

R Rm 262

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OFFICIAL RECORDS  
BK: 2624 PG: 132

LT1-2-2009003740-1

AGREEMENT REGARDING  
DEVELOPMENT WITHIN I-75/SR 50 PDD

EXHIBIT B

THIS AGREEMENT is made and entered into as of the 18<sup>th</sup> day of November, 2008, by and among Hernando County, a subdivision of the State of Florida, whose address is 20 N. Main Street, Suite 461, Brooksville, FL 34601 (the "County"), DBSI One Hernando Center North LLC, an Idaho limited liability company, its successors and assigns, whose address is 8850 West Emerald, Suite 164, Boise, ID 83704 (the "Developer"), regarding public infrastructure and facilities improvements related to the I-75/SR 50 PDD, concurrency determinations, and development conditions. The parties state:

LT2-2624-1329-18

Recitals

WHEREAS, in connection with the County's adoption of the initial comprehensive plan, the Hernando County Board of County Commissions ("BOCC") designated that certain area lying south of SR 50, north of the Hernando/Pasco County line, east of Lockhart Road and west of the abandoned CSX railroad right-of-way (currently used as the Withlacoochee Trail) as the I-75/SR 50 Planned Development District ("I-75/SR 50 PDD") as delineated on the County's Future Land Use Map ("FLUM"); and,

WHEREAS, the I-75/SR 50 PDD contains approximately 5,021 acres, the majority of which is currently undeveloped at the time of approval of this Agreement; and,

WHEREAS, currently there is inadequate infrastructure (i.e. roads, parks, water and sewer utilities, public facilities, and schools) in place to support the development and build-out of I-75/SR 50 PDD; and,

WHEREAS, the County's Comprehensive Plan Policy 1.07B(1) allowed a number of different land use categories to be developed within the specially created I-75/SR 50 PDD category including: (1) commercial; (2) industrial; (3) residential including multi-family; (4) recreation and (5) public facilities; and,

WHEREAS, those persons owning property within the I-75/SR 50 PDD specially benefit from the mixed-use category previously assigned to this area under the County's Comprehensive Plan; and,

WHEREAS, up until this time, there has been minimal need for the County to expand or create new roads, parks, schools and other park capital facilities within or in proximity to the I-75/SR 50 PDD; and,

WHEREAS, Goal 1.07 of the County's Comprehensive Plan mandates the comprehensive planning of certain areas within the County in which mixed land uses are envisioned and more planning control is determined to be necessary to best utilize a limited resource; and,

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HERNANDO COUNTY CLERK OF COURT  
KAREN NICOLAI

RECORDING FEES \$ 154.50  
01/27/2009 Deputy Clk

**WHEREAS**, Objective 1.07B of the County's Comprehensive Plan mandates the efficient utilization of the mixed land uses (*i.e.* commercial, industrial, residential) in the I-75/SR 50 PDD Area, through master planning, roadway network, infrastructure and public facilities, and aesthetics prior to or concurrent with development occurring; and,

**WHEREAS**, the Developer (under DBSI - Discovery Real Estate Services, LLC, a predecessor or related entity) filed an application with the County (which was assigned Planning File Number H-06-127) to rezone approximately 9.5 acres of land from PDP(IND)/Planned Development Project (Industrial) to PDP(GC)/Planned Development Project (General Commercial) and establishing a Master Plan on approximately 175 acres of land zoned PDP(GC)/Planned Development Project (General Commercial) and PDP(IND)/Planned Development Project (Industrial), hereinafter collectively referred to as the "Land", as located within the I-75/SR 50 PDD Area; and,

**WHEREAS**, on January 8, 2007, the County Planning and Zoning Commission heard the Developer's request, and recommended approval subject to certain performance conditions; and,

**WHEREAS**, on February 14, 2007, the BOCC adopted Resolution # 2007-50, approving the requested rezoning and the Establishment of a Master Plan for the Land, subject to the Performance Conditions set forth in the BOCC Meeting Results Memorandum (incorporated therein by reference and made a part hereof); and,

**WHEREAS**, approximately 147.61 acres of the Land which was previously identified for industrial development, and as legally described on Exhibit "A" attached hereto and made a part hereof (the "Property"), is intended to be developed by this Developer and which is the subject of this Agreement; and,

**WHEREAS**, the Developer intends to construct, or have constructed, multiple buildings on the Property, with uses/occupancies consistent with the Planned Development Project (Industrial) zoning district and the approved PDP Master Plan (as same may be amended, extended or re-adopted), not exceeding a total of 3,200,000 square feet of gross floor area, and subject to the afore-referenced Performance Conditions and this Agreement (the "Project"); and,

**WHEREAS**, at the time of this Agreement, the Project is intended to consist primarily of Distribution/Warehouse users; and,

**WHEREAS**, pursuant to the aforesaid Performance Conditions, the Developer is required to participate in, and contribute its proportionate share towards the required public infrastructure and facilities, and enter into an enforceable development agreement to provide for such mitigation; and,

**WHEREAS**, in 2007, a detailed analysis of the public infrastructure and facilities needs of the I-75/SR 50 PDD was prepared, specifically as to roads, parks, schools, water and sewer utilities, and public facilities ("Needs Analysis") which has been reviewed and approved by the Hernando County Planning Department; and,

**WHEREAS**, on the 12<sup>th</sup> day of September 2007, the BOCC approved an area plan governing the development of the I-75/SR 50 PDD Area (the "I-75/SR 50 PDD Area Plan") based on the data and estimates contained in the Needs Analysis; and,

**WHEREAS**, on the 12<sup>th</sup> day of September 2007, the BOCC adopted Ordinance 2007-16 (the "Overlay Ordinance") establishing the boundaries of an overlay district as identical with the current I-75/SR 50 PDD, establishing an expanded overlay district for purposes of road improvements, providing for imposition of certain impact fee surcharges, exemptions and credits for properties within the overlay district and the expanded district, providing incentives to encourage developers to advance up-front funds, donate land and/or construct pipeline improvements, and providing additional regulations regarding planning and oversight within the I-75/SR 50 PDD; and,

**WHEREAS**, the BOCC has concluded that due to the lack of existing public infrastructure and facilities within or proximate to the I-75/SR 50 PDD, there are greater financial costs associated with creating new public infrastructure and facilities necessary to serve the anticipated population and development within the I-75/SR 50 PDD; and,

**WHEREAS**, the County desires for the Developer to provide for such infrastructure improvements and funding as will facilitate the development of the I-75/SR 50 PDD and in furtherance of Comprehensive Plan Objective 1.07B, the I-75/SR 50 PDD Area Plan and the performance conditions imposed in connection with the approval of the Project on the Property; and,

**WHEREAS**, the parties enter into this Agreement pursuant to the Project's performance conditions and in furtherance of the County's Comprehensive Plan objectives, the I-75/SR 50 PDD Area Plan, and the Overlay Ordinance; and,

**WHEREAS**, the County has determined that the commitments from the Developer, as provided herein, will fully address all applicable infrastructure concurrency requirements, i.e. parks, roads, water and sewer utilities, schools, and other public facilities as to the Project in satisfaction of the Project's zoning performance conditions, the County's Comprehensive Plan objectives, the I-75/SR 50 PDD Area Plan, and the Overlay Ordinance; and,

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by the parties hereto each to the other, simultaneously with the execution and delivery of these presents and in consideration of the mutual understanding and agreements hereinafter set forth and contained, the parties agree as follows:

**I. RECITALS: EXHIBITS**

The above Recitals are true and correct and, together with all exhibits attached hereto, are incorporated herein by reference and made a part hereof.

## II. DEFINITIONS

In addition to those terms specifically defined in the Recitals above (or elsewhere herein), the following definitions shall apply throughout this Agreement:

"Authorized Development" or "Authorized Intensity" means the development of the Property with multiple buildings that all have uses/occupancies consistent with the Planned Development Project (Industrial) zoning district and the approved PDP Master Plan (as same may be amended, extended or re-adopted) up to a total of 3,200,000 square feet of gross floor area, and subject to the afore-referenced Performance Conditions, this Agreement and the County's land development regulations.

"Code" means the Hernando County Code of Ordinances in effect at the time of this Agreement, together with all subsequent amendments and/or renumbering which may occur from time to time.

"Distribution/Warehouse Use" means that use/tenant occupation defined by Land Use Category 152 of the Institute of Traffic Engineers *Trip Generation Manual*, 7<sup>th</sup> Edition (as may be amended from time to time). For purposes of this Agreement, Distribution/Warehouse Use of the Property presupposes that no single space shall consist of, or any single user shall occupy, less than 250,000 square feet of gross floor area.

"Effective Date" means the last date signed by the Developer and the County and the date upon which this Agreement shall take effect.

"Election Date" means the date that the Developer obtains its final or last certificate of occupancy on the First Building or December 31, 2011; whichever occurs first.

"First Building" means the first Distribution/Warehouse Use building constructed by the Developer. For purposes of this Agreement, the First Building shall consist of no less than 250,000 square feet of gross floor area.

"Operational Improvements" means those improvements, such as turn lanes and access improvements without limitation, required by the Traffic Operations Study (defined below) and in accordance with the County's Facilities Design Guidelines/County Engineer or applicable permitting authority necessary to ensure safe and adequate access to the Property. Operational Improvements are not be eligible for credits or offset of any kind.

"Other Authorized Use" or "Other Authorized Uses" means any use of the Property which is allowed as part of the Authorized Development (i.e. consistent with the Planned Development Project (Industrial) zoning district, the approved PDP Master Plan, and this Agreement) but excluding Distribution/Warehouse Use which is separately defined above.

"Pay As You Go" means the Developer pays Roads Impact Fees and Roads Impact Fee Surcharges at the time each building permit or set of building permits are pulled except as

otherwise expressly provided in this Agreement. Pay as You Go may also be referred to as "Option Three" in this Agreement.

"PDP Master Plan" means the approved master plan for the Property (as approved by the BOCC pursuant to the Planned Development Project (PDP) regulations contained in Appendix A, Article VIII of the Code) and any amendments, extensions or re-adoptions thereof.<sup>1</sup> At the time of this Agreement, the approved PDP Master Plan shall refer to that master plan approved by the BOCC on February 14, 2007 (Planning File No. H-06-127) as may be amended or extended.

"Performance Conditions" means those conditions imposed upon the development of the Property in connection with the BOCC's approval of the PDP Master Plan (as referenced in BOCC Results Memorandum dated February 14, 2007), as such PDP Master Plan may subsequently be extended, amended or re-adopted.

"Rate Study" means that independent roads impact fee calculation study performed in 2008 which analyzed the traffic trips generated by the Walmart Distribution Center on Kettering Road, pursuant to Code Section 23-138(b), based upon the proposed Distribution/Warehouse Use of the Property. The Rate Study shall be valid through December 31, 2011.

"Revised Roads Impact Fee Rate" means the rate for the Road Impact Fee rate calculated in accordance with Code Section 23-138(b). At the time of this Agreement, this amount is \$0.314 per square foot of gross floor area based upon the Rate Study. The Revised Roads Impact Fee Rate shall be valid through December 31, 2011.

"Revised Roads Impact Fee Surcharge Rate" means the rate for the Roads Impact Fee Surcharge calculated in accordance with Code Section 23-153(d). At the time of this Agreement, this amount is \$0.157 per square foot of gross floor area. The Revised Roads Impact Fee Surcharge Rate shall be valid through December 31, 2011.

"Roads Impact Fees" means those fees required to be paid by the Developer pursuant to the *Roads Impact Fee Ordinance*, codified in Chapter 23, Article III, Division 5, of the Code.

"Roads Impact Fee Surcharges" means those fees required to be paid by the Developer pursuant to the *Impact Fee Surcharge and Planning Overlay Ordinance for the Greater I-75/SR 50 Planned Development District Area*, codified in Chapter 23, Article III, Division 6, of the Code.

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<sup>1/</sup> The PDP Master Plan, which was approved by the BOCC on February 14, 2007 under Planning File No. H-06-127, was for the entire Land (and which included a commercial tract/acreage outside of the subject Property). Following the execution of this Agreement, the Developer will file an amendment to the master plan to conform to the Property's current footprint (legally described on Exhibit "A" hereto), to account for the Authorized Intensity hereunder, and to otherwise be consistent with the terms of this Agreement.

"Roads Pipeline Advance" means the advance lump sum payment of money, paid by the Developer to the County, and which payment is intended to equal or exceed the Developer's obligation to pay Roads Impact Fees and Roads Impact Fee Surcharges (thereby exempting the Developer from the requirement to pay same). The amount of the Roads Pipeline Advance shall be as set forth in this Agreement. Roads Pipeline Advance may also be referred to as "Option Two" in this Agreement.

"Roads Pipeline Improvements" means the design, permitting, construction, and acceptance by the County, of: (i) Kettering Road from the northern side of the SR50/Kettering Road intersection running south for approximately 2,600 linear feet as built to four-lane Major Collector Road Standards and past the proposed northerly entrance to the Project; and (ii) all related improvements to the SR 50/Kettering Road Intersection necessitated by such four-laning of Kettering Road. Roads Pipeline Improvements may also be referred to as "Option One" in this Agreement.

"Traffic Operations Study" means that study performed by a qualified professional, based upon the most current available data, and in accordance with professionally accepted methodology. The Traffic Operations Study shall analyze projected transportation impacts to the local road network from the Project in accordance with the County's Facilities Design Guidelines and shall include, to the extent not otherwise required under the Guidelines: projected trip generation; trip distribution; and analysis of the SR 50/Kettering Road intersection.

### **III. DURATION**

This Agreement shall terminate upon the build-out of the development described herein, or by operation of applicable law, whichever occurs last. However, notwithstanding the foregoing, this Agreement shall expire and become null and void on December 31, 2011, unless by such date, either (a) the Developer obtains its first building permit for vertical construction for the First Building, *or* (b) the Roads Pipeline Improvements (pursuant to Option One below) have been designed, permitted, and are under substantial construction.

### **IV. CONSISTENCY WITH COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS; RELATIONSHIP TO PDP MASTER PLAN**

A. The County finds and agrees that the Authorized Development is consistent with Hernando County's adopted Comprehensive Plan, but for compliance with the Performance Conditions and all applicable County land development regulations including, but not limited to: PDP Master Plan approval and all amendments or extensions thereof; concurrency (which is addressed, in part, in this Agreement), conditional and final platting (if platting is sought by the Developer), construction drawing approvals, building permit approvals, and approvals from the various utilities and other agencies. In addition, regardless of whether the Property is platted or remains a unified tract, the Developer agrees to obtain a separate "property key number" from the Hernando County Property Appraiser's Office for each and every building on the Property. The property key number shall be obtained prior to building permitting.

B. The Developer acknowledges and agrees that the Property must have a valid, current and approved PDP Master Plan at the time the Developer obtains its first building permit. In this regard; the parties agree that in the event the PDP Master Plan expires or lapses prior to the Developer obtaining its first building permit, then the Developer may cure such expiration or lapse by filing a new application for PDP Master Plan approval with the County Planning Department; provided, however, the BOCC must hear and approve the new PDP Master Plan prior to December 31, 2011 (the date this Agreement terminates under **Section III** above if no building permit for vertical construction in connection with the First Building has been obtained).

**V. I-75/SR 50 PDD AREA PLAN**

This Agreement is made incident to, and in implementation of the I-75/SR 50 PDD Area Plan and the Overlay Ordinance as to the development of the Project on the Property. However, in the event of any conflict between the I-75/SR 50 PDD Area Plan and this Agreement, this Agreement shall supersede and control.

**VI. TRAFFIC OPERATIONS STUDY**

At the time the Developer pulls its first building permit for vertical construction, the Developer shall provide the County Engineer with the Traffic Operations Study.

**VII. RIGHT-OF-WAY DEDICATIONS**

The Developer hereby agrees to dedicate to the County for public use, by plat or warranty deed (in such form and with such legal description and sketch as approved by the County) prior to or concurrent with approval of its first building permit for vertical construction or its first conditional plat, whichever occurs first, those lands required to provide for right-of-way for Kettering Road measured eighty (80) feet eastward of the existing center line to contribute to a total road right-of-way width of one hundred and sixty (160) feet, the entire length along the Property. In addition, the Developer agrees to acquire that certain right-of-way along Kettering Road (of the same width and location) on that property lying on the east side of Kettering Road, north of the subject Property and south of SR 50. The latter portion of right-of-way shall be acquired and then conveyed to the County in the same manner, and within the same time frame, as the first right-of-way segment described herein. For purposes of this Agreement, the parties agree that the Dedication shall not be eligible for roads impact fee credits, road impact surcharge fee credits or other compensation; provided, however, the County acknowledges and agrees that this dedications of right-of-way constitute one of the components mitigating the traffic impacts of the Project, and vesting said Project against transportation concurrency requirements of the County's Comprehensive Plan and the Code.

**VIII. COLLECTION AND USE OF ROADS IMPACT FEES AND ROADS IMPACT FEE SURCHARGES**

A. Timing of Payment. For purposes of this Agreement, no Roads Impact Fees or Roads Impact Fee Surcharges shall be collected at the time of building permitting in connection with the First Building; however the payment of such Roads Impact Fees and Roads

Impact Fee Surcharges shall be deferred for such certain period of time as provided herein with such fees becoming due and payable or unless otherwise exempted under this Agreement (*i.e.* full and satisfactory performance of Option One or Option Two). For all buildings/improvements other than the First Building, then Roads Impact Fees and Roads Impact Fee Surcharges shall be paid at time of building permitting at the then prevailing rate except as otherwise deferred, exempted, or modified in this Agreement.

B. Use of Funds. For purposes of this Agreement, the parties agree that the County shall be entitled to use and spend all Roads Impact Fees and Roads Impact Fee Surcharges (regardless of whether paid as a Roads Pipeline Advance, Pay As You Go, or in separate parts) that it receives from the Developer immediately upon receipt thereof and said amount **shall be deemed non-refundable** (notwithstanding more liberal provisions contained in the Code or Florida case law). Payments of all such fees shall be by check payable to "Hernando County Board of County Commissioners" and delivered to: Hernando County Development Department.

#### IX. TRANSPORTATION

A. Developer's Obligation to Timely Make Election. The Developer shall make its Election, on or before the Election Date, by notifying the County, in writing, that it has chosen, and will diligently and in good faith proceed with:

- *Option One – Roads Pipeline Improvements;*
- *Option Two – Roads Pipeline Advance; or,*
- *Option Three – Pay As You Go.*

Each Option is discussed in more detail below.

1. *Option One – Roads Pipeline Improvements.* If the Developer duly elects Option One:

a. The Roads Pipeline Improvements shall be designed, permitted, and constructed in accordance with professionally accepted design and construction industry standards and the County's Facilities Design Guidelines.

b. No later than eighteen (18) months from the Election Date, the Developer shall commence the construction of the Roads Pipeline Improvements. Thereafter, the Developer shall diligently and in good faith proceed with said construction until fully and satisfactorily completed and the Roads Pipeline Improvements have been accepted by the County Engineer. However, nothing herein shall prevent the Developer from commencing the Roads Pipeline Improvements prior to the Election Date.

c. Construction of all Roads Pipeline Improvements shall be satisfactorily completed no later than eighteen (18) months from the date construction was commenced.



d. Upon the County's acceptance of the Roads Pipeline Improvements, the Developer shall have satisfied its obligation under Section IX of this Agreement, its performance condition relative to Kettering Road and the SR50/Kettering Road intersection, and which improvements shall be deemed in lieu of (exempt from) the roads impact fees and roads impact fee surcharges pursuant to Code Sec. 23-144(a)(4) and 23-157(a)(4)d, regardless of the ultimate end uses or users of the Property (but within those uses allowed under PDP(Ind)/Planned Development Project (Industrial) and which are in accordance with the Project's approved Master Plan) and this Agreement.<sup>2</sup>

e. To insure the Developer's promise (evidenced by its written Election to diligently and in good faith proceed with Option One) to timely commence and complete the Roads Pipeline Improvements, the parties agree that the County shall issue no building permits for any subsequent building or other improvements (other than in connection with the First Building) until the Roads Pipeline Improvements have been designed, permitted, and substantial construction has commenced. At any time thereafter, should construction of the Pipeline Improvements cease (no significant activity for a period of thirty consecutive days as determined by the County Engineer), then the County shall stop issuing further building permits until this provision has been complied with. Additionally, in the event that (i) the Developer has obtained its building permit for vertical construction for the First Building and (ii) substantial construction has not commenced in connection with the Roads Pipeline Improvements, then, as a prerequisite for the County to issue any certificate of occupancy in connection with the First Building, the Developer shall provide the County with a Performance/Payment Bond or a Letter of Credit issued by such surety or institutional lender acceptable to the County (and on such form acceptable to the County Attorney's Office) in an amount equal to what the Roads Impact Fees and Roads Impact Fee Surcharges for the First Building would have been if they were paid based upon the formula in Section IX.A.2.b. below. The County shall promptly provide the appropriate release or discharge of said Performance/Payment Bond or Letter of Credit upon the full completion of the Roads Pipeline Improvements as provided for herein, or upon receiving the outstanding balance (i.e. equal to what the Roads Impact Fees and Roads Impact Fee Surcharges for the First Building would have been if they were paid based upon the formula in Section IX.A.2.b. below) in full in the event the Developer fails or elects not to complete the Roads Pipeline Improvements in accordance with this Agreement.

2. *Option Two – Roads Pipeline Advance.* If the Developer duly elects Option Two:

a. The Roads Pipeline Advance must be received by the County, in full, at the same time the Developer advises the County of its Election but no later than the Election Date.

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<sup>2/</sup> As an additional inducement for the Developer to elect the Roads Pipeline Improvements (Option One), the County agrees that the Developer shall not be confined to developing only Distribution/Warehouse Uses but instead may develop any Other Authorized Use(s).

b. If the Developer has received its first building permit for vertical construction for the First Building prior to making its Election (by paying the County the Roads Pipeline Advance on or before the Election Date), then the Roads Pipeline Advance shall be calculated as follows:

$$\underline{\$0.471} \text{ [Revised Roads Impact Fee Rate with Surcharge]} \times 3,200,000 \text{ [total square feet of gross floor space]} = \$1,507,200$$

c. In the event the Developer makes its Election (by paying the County the Roads Pipeline Advance) at the same time and in conjunction with the Developer obtaining its first building permit for vertical construction for the First Building, then, notwithstanding anything contained in Code Sec. 23-157 to the extent contrary, the Roads Pipeline Advance shall be calculated as follows:

$$\underline{\$0.314} \text{ [Revised Roads Impact Fee Rate without Surcharge]}^1 \times 3,200,000 \text{ [total square feet of gross floor space]} = \$1,004,800$$

d. Upon the County's receipt of the Roads Pipeline Advance (\$1,507,200 or \$1,004,800, depending upon when the Developer makes its Election), the Developer shall have satisfied its obligations under Section IX of this Agreement, and the Performance Conditions relative to Kettering Road and the Kettering Road/SR 50 Intersection, and such payment shall be deemed in lieu of (and, therefore, exempt from) all Roads Impact Fees and Roads Impact Fee Surcharges pursuant to Code Sec. 23-144(a)(4) and 23-157(a)(4)d, provided that the Property is developed for Distribution/Warehouse Use and no other use.

e. All funds (\$1,507,200 or \$1,004,800, respectively) paid as a Roads Pipeline Advance, upon receipt by the County (the "Amount Paid"), shall be non-refundable and may be spent by the County upon receipt thereof. If, however, at some time in the future, the Developer applies for any Other Authorized Use(s), then the Developer shall be required to pay the difference as provided for herein for such Other Authorized Use(s). At such time, the County will perform an internal accounting to determine what Roads Impact Fees (Code Sec. 23-138) and Roads Impact Fee Surcharges (Code Sec. 23-153) would have been due had such fees been paid at the time of all previously issued building permits (the "Cumulative Impact Fees Calculation"). The Cumulative Impact Fees Calculation is then subtracted from the Amount Paid [and which the parties agree is strictly a paper calculation]. This internal accounting shall continue by the County with each subsequent building permit or sets of building permits until the Cumulative Impact Fees Calculation equals the Amount Paid, whereupon the Developer shall immediately pay the County the difference; and, thereafter, the Developer shall

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<sup>1</sup>/ Pursuant to the *Impact Fee Surcharge and Planning Overlay Ordinance for the Greater I-75/SR 50 Planned Development District Area* (at Code Sec. 23-157(b)(4)d.i), pipeline advances are required to be received by the County prior to the issuance of the first building permit in order to qualify for the 1.5 multiplier per said ordinance.

pay all Roads Impact Fees and Roads Impact Fee Surcharges in full at the then prevailing rate<sup>4</sup> in accordance with Chapter 23, Article III, Divisions 5 and 6 of Code, through complete build-out of the Project.

3. *Option Three – Pay As You Go.* If the Developer duly elects Option Three by providing the County with timely written notification on or before the Election Date, or fails to timely elect Option One (by providing the County with timely written notification on or before the Election Date) or Option Two (by the County receiving the Roads Pipeline Advance on or before the Election Date):

a. The First Building – For purposes of this Agreement, and notwithstanding any provision in Chapter 23, Article III, of the Code which may be contrary, Roads Impact Fees and Roads Impact Fee Surcharges for the First Building shall be received by the County prior to, and as a precondition of, the County issuing the final (last) certificate of occupancy in connection with the First Building.<sup>5</sup> Roads Impact Fees and Roads Impact Fee Surcharges for the First Building shall be calculated at the rate of \$0.471 per square foot of gross floor area based upon all certificates of occupancy issued for the First Building, provided that said certificate(s) of occupancy is (are) based upon a Distribution/Warehouse Use. In the event that one or more certificates of occupancy for the First Building is (are) based upon any Other Authorized Use(s), then the Roads Impact Fees and the Roads Impact Fee Surcharge shall be calculated at the then prevailing rate for such Other Authorized Use(s) in accordance with Chapter 23, Article III, Divisions 5 and 6 of the Code.

b. Subsequent Buildings/Improvements – On all other buildings/improvements (other than the First Building), Roads Impact Fees and Roads Impact Fee Surcharges shall be due and payable at the time each building permit or sets of building permits are pulled, and shall be calculated as follows:

i. For Distribution/Warehouse Use, where the building permit is applied for on or prior to December 31, 2011, then the Revised Roads Impact Fee Rate and the Revised Impact Fee Surcharge Rate shall apply.

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<sup>4</sup>/ However, nothing herein shall prevent the Developer from submitting a separate rate study (performed by a qualified professional, based upon the most current available data, and in accordance with professionally accepted methodology) for such Other Authorized Use(s). The new rate study shall be subject to review and acceptance by the County Engineer.

<sup>5</sup>/ The parties hereby agree that if said Roads Impact Fees and Roads Impact Fee Surcharges for the First Building have not been paid and the County, for whatever reason, has issued or cannot withhold the final certificate of occupancy for the First Building, then the County may, without limitation: lien the Property for said amount(s) with such lien accruing at the agreed fixed interest rate of ten percent (10%) per annum until paid; withhold issuing all subsequent building permits and certificates of occupancy until such amount(s) are paid in full; and/or exercise any other remedies allowed in law or equity.

ii. For Distribution/Warehouse Use, where the building permit is applied for after December 31, 2011, then the Developer shall pay Roads Impact Fees and Roads Impact Fee Surcharges based on the then prevailing rate in accordance with Chapter 23, Article III, Divisions 5 and 6 of the Hernando Code. However, nothing herein shall prevent the Developer from submitting a new rate study (performed by a qualified professional, based upon the most current available data, and in accordance with professionally accepted methodology) for Distribution/Warehouse Use. The new rate study shall be subject to review and acceptance by the County Engineer.

iii. For any Other Authorized Use(s), the Developer shall pay Roads Impact Fees and Roads Impact Fee Surcharges based on the then prevailing rate in accordance with Chapter 23, Article III, Divisions 5 and 6 of the Hernando Code for such use. However, nothing herein shall prevent the Developer from submitting a separate rate study (performed by a qualified professional, based upon the most current available data, and in accordance with professionally accepted methodology) for such Other Authorized Use(s). The new rate study shall be subject to review and acceptance by the County Engineer.

B. Operational Improvements to Provide Safe and Adequate Access to the Site. The Developer, at its sole expense, shall design, permit and construct the Operational Improvements. Operational Improvements are in addition to the requirements above and shall not be eligible for credits or offset of any kind.

C. Satisfaction of Fair Share Payment of Kettering Road and SR 50/Kettering Road Intersection Improvements. The Developer's full performance under Section IX of this Agreement (i.e. timely election and construction as to Option One, timely payment as to Option Two, or timely election and payments as to Option Three) is intended to satisfy the Performance Conditions related to the Developer's fair share payment related to Kettering Road and SR 50/Kettering Road-Intersection improvements in connection with the industrial development of the subject Property.

D. County Pre-Determination of Roads Concurrency. In material reliance upon the Developer's promises herein, and upon the Developer's execution and the County's approval of this Agreement, road concurrency related to the development of the Project as described herein shall be deemed fully satisfied and vested for all purposes including, without limitation, platting, building permitting, and issuance of certificates of occupancy, and against other mitigation requirements not described in this Agreement. This vesting shall run with the land for the duration of this Agreement.

#### X. PUBLIC CAPITAL FACILITIES

To mitigate its respective fair share obligation associated with public capital facilities, the Developer shall be responsible for payment of all public capital facilities impact fees and public capital facilities impact fee surcharges imposed under Chapter 23, Article III, Divisions 3 and 6 of the Code without offsets, credits or exemption, at the time each building permit, or group of permits, are obtained.

**XI. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES CAPITAL FACILITIES**

The Developer shall be responsible for payment of all fire protection and emergency medical services capital facilities impacts fees imposed under Chapter 23, Article III, Division I of the Code without offsets, credits or exemption, at the time each building permit, or group of permits, are obtained.

**XII. WATER AND SEWER AGREEMENT**

A. HCUD Agreements. The Developer will be entering into a separate agreement with the Hernando County Water and Sewer District (the "HCUD Agreement") to provide for mitigation of the Project's water and sewer impacts and for the provision of water and sewer connection and service.

B. County Pre-Determination of Water and Sewer Concurrency. The County has determined that all water and sewer utility facilities required for the development of the Project on the Property to meet concurrency as to water and sewer utility facilities in accordance with Chapter 163, *Fla. Stat.*, and Chapter 23, Article VIII of the Code will be made available concurrent with the impacts of the Project through the Developer's commitments, agreements and obligations as set forth in the HCUD Agreement. Therefore, in material reliance upon the Developer's promises as set forth in the HCUD Agreement, including their promised payment of all water and sewer utility connection fees under the Code, and upon the Developer's execution and HCUD's approval of the HCUD Agreements, and the Developer's execution and the County's approval of this Agreement, water and sewer utility concurrency related to the development of the Project on the Property as described herein shall be deemed fully satisfied and vested for all purposes including, without limitation, platting, building permitting, and certificates of occupancy, and any additional mitigation requirements. This vesting shall run with the land for the life of the Project (unless this Agreement expires pursuant to Section II above). In the event of any conflict with the foregoing provision and the HCUD Agreement, this Agreement shall supersede and control as to any issue of concurrency and, the HCUD Agreement shall supersede and control as to all other matters addressed by them.

**XIII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions as to this Project and/or the development of the Property.

**XIV. ECONOMIC INCENTIVES**

This Agreement shall not affect the ability of the Developer to apply for economic incentives from the County as provided for under Chapter 11.5 of the Code, or under any other state, local or federal program applicable to the Project.

**XV. NOTICES**

Any notices, reports or communications required by this Agreement shall be sent to the other party at the address contained in the initial heading, and with copies to:

Developer: DBSI One Hernando North LLC,  
8850 West Emerald, Suite 164  
Boise, ID 83704

With a copy to: Donna J. Feldman, Esq.  
19321-C U.S. Highway 19, Suite 103  
Clearwater, FL 33764

County: Planning Department  
Hernando County Government Center  
20 N. Main Street, Suite 462  
Brooksville, FL 34601  
Attention: Ronald F. Pianta, AICP, Planning Director  
Paul Wieczorek, AICP, Senior Planner

With a copy to: Development Department  
789 Providence Blvd.  
Brooksville, FL 34601  
Attention: Jodi Singer, Office Manager

With a copy to: Garth Collier, County Attorney  
Hernando County Government Center  
20 N. Main Street, Suite 462  
Brooksville, FL 34601

**XVI. FORCE MAJEURE**

The parties agree that failure or delay of the County or the Developer in performing any of the terms of this Agreement shall be excused if and to the extent the failure or delay is caused by any acts of God, wars, fires, strikes, floods, weather, or any law, ordinance, rule or regulation beyond the control of the County or the Developer.

**XVII. ENTIRE AGREEMENT**

This Agreement, together with the HCUD Agreement (as now existing or may be entered into), and the performance conditions (which are incorporated herein by reference and made a part hereof) contains the entire Agreement of the parties hereto with respect to the specific matters set forth herein. No oral statements, representations or prior written matter relating to the subject matter herein, but not contained herein, shall have any force or effect.

**XVIII. MODIFICATION**

No modification of this Agreement shall be valid or binding unless such modification is in writing and duly executed by both the County and the Developer or its successors/assigns.

**XIX. RECORDING; BINDING EFFECT; ASSIGNMENT**

This Agreement shall be recorded in the public records at the Developer's expense. This Agreement shall be binding upon the respective successors, administrators, executors, heirs, and assigns of the parties hereto. The Developer may assign its respective rights and obligations hereunder to any successor-in-interest as to such Developer's Project.

**XX. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and same instrument.

**XXI. AUTHORITY**

This Agreement is entered into pursuant to Chapters 8, 23, 26, 28 and Appendix A of the Code. The County is authorized to execute this Agreement in accordance with Florida law including, but not limited to, Chapter 125, *Fla. Stat.*

**XXI. GOVERNING LAW; DISPUTES**

This Agreement shall be interpreted and construed in accordance with the laws of Florida law and the Code. Any dispute to this Agreement shall be litigated in civil court in Hernando County, Florida. Each party shall be responsible for its own costs and attorneys fees in the event of any dispute, claim, action or appeal.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals below.

**DBSI ONE HERNANDO CENTER NORTH LLC,**  
an Idaho limited liability company

By: **DBSI 2006 Land Opportunity Fund LLC,**  
an Idaho limited liability company

Its: **Member**

By: **DBSI Land Development, LLC,**  
an Idaho limited liability company

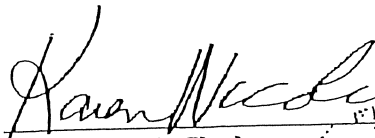
Its: **Manager**

By: 

Printed Name: Jeremy Swenson

Its: **Manager**

ATTEST:

  
**Karen Nicolai, Clerk**

**HERNANDO COUNTY BOARD OF COUNTY  
COMMISSIONERS (COUNTY)**

By: 

**Christopher A. Kingsley, Chairman (Date)**  
**Rose Rocco, Vice Chairman**

Approved as to Form  
and Legal Sufficiency

By: 

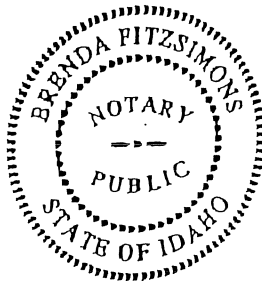
**Geoffrey T. Kirk**  
**Assistant County Attorney**

October 17, 2008 (4:35pm)



STATE OF IDAHO  
COUNTY OF ADA

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2008 by Jeremy Swenson, as Manager of DBSI Land Development LLC, an Idaho limited liability company, as Manager of DBSI 2006 Land Opportunity Fund LLC, an Idaho limited liability company, as Member of DBSI One Hernando Center North LLC, an Idaho limited liability company, who is personally known to me.



NOTARY PUBLIC

Brenda Fitzsimons  
Brenda Fitzsimons  
#16855

My commission expires: 11/16/2008

STATE OF FLORIDA  
COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2008, by Christopher Kingsley, Chairman of the Hernando County Board of County Commissioners, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Doris N. Cupeles  
NOTARY PUBLIC  
[Print or stamp name, title and notary number]

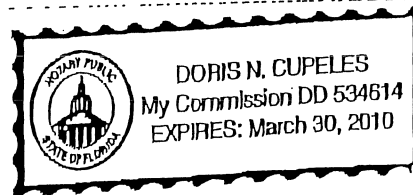


EXHIBIT "A"

For a point of reference commence at the Southwest corner of the Northwest 1/4 of Section 4, Township 23 South, Range 21 East, Hernando County, Florida; thence N. 00°21'41" E., along the West boundary of said Northwest 1/4, a distance of 1466.00 feet; thence S. 89°38'19" E., a distance of 50.00 feet to a point on the East right-of-way line of Kettering Road as described and recorded in Official Record Book 822, Page 895, Public Records of Hernando County, Florida and for a Point of Beginning: thence continue S. 89°38'19" E., a distance of 1045.38 feet to a point on the West right-of-way line of the former Atlantic Coastline Railroad (said former right-of-way now known as the "Rails to Trails Project" as described and recorded in Official Record Book 762, Pages 1490 through 1514, Public Records of Hernando County, Florida); thence along said West right-of-way line, S. 15°04'33" E., a distance of 1515.04 feet, to a point on the South boundary of the Northwest 1/4 of said Section 4; thence continue along said right-of-way line and along the South boundary of said Northwest 1/4, N. 89°51'12" W., a distance of 51.82 feet; thence continuing along said right-of-way line, S. 15°04'33" E., a distance of 2727.52 feet, to a point on the South boundary of the Southwest 1/4 of said Section 4; thence departing said right-of-way line, N. 89°43'18" W., along said South boundary, a distance of 2122.87 feet, to a point on the East right-of-way line of Kettering Road as described and recorded in Official Record Book 822, Page 895, Public Records of Hernando County, Florida (said point lying 50.00 feet East of the West boundary of said Southwest 1/4); thence N. 00°21'41" E., parallel with and 50.00 feet East of said West boundary of the Southwest 1/4, a distance of 1655.93 feet to the Southwest corner of that certain parcel of land described and recorded in Official Record Book 813, Page 1092, Public Records of Hernando County, Florida; thence departing said right-of-way line and along the exterior boundaries of said certain parcel, the following three (3) courses; (1) S. 89°38'19" E., a distance of 155.00 feet; (2) N. 00°21'41" E., a distance of 140.00 feet; (3) N. 89°38'19" W., a distance of 155.00 feet to a point on said East right-of-way line of Kettering Road; thence N. 00°21'41" E., along said East right-of-way line, a distance of 2296.84 feet to the Point of Beginning.

OFFICIAL RECORDS  
BK: 2624 PG: 1346