed DRI is not in an area designated as an Area of Critical State Concern pursuant to the provisions of Section 380.05, F.S (2004).
2. The proposed DRI is consistent with the State Comprehensive Plan.
3. The proposed DRI is consistent with the Strategic Regional Policy Plan adopted by the Northeast Florida Regional Council.
4. The original DRI was consistent with the St. Johns County Comprehensive Plan 1990-2005 and the proposed changes are consistent with the St. Johns County Comprehensive Plan 2000-2015 and St. Johns County land development regulations.
5. The proposed DRI is consistent with the Assessment Report and Recommendations of the Northeast Florida Regional Council issued pursuant to Section 380.06, F.S (2004).

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, in public hearing duly constituted and assembled on December 15, 2009, that the Notice of Proposed Change to the Marshall Creek DRI is hereby approved, subject to the following terms and conditions, restated in full:

GENERAL CONDITIONS

1. **Application For Development Approval.** The DRI shall be developed in accordance with the information, plans and commitments contained in (1) the Marshall Creek DRI ADA dated January 14, 1998, (2) the ADA sufficiency information response dated April 17, 1998, (3) the Master Plan, Map H, dated August 30, 2007, attached as Exhibit "3," and (4) the amendments to the ADA and the ADA sufficiency information response submitted on September 10, 1998 submitted by the Applicant as part of the DRI review prior to adoption of this Development Order under Resolution 98-191 and the amendments to the DRI approved in Resolution Numbers 98-220, 2002-103, 2004-24, 2004-154, and 2005-232, all of which are incorporated by reference except to the extent of any conflict with the express terms of the conditions of the Marshall Creek DRI Development Order.

2. **Land Use Totals.** The DRI may be developed with the following improvements: 45 acres of retail and 31 acres of office use to be developed with 300,000 gross square feet of retail service use, 1,500 retail parking spaces and 300,000 gross square feet of office use; up to 2,774 residential units; 18-hole golf course with normal accessory uses; approximately 45.17 acres of parks; other recreational amenities including a fitness center, swim and tennis center, interpretive environmental center/intracoastal club (as described on page 10-5 of the ADA, as amended by September 10, 1998 amendment), boat ramp, and boat dock, and approximately 733 acres of Regional/Open Space, with not less than 648.8 acres of preserved wetlands. As shown on the Land Use Summary and Comprehensive Plan Compliance Table attached as Exhibit "4", no more than 2,774 residential units and 119,000 square feet of non-residential space may be located within the "Density B" part of the Project and no more than 900 residential units and 600,000 square feet of non-residential space may be located within the "Mixed Use Corridor" part of the Project but in no event shall the total exceed the maximum development authorized by

this Development Order. The foregoing expressions of the allowable density ranges per land use category are not cumulative and are intended to express maximum density limitations on the amount of development per land use category. The Applicant may increase certain land uses and simultaneously decrease other land uses through modification of the Marshall Creek (a/k/a Palencia) PUD Ordinance without filing a Notice of Proposed Change provided that such changes are consistent with the Land Use Exchange Table attached as Exhibit “5.”

(a) At the time of election of a land use trade-off under the Land Use Exchange Table, the Applicant shall submit to St. Johns County any required application for PUD modification and shall notify, in writing, St. Johns County, the Department of Community Affairs (DCA) and the Northeast Florida Regional Council (NEFRC) of the election and shall provide the County, DCA, and NEFRC with cumulative land use totals and remaining allowable quantities. Written notice of the trade-off election shall be given to the DCA and NEFRC at least 30 days before any local government hearing or meeting which may be required for approval of the proposed trade-off.

(b) So long as the trade-off is consistent with the criteria contained in Exhibit “5” and no change is made to the Master Plan, Map H, no additional DRI approvals shall be required for the trade-off. Trade-off elections shall be reported biennially as provided below.

3. **Phasing, Buildout and Expiration of DRI.** The DRI shall be developed in two phases. Phase I shall be June 15, 1998 through June 15, 2008 and Phase II shall be June 16, 2008 through February 28, 2015. Physical development of the DRI has begun. The buildout date for all development is February 28, 2015. The DRI termination and DRI Development Order expiration dates are established as February 28, 2024. Any further extensions of the DRI

buildout, termination or expiration dates shall be governed by the provisions of Section 380.06(19) (C), F.S.

4. **Effective Date.** The original Development Order took effect on October 23, 1998.

5. **Monitoring Official.** The Director of The Growth Management Department of St. Johns County, Florida, or her designee shall be the local official responsible for monitoring the development for compliance by the Applicant with this Development Order.

6. **Downzoning Protection.** The Marshall Creek DRI as approved in this Development Order shall not be subject to downzoning or reduction of approved land uses before February 28, 2024, unless the Applicant consents to such change or St. Johns County demonstrates that substantial changes in the conditions underlying the approval of this development order have occurred, or that the development order was based on substantially inaccurate information provided by the Applicant, or that the change is clearly established by St. Johns County to be essential to the public health, safety and welfare.

7. **Election Regarding Environmental Rules.** Pursuant to Section 380.06(5)(c), F.S. (2004), the Applicant had elected to be bound by the rules adopted pursuant to Chapters 373 and 403 in effect as of the date of the original Development Order, including, but not limited to, the provisions of Section 373.414(13), F.S. The Applicant further elects to be bound by the rules adopted pursuant to Chapters 373 and 403 in effect as of the date of this Amended and Restated Development Order for the Added Lands. Such rules shall be applicable to all application for permits pursuant to those chapters which are necessary for and consistent with the development authorized in this Amended and Restated Development Order, except that a later-adopted rule shall be applicable to an application if:

- i. the later adopted rule is determined by the rule adopting agency to be essential to the public health, safety, or welfare; or
- ii. the later adopted rule is adopted pursuant to Section 403.061(27), F.S.; or
- iii. the later adopted rule is being adopted pursuant to a subsequent enacted statutorily mandated program; or
- iv. the later adopted rule is mandated in order for the state to maintain delegation of a federal program; or
- v. the later adopted rule is required by state or federal law.

Further, to qualify the Added Lands for the benefits of this provision, the application must be filed within five (5) years from the issuance of this Amended and Restated Development Order and the permit shall not be effective for more than eight (8) years from the issuance of the Amended and Restated Development Order. Nothing in this paragraph shall be construed to alter or change any permitting agency's authority to approve permits or to determine applicable criteria for longer periods of time.

8. **Level of Service Standards.** The Applicant shall be required to meet the adopted level of service standards in the St. Johns County Comprehensive Plan and the requirements of the County's concurrency management system.

9. **Reporting.** The Applicant or its successors or assigns, shall submit a biennial report on every other anniversary date of the Development Order, beginning in 2006, until the completion of the DRI. The report shall be submitted to St. Johns County, the Northeast Florida Regional Council, Florida Department of Community Affairs, the Northeast District of the Florida Department of Environmental Protection, St. Johns River Water Management District, Florida Fish and Wildlife Conservation Commission, and any other affected permit agencies.

Form RPM-BSP-ANNUAL REPORT-1 of the Florida Department of Community Affairs, as amended from time to time, may be used for the format of this report. In accordance with Section 380.06(18), F.S. (2004), failure to file the report in a timely manner may result in the temporary suspension of this Development Order. The biennial report shall address the following:

(a) A description of any changes made in the plan of development, or in the representations contained in the Application for Development Approval, or in the phasing for the reporting years and for the coming year. Any trade-off elections permitted by the Land Use Exchange Table in Exhibit "5." Any actions (substantial or non-substantial deviation determinations) taken by the local government to address these changes, including a cumulative history of such changes since adoption of the development order.

(b) A summary comparison of development activity proposed and actually conducted for the preceding two years and projected for the coming two years.

(c) Identification of undeveloped tracts of land, other than individual single family lots that have been sold to a separate entity or developer;

(d) Identification and intended use of lands purchased, leased or optioned by the Applicant adjacent to the original DRI site since the development order was issued;

(e) A specific assessment of the Applicant's and the local government's compliance with each individual condition of approval contained in the DRI development order and the commitments which are contained in the Application for Development Approval and subsequent sufficiency responses and which have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;

(f) Any known incremental DRI applications for development approval or requests for a substantial deviation determination that were filed in the two reporting years and to be filed during the next year;

(g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued. Imposition of any moratorium imposed by a regulatory agency, including the type, duration, cause of and remedy for the moratorium;

(h) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose and activity of each;

(i) A copy of the recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the Applicant pursuant to Paragraph 380.06 (15)(f), F.S. 2004.

(j) A statement certifying that the Northeast Florida Regional Council (with appropriate filing fee), the Florida Department of Community Affairs, St. Johns County, Department of Environmental Protection, St. Johns River Water Management District, Florida Game and Fresh Water Fish Commission, and the other affected permit agencies have been sent copies of the biennial report in conformance with Subsections 380.06(15) and (18), F. S. (2004).

(k) The acreage of uplands and wetlands placed under recorded conservation easements.

(l) Any change to previously reported stormwater plans or design criteria shall be reported biennially in the Monitoring Report.

(m) The status of the preserved wetlands and buffer areas shall be monitored and the cumulative acreage of each shall be reported biennially. A map shall be provided that defines these areas on a biennial basis.

(n) Each biennial report shall be accompanied by a statement certifying that the NEFRC, Department of Community Affairs, St. Johns County, Florida Department of Transportation, Florida Department of Environmental Protection and the St. Johns River Water Management District have been sent copies of the Biennial Monitoring Report in conformance with Subsections 380.06(15) and (18), Florida Statutes. It is the responsibility of the Applicant to guarantee that all appropriate agencies receive a copy of the biennial report.

10. **Notice of Adoption.** Notice of the adoption of this Amended & Restated Development Order, or any subsequent amendment to it, shall be recorded by the Applicant in accordance with Sections 28.222 and 380.06(15)(f), F.S. (2004), with the Clerk of the Circuit Court of St. Johns County, Florida. Recordation of this notice shall not constitute or provide actual or constructive notice of a lien, cloud or encumbrance of the DRI Property. The conditions of this Development Order shall run with the land and bind the successors and assigns of the Applicant on the DRI Property. Any contract or agreement for sale of those interests by

the Applicant for all or any part of the property subject to this Development Order shall contain a legend substantially in the following form printed or stamped thereon:

THE PROPERTY DESCRIBED IN THIS AGREEMENT IS PART OF THE MARSHALL CREEK DEVELOPMENT OF REGIONAL IMPACT AND IS SUBJECT TO A DEVELOPMENT ORDER, NOTICE OF WHICH IS RECORDED IN THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, WHICH IMPOSES CONDITIONS, RESTRICTIONS AND LIMITATIONS UPON THE USE AND DEVELOPMENT OF THE SUBJECT PROPERTY WHICH ARE BINDING UPON EACH SUCCESSOR AND ASSIGN OF HINES INTERESTS LIMITED PARTNERSHIP. THE DEVELOPMENT ORDER DOES NOT CONSTITUTE A LIEN, CLOUD OR ENCUMBRANCE OF REAL PROPERTY OR CONSTITUTE ACTUAL OR CONSTRUCTIVE NOTICE OF SAME. A COPY OF THE DEVELOPMENT ORDER MAY BE REVIEWED AT THE OFFICE OF THE PLANNING DEPARTMENT, ST. JOHNS COUNTY, FLORIDA.

11. **Application For Proposed Changes.** The Applicant shall submit simultaneously to St. Johns County, the Northeast Florida Regional Council and Florida Department of Community Affairs any applications for proposed changes to the DRI and shall comply with the requirements of Section 380.06(19), F.S. (2004), concerning substantial deviations.

12. **Subsequent Requests for Development Permits.** Subsequent requests for development permits shall not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the St. Johns County Board of County Commissioners, after due notice and hearing, that one or more of the following is present;

- (a) substantial deviation from the terms or conditions of this Development Order, or other changes to the approved Development Plan which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Northeast Florida Regional Council; or
- (b) an expiration of the period of effectiveness of this Development Order as provided in this Development Order.

Upon a finding that (a) is present, the St. Johns County Board of County Commissioners shall order compliance with Section 380.06(19) (g) and (h), Florida Statutes, and development within Marshall Creek may continue, as approved, during the DRI review in those portions of the development that are not affected by the proposed change. Upon a finding that (b) is present, the St. Johns County Board of County Commissioners shall order a termination of all development activity until such time as a new DRI application for development approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes (2004).

13. **Limitation of Approval.** The approval granted by this Development order is limited. Such approval shall not be construed to obviate the duty of the Applicant to comply with all other applicable local or state permitting procedures.

SPECIAL CONDITIONS

Vegetation and Wildlife.

1. Prior to commencement of construction within any area identified as Gopher Tortoise Habitat on Map G, attached as Exhibit "6," the Applicant shall be responsible for the adequate mitigation of impacts to gopher tortoise habitat. There are 12.6 acres of occupied Gopher Tortoise Habitat present on the Existing Lands and 88.1 acres on the Added Lands, for a total of 100.7 acres of habitat. In order to adequately mitigate impacts to gopher tortoise habitat, the Applicant has purchased 3.15 acres of gopher tortoise habitat within the regional wildlife mitigation park through a contribution of \$13,649.00 for occupied habitat on Existing Lands. The applicant will purchase 9.67 acres of Gopher Tortoise Habitat through a contribution of \$56,714.74 for occupied Gopher Tortoise Habitat on the Added Lands. This condition relative to Gopher Tortoise Habitat shall be deemed satisfied. Additionally, Applicant shall provide four

(4) wildlife crossings, as depicted on Map H. The westernmost crossing shall be a culvert crossing of either a prefabricated and arched concrete structure, a corrugated pipe or a structure of similar design, with a vertical clearance of a minimum of four (4) feet and a horizontal opening width which is no less than one tenth the width of the road and right-of-way which is being traversed or ten (10) feet which ever is larger. The remaining wildlife crossings shall be at grade crossings with reduced speed limits and signs consistent with other such crossings approved in the County.

2. A minimum of 96 acres of uplands shall be preserved within the upland buffers around the preserved wetlands and other areas within the Existing Lands and a minimum of 73 acres of uplands shall be preserved within the upland buffers around preserved wetlands and other areas within the Added Lands. If the minimum buffers provided exceed the minimum acreage under Special Condition 5, than the upland preservation acreage shall be increased accordingly.

3. The areas within the East Parcel as indicated on Map H attached as Exhibit "3" (the "East Parcel") shall be limited in use to single family development at a density of no more than two (2) units per acre and active and passive recreational uses, and the interpretive environmental center/intracoastal club (as described on page 10-5 of the ADA, as amended September 10, 1998). The Applicant shall preserve a minimum of twenty-five percent (25%) of existing tree canopy in the areas within the East Parcel that are also within FLUCCS Code No. 425 as shown on Map D attached as Exhibit "7." The canopy will be preserved through covenants and restrictions and tree protection requirements that will be incorporated in final engineering plans submitted to St. Johns County. The Applicant shall comply with this requirement at the time of Construction Plan approval for areas within the East Parcel. St. Johns

County shall cooperate with the Applicant in preserving existing tree canopy by considering appropriate variances from paving and drainage standards to minimize loss of significant trees.

Wetlands/Upland Buffers.

4. Of the total of approximately 753.6 acres of wetlands located on the site, no less than 648.8 acres of wetlands shall be preserved on-site and no more than 105 acres of wetlands (no more than 35 acres on the Existing Lands and no more than 70 acres on the Added Lands) may be impacted as in the areas generally depicted on the Master Plan, as illustrated in Table 13-1 of page 43 of the sufficiency response to the original ADA and the NOPC Application dated October 1, 2004. The Applicant's environmental consultant has classified all wetlands on the site into several wetland quality classifications. The project's land planners made every effort to minimize impacts to the highest quality wetlands and to confine wetland impacts to the extent practicable to the lower quality wetlands. The exact boundaries of the areas to be preserved shall be determined in connection with wetland delineation and environmental resource permitting by the St. Johns River Water Management District. The limits of the preserved wetlands shall be delineated on the engineering plans submitted for approval by St. Johns County. All engineering plans submitted to St. Johns County shall be consistent with the requirements of applicable permits issued by the St. Johns River Water Management District. Prior to commencement of clearing, earth movement, construction or other development (including platting) within 500 feet of any wetlands within the jurisdiction of FDEP or SJRWMD, those wetlands shall be surveyed and the wetland boundaries shall be approved by the SJRWMD. All wetland and upland preservation areas required under this Development Order shall be protected by conservation easements meeting the requirements of §704.06 of the Florida Statutes. Nothing in this Development Order shall limit the owners' rights to use conservation easements as mitigation for

wetland impacts within or outside the development. The location and extent of the wetlands to be preserved shall be shown on engineering plans and shall be consistent with the areas of wetlands shown on the Existing Land Use/Natural Resources Map D attached as Exhibit "7."

5. The following buffers will be provided:

AS TO EXISTING LANDS:

Isolated Wetlands:

A minimum 15-foot upland buffer measured landward from the SJRWMD jurisdictional line will be maintained around all preserved isolated wetlands with the exception of road crossings and other impacted areas approved by the St. Johns River Water Management District.

Contiguous Wetlands:

A minimum 25-foot upland buffer measured landward from the SJRWMD jurisdictional line will be maintained around all preserved contiguous wetlands with the exception of road crossings and other impacted areas approved by the St. Johns River Water Management District.

Tidal Marsh/Tolomato River:

An average vegetated buffer of 200 feet shall be maintained between the landward edge of the upland buffer and open water. In addition, a minimum 50-foot vegetated buffer shall be maintained between the landward edge of the upland buffer and open water. An additional 25-foot building setback shall be provided from the landward edge of the upland buffer, except for the one golf hole fronting the marsh, the interpretive environmental center/intracoastal club and any crossings or other similar areas where

all stormwater will be routed to the stormwater management system. In addition, a minimum 50-foot upland buffer measured landward from the St. Johns River Water Management District wetland jurisdictional line shall be maintained and a minimum buffer of native vegetation 75 feet wide along that portion of the Tolomato River north of Marshall Creek measured landward from the landward edge of the marsh where this would result in a wider overall buffer than the 50-foot upland buffer. The minimum 50-foot upland buffer and minimum 75-foot vegetated buffer from the marsh line provided for in this paragraph shall not apply adjacent to golf hole 6, as shown on Map H, or to an intracoastal club area limited to 250 feet of marsh frontage measured as the distance between east/west lines through the north and south limits of the intracoastal club area at the marsh edge. The most restrictive of the foregoing buffers applicable to a given situation shall control. The additional 25-foot building setback described in the third sentence of this paragraph shall be established at the landward edge of the controlling upland buffer or 50 feet landward of the St. Johns River Water Management District line, whichever is more restrictive.

Tidal Marsh/Marshall Creek:

An average vegetated buffer of 100 feet shall be maintained between the landward edge of the upland buffer and open water. In addition, a minimum 50-foot vegetated buffer between the landward edge of the upland buffer and open water shall be maintained. There shall be an additional 25-foot building setback from the landward edge of the upland buffer, except for the golf holes, road crossings and other similar areas where all stormwater will be routed to the stormwater management system. A minimum upland buffer 50 feet wide measured landward from the St. Johns River Water Management

District wetland jurisdictional line shall be maintained. The 50-foot wide upland buffer shall not apply to the area adjacent to golf hole 16 or the green of golf hole 7, as shown on Map H. The additional 25-foot building setback referenced in the third sentence of this paragraph shall be established at the landward edge of the upland buffer or 50 feet landward of the St. Johns River Water Management District jurisdictional line, whichever is more restrictive. The most restrictive of the foregoing buffers applicable to a given situation shall control.

Riverine Areas/Marshall Creek/Stokes Creek:

A minimum vegetated buffer of 50 feet between the landward edge of the upland buffer and open water shall be maintained. There shall be an additional 15-foot building setback from the landward edge of the upland buffer, except for golf holes, road crossings and other similar areas where all stormwater will be routed to the stormwater management system.

Site Specific Buffering Plan:

Notwithstanding anything to the contrary set forth above, the Applicant may submit a site specific buffering plan within the boundaries of a proposed residential subdivision or non-residential development parcel to the County, the St. Johns River Water Management District and the Northeast District Office of the Florida Department of Environmental Protection in connection with construction plan approval and platting of a residential subdivision or construction plan approval for a non-residential parcel (“Site Specific Buffering Plan”) The Site Specific Buffering Plan may propose buffering requirements which differ from those set forth above, and which may include other stormwater run-off treatment measures. The Site Specific Plan may be implemented only

if the County, the St. Johns River Water Management District and the Northeast District Office of the Florida Department of Environmental Protection determine that the proposed Site Specific Buffering Plan provides protection to wetland resources, Class II waters and Outstanding Florida Waters that is equal to or better than the protection afforded by the minimum buffering requirements set forth above. The Northeast District of Florida Department of Environmental Protection and the St. Johns River Water Management District shall have thirty-five (35) days within which to review, comment on and both approve the Site Specific Buffering Plans prior to approval by the County as part of its normal construction plan review process. The Applicant shall not be permitted to seek approval of Site Specific Buffering Plans to reduce minimum buffers along the Tolomato River and the tidal marshes of Marshall Creek, except in the areas adjacent to golf hole 6, golf hole 16, and the green of golf hole 7, as shown on Map H. None of the Site Specific Buffering Areas along the Tolomato River shall occur within 1,000 feet south of the point of intersection of the northerly boundary of the original DRI project with the marsh edge.

Guidelines For Trimming Within Upland Buffers:

All native vegetation shall be preserved within all upland buffers, but such vegetation may be trimmed by hand with non-motorized equipment, subject to the buffer management guidelines set forth below. The guidelines shall be implemented and enforced by an architectural review committee to be established in connection with recorded covenants and restrictions. Any hand-trimming allowed within upland buffers pursuant to the foregoing provisions, shall be limited to 50 percent (50%) of lot width with an upper height limit of twenty-five feet (25') and a lower height limit of thirty-six

inches (36") from the ground. Trimming will be limited to limbs three inches (3") in diameter or less. Dead and diseased trees and branches may be removed. The guidelines shall also be made part of the approved construction plans enforceable by St. Johns County. The vegetated buffer areas shall be further protected by a conservation easement, which shall be recorded prior to final plat approval within residential areas and prior to conveyance of non-residential parcels to third parties. Such areas shall be clearly identified on subdivision plats. No herbicides or pesticides shall be applied within the upland buffers. The conservation easements shall be in the form previously reviewed and approved by the Department of Community Affairs.

For purposes of applying the provisions of this Special Condition 5, open water shall be defined as any watercourse that is regularly inundated and generally devoid of vegetation. Areas of open water shall be identified by the Applicant, agreed to by the St. Johns River Water Management District and St. Johns County and mapped on all engineering plans for improvements that abut the tidal marsh of the Tolomato River, the tidal marsh of Marshall Creek, or the riverine areas of Marshall Creek and Stokes Creek.

Conservation easements and the portions of the recorded covenants and restrictions that relate to preservation of wetlands and upland buffers shall be enforceable by the Applicant, the property owners association, the St. Johns River Water Management District, the County and the Northeast District of the Florida Department of Environmental Protection. The covenants and restrictions or conservation easement shall not permit variances from the minimum standards set forth in this Development Order Condition for individual lot owners.

The upland buffers required under this Development Order Special Condition 5 are minimum buffers. If the St. Johns River Water Management District determines, in connection with its review of applications for environmental resource permits for the project, that larger buffers are necessary to provide reasonable assurance that applicable state water quality standards will not be violated and that current water quality in receiving waters is preserved, then such larger buffers shall be provided. Such larger buffers may be required for parcels in which the stormwater from lawns, etc. is not collected and treated before entering the buffer, and for areas where the uses are more intense and create a greater threat for degradation of adjacent water quality.

AS TO THE ADDED LANDS:

Contiguous Wetlands:

An averaged 25-foot undisturbed vegetative upland buffer (10-foot minimum) shall be required adjacent to contiguous wetlands. This upland buffer shall be measured landward of the state wetland jurisdictional line. In addition, a 25-foot building setback to the upland buffer shall be provided. In no instance shall the upland buffer be reduced to less than 10 feet except in circumstances where unavoidable wetland impact occurs such as but not limited to a road crossing. The building setback shall be measured from the landward edge of the upland buffer.

Guana/Tolomato Rivers and Tributaries:

An averaged 50-foot undisturbed vegetative upland buffer (25-foot minimum) shall be required adjacent to the Guana or Tolomato Rivers and into all tributaries up to a location where a mean high water line can be set. Such portions of these tributaries, streams or

other water bodies shall be established by the mean high water line of the applicable tributary, stream or other water body and such mean high water line shall be depicted on all site plans, development plans and other documents submitted to authorize the review for development. This upland buffer shall be measured landward of the state wetland jurisdictional line. In no instance shall the upland buffer be reduced to less than 25 feet except in circumstances where unavoidable wetland impact occurs such as but not limited to a road crossing.

Conservation easements and the portions of the recorded covenants and restrictions that relate to preservation of wetlands and upland buffers shall be enforceable by the Applicant, the property owners association, the St. Johns River Water Management District, the County and the Northeast District of the Florida Department of Environmental Protection. The covenants and restrictions or conservation easement shall not permit variances from the minimum standards set forth in this Development Order Condition for individual lot owners.

The upland buffers required under this Development Order Special Condition 5 are minimum buffers. If the St. Johns River Water Management District determines, in connection with its review of applications for environmental resource permits for the project, that larger buffers are necessary to provide reasonable assurance that applicable state water quality standards will not be violated and that current water quality in receiving waters is preserved, then such larger buffers shall be provided. Such larger buffers may be required for parcels in which the stormwater from lawns, etc. is not collected and treated before entering the buffer, and for areas where the uses are more intense and create a greater threat for degradation of adjacent water quality.

6. Construction activity within the Marshall Creek DRI shall be conducted in accordance with a stormwater pollution prevention plan developed pursuant to the EPA NPDES permit program. Prior to commencement of any construction that will be adjacent to a preserved wetland, the contractor shall be required to install silt fencing on the landward edge of the upland buffer or landward of the upland buffer at the physical limits of construction to protect the preserved wetlands. An additional row of silt fencing shall be installed at least three feet (3') landward of the silt fence along the upland buffer adjacent to tidal marsh. The silt fencing shall be inspected at least once a week and repairs to fallen or damaged sections shall be made immediately upon discovery. The provisions of this Development Order Condition shall be incorporated into all construction contracts for work within the Marshall Creek DRI. All contractors working within the Marshall Creek DRI shall be notified of the requirement for a stormwater pollution prevention plan developed pursuant to the EPA NPDES Permit Program and shall be advised of the requirements set forth above concerning silt fencing. Copies of the stormwater pollution prevention plans shall be provided to the Northeast District office of the Florida Department of Environmental Protection.

Docks and Piers.

7. Construction of docks and piers within the tidal marsh areas of the Project shall be limited as follows:

- (a) Up to five (5) private individual docks may be constructed within the Marshall Creek marsh system. For purposes of this condition, the Marshall Creek marsh system is defined as that part of Marshall Creek and its adjacent wetlands that is southeasterly of the loop road shown on the Master Plan and west of a line connecting the two small islands lying north and south of Marshall Creek, as shown on the Master Plan. The docks shall

be required to meet all applicable permitting and authorization requirements, including, but not limited to, the requirements of Chapter 18-20 F.A.C. for docks within the aquatic preserve. The Applicant acknowledges and agrees to comply with Comprehensive Plan objective F.1.1.2 as it may apply to the Added Lands.

(b) Up to two (2) community piers with viewing platforms, not including the Fish Camp Parcel, may be constructed from the upland areas of the site to the open waters of the Tolomato River. These piers shall be for the common use of the residents of the Project and shall be part of an environmental education program. Non-motorized boat launches may be permitted in association with these piers. No motorized docking shall be permitted. The piers shall be required to meet all applicable permitting and authorization requirements, including, but not limited to, the requirements of Chapter 18-20 F.A.C. for piers within the aquatic preserve. Nothing in this Special Condition shall entitle the Applicant to use uplands or wetlands owned by the State of Florida. All permits for docks and piers to the Tolomato River shall require the applicant to have riparian rights. The two piers to the Tolomato River must be separated by at least one-quarter (1/4) mile.

(c) Applicant may elect to (i) maintain the Fish Camp Parcel in its current state, (ii) convey the Fish Camp Parcel to a third party purchaser, or (iii) may improve the Fish Camp parcel, and/or the existing boat ramp and/or construct docks to facilitate the launching and hauling out of both