

**DEVELOPMENT AGREEMENT AMENDMENT
BETWEEN PASCO COUNTY AND
SB ASSOCIATES LIMITED PARTNERSHIP,
DEVELOPER OF RECORD, FOR DEVELOPMENT OF
REGIONAL IMPACT NO. 129, SEVEN OAKS**

THIS DEVELOPMENT AGREEMENT AMENDMENT (Amendment) is made and entered into by and between Pasco County, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter called "COUNTY," and SB ASSOCIATES LIMITED PARTNERSHIP, a Delaware limited partnership, hereinafter "SB," the Developer of Record for Seven Oaks Development of Regional Impact (DRI) No. 129, hereinafter called "SB" or "DEVELOPER."

W I T N E S S E T H:

WHEREAS, the COUNTY is authorized by the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, to enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction; and

WHEREAS, on September 25, 2001, the COUNTY entered into a Development Agreement for the Project with SB and PITTWAY which identified the specific pipeline improvements and set forth the obligations of the parties with respect to the pipeline projects; and

WHEREAS, on December 2, 2008, the COUNTY entered into a Amended and Restated Development Agreement with SB which revised the proportionate share amount, revised the pipeline projects, revised the schedule for the S.R./C.R. 581 Project, recognized the assignment by Pittway to SB, and revised certain other matters ("Amended and Restated Development Agreement"); and

WHEREAS, subsequent to approval of the Amended and Restated Development Agreement, the construction of the S.R./C.R. 581 Project was delayed by protracted issues with Tampa Electric Company related to relocation of its facilities causing the project not to be completed by the date in the Amended and Restated Development Agreement; and

WHEREAS, the COUNTY approved an Amended and Restated Development Agreement on December 2, 2008; and

WHEREAS, the parties desire to enter into this Development Agreement Amendment to extend the completion date for the S.R./C.R. 581 Project, to reflect the extensions granted on December 2, 2009, pursuant to Resolution No. 09-269 and to revise certain procedures related to transportation impact fee reimbursements/credits.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, the COUNTY and SB hereby agree as follows:

1. AMENDMENTS

A. Section 3, GENERAL REQUIREMENTS

b. Duration and Effective Date, is amended as shown below in strikethrough/underline format:

This DA shall be for the duration of twelve (12) ~~ten (10)~~ years, subject to any conditions precedent or termination provisions herein or mutual agreement, from the effective date of this DA. The effective date of this DA shall be the date of approval of this DA by the COUNTY.

B. Section 4., FINANCE AND CONSTRUCTION OF ROADWAY IMPROVEMENTS

b. Identification of Required Roadway Improvements, (1) Identification of Pipeline Projects (a) is amended as shown below in strikethrough/underline format:

The Pipeline Project is the S.R./C.R. 581 Improvement Pipeline Project as further defined below which is estimated to cost Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00). The DEVELOPER shall post a letter of credit (LOC) or other performance guarantee acceptable to the COUNTY for the S.R./C.R. 581 Improvement Pipeline Project as further defined below in accordance with Section No. 8 of this DA. The S.R./C.R. 81 Improvement Pipeline Project shall consist of the widening of S.R./C.R. 581 to six (6) lanes from County Line Road north to S.R. 54 in conformance with the approved Florida Department of Transportation (FDOT) Project Development and Environmental Study (PD&E). The S.R./C.R. 581 Improvement Pipeline Projects shall also include all shoulders, striping, signalization, medians, sidewalks, stormwater-drainage facilities, floodplain mitigation, wetland mitigation, guardrails, and other roadway appurtenances, all as determined by the COUNTY and permitting agencies to be necessary during the design and permitting of the project (Roadway Appurtenances). Construction of these improvements satisfies the Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00) of the DEVELOPER's proportionate-share obligations. The DEVELOPER shall design, permit, construct, and acquire right-of-way (where necessary) for the S.R./C.R. 581 Improvement Pipeline Project, regardless of cost. Except for the site-related S.R./C.R. 581 intersection improvements as further described below, construction of the S.R./C.R. 581 Improvement Pipeline Project shall be eligible for transportation impact fee (TIF) reimbursements in accordance with Section No. 7 of this DA. The DEVELOPER understands and agrees that notwithstanding the potential regional benefits associated with the S.R./C.R. 581 Improvement Pipeline Project, any Site-related S.R./C.R. 581 Improvements, as described in 4. b. (3) below are not eligible for TIF reimbursement pursuant to the terms of the Pasco County TIF Ordinance as amended; therefore, the design, permitting, right-of-way acquisitions/donations, and construction expenses for the Site-related S.R./C.R. 581 Improvements are not

eligible for TIF reimbursement. The DEVELOPER shall commence construction of the S.R./C.R. 581 Improvement Pipeline project on or before December 1, 2008, and shall complete construction on or before April 1, 2011 ~~October 31, 2010~~. For all purposes under this DA, the term(s) "Commence" or "Commencement" shall mean the issuance of a right-of-way permit by the COUNTY for the required road improvement, and the term(s) "Complete" or "Completed" shall mean the required road improvement has been accepted by the COUNTY for maintenance and is open to the traveling public, and the required maintenance guarantee has been provided by the DEVELOPER(s).

C. Section 7, TRANSPORTATION IMPACT FEES REIMBURSEMENT, is amended as shown below in strikethrough/underline format:

a. Transportation Impact Fees: The DEVELOPER and Project shall be assessed TIFs in accordance with the COUNTY's adopted TIF Ordinance as amended and this DA. The COUNTY agrees to budget transportation impact fees paid within the Project in an impact fee account attributable to the pipeline projects (hereinafter "Seven Oaks, PH II, TIF Developer Credit Account") for reimbursement to the DEVELOPER or to another entity or entities; e.g., the CDD, to the extent that such entity finances or otherwise pays for or contributes to the pipeline project(s) as determined by the COUNTY (hereinafter referred to as the Reimbursement Receiving Entity). Once the DEVELOPER and/or contractor has posted the performance guarantees and commenced construction for the pipeline project referenced in this DA, the COUNTY agrees to reimburse the Reimbursement Receiving Entity for those expenditures on the pipeline project approved by the COUNTY to be impact fee creditable in accordance with this DA and the TIF Ordinance. The DEVELOPER and Reimbursement Receiving Entity shall not be entitled to any interest on the account. The DEVELOPER and Project shall pay TIFs in accordance with the TIF Ordinance. On or after December 1, 2010, it is anticipated that, to the maximum extent possible, impact fee credit letters will be submitted to the COUNTY whenever the DEVELOPER has COUNTY-approved impact fee credits to cover impact fees that are due.

b. Existing Impact Fee Credit Amount: The COUNTY acknowledges that the DEVELOPER, or its assigns, has previously paid transportation impact fees to the COUNTY for Phase II development since the approval of the Original Development Agreement between the parties dated September 5, 2001. The COUNTY shall verify the amount of such impact fees paid from the date of the Original Development Agreement through the Effective Date of this Agreement and place this amount, less the amount of Eight Hundred Thirty-Four Thousand Two Hundred Forty-Five and 25/100 Dollars (\$834,245.25) previously credited to the DEVELOPER, in an account designated as the Seven Oaks, PH II, TIF Developer Credit Account which shall be administered as provided herein. The DEVELOPER has previously incurred costs and expenses for the design, permitting, right-of-way acquisition, and stormwater pond construction for the Pipeline Project which qualify for reimbursement under the terms of this Agreement. In addition, the DEVELOPER has paid the COUNTY the sum of One Million Seven Hundred Sixty Thousand and 00/100

Dollars (\$1,760,000.00) for the benefit of the FDOT pursuant to the Original Development Agreement which amount also qualifies for reimbursement under the terms of this Agreement. The DEVELOPER has submitted copies of paid invoices to the COUNTY identifying the costs of such design and permitting services as well as the costs for construction to date in the amount of Four Million Five Hundred Eighty-Nine Thousand One Hundred Forty-Eight and 61/100 Dollars (\$4,589,148.61). The COUNTY will review the supporting documentation for this amount and within sixty (60) days from the Effective Date of this Agreement to determine those actual and reasonable costs which qualify for reimbursement from the TIFs previously collected from within Phase II ("Earned Impact Fee Credit"). The COUNTY shall reimburse this Earned Impact Fee Credit directly to SB within thirty (30) days of determining the amount of the Earned Impact Fee Credit provided that in no event shall the combination of all reimbursement payments made by the COUNTY on the account of actual costs and impact fee credits (assigned to SB Associates by the COUNTY on account of such costs) exceed the lesser of the actual costs of construction for the Pipeline Project, or the sum Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00). The balance of the Seven Oaks, PH II, TIF Developer Credit Account remaining after payment of the Earned Impact Fee Credit ("Unearned Impact Fee Credit") shall be reimbursed to the DEVELOPER as other expenditures by the DEVELOPER are found by the COUNTY to qualify for reimbursement in accordance with the requirements of Section 7. c. of this Agreement.

c. Transportation Impact Fee Reimbursement: The Reimbursement Receiving Entity shall be eligible for TIF reimbursement for actual and reasonable design, permitting, right-of-way acquisition, and construction costs, and payments in lieu of such costs, for the S.R. 581 Improvement Pipeline Project, all as detailed in this DA and the TIF Ordinance. Actual and reasonable design, engineering, inspection, permitting, right-of-way acquisition, and construction costs shall be determined by the County Administrator or his designee. In no event shall such TIF reimbursement (or credit) exceed the lesser of the actual construction costs or Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00). ~~All development within the Project shall continue to pay transportation impact fees in accordance with the requirements of the County's adopted TIF Ordinance as amended and this DA.~~ The COUNTY shall track all impact fees paid for future development within Phase II of the Seven Oaks DRI (hereinafter collectively referred to as the "**Seven Oaks, PH II, TIF Developer Credit Account**"). The COUNTY will use the impact fees collected in the **Seven Oaks, PH II, TIF Developer Credit Account** to reimburse SB for the actual approved costs incurred by SB for the design, permitting, right-of-way acquisition, and construction of S.R./C.R. 581 and the Project B payment to the FDOT in the amount of One Million Seven Hundred Sixty Thousand and 00/100 Dollars (\$1,760,000.00).

For requests and invoices for reimbursement submitted prior to

October 1, 2010, the following procedures shall apply:

(1) Such reimbursement shall be made by the COUNTY on an annual basis once the COUNTY and Office of the Clerk of the Circuit Court have been provided with the necessary documentation to verify actual amounts paid.

(2) The annual reimbursement period shall terminate on September 30th of each year and any invoices submitted after that date will, upon approval of the same by the COUNTY and Clerk, be included in the next annual payment. ~~Subject to the requirements of the Prompt Payment Act~~ **I**the **COUNTY** Clerk will make annual reimbursement payments to the DEVELOPER within sixty (60) days of September 30th. Any disputed amounts not approved prior to September 30th will be carried over to the next payment cycle for resolution in accordance with the terms of this Agreement. **These payments are subject to all other requirements of the Prompt Payment Act.**

For requests and invoices submitted after October 1, 2010, requests and invoices for reimbursement may be submitted to the COUNTY at a frequency no greater than monthly and shall include documentation identifying the amount of TIFs the DEVELOPER believes have been collected by the COUNTY within Phase II of the Seven Oaks DRI since the DEVELOPER's last reimbursement submittal and identifying the corresponding lots, parcels and/or addresses. The COUNTY will reimburse the DEVELOPER the TIF's collected from within Phase II of the Seven Oaks DRI and not previously reimbursed ~~Subject to the requirements of the Prompt Payment Act, the Clerk will make reimbursement payments to the Developer~~ **within sixty (60) days of submittal. Any disputed amounts not approved prior to the end of this period will be carried over to the next submittal for resolution in accordance with the terms of this Agreement. These payments are subject to all other requirements of the Prompt Payment Act.** In the event the total amount in the **Seven Oaks, Ph II, TIF Developer Credit**

Account is insufficient to reimburse SB for an otherwise qualifying costs, then a credit shall be established in the account and any subsequent impact fees collected within Phase II of the Seven Oaks DRI shall be paid to SB and utilized to reduce said credit. The COUNTY acknowledges that it has included the S.R./C.R. 581 Improvement Pipeline Project within its Capital Improvement Program at a budgeted cost of Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00) and has budgeted sufficient funds in the current year budget to provide for the reimbursement payments consistent with the requirements of this Section. Notwithstanding any provision of this Agreement to the contrary, in no event shall the combination of reimbursement payments made by the COUNTY on the account of actual costs and impact fee credits (assigned to SB Associates by the COUNTY on account of such costs) exceed Twenty-Two Million Two Hundred Seventy-Two Thousand Five Hundred Seventy-Six and 00/100 Dollars (\$22,272,576.00). In addition, reimbursements to SB will be limited to the amount of TIFs actually collected from within Phase II of the Seven Oaks DRI, and whenever reimbursements have been made so as to exhaust the **Seven Oaks, PH II,**

TIF Developer Credit Account no further reimbursements will be made by the COUNTY until such time as there are additional impact fees paid from within Phase II of the Seven Oaks DRI; however, in the interim, impact fee credits will be assigned to SB until the accumulative amount of such reimbursements and credits have reached the maximum reimbursement amount authorized hereunder.

(1) ~~All requests and invoices for reimbursement shall be submitted to the COUNTY at a frequency no greater than annually prior to September 30th.~~ Any final requests or invoices for the pipeline project shall be submitted to the COUNTY within ninety (90) days of final acceptance by the FDOT for the S.R./C.R. 581 Improvement Pipeline Projects and the COUNTY or the FDOT as applicable, or for amounts under dispute, no later than ninety (90) days after the conclusion of the dispute. Should there be any amounts denied for reimbursement, the DEVELOPER may appeal such decision in a manner consistent with the TIF Ordinance. **If the total amount in the Seven Oaks, Ph II, TIF Developer Credit Account ~~Seven Oaks Phase II Impact Fee Fund~~ is insufficient to reimburse SB for the final approved reimbursement, then SB shall be reimbursed the total amount in the account fund at that time and a credit shall be established for the difference. Any TIFs collected by the COUNTY within Phase II of the Seven Oaks DRI, that are not reimbursed as part of the final reimbursement, or are subsequently collected, shall be placed in the Seven Oaks, Ph II, TIF Developer Credit Account ~~Seven Oaks Phase II Impact Fee Fund~~. Within sixty (60) days of SB's written request(s) to the COUNTY which shall occur at a frequency no greater than monthly and shall include documentation identifying the amount of TIFs the DEVELOPER believes have been collected by the COUNTY within Phase II of the Seven Oaks DRI since the DEVELOPER's last reimbursement submittal and identifying the corresponding lots, parcels, and /or addresses, the COUNTY shall pay to SB the total amount of said impact fees and shall reduce the amount of SB's credit by the same amount. These payments are subject to all other requirements of the Prompt Payment Act.**

(2) Notwithstanding the foregoing, unless otherwise provided herein, the DEVELOPER and/or the Reimbursement Receiving Entity shall not be eligible for impact fee credit reimbursement for:

1. The Other Required Roadway Improvements
2. The Site-Access Improvements
3. Any internal roadway improvements or internal right-of-way dedications required by the DO, MPUD Conditions of Approval, and/or the Land Development Code.
4. Construction Engineering and Inspection (CEI) expenses in excess of ten (10) percent of the total Pipeline Project cost.
5. Pipeline project costs not specifically set forth in this DA; e.g., financing and insurance expenses.

In addition, the DEVELOPER and Reimbursement Credit Receiving Entity shall not be eligible for impact fee credit for any costs for which the COUNTY has provided a reimbursement pursuant to this DA.

~~d. Impact Fee Adjustment. Until such time as the Developer provides an analysis satisfactory to the County Administrator, or his designee, demonstrating that the transportation concurrency impacts of the DRI have been adequately mitigated through 2013, all entitlements within the DRI that are not qualified EC or TC uses (and subject to any Additional EC/TC Restrictions) and that receive a Final Certificate of Capacity after August 15, 2011, or other County wide concurrency extension date as may be determined by the Board from time to time in accordance with the Concurrency Management Ordinance, shall pay, at the time transportation impact fees are due, the Option 1 FY 2007 Full Fee as set forth in the Transportation Impact Fee Ordinance Schedule, indexed to the time of payment by the most recent construction and right-of-way indices in the Transportation Impact Fee Ordinance (the Option 1 Fee).~~

2. EFFECTIVE DATE

The effective date of this Amendment shall be established in accordance with Section 163.3239, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Amendment on this _____ day of _____, _____.

(SEAL)
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

PAULA S. O'NEIL, Ph.D., CLERK AND COMPTROLLER

CHAIRMAN

WITNESSES:

SB ASSOCIATES LIMITED PARTNERSHIP

BY: _____
Signature

Print

Its _____
Title

STATE OF FLORIDA
COUNTY _____

The foregoing instrument was acknowledged before me this _____
(date), by _____
(name of person acknowledging), who is personally known to me or who has produced _____

(type of identification) as identification.

Seal:

NOTARY