



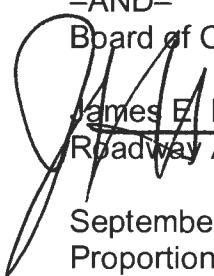
Interoffice Memorandum

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
SEP 22 2015 CAS/LC

AGENDA ITEM

August 28, 2015

TO: Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

FROM:  James E. Harrison, Esq., P.E., Chairman  
Roadway Agreement Committee

SUBJECT: September 22, 2015 – Consent Item  
Proportionate Share Agreement  
7-Eleven at E. Colonial Drive/(SR50) and Bonneville Drive  
Woodbury Road: From Waterford Lakes Parkway to Colonial Drive

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for 7-Eleven at E. Colonial Drive/(SR50) and Bonneville Drive Woodbury Road: From Waterford Lakes Parkway to Colonial Drive ("Agreement") by and between 7-Eleven, Inc. and Orange County for a proportionate share payment in the amount of \$13,464.00. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing a proportionate share payment. The Proportionate Share Payment is due within 30 days of the effective date of this Agreement. The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Woodbury Road for two deficient trips on the road segment from Waterford Lakes Parkway to Colonial Drive in an amount of \$6,732 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on August 5, 2015. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407 836-5610.

**ACTION REQUESTED: Approval of Proportionate Share Agreement for 7-Eleven at E. Colonial Drive/(SR50) and Bonneville Drive Woodbury Road: From Waterford Lakes Parkway to Colonial Drive by and between 7-Eleven, Inc. and Orange County for a proportionate share payment in the amount of \$13,464. District 5**

JEH/HEGB:rep  
Attachment

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
SEP 22 2015 CAS/LC

This instrument prepared by  
and after recording return to:  
Chris Blurton Interplan LLC  
604 Courtland Street, Orlando FL 32804  
Parcel ID Number: 23-22-31-0000-00-007

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR  
7-Eleven at E. Colonial Drive/ (SR50) and Bonnevill Drive  
Woodbury Road: From Waterford Lakes Parkway to Colonial Drive**

This Proportionate Share Agreement (the "Agreement") is made and entered into by and between 7-Eleven, Inc., 1722 Routh St., STE 1000, Dallas, TX 75201, a Texas Corporation ("**the Owner**") and ORANGE COUNTY, PO Box 1393, Orlando, FL 32802-1393, a charter county and political subdivision of the State of Florida ("**the County**").

WHEREAS, the Owner is the owner of fee simple title to certain real property, as more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is located in County Commission District #5, is within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to County project identification number 5059; and

WHEREAS, the Owner intends to develop the Property as a 4,869 square foot gas station with convenience store (the "**Project**"); and

WHEREAS, the Owner received a letter from the County dated July 8<sup>th</sup>, 2015, stating that the Owner's Capacity Encumbrance Letter ("**CEL**") application #15-05-036 for the Project was denied; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Woodbury Road from Waterford Lakes Parkway to Colonial Drive (the "**Deficient Segment**"), and zero (0) PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied as further described in Exhibit "B" hereto; and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards and, therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, the Owner must provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, the Owner and the County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segment through the current anticipated Project buildout is Thirteen Thousand Four Hundred Sixty-four and No/100 Dollars (\$13,464.00) (the "**PS Payment**"); and

WHEREAS, the County and the Owner desire to set forth certain terms, conditions, and agreements between the parties as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between the Owner and the County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

**Section 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Issuance of Capacity Encumbrance Letter.**

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segment described in Exhibit "B," attached hereto and incorporated herein by reference, totals Thirteen Thousand Four Hundred Sixty-Four and No/100 Dollars (\$13,464.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. The Owner and the County agree that the Excess Trips constitute the Project's impact on the aforementioned Deficient Segment based upon the Owner's Traffic Study titled "7- Eleven Colonial Drive/ (SR 50) at Bonneville Drive, Orange County, Florida Traffic Study" prepared by Raysor Transportation Consulting, LLC on February 9, 2015, for Interplan LLC (the "Traffic Study"), CMS # 15-15-036, as incorporated herein by this reference and upon calculations described in the attached and incorporated Exhibit "B." The Traffic Study was accepted by the Orange County Transportation Planning Division on June 24, 2015, and is on file and available for inspection with that Division. The Owner and the County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project within the Orange County's jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Project; provided, however, that if the Owner subsequently increases the number of units (or square footage, as applicable) of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. The Owner and the County further acknowledge and agree that the calculation of and agreement on the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) **Timing of PS Payment.** Within thirty (30) days following the Effective Date (as defined in Section 12 hereof) of this Agreement, the Owner shall deliver a check to the County in the amount of Thirteen Thousand Four Hundred Sixty-four and No/100 Dollars (\$13,464.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and

Operational Support Division of the Community, Environmental, and Development Services Department. Within twenty-one (21) days following the County's receipt of the PS Payment, the County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the CEL, the Owner shall reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the County Code. An amount equal to the PS Payment shall be applied to the amount of the initial reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment), as further set forth in Section 3 below. In the event the Owner has not paid the PS Payment within thirty (30) days of the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count or square footage, as applicable, could result in an increase in trips on the Deficient Segment or other segments within the Concurrency Road Network. The Owner understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, the Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* The County hereby acknowledges and agrees that, based upon the Owner's commitment to pay the PS Payment as required herein, in the absence of a change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, the Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within the jurisdiction of the County through buildout of the Project. The Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segment are actually constructed. Provided, however, the Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt the Owner from meeting the requirements of all other applicable laws, regulations, and County Code sections or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

**Section 3. *Transportation Impact Fee Credits.*** The County and the Owner agree that the Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to, but not exceeding the amount of, the PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibit "B" attached

hereto. The County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by the Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall the Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, the Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

**Section 4. No Refund.** The PS Payment (including any reservation fees paid with the PS Payment) is non-refundable.

**Section 5. Notice.** With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to the 7-Eleven, Inc.  
Owner: 1722 Routh Street STE 1000  
Dallas, TX 75201  
Attention: Grant Distil

With copy to: Interplan LLC  
604 Courtland Street STE 100  
Orlando, FL 32804  
Attention: Sue Lorentz

As to the Orange County Administrator  
County: PO Box 1393  
Orlando, Florida 32802-1393

With copy to: Orange County Community, Environmental, and Development  
Services Department  
Manager, Fiscal and Operational Support Division  
PO Box 1393  
Orlando, Florida 32802-1393

Orange County Community, Environmental, and Development  
Services Department  
Manager, Transportation Planning Division  
4200 South John Young Parkway  
Orlando, Florida 32839

Orange County Community, Environmental, and Development  
Services Department  
Manager, Planning Division  
PO Box 1393  
Orlando, Florida 32802-1393

**Section 6. Covenants Running with the Property.** This Agreement shall be binding, and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

**Section 7. Recordation of Agreement.** The parties hereto agree that this Agreement shall be recorded in the Official Records of Orange County, Florida, at the Owner's expense, within ten (10) business days after the Effective Date of this Agreement (as defined in Section 12 below).

**Section 8. Applicable Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

**Section 9. Specific Performance.** The County and the Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in and for Orange County, Florida.

**Section 10. Attorney Fees.** In the event either party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

**Section 11. Construction of Agreement; Severability.** Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation,

construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

**Section 12. Effective Date.** The effective date of this Agreement (the "Effective Date") shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

**Section 13. Amendments.** No amendment, modification or other changes to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

**Section 14. Counterparts.** This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



"THE COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Teresa Jacobs

Teresa Jacobs

Orange County Mayor

Date: 9.22.15

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: Craig Stopyla

Deputy Clerk

Print Name: Craig Stopyla

**WITNESSES:**

Lauren Evans

Print Name: Lauren Evans

Veronica Wilson

Print Name: Veronica Wilson

**"THE OWNER"**

7-Eleven, Inc.

By: Grant Distel

Print Name: Grant Distel

Title: Assistant Secretary

Date: August 19, 2015

**STATE OF FLORIDA  
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Grant Distel, of 7-Eleven Inc who is known by me to be the person described herein and who executed the foregoing, this 19 day of August, 2015. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 19 day of August, 2015.



Heather Kiesel  
NOTARY PUBLIC

Print Name: Heather Kiesel

My Commission Expires: 3/12/2016



**Exhibit "A"**

**"7-Eleven E. Colonial/SR50 and Bonneville"**

Parcel ID: 23-22-31-0000-00-007

Legal Description: THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 SECTION 23, TOWNSHIP 22 SOUTH, RANGE 31 EAST, LYING AND BEING IN ORANGE COUNTY, FLORIDA;

LESS AND EXCEPT THE LANDS PLATTED PALM LAKE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK U, PAGE 71, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Proportionate Share Agreement  
7-Eleven, E. Colonial Drive/(SR50) and Bonneville Drive  
Page 9 of 9

**Exhibit "B"**

(See attachment)

Log of Project Contributions  
Woodbury Road (Waterford Lakes Parkway to Colonial Drive)

**Roadway Improvement Project Information**

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Woodbury Road	Waterford Lakes Pkwy	Colonial Dr	0.77	E	880	Widen from 2 to 4 lanes	1960	1080	\$7,270,000	\$6,732

**County Share of Improvement**

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Woodbury Road	Waterford Lakes Pkwy	Colonial Dr	0.77	E	880	8	1960	1080	\$53,852

**Developer Share of Improvement**

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Woodbury Road	Waterford Lakes Pkwy	Colonial Dr	0.77	E	880	1960	1080	8	1072	\$7,216,148	\$6,732

Updated: 7/30/15

**Log of Project Contributions**

	Date	Project	Project Trips	Prop Share
Existing	Feb-13	Existing plus Committed	8	\$53,856
		<b>Backlogged Totals:</b>	<b>8</b>	<b>\$53,856</b>
Proposed	Jul-13	Town Park Outparcels	3	\$20,196
	Oct-13	Town Park Multi Family	3	\$20,196
	Oct-13	Popeye's East Colonial	4	\$26,928
	Jul-14	Waterford Oaks Phase II	26	\$175,032
	Jul-15	7-Eleven Development	2	\$13,464
		<b>Totals:</b>	<b>46</b>	<b>\$309,672</b>

EXHIBIT 'B'