

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:
Petition for a Variance
7-Eleven, Inc.
Lehigh Acres, Florida

OGC File No. 17-0088
Lee County

FINAL ORDER GRANTING PETITION FOR VARIANCE

On February 14, 2017, 7-Eleven, Inc., Petitioner, filed its Petition with the Florida Department of Environmental Protection (Department) under section 120.542, Florida Statutes (F.S.), for a permanent variance from the 500-foot radial wellhead protection area established in Rule 62-521.400(1)(l), Florida Administrative Code (F.A.C.). Petitioner seeks a variance from the cited rule provisions which currently prohibit the siting of underground storage tanks (USTs) that are otherwise installed pursuant to Chapter 62-761, F.A.C., within a 500-foot radial Wellhead Protection Area setback distance around a potable water well.

Specifically, Petitioner requests a variance to install and operate new petroleum USTs regulated pursuant to Chapter 62-761, F.A.C., within the 500-foot Wellhead Protection Area of Well #3, Florida Unique Well Identification Number AAC5241, PWS ID# 5360172, which is owned and operated by the Florida Governmental Utility Authority (FGUA) (Well #3). The USTs would be located on the premises of the 7-Eleven, Inc., convenience store (Facility), currently comprised of three parcels located in Lehigh Acres, Lee County, Florida. The frontage parcel has an address of 1103 Leeland Heights Blvd W, Lehigh Acres, Florida 33936.¹ The back two adjacent parcels are located at 1100

¹ The current owner of record of this parcel is the John M. Morgan Trust (STRAP: 32-44-27-03-00015.0150).

Fillmore Ave Lehigh Acres, Florida 33936² and 1102 Fillmore Ave Lehigh Acres, Florida 33936.³

Petitioner has agreed to install a monitoring well, perform quarterly monitoring for gasoline and diesel constituents, and provide financial assurances, in addition to those already required by Rule 62-761.420, F.A.C., to abandon and replace Well #3 under certain conditions, should the variance be granted.

Notice of Receipt of the Petition was published in the Florida Administrative Register on March 8, 2017, (Public Notice ID 18700259). One public comment was received from FGUA.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. The Department is the state agency charged under Chapters 373 and 403, F.S., with the duty and authority to protect the State's water resources, including the authority to establish setback distances for potential sources of contamination to a Wellhead Protection Area. A Wellhead Protection Area is defined in Rule 62-521.200(7), F.A.C., as "an area designated by the Department consisting of a 500-foot radial setback distance around a potable water well where ground water is provided the most stringent protection measures to protect the ground water source for a potable water well and includes the surface and subsurface area surrounding the well."

2. Petitioner seeks a permanent variance or waiver from Rule 62-521.400(1)(I), F.A.C., (the Wellhead Protection Rule), adopted in 1995, which provides in pertinent part:

² The current owner of record of this parcel is the James B Pletcher Trust (STRAP: 32-44-27-03-00015.0170).

³ The current owner of record of this parcel is Steve and Pamela Pletcher (STRAP: 32-44-27-03-00015.0180).

(1) The Department shall require new installations to meet the following restrictions within a wellhead protection area.

(l) Underground storage tanks regulated under Chapter 62-761, F.A.C., shall not be installed 90 days after the effective date of this rule. Replacement of an existing underground storage tank system regulated under Chapter 62-761, F.A.C., within the same excavation, or addition of new underground storage tanks regulated under Chapter 62-761, F.A.C., at a facility with other such underground storage tanks is exempt from this provision, provided that the replacement or new underground storage tank system is installed with secondary containment as required in Chapter 627-61, F.A.C.

3. Petitioner states the proposed USTs will be sited on the Facility property as far from Well #3 as safely and reasonably as possible, and that it is not physically possible to locate the USTs outside of the Wellhead Protection Area of Well #3. The USTs will be installed to no deeper than 20 feet below land surface (BLS) and within the water table aquifer.

4. Petitioner states that information received from Alvarez and Bacon (1988) (Exhibit E to the Petition), indicates Well #3 was drilled in 1970, is cased and grouted, has a production zone interval between 58 to 68 feet BLS. According to information submitted by Petitioner, the production zone of Well #3 is located within the Sandstone Aquifer.

5. According to information submitted by Petitioner (Exhibit E to Petition), the Sandstone Aquifer production zone of Well #3 is confined from the overlying water-table aquifer by the 15 to 20 feet thick clays of the upper Peace River Formation. Petitioner further states that these semi-confining layers significantly reduce the potential for migration to the production zone of Well #3.

6. In addition, according to information submitted by Petitioner, because the UST will not be located in the same aquifer system to Well #3, this offers an additional measure of confinement and further reduces the potential for downward migration of to the production zone of Well #3.

7. Petitioner states that the proposed USTs will meet, and in some instances exceed, the requirements of Chapter 62-761, F.A.C. (i.e., standards for the registration, construction, installation, operation, maintenance, repair, closure, and disposal of storage tank systems that store regulated substances, and to minimize the occurrence and environmental risks of releases and discharges) applicable to UST systems. Petitioner states that piping and dispenser sumps and liners will be installed for the piping system and continuously monitored with sensors; the UST system will be monitored for releases by a pressurized line leak detector and by interstitial monitoring of the double-walled tank and piping system; a continuous monitoring interstitial monitoring system will exceed the minimum monthly sampling requirement of the UST rules; integrity testing of the containment system will meet the requirements of Chapter 62-761, F.A.C.; and the UST system and its release detection and integrity testing systems will provide immediate notification of potential releases of product.

8. The Department's Division of Waste Management reviewed the Petition and concurs with Petitioner's statements regarding the UST system, including its installation and operation.

9. Pursuant to Rule 62-532.400(7), F.A.C., of the Water Well Permitting and Construction Requirements in Chapter 62-532, F.A.C., the setback between a public water system well and a UST is 100 feet, while the setback in the Wellhead Protection

Rule is 500 feet. The Water Well Permitting and Construction Requirements rule was adopted in 2010 (fifteen years after the Wellhead Protection Rule) and reflects the advances in UST design, construction and monitoring requirements since the Wellhead Protection Rule was adopted in 1995.

**PRINCIPLES OF FAIRNESS AND SUBSTANTIAL
HARDSHIP TO THE PETITIONER**

10. Petitioner seeks a permanent variance or waiver from the 500-foot Wellhead Protection Area established in Rule 62-521.400(1)(I), F.A.C., on the grounds that application of the rule to the siting of its USTs would be unreasonable, unfair, and would create an unintended result and substantial hardship and would violate the principles of fairness.

11. Petitioner states that siting the USTs outside of the 500-foot Wellhead Protection Area for Well #3 would cause substantial hardship and would violate the principles of fairness because:

- A. Petitioner would have to again redesign the facility (including its infrastructure and installing additional underground fuel lines) and acquire new permits, both of which would result in substantial increased costs and delays in construction.
- B. The current site for the USTs is the safest location that is the furthest away from Well #3. Petitioner states that other locations would require installing fuel lines underneath the convenience store, which is a potential hazard, and also block safe ingress and egress to the Facility.

C. Petitioner relied on prior governmental approvals and review in purchasing materials, hiring contractors and consultants.

**THE VARIANCE OR WAIVER WILL MEET THE
UNDERLYING PURPOSE OF THE STATUTE**

12. Section 120.542(2), F.S., states that "variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness."

13. The variance procedure is intended to provide relief from unreasonable, unfair, and unintended results in unique cases. Section 403.021(2), F.S., provides in pertinent part that it is the public policy of the state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies. Additionally, the applicable setback distance set forth in Chapter 62-532, F.A.C., post-dates the setback established in the Wellhead Protection Rule, providing further demonstration that the purpose of the underlying statute will be met by granting the requested variance.

14. The requested variance is consistent with the applicable setback distance set forth in Chapter 62-532, F.A.C., and will meet the purpose of the underlying statute to protect the State's water resources and public health because:

A. The design, construction and monitoring of the USTs and associated piping will meet or exceed the requirements of Chapter 62-761, F.A.C.;

- B. The proposed UST system and its release detection and integrity testing systems will provide immediate notification of potential releases of product, in order to allow the containment and abatement of the discharge before it can affect the State's water resources, including those in the production zone of Well #3;
- C. The installation, sampling and analyzing groundwater samples from the required monitoring well (MW) located between the UST and Well #3 would detect the presence of any contamination from the USTs in advance of impacting Well #3;
- D. The semi-confining beds separating the production zone of Well #3 from the upper intermediate and surficial aquifers significantly reduces the potential migration of surface water or overlying groundwater to the production zone of Well #3; and,
- E. The additional financial assurance to be maintained by Petitioner specifically for abandonment and replacement of Well #3, in addition and not in lieu of the requirements established by Rule 62-761.420, F.A.C.

IT IS THEREFORE ORDERED that Petitioner's petition for a permanent variance from the siting requirements set forth in Rule 62-521.400(1)(l), F.A.C., for the USTs that are the subject of the Petition is hereby **GRANTED**, if the following conditions are met:

- (1) The USTs meet the design, construction, installation and operation requirements of Chapter 62-761, F.A.C. (as that chapter exists on the date of this Order, and as it may be amended) or the design, construction, installation

and operation specifications set forth in Paragraphs 53 and 54 of the Petition, to the extent they are more stringent or are in addition to the requirements of Chapter 62-761, F.A.C., in effect on the date of this Order;

- (2) Petitioner installs a monitoring well at a total well depth of 17 feet BLS, generally located and as depicted in Exhibit "A" to this Order, no later than 60 days prior to initiating operation of the USTs;
- (3) Within 30 days of installing the monitoring well, Petitioner shall analyze a groundwater sample from the monitoring well in accordance with the Department's Sampling Standard Operating Procedures (effective 2014) for gasoline (benzene, ethylbenzene, toluene, xylenes, and Methyl tert-Butyl Ether) and diesel fuel (naphthalene, phenanthrene, fluorine, and chrysene) constituents, using the United States Environmental Protection Agency Methods 8260 (BTEX including MTBE) and 8270 for PAHs (1-methylnaphthalene, 2-methylnaphthalene, and the 16-method listed PAHs), to establish a baseline sample and Petitioner shall provide such groundwater sampling results to the Department and FGUA at the addresses provided on Exhibit "B";
- (4) After the USTs are placed into operation, Petitioner shall perform quarterly groundwater sampling from the monitoring well and analyze such samples in accordance with the Department's Sampling Standard Operating Procedures (effective 2014) for gasoline (benzene, ethylbenzene, toluene, xylenes, and Methyl tert-Butyl Ether) and diesel fuel (naphthalene, phenanthrene, fluorine, and chrysene) constituents, using the United States Environmental Protection

Agency Methods 8260 (BTEX including MTBE) and 8270 for PAHs (1-methylnaphthalene, 2-methylnaphthalene, and the 16-method listed PAHs), at Petitioner's expense, and Petitioner shall provide such groundwater sample results to the Department and FGUA at the addresses provided on Exhibit "B". Petitioner may undertake semi-annual monitoring upon providing written notice to FGUA and written approval of the Department;

- (5) Petitioner shall provide to FGUA all documents submitted by Petitioner to the Department with respect to the Facility (e.g., monitoring, incidents, or discharge) as required by Chapters 62-780 and 62-761, F.A.C., at the address provided on Exhibit "B". Petitioner shall provide such documents to FGUA concurrent with the submittal of such to the Department;
- (6) In addition to the financial assurances required by Rule 62-761.420, F.A.C. and no later than 30 days prior to initiating operation of the USTs, Petitioner shall provide financial assurance specifically for Well #3 in the form of a surety bond in the amount of Five Hundred Thirty-Two Thousand Nine Hundred and Nine Dollars (\$532,909.00), for the purpose of reimbursing FGUA for the reasonable costs to abandon and replace Well #3 under the conditions provided in a standby trust agreement and surety bond in a form substantially similar to the forms attached hereto as Exhibit "C", or as otherwise agreed to by Petitioner and FGUA, and the value of which shall adjust every five years from the date the initial bond is issued according to the Consumer Price Index, All items in US City Average, All Urban Consumers, not seasonally adjusted (CUUR0000SA0) ("CPI"), as published by the U.S. Bureau of Labor Statistics.

The reference period from which changes in the CPI will be measured shall be the month in which the initial bond was issued (the "Base Reference Month"). The bond shall adjust by the percent change in the level of the CPI between the Base Reference Month and the most recent monthly CPI published at the time of the adjustment. The CPI percent change is calculated by first determining the CPI index point change between the two periods and then dividing that index point change by the Base Reference Month CPI index. At the time of adjustment, the original bond amount shall be adjusted in an amount equal to the CPI percent change,⁴ unless otherwise agreed to by Petitioner and FGUA in good faith and in writing. Petitioner shall maintain this surety bond until the earlier of the abandonment of Well #3, UST operations are terminated, this Variance is properly transferred as set forth herein, or this Variance is rendered moot;

- (7) Petitioner establishes a standby trust fund, naming FGUA as the grantee, to receive any proceeds from the aforementioned bond under the conditions provided in the standby trust agreement and surety bond;
- (8) Petitioner and FGUA have agreed to be bound by the process to call upon the bond and for applicable dispute resolution as set forth in the attached Exhibit "D" and which is incorporated herein;
- (9) Should the bond proceeds be placed in the standby trust, Petitioner's obligations to FGUA under this Order are fulfilled; however, Petitioner remains

⁴ This process for using the Consumer Price Index for Escalation is also described on the Department of Labor's website: <https://www.bls.gov/cpi/factsheets/escalation.htm> (last visited Dec. 12, 2017).

liable to the Department for additional soil, surface water and groundwater remediation activities, as applicable, under Chapter 62-780, F.A.C.; and,

- (10) This Variance may be transferred to another entity ("Transferee") pursuant to the process provided for in Rule 62-4.120. F.A.C. Petitioner shall provide FGUA with written notice of the requested transfer. When making its determination, the Department shall evaluate Transferee's capability to comply with the additional financial assurances and obligations required by this Variance. Petitioner, Transferee, and FGUA shall have the right to request a Chapter 120, F.S., proceeding on the final determination made by the Department regarding the requested transfer.

DONE AND ORDERED ON this the 28 day of February, 2018, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Justin B. Green, Director
Division of Water Resource Management
State of Florida Department of
Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Heal Randall 3-1-18
Clerk Date

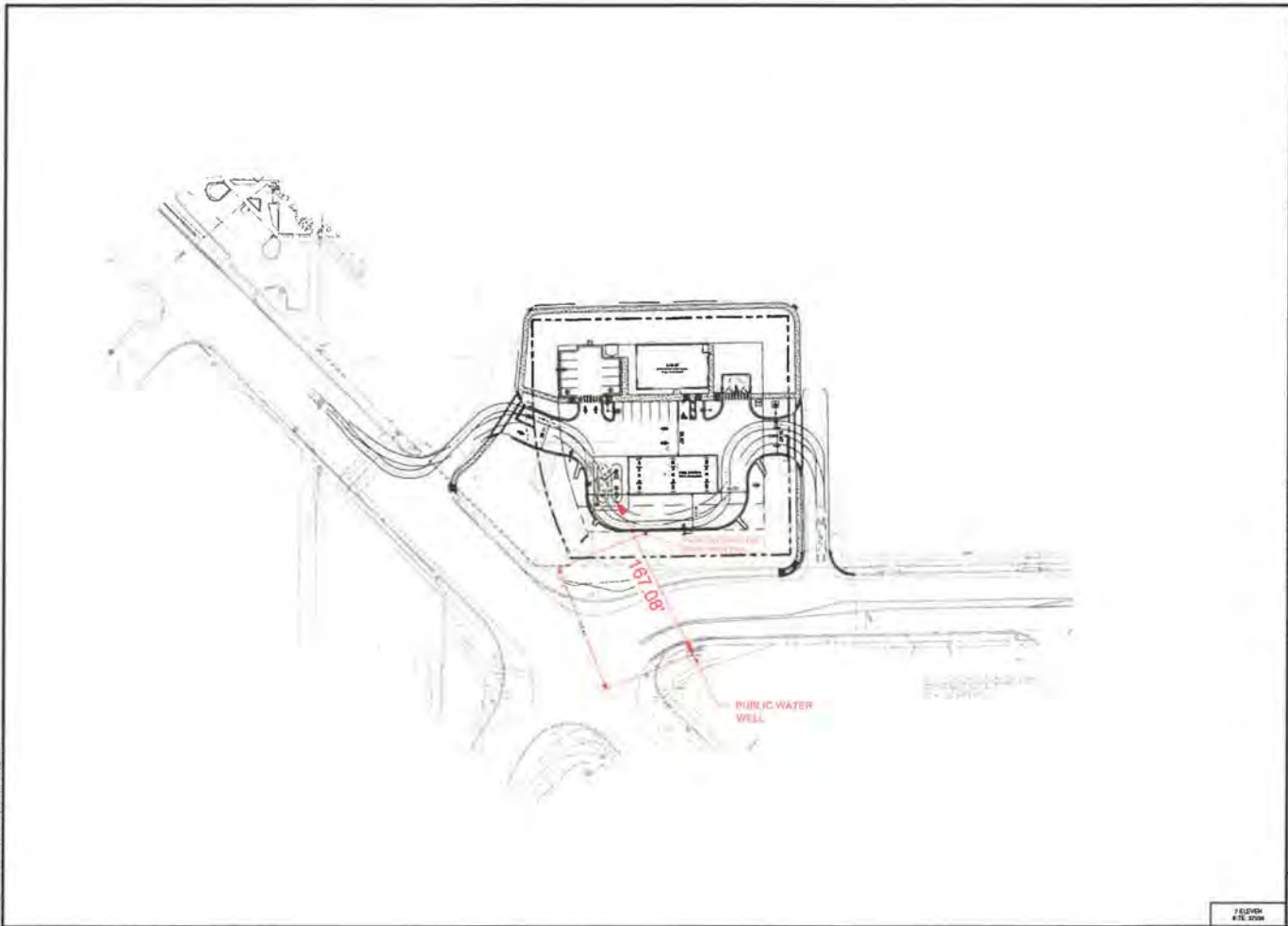
FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

Copies furnished to:
Betsy Hewitt, Esq., FDEP, Office of General Counsel
Jennifer Carpenter, FDEP, South District

Exhibit List

- A. Monitoring Well Location
- B. Contact List
- C. Storage Tank Standby Trust Agreement and Storage Tank Bond
- D. Storage Tank Bond Agreement

Exhibit "A"
Monitoring Well Location



cph
 www.cphcorp.com
A Full Service A/E Firm
 Architects
 Engineers
 Environmental
 Landscape Architects
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Office in:
 • Florida
 • Puerto Rico
 • Connecticut
 • Maryland

| Discipline | Staff | Architect | Engineer | Surveyor | Other |
|--------------------------|-------|-----------|----------|----------|-------|
| Architecture | 1 | 1 | 0 | 0 | 0 |
| Engineering | 1 | 1 | 1 | 0 | 0 |
| Environmental | 1 | 0 | 0 | 0 | 0 |
| Landscape Architecture | 1 | 0 | 0 | 0 | 0 |
| Planning | 1 | 0 | 0 | 0 | 0 |
| Surveying | 1 | 0 | 0 | 0 | 0 |
| Traffic / Transportation | 1 | 0 | 0 | 0 | 0 |

Project No. 7-1108
 Project Name 7-1108
 Project Address 1100 FILLMORE AVENUE
 Project City LEE COUNTY / FLORIDA

EXHIBIT
7-ELEVEN
 1100 FILLMORE AVENUE
 LEE COUNTY / FLORIDA

Sheet No.
EX1

7-ELW04
 4/16/2004

Exhibit "B"
Contact List

EXHIBIT B
CONTACT LIST

Notice Address for Petitioner and Petitioner's Designee(s):

7-Eleven, Inc.
Attn: Grant Distel, Senior Development Director
3200 Hackberry Road, 3A-45 F
Frisco, Texas 75063

Copy to:

Douglas J. Rillstone
Broad and Cassel LLP:
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Notice Address for Department:

State of Florida Department of Environmental Protection
Attn: _____
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

**Notice Address for Florida Government Utility Authority and
Florida Government Utility Authority's Designee(s):**

Florida Government Utility Authority

Attn: Glenn Forrest, FGUA Operations Manager
2080 Wekiva Springs Road, Suite 2070
Longwood, FL 32779-6026

Copy to:

John C. Pelham, General Counsel for FGUA
Pennington P.A.
P. O. Box 10095
Tallahassee, FL 32302-2095

Or for Delivery:

215 South Monroe, 2nd Floor
Tallahassee, FL 32301-1839

Exhibit "C"
Storage Tank Standby Trust Agreement and Storage Tank Bond

STORAGE TANK BOND AGREEMENT

FINAL ORDER GRANTING PETITION FOR VARIANCE

OGC Case No. 17-0088

This **AGREEMENT**, is entered into this ___ day of _____, 2018, by and between 7-Eleven, Inc., a Texas corporation, whose principal address is 3200 Hackberry Road, Irving, Texas 75063, (“7-Eleven”), and the Florida Governmental Utility Authority, a Florida legal entity and public body created by Interlocal Agreement pursuant to Section 163.01(7)(g), Florida Statutes, whose principal address is 280 Wekiva Springs Road, Suite 2070, Longwood, Florida 32779-6026 (“FGUA”),

WHEREAS, FGUA owns and operates Well #3, Florida Unique Well Identification No. AAC5241, PWS ID# 5360172 (“Well”);

WHEREAS, 7-Eleven owns and operates the facility located at 1103 Leeland Heights Blvd W, Lehigh Acres, Florida 33936 (“Facility”), and will own and operate ___ number of underground storage tanks at the Facility, whose FDEP ID numbers are: _____

____ (“Tanks”);

WHEREAS, pursuant to the Florida Department of Environmental Protection (“FDEP”) Final Order Granting Petition for Variance, OGC Case No. 17-0088 (“Final Order”), 7-Eleven is required to provide further financial assurance specifically for the Well, in addition to the financial assurances required under Rule 62-761.420, Florida Administrative Code, which shall reimburse FGUA for the reasonable costs to abandon and replace the Well under the conditions provided herein;

WHEREAS, pursuant to the FDEP Final Order, 7-Eleven has obtained Surety Bond No. _____ (“Bond”), and established with FGUA a Storage Tank Standby Trust Agreement (“Standby Trust”) in which deposit the Penal Sum for use by FGUA as provided therein; and,

WHEREAS, 7-Eleven and FGUA have agreed to enter into this Agreement to establish and govern the process to access the Bond Penal Sum in the event 7-Eleven and FGUA disagree as to whether Groundwater Contamination caused by an incident or discharge, whether intentional or accidental, at the Facility of petroleum or petroleum products stored in the Tanks arising solely from operating the Tanks cannot be remediated to avoid or preclude such Groundwater Contamination from reaching the Well.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency. which are hereby acknowledged, the Parties in this Agreement.

1. The foregoing clauses are incorporated herein as terms of this Agreement. The capitalized terms used in this Agreement shall have the same respective meanings as set forth in

the FDEP Final Order, Bond or Standby Trust, unless a different meaning is required by the context hereof or ascribed to herein.

2. FGUA may initiate the process to access the Bond Penal Sum obtained by 7-Eleven pursuant to the Final Order only when:

(a) Groundwater Contamination, as defined in the Standby Trust Fund Agreement, is detected in either the Monitoring Well constructed at the Facility as required by the Final Order or Well #3; and,

(b) FGUA determines in good faith that Well #3 must be abandoned or replaced solely because such Groundwater Contamination cannot be remediated to avoid or preclude such Groundwater Contamination from reaching Well #3 or otherwise compromise the integrity of Well #3.

3. If the conditions of Section 2, above, are met, FGUA shall deliver written notice of such determination to 7-Eleven and the FDEP. 7-Eleven shall have no more than 180 days from receipt of such notice to complete a contamination assessment for such incident or discharge and deliver to FGUA notice of 7-Eleven's good faith determination as to whether such Groundwater Contamination cannot be remediated to avoid or preclude the Groundwater Contamination from reaching Well #3 or otherwise compromise the integrity of Well #3 such that Well #3 should be abandoned and replaced.

4. If 7-Eleven's determination provided in Section 3 is in agreement with FGUA's determination under Section 2, FGUA and 7-Eleven shall jointly advise the Trustee in writing that each agree that the threshold established in paragraph 1 of the Bond has been satisfied and instruct the Surety to place the Penal Sum into the Standby Trust. Once the Penal Sum has been placed under the Standby Trust, the Trustee shall disburse funds to FGUA as provided by the Standby Trust.

5. If 7-Eleven's determination in Section 3 is contrary to FGUA's determination in Section 2, 7-Eleven and FGUA shall, within 30 days of 7-Eleven's determination, each select an engineering firm from FGUA's then-current list of FGUA continuing contract consultants that is familiar with the regulation and operation of potable water supply wells and remediation of groundwater contamination under Chapters 373 and 403, Florida Statutes, as well as the hydrology and geology within Lee County, Florida.

(a) If 7-Eleven and FGUA select the same engineering firm, that firm shall determine whether the incident or discharge cannot be remediated to avoid or preclude the Groundwater Contamination from reaching Well #3 or otherwise compromise the integrity of Well #3 such that Well #3 should be abandoned and replaced.

(b) If 7-Eleven and FGUA do not agree on an engineering firm, the two firms nominated by 7-Eleven and FGUA shall, within 30 days of their initial selection, jointly select a third engineering firm from the FGUA list of continuing contract consultants and that third engineering firm shall determine whether the incident or discharge cannot be

remediated to avoid or preclude the Groundwater Contamination from reaching Well #3 or otherwise compromise the integrity of Well #3 such that Well #3 should be abandoned and replaced.

(c) If the engineering firm agrees with FGUA, FGUA and 7-Eleven shall jointly advise the Trustee in writing that the threshold established in paragraph 1 of the Bond has been satisfied and instruct the Surety to place the Penal Sum into the Standby Trust. Once the Penal Sum has been placed under the Standby Trust, the Trustee shall disburse funds to FGUA as provided by the Standby Trust.

(d) If the engineering firm agrees with 7-Eleven, then the Bond shall remain in place.

6. The decision of the engineering firm selected to make the determination as provided in Section 5 shall be final and not subject to any appeal or reconsideration by either 7-Eleven or FGUA.

7. 7-Eleven and FGUA shall each be responsible for one-half of the selected engineering firm's fees and costs.

8. This Agreement shall remain in effect and shall terminate by its own terms when the Penal Sum has been placed in trust in accordance with the Standby Trust.

IN WITNESS HEREOF, the Agreement has been duly executed by the parties hereto effective as of the day and year set forth above.

7-ELEVEN, INC.
a Texas corporation

Authorized Signature for 7-Eleven

Type Name and Title

STATE OF TEXAS
COUNTY OF _____

The foregoing instrument was acknowledged, before me this ____ day of _____, 2018, by _____, as _____ of 7-Eleven, Inc., a Texas corporation, and who is personally known to me or produced a _____ as identification.

NOTARY PUBLIC

FLORIDA GOVERNMENTAL UTILITY AUTHORITY
a Florida legal entity and public body created
by Interlocal Agreement pursuant to
Section 163.01(7)(g), Florida Statutes,

Authorized Signature for FGUA

Type Name and Title

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged, before me this ____ day of _____, 2018, by _____, as _____ of Florida Governmental Utility Authority, a legal entity and public body created by Interlocal Agreement pursuant to Section 163.01(7)(g), Florida Statutes, and who is personally known to me or produced _____ as identification.

NOTARY PUBLIC

Exhibit "D"
Storage Tank Bond Agreement

STORAGE TANK STANDBY TRUST FUND AGREEMENT

This TRUST AGREEMENT, the "Agreement," is entered into as of _____, 2018, by and between 7-Eleven, Inc., a Texas corporation, whose principal address is 3200 Hackberry Road, Irving, Texas 75063, the "Grantor"; the Florida Governmental Utility Authority, a Florida legal entity and public body created by Interlocal Agreement pursuant to Section 163.01(7)(g), Florida Statutes whose principal address is 280 Wekiva Springs Road, Suite 2070, Longwood, FL 32779-6026 ("FGUA" or the "Grantee"); and _____ a corporation, whose principal address is _____ (the "Trustee"), for account number _____.

WHEREAS, Grantee owns and operates Well #3, Florida Unique Well Identification No. AAC5241, PWS ID# 5360172 ("Well");

WHEREAS, Grantor owns and operates the facility located at 1103 Leeland Heights Blvd W, Lehigh Acres, Florida 33936 ("Facility"), and will own and operate ___ number of underground storage tanks at the Facility, whose FDEP ID numbers are: _____ ("Tanks");

WHEREAS, pursuant to the Final Order Granting Petition for Variance, OGC Case No. 17-0088, Principal is required to provide further financial assurance specifically for the Well, in addition to the financial assurances required under Rule 62-761.420, F.A.C., which shall reimburse FGUA for the reasonable costs to abandon and replace the Well under the conditions provided herein;

WHEREAS, pursuant to the Final Order Granting Petition for Variance, OGC Case No. 17-0088, and in addition to the financial responsibility demonstration required by Rule 62-761.420, F.A.C., Grantor has established a standby trust fund, naming FGUA as the grantee, to receive any proceeds from Surety Bond No. _____ ("Bond");

WHEREAS, Grantor and FGUA have agreed to enter into this Agreement to govern disbursement(s) of the Bond to, and administration of, the standby trust fund; and,

WHEREAS, Grantor and Grantee, acting through its respective duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

NOW, THEREFORE, the Grantor, Grantee, and Trustee agree as follows:

Section 1. RECITALS. The above whereas clauses are incorporated as terms into the Agreement.

Section 2. DEFINITIONS. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Grantee" means the FGUA and any governmental agency that is a successor or assign of the FGUA that owns and operates the Well.

(d) The term "Groundwater Contamination" means groundwater with concentrations of constituents of petroleum or petroleum products stored in the Tanks that exceed groundwater cleanup target levels established in applicable rules adopted by the Florida Department of Environmental Protection resulting from an incident or discharge at the Facility.

Section 3. ESTABLISHMENT OF FUND. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the FGUA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. Payments made by the Surety are transferred by the Surety to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor or Surety, any payments necessary to discharge any liability established by Bond.

Section 4. PAYMENT FOR DAMAGES.

1. Proceeds from the Bond will be transferred by the Surety to the Trustee only upon the Trustee's receipt of a written agreement between Grantor and Grantee that Groundwater Contamination caused by any incident or discharge, whether intentional or accidental, at the Facility, of petroleum or petroleum products stored in the Tanks, cannot be remediated to avoid or preclude such Groundwater Contamination from reaching the Well ("Grantor/Grantee Agreement"). The Trustee shall make payments from the Fund to FGUA to reimburse FGUA's reasonable costs associated with the abandonment and replacement of the Well, including the design, permitting, construction, testing and connection of the replacement well.

2. To request disbursement from the Fund, FGUA's Designee identified in **Schedule A** shall deliver to Trustee and Grantor a written and notarized disbursement request, which shall include a description of the work completed and copies of all invoices and documentation supporting the requested disbursement ("Disbursement Request"). Such delivery shall be in accordance with Section 20, below. Disbursement Requests may be made by FGUA as needed throughout the process of design, permitting, construction and testing of the replacement well so as to minimize capital outlay of FGUA in replacing the well.

3. If Grantor does not deliver to Trustee and FGUA a written objection to the Disbursement Request, such objection to be limited to whether such costs are associated with the abandonment and replacement of the Well, within ten (10) business days of receipt of the Disbursement Request, Grantor shall be deemed to have approved the Disbursement Request and the Trustee shall make the requested disbursement to FGUA's Designee.

4. If Grantor does provide a timely objection to all or a portion of the Disbursement Request, Trustee shall withhold disbursement until the parties in the exercise of good faith agree on the requested disbursement.

5. The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of the FGUA under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of the FGUA arising from, and in the course of, employment by the FGUA;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft; or,

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the FGUA that is not the direct result of an incident or discharge from a Tank.

Section 5. PAYMENTS COMPRISING THE FUND. Payments made to the Trustee for the Fund shall consist only of proceeds from the Bond.

Section 6. TRUSTEE MANAGEMENT. Once funds are deposited into the Fund, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that the Trustee is authorized to hold cash awaiting distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. COMMINGLING. The Trustee shall not commingle the Fund with any other Grantee funds whatsoever.

Section 8. EXPRESS POWERS OF TRUSTEE. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and,

(c) Except as otherwise provided in this Agreement, to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. TAXES AND EXPENSES. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. ADVICE OF COUNSEL. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with notice to Grantee Counsel of the consultation, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. TRUSTEE COMPENSATION. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. SUCCESSOR TRUSTEE. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee, the Grantee approves the successor trustee, and this successor accepts the appointment. The Grantee shall not unreasonably withhold its approval of a successor trustee. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, Grantee and the present Trustee in the manner described in Section 20 below and at least ten (10) business days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. INSTRUCTIONS TO THE TRUSTEE. All requests, objections, instructions, or other correspondence required by this Agreement from the Grantor's Designee or FGUA's Designee to the Trustee shall be in writing, signed and notarized by the requesting Designee or other designees as the Grantor or FGUA may designate by written amendment to **Schedule A**, which is incorporated herein. The Trustee shall have the right to assume, in the absence of written notice or objection to the contrary within the timeframe set forth in Section 4, that a proper disbursement request by the FGUA's Designee is in accordance with this Agreement, and shall be fully protected in taking action in such an event. The Trustee shall also have the right to assume, in the absence of a written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the FGUA hereunder has occurred. The Trustee shall have no duty to act in the absence of such disbursement requests, except as provided for herein.

Section 14. WAIVER AND RELEASE. Any disbursement to FGUA from the Fund shall constitute a complete, irrevocable and unconditional waiver, release, and discharge of Grantor (including, without limitation, officers, employees, agents, or assigns of Grantor) from any and all

past, present, or future charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, arbitrations, damages, actions, causes of actions, suits, rights, demands, attorneys' fees, costs, losses, debts and expenses, that FGUA has, owns, holds, or claims to have had, owned or held or which it at any time before the disbursement had, owned or held, or claimed to have had, owned or held, at any time which arise out of, allegedly arise out of, or relate to the Tank incident or discharge subject to the Grantor/Grantee Agreement, including any claims under any other federal, state, local or foreign law, regulation or ordinance, any public policy, contract, constitutional, common law, or tort theory (including, but not limited to, claims for negligence, negligent or intentional infliction of emotional distress, fraud, misrepresentation, or any type of claim for personal injury, etc.) whether based on common law or otherwise, indemnity and/or attorneys' fees or costs that may or did accrue prior to the date of the disbursement or at any future time arising out of these claims. The listing of claims waived in this paragraph related to the Tank incident or discharge subject to the Grantor/Grantee Agreement is intended to be illustrative rather than exhaustive. Thus, FGUA acknowledges and agrees that a disbursement to FGUA under this Agreement constitutes a full and final bar to any and all claims of any type that it now has, had or may have against the Grantor related to the incident or discharge subject to the Grantor/Grantee Agreement.

A disbursement to FGUA from the Fund shall result in FGUA, to the extent authorized by Florida law, and specifically without waiver of any sovereign immunity protection as provided in Section 768.28, Florida Statutes, indemnifying, defending, and holding completely harmless the Grantor (including, without limitation, officers, employees, agents, or assigns of Grantor) from and against any and all liabilities (including statutory liability and personal injury), losses, suits, claims, demands, judgments, fines, any and all damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees), which may be resulting from or arising out of or in connection with the incident or discharge subject to the Grantor/Grantee Agreement.

Grantor agrees to give FGUA reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow FGUA or its insurer to compromise and defend the same to the extent of FGUA's interest, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, FGUA shall engage counsel reasonably acceptable to Grantor. In any suit, action, proceeding, claim or demand brought in respect of which the Grantor may pursue indemnity, the Grantor shall have the right to retain its own counsel. The fees and expenses of such counsel shall be at the expense of the Grantor unless (1) the FGUA and the Grantor shall have mutually agreed to the contrary, (2) the FGUA has failed within a reasonable time to retain counsel reasonably satisfactory to the Grantor, or (3) the Grantor and the FGUA are both named parties in any such proceeding and, in the sole judgment of the Grantor, representation of both the Grantor and the FGUA by the same counsel would be inappropriate due to actual or potential differing interests between them. In the event of any of the above stated instances, FGUA shall be responsible for the legal fees and expenses. The indemnification provisions of this Section shall survive the expiration or earlier termination of this Agreement.

FGUA explicitly acknowledges and agrees to the rights, waivers, releases, and indemnification provisions in this Section 14 and that the provisions of this Section 14 are material and instrumental in inducing Grantor to enter into this Agreement and that the provisions of Section 14 shall survive the termination of this Agreement for a period of ten (10) years.

Section 15. AMENDMENT OF AGREEMENT. This Agreement may be amended by an instrument in writing executed by all parties.

Section 16. IRREVOCABILITY AND TERMINATION. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until it is: (1) terminated at the written direction of the parties; (2) terminated by the Trustee and the Grantor if a governmental entity ceases to own and operate the Well; (3) terminated by the Trustee and the Grantor after the Fund has been funded and when the Fund has a zero (\$0) balance; or, (4) terminated by the Trustee and the Grantor after the Fund has been funded and eighteen months (18) months has passed from the date the Fund was funded, or the final Disbursement from the fund was made to FGUA, whichever is later. Upon termination of the Fund, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. TRUSTEE IMMUNITY AND INDEMNIFICATION. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor's Designee or the FGUA's Designee issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. CHOICE OF LAW. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 19. INTERPRETATION. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 20. NOTICE. All notices, objections, or disbursement requests required by this Agreement must be sent next-day delivery by a nationally-recognized overnight delivery service to the addresses and persons set forth in Schedule A. Any such notice shall be deemed to have been delivered upon actual delivery or one (1) business day following submission to a nationally-recognized overnight delivery service for next day delivery. Any party may change its notice address by written notice to the other parties given as provided in this section. In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written.

[Grantor Signature on the following page]

GRANTOR:
7-Eleven, Inc., a Texas corporation

Authorized Signature for Grantor

Type Name and Title

Telephone Number

Email Address

STATE OF TEXAS
COUNTY OF _____

The foregoing instrument was acknowledged, before me this ___ day of _____, 2018,
by _____, as _____ of 7-Eleven, Inc., a Texas corporation, and who is
personally known to me or produced a _____ as identification.

NOTARY PUBLIC

[Grantee Signature on the following page]

GRANTEE:

**Florida Governmental Utility Authority,
a Florida legal entity and public body created
by Interlocal Agreement pursuant to
Section 163.01(7)(g), Florida Statutes,**

Authorized Signature for Grantee

Type Name and Title

Telephone Number

Email Address

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged, before me this ____ day of _____,
2018, by _____, as _____
_____ of Florida Governmental
Utility Authority, a legal entity and public body created by Interlocal Agreement pursuant to Section
163.01(7)(g), Florida Statutes, Florida, and who is personally known to me or produced _____ as
identification.

NOTARY PUBLIC

TRUSTEE:

Authorized Signature for Trustee

Type Name and Title

Telephone Number

Email Address

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged, before me this ____ day of _____,
2018, by _____, as
_____ of
_____, a _____, and who is personally known to me or produced _____ as
identification.

NOTARY PUBLIC

SCHEDULE A

Notice Address for Grantor and Grantor's Designee(s):

7-Eleven, Inc.
Attn: _____
3200 Hackberry Road
Irving, Texas 75063

Copy to:
Douglas J. Rillstone
Broad and Cassel LLP
215 South Monroe Street, Suite 400
Tallahassee, FL 32301

Notice Address for Grantee and Grantee's Designee(s):

Florida Government Utility Authority
Attn. Glenn Forrest, FGUA Operations Manager
2080 Wekiva Springs Road, Suite 2070
Longwood, FL 32779-6026

Copy to:
John C. Pelham, General Counsel for FGUA
Pennington P.A.
P. O. Box 10095
Tallahassee, FL 32302-2095

Or for Delivery

215 South Monroe, 2nd Floor
Tallahassee, FL 32301-1839

Notice Address for Trustee:

Type Name of Trustee

Type Address

STORAGE TANK BOND
Florida Unique Well Identification No. AAC5241
PWS ID# 5360172

Date Bond executed: _____

Surety Bond Number: _____

Period of coverage:

The Principal is 7-Eleven, Inc., herein referred to as "Principal" or "owner or operator", whose principal address is 3200 Hackberry Road, Irving, Texas 75063, a corporation organized under the laws of the State of Texas.

The Surety is _____, herein referred to as "Surety," whose principal address is _____, a corporation organized under the laws of the State of _____, and is licensed to do business in the State of Florida.

Scope of Coverage:

Facility: 1103 Leeland Heights Blvd W, Lehigh Acres, Florida 33936 ("Facility")
Florida Department of Environmental Protection ("FDEP") ID: _____
Number of tanks at Facility: _____ ("Tanks")

Water Supply Well: Abandonment and replacement of Well #3, (Florida Unique Well Identification No. AAC5241, PWS ID# 5360172) ("Well"), owned and operated by the Florida Governmental Utility Authority ("FGUA") a Florida legal entity and public body created by interlocal agreement pursuant to Section 163.01(7)(g), Florida Statutes.

Penal sums of bond: FIVE HUNDRED THIRTY TWO THOUSAND NINE HUNDRED NINE DOLLARS (\$532,909.00), herein after "Penal Sum."

KNOW ALL PERSONS BY THESE PRESENTS, that we, the Principal and Surety, hereto are firmly bound to the FGUA, in the above Penal Sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the Penal Sum.

WHEREAS, pursuant to the Final Order Granting Petition for Variance, OGC Case No. 17-0088, Principal is required to provide further financial assurance specifically for the Well, in addition to the financial assurances required under Rule 62-761.420, F.A.C., which shall reimburse FGUA for the reasonable costs to abandon and replace the Well under the conditions provided herein;

WHEREAS, pursuant to the Final Order Granting Petition for Variance, OGC Case No. 17-0088, and in addition to the financial responsibility demonstration required by Rule 62-

761.420, F.A.C., Principal has established a standby trust fund, naming FGUA as the grantee, to receive any proceeds from this Bond;

WHEREAS, Principal and FGUA have agreed to enter into a standby trust agreement that will govern disbursement(s) of this Bond from the standby trust fund; and,

WHEREAS, Surety is authorized to do business in the State of Florida;

NOW, THEREFORE, the conditions of this obligation are such that:

1. If Principal and FGUA agree in writing that a final determination has been made that "Groundwater Contamination" (defined as "groundwater with concentrations of constituents of petroleum or petroleum products stored in the Tanks that exceed groundwater cleanup target levels established in applicable rules adopted by the FDEP resulting from an incident or discharge at the Facility") occurring during the period in which this Bond is in effect, of petroleum or petroleum products stored in the Tanks cannot be remediated to avoid or preclude such Groundwater Contamination from reaching the Well, the Surety shall remain liable to FGUA for the reasonable costs to abandon and replace the Well, up to the amount of the Penal Sum.
2. In the event that the Principal and FGUA agree in writing as provided above, the FGUA may call upon this Bond after an incident or discharge as provided in the Storage Tank Bond Agreement.
3. The Surety's obligation does not apply to any of the following:
 - (a) Any obligation of the owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of the owner or operator, arising from, and in the course of employment by the owner or operator;
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft; or,
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the owner or operator that is not the direct result of an incident or discharge, from a storage tank.

The Surety shall become liable on this Bond obligation only when the conditions described in paragraph 1 and 2, above, occur. Upon notification by the FGUA that the circumstance described in paragraph 1, above, has occurred as evidenced by the delivery of a certified copy of such written agreement to Surety and Principal, the Surety shall place the amount of the Penal Sum into the standby trust fund established by the Principal, FGUA, and the trustee for the Standby Trust.

The Surety hereby waives notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this Bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount to the Penal Sum shown on the face of the Bond, but in no event shall the obligation of the Surety hereunder exceed the amount of said Penal Sum.

The Surety may cancel the Bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this Bond by sending written notice to the Surety with additional written notice to FDEP and to FGUA. Principal must maintain this bond or a replacement bond as provided in the Final Order Granting Petition for Variance, OGC File No. 17-0088.

In Witness Whereof, the Principal and Surety have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this Surety Bond on behalf of the Principal and Surety.

PRINCIPAL

Signature of Authorized Representative of Principal

Type Name and Title

Telephone Number

Email Address

CORPORATE SURETY

Provide the following for each surety. Attach pages as needed.

_____(SEAL)
Surety Company Liability Limit

Signature of Authorized Representative of Surety
(Attach Power of Attorney)

Type Name and Title

Address of Authorized Representative

Telephone Number

Email Address

NOTICE OF RIGHTS

The Department's proposed agency action will become final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's Order may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, and Tallahassee, Florida 32399-3000. Petitions filed by the Petitioner or any of the parties listed below must be filed within twenty-one days of receipt of this written notice.

Under Rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may request an extension of time to file a petition for an administrative hearing. Requests for extension of time must be filed (received by the clerk) with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the end of the time period for filing a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Petitions filed by any persons other than those entitled to written notice under section 120.60(3), F.S., must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first. Under section 120.60(3), F.S.; however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will only be at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available for this proceeding.

Once this permitting decision becomes final, any party to the final agency action has the right to seek judicial review of it under section 120.68, F.S., by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, or via email at agency_clerk@dep.state.fl.us, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty days after this order is filed with the clerk of the Department.