

WHEN RECORDED MAIL TO:

City Clerk
City of Riverside
City Hall, 3900 Main Street
Riverside, CA 92522

Project: 8703 Indiana Avenue
Riverside, CA
APN: 233-140-018

DOC # 2009-0545135

10/21/2009 08:00A Fee:NC

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Recorded in Official Records

County of Riverside

Larry W Ward

Assessor, County Clerk & Recorder



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AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

(DUTY TO MAINTAIN EXTERIOR PROPERTY APPEARANCE)

THIS AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Covenant") is made and entered into this 14th day of October, 2009, by 7-Eleven Inc., a Texas corporation, formerly known as and which holds title to the Property defined in Exhibit "A" below as The Southland Corporation, a Texas Corporation ("Declarant") and the Redevelopment Agency of the City of Riverside, a public body corporate and politic ("Agency"), with reference to the following facts:

A. Declarant is the fee owner of the real property in the City of Riverside, County of Riverside, State of California, located at 8703 Indiana Avenue, Riverside County Assessor's Parcel Number 233-140-018 and legally described in Exhibit "A" attached hereto (the "Property").

B. Declarant entered into that certain Owner Participation Agreement ("OPA") and this Covenant dated on or about October 14, 2009. As material consideration for the OPA, Declarant has agreed to be bound by this Covenant.

C. In order to maintain and enhance the appearance of properties located within the City of Riverside ("City") and in the Arlington Redevelopment Project Area, the Agency and Declarant desire to execute and record this Covenant that places certain restrictions on the exterior Property to ensure that the Property is maintained in "Good Repair" defined in this Covenant.

NOW, THEREFORE, Declarant hereby covenants and agrees with the Agency that the Property is, and shall hereafter be held, transferred, sold, conveyed, hypothecated, encumbered,

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leased, rented, improved, used and occupied subject to the following declarations, limitations, covenants, conditions, and restrictions for any portion of the Property:

1. Standard of Maintenance.

Declarant shall maintain the Property in "Good Repair." "Good Repair" shall mean in a clean, neat, orderly and safe condition in which maintenance is not deferred and the overall appearance is of the highest quality, consistent and compatible with the highest standards of the City of Riverside business community (i.e. Trader Joe's and Fresh and Easy) and shall include, but not be limited to, components that are visible from the public right-of-way. Declarant shall, therefore, at its sole cost and expense, maintain in Good Repair:

- (a) All improvements on the property including, but not limited to the façade, the parking lot and lighting, planters, other structures, fences, walls, roofs, chimneys, cornices, gutters, downspouts, drains, windows, shutters, doors, storefronts, signs, marquees, awnings and trash enclosures.
- (b) All painted surfaces and shall maintain and apply paint or preservatives as necessary to prevent deterioration and to remove graffiti and major areas of flaking or peeling or chipped or damaged paint that are visible from the public right-of-way.
- (c) All vegetation by removing and replacing any dead, decayed or diseased trees, shrubs, or other vegetation which is in need of landscape maintenance; and by preventing any overgrown vegetation including trees, shrubbery, ground covers, landscaping, lawns and other plantings
- (e) All signage, windows, lighting and light standards required for use and operation of the Property.
- (f) All parking lot trash enclosures, circulation and parking areas, drainage swales and other drainage facilities and storm drains on the Property.
- (g) All off-site landscaping, sidewalk and irrigation facilities located within the immediately adjacent public right-of-way.
- (h) All aspects of the Property and any visible utility installations which Declarant has exclusive use of, including without limitations those relating to mechanical, air conditioning, plumbing, sewer, electrical, heating, water, gas, cable television, drains, fire protection (including all required tests and maintenance) and other lines, equipment, systems and fixtures exclusively serving Property.

2. Failure to Perform – Notice and Opportunity to Cure.

If Declarant fails to perform the maintenance and/or repair as required hereunder, Agency shall have the right, but not the obligation to give Declarant a thirty (30) day notice of default which shall specify the nature and scope of the default asserted by Agency ("Default") and the opportunity to Declarant to cure the Default ("Notice"). Should Declarant fail to cure the Default within the thirty (30) day cure period prescribed in the Notice, or within such additional time as the Agency may provide Declarant if additional time is necessary to cure the Default due to the nature and scope of the Default, then the Agency shall have the right, but not the



obligation, to perform the maintenance and/or repair obligations of the defaulting Declarant without first obtaining an order from a court and on ten (10) days prior written notice of entry served on Declarant. In such event, Declarant shall be obligated to reimburse the Agency for the cost of such maintenance and/or repair upon receipt of an invoice therefore from Agency ("Invoice"). If Declarant is subject to such reimbursement obligation, Declarant shall also be required to pay an additional fifteen percent (15%) of such cost of maintenance and repair to the Agency to cover the Agency's administrative and overhead expenses. Declarant's failure to reimburse the Agency within thirty (30) days from the date of the Invoice shall entitle the Agency to record a notice of lien against the Property and to enforce the lien through an action in foreclosure.

3. Right of Entry.

Declarant hereby grants to Agency a Right of Entry and access to the Property for the purpose of securing compliance with, or to perform any work of maintenance or repair required by this Covenant as provided in Paragraph 1 above. Agency shall give Declarant written notice of entry ten (10) days prior to the date of entry provided that Declarant has failed to cure a default pursuant to Paragraph 2 of this Covenant.

4. Enforcement.

(A) In addition to other available remedies and at the election of the Agency, failure of Declarant to comply with this Covenant shall be deemed a violation of Riverside Municipal Code ("RMC") section 6.14.020 relating to landscaping maintenance, RMC section 13.06.090 relating to vegetation maintenance, RMC section 19.620.010 et seq. relating to windows and signs, any other RMC violations not specifically listed, and all breaches and/or violations of this Covenant shall be deemed a nuisance subject to abatement pursuant to RMC section 6.15.010 et seq. Declarant hereby waives all protests, challenges, objections, claims and causes of action of whatever kind or nature including constitutional claims, if any, arising out of the enforcement of this Covenant by the City of Riverside and the Right of Entry granted herein. If Agency elects to proceed against Declarant under the provisions of the RMC, such action will also include any and all rights to impose a special assessment lien against the Property.

(B) It is agreed that the covenants, conditions, and restrictions created by this Covenant are of a special and unique kind and character in that they promote the public health, safety, welfare and morals of the community and that the rights granted to the Agency hereunder are of a similar special and unique kind and character so that if there is a default by the Declarant, or breach by the Declarant of any material provision of this Covenant, the Agency would not have an adequate remedy at law. It is expressly agreed, therefore, that the Agency's rights under this Covenant may be enforced by an action for the enforcement and implementation of this Covenant, specific performance and such other equitable relief as is provided by the laws of the State of California and of the City of Riverside.

(C) Notwithstanding any other provision contained in this Covenant, an uncured Default under the terms of this Covenant, as provided in Section 2 hereof, shall be deemed a cause for termination of the Agency's obligations under the OPA and authorizes the



Agency to proceed, in its sole and absolute discretion, to consider acquisition of the Property by eminent domain. This remedy shall be in addition to other remedies available to the Agency either as a matter of law or under the terms of this Covenant and the OPA.

5. Covenant Running with the Land.

This Covenant shall run with the land and each and all of its terms shall be binding upon Declarant, its heirs, successors and assigns, and shall continue in effect until such time as released by the Development Director of the Redevelopment Agency for the City of Riverside, California, by a writing duly recorded or the time period of Section 7 below expires and after said expiration this Covenant shall have no more force or effect and it shall no longer affect the Property.

6. Reinstatement of Condemnation Authority.

To the extent that under the OPA Agency suspended its right to exercise eminent domain authority over the Property, Agency's eminent domain authority shall be reinstated upon occurrence of one or any combination of the following: (i) There is an uncured breach of the OPA as provided in Sections 2.2.3 or 2.2.4 thereof (ii) There is an uncured Default by Declarant under this Covenant pursuant to Section 2 of this Covenant, or (iii) Upon lapse of the Covenant as provided in Section 7 of this Covenant.

7. Duration

This Covenant shall remain in full force and effect for a period of fifteen (15) years from the recording date of this Covenant. Upon request from Declarant, Agency will execute in recordable form any document requested by Declarant which is reasonably necessary in the judgment of Declarant to terminate the effect of this Covenant after it has expired.

[Signatures on following page.]



IN WITNESS WHEREOF, Declarant has caused this Covenant and Agreement to be executed as of the day and year first written above.

AGENCY:

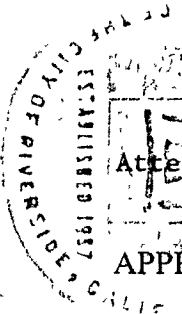
DECLARANT:

REDEVELOPMENT AGENCY OF
THE CITY OF RIVERSIDE,
a public body, corporate and politic

7-ELEVEN INC.,
a Texas corporation,
formerly known as The Southland Corporation,
a Texas corporation

By: *Bell J. Dahn*
Executive Director

By: *David Fenton*
Name: David Fenton
Its: Sr. Vice President



Attest: *[Signature]*
Agency Secretary

By: *[Signature]*
Name: J. Donald Stevenson, Jr.
Its: Assistant Secretary

APPROVED AS TO FORM:

By: *Kristi J. Smith*
Agency General Counsel
Kristi J. Smith

Final Version
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CA 07-2249 Rev 06/12/09



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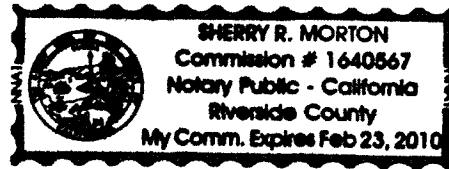
State of California
County of Riverside

On October 14, 2009, before me, Sherry R. Morton, Notary Public, personally appeared Belinda J. Graham, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sherry R Morton (SEAL)
Signature



ACKNOWLEDGMENT

State of California
County of Riverside

On October 15, 2009, before me, Sherry R Morton, Notary Public, personally appeared Colleen J. Nicol, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~(is)~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Sherry R. Morton (SEAL)
Signature

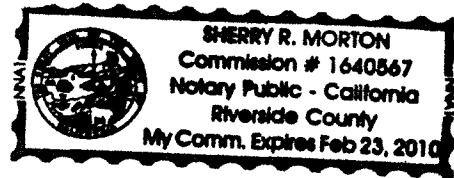


EXHIBIT "A"

Legal Description

LOTS 1 AND THE EASTERLY 26.60 FEET OF LOT 2 OF TRACT 2641, IN THE CITY OF RIVERSIDE, AS SHOWN BY MAP ON FILE IN BOOK 47 PAGES 74 AND 75 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPT THAT PORTION OF LOT 1 CONVEYED TO THE CITY OF RIVERSIDE BY DEED RECORDED DECEMBER 16, 1966, AS INSTRUMENT NO. 120388, OFFICIAL RECORDS.



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ACKNOWLEDGMENT

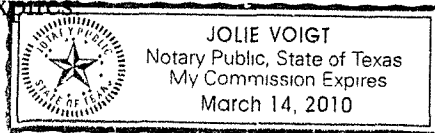
State of Texas
County of Dallas

BEFORE ME, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared David Fenton and J. Donald Stevenson, Jr., a Vice President and an Assistant Secretary, respectively, of 7-ELEVEN, INC., a Texas corporation, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation, and that they executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8 day of July, 2009.

Jolie Voigt
NOTARY PUBLIC

My commission expires



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