

BCC Mtg. Date: Jun. 14, 2016

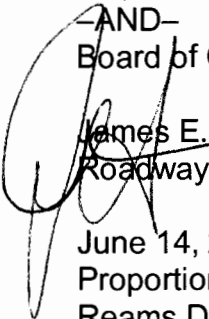


Interoffice Memorandum

AGENDA ITEM

May 20, 2016

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

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

SUBJECT: June 14, 2016 – Consent Item
Proportionate Share Agreement
Reams Development, LLC Reams Road:
From Center Drive (f/k/a Cast Drive) to Taborfield Avenue

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Reams Development, LLC on Reams Road: from Center Drive (f/k/a Cast Drive to Taborfield Avenue ("Agreement")) by and between Reams Development, LLC and Orange County for a proportionate share payment in the amount of \$63,618. 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 Reams Road for 6 deficient trips on the road segment from Center Drive (f/k/a Cast Drive) to Taborfield Avenue in an amount of \$10,603 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on May 4, 2016. 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 and execution of Proportionate Share Agreement for Reams Development, LLC Reams Road: From Center Drive (F/K/A Cast Drive) to Taborfield Avenue by and between Reams Development, LLC and Orange County for a proportionate share payment in the amount of \$63,618. District 1

JEH/HEGB:rep
Attachment

BCC Mtg. Date: Jun. 14, 2016

This instrument prepared by
and after recording return to:

Anna H. Long, Esq.
Dean Mead Egerton Bloodworth Capouano & Bozarth, P.A.
800 N. Magnolia Ave., Ste. 1500
Orlando, FL 32803

Parcel ID Number(s): 02-24-27-7135-03-000

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

**PROPORTIONATE SHARE AGREEMENT FOR
Reams Development, LLC
Reams Road: From Center Drive (F/K/A Cast Drive) to Taborfield Avenue**

This Proportionate Share Agreement (the "Agreement") effective as of the latest date of execution (the "**Effective Date**") is made and entered into by and between Reams Development, LLC, a Florida Limited Liability Company ("**Owner**"), whose mailing address is 8525 Redleaf Lane, Orlando, Florida 32819, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), whose mailing address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, 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 1, within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Reams Road; and

WHEREAS, Owner intends to develop the Property as a 2,940 sf convenience store with a gas station and a car wash (the "**Project**"); and

WHEREAS, Owner received a letter from County dated April 11, 2016 stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #16-01-002 for the Project was denied; and

WHEREAS, the Project will generate six (6) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Reams Road from Center Drive (F/K/A Cast Drive) to Taborfield Avenue (the "**Deficient Segment**"), and 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, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and 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 Sixty-Three Thousand Six Hundred Eighteen and 00/100 Dollars (\$63,618.00) (the "**PS Payment**"); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them 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 Owner and 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 Sixty-Three Thousand Six Hundred Eighteen and 00/100 Dollars (\$63,618.00). The PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips constitute the Project's impact on the aforementioned Deficient Segment based upon (i) Owner's Traffic Study titled "7-Eleven Site -- Reams Road; Transportation Concurrency Analysis" prepared by RAYSOR Transportation Consulting on April 1, 2016 for Reams Development, LLC (the "Traffic Study"), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit "B." The Traffic Study was accepted by the Orange County Transportation Planning Division on April 8, 2016, and is on file and available for inspection with that Division (CMS #2016002). Owner and 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 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 Owner subsequently increases the number of units and/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. Owner and County further acknowledge and agree that the calculation of and agreement regarding 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, Owner shall deliver a check to County in the amount of Sixty-Three Thousand Six Hundred Eighteen and 00/100 Dollars (\$63,618.00) 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 its receipt of the PS Payment, 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 must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward 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 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 and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require 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.** County hereby acknowledges and agrees that, based upon Owner's commitment to pay the PS Payment as required herein and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, 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 County's jurisdiction through buildout of the Project. 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, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of the CEL 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 Owner from meeting the requirements of all other applicable laws, regulations, or Orange County Code provisions 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. County and Owner agree that 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 PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibit "B" attached hereto. 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 Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall 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, 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 Owner: Reams Development, LLC
8525 Redleaf Lane
Orlando, Florida 32819

With copy to:
Jeffrey A. Icardi, Esquire
Icardi & Icardi, P.A.
549 Wymore Road North, Ste. 109
Maitland, FL 32751

7-Eleven, Inc.
1722 Routh Street
Dallas, Texas 75221

Dean Mead Egerton Bloodworth Copouano & Bozarth, PA
800 N. Magnolia Avenue, Suite 1500
Orlando, Florida 32803
Attention: Anna H. Long, Esq.

Raysor Transportation
19046 Bruce B. Downs Boulevard, #308
Tampa, Florida 33647
Attention: Michael Daniel Raysor

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County Community, Environmental, and Development
Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

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
201 South Rosalind Avenue, 2nd Floor
Orlando, FL 32801

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 Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

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. County and 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 lie in the Circuit Court of 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 and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any 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. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

Section 13. 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.



“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Teresa Jacobs
Teresa Jacobs
Orange County Mayor
Date: 6.14.16

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

By: Craig A. Stopya
for Deputy Clerk

Printed Name: Craig A. Stopya

WITNESSES:

Gloria L Latoski

Print Name: GLORIA L LATOSKI

Sarah Kersey

Print Name: SARAH KERSEY

"OWNER"

Reams Development, LLC, a Florida
Limited liability company

By: Karam V. Duggal

Print Name: Karam V. Duggal

Title: Manager

Date: 5-14-16

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Karam V. Duggal, Manager of Reams Development, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 19th day of May, 2016. He is personally known to me or has produced _____ (type of identification) as identification and did (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 19th day of May, 2016.

Gloria L Latoski

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

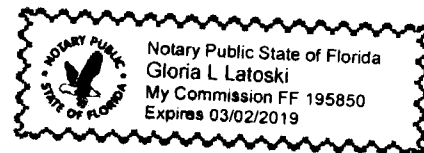


Exhibit "A"

"7-Eleven Store #37225/Site #1036466 (Reams Road)/ Physical Address to be assigned"

Parcel ID: 02-24-27-7135-03-000

Legal Description:

LOT 3, REAMS ROAD DEVELOPMENT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 88, PAGES 51 AND 52, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Commence at the Northeast corner of Section 2, Township 24 South, Range 27 East, Orange County, Florida; thence run S00°16'52"E along the East line of the Northeast 1/4 of said Section 2, a distance of 1342.73 feet to a point on the South line of those lands described in O.R. Book 5522, Page 2640; thence run N89°59'34"W, a distance of 355.00 feet along the South line of said lands described in O.R. Book 5522, Page 2640; thence continue along said South line S71°26'41"W a distance of 171.86 feet to the POINT OF BEGINNING; thence leaving said South line run S43°39'37"E, a distance of 40.50 feet; thence run S46°20'23"W, a distance of 399.10 feet to a point on the North right of way line of Reams Road as recorded in O.R. Book 10899, Page 4276, said point being on a non-tangent curve, concave to the Northeast, having a radius of 902.00 feet; thence from a radial bearing of N41°44'27"E, run northwesterly along the arc of said curve through a central angle of 04°35'56", an arc distance of 72.40 feet; thence continue N43°39'37"W along said North right of way line of Reams Road per O.R. Book 10899, Page 4276, a distance of 90.68 feet; thence run N46°20'23"E, a distance of 402.00 feet; thence run S43°39'37"E along the aforesaid South line of those lands described in O.R. Book 5522, Page 2640, a distance of 122.50 feet to the POINT OF BEGINNING.
The area described containing 1.503 acres more or less.

Exhibit "B"
"7-Eleven Store #37225/Site #1036466 (Reams Road)/ Physical Address to be assigned"

Log of Project Contributions
Reams Road (Center Dr. to Taborfield Avenue)

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
Reams Road	Center Drive	Taborfield Avenue	1.21	E	880	Widen from 2 to 4 lanes	2,000	1,120	\$11,875,200	\$10,603

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
Reams Road	Center Drive	Taborfield Avenue	1.21	E	880	689	2,000	1,120	\$7,305,369

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
Reams Road	Center Drive	Taborfield Avenue	1.21	E	880	2,000	1,120	689	431	\$4,569,831	\$10,603

Updated: 5/4/16

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Jun-15	Existing plus Committed		\$7,104,010
	Fitness	4	\$42,412
	Taco Bell	9	\$95,427
	Mini Storage	6	\$63,618
			\$0
			\$0
			\$0
			\$0
	Backlogged Totals:	689	\$7,305,467
	Seven Eleven	6	\$63,618
			\$0
			\$0
			\$0
			\$0
			\$0
	Totals:	695	\$7,369,085

Proportionate Share Agreement
 Reams Development, LLC for Reams Road: from Center Drive (F/K/A East Drive) to Taborfield Avenue, 2016

JOINDER AND CONSENT TO PROPORTIONATE SHARE AGREEMENT

FOR REAMS DEVELOPMENT, LLC


Reams Road (from Center Drive (f/k/a Cast Drive) to Taborfield Avenue)

7-Eleven, Inc., a Texas corporation, the contract buyer ("Buyer") under that certain Purchase Contract dated December 15, 2014 ("Purchase Contract"), does hereby join in and consent to the agreement over the property which is the subject of the Purchase Contract and which is described and set forth on Exhibit "A" attached hereto.

IN WITNESS WHEREOF, the Buyer has caused this Joinder and Consent to be executed in its name by its duly authorized officer this 1st day of June, 2016, and agrees to join in and consents to the terms and conditions set forth in the subject Proportionate Share Agreement.

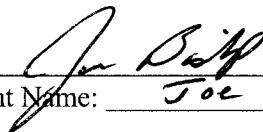
Signed, sealed and delivered in the presence of:

7-Eleven, Inc., a Texas corporation


Print Name: AUSTIN ROSEN

By: Daniel Tubbs

Name: Daniel Tubbs


Print Name: Joe Bishop


Title: Development Proj. MGR.*

Dated: 6/1/16

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of June, 2016, by DANIEL TUBBS, the D.P.M.* of 7-Eleven, Inc., a Texas corporation, on behalf of said corporation. He/she is personally known to me, or produced _____ as identification.

(NOTARIAL SEAL)


Notary Public
Print Name: CHARLES E. CARPENTER
My Commission Expires: 3/29/20

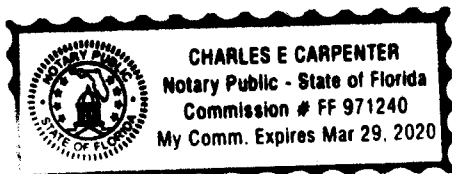


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OF ORANGE COUNTY, FLORIDA.

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