

MAIL RECORDED ORIGINAL TO:  
Legal Department (Loc. 36026)  
7-Eleven, Inc.  
1722 Routh Street, Suite 1000  
Dallas, Texas 75201-2506

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12/31/2012 12:13 PM \$41.00  
Book - 10093 Pg - 4570-4582  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: ZJM, DEPUTY - WI 13 P.

### RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "Covenant") is made and entered into as of December 21, 2012, by BDN LAND INVESTMENT, L.C., a Utah limited liability company ("**BDN**"), WB II LAND INVESTMENT, L.C., a Utah limited liability company, WB III LAND INVESTMENT, L.C., a Utah limited liability company (collectively, "**WB**") and THE DISTRICT-NORTH, L.C., a Utah limited liability company ("**District-North**") (BDN, WB and District-North are collectively referred to herein as "Declarant"), and 7-ELEVEN, INC., a Texas corporation ("7-Eleven"), and its successors and assigns.

#### Recitals

A. BDN is the owner of certain real property situated in the City of South Jordan, County of Salt Lake, State of Utah, legally described as follows:

Lots 2 and 3 of THE NORTH DISTRICT – a Multiple Use Subdivision according to the official plat thereof, filed in Book "2007P" of Plats, at Page 413 of the Official Records of the Salt Lake County Recorder (the "BDN Property").

Parcel ID Nos. 27-20-176-002 and 27-20-176-005

District-North is the owner of certain real property situated in the City of South Jordan, County of Salt Lake, State of Utah, legally described as follows:

Lots 3 and 4 of RIVER HEIGHTS AT THE NORTH DISTRICT – a Multiple Use Subdivision according to the official plat thereof, filed in Book "2009P" of Plats, at Page 31 of the Official Records of the Salt Lake County Recorder (the "District-North Property").

Parcel ID Nos. 27-20-153-004 and 27-20-153-007

WB is the owner of certain real property situated in the City of South Jordan, County of Salt Lake, State of Utah, legally described as follows:

Lots 2A and 5A of RIVER HEIGHTS AT THE NORTH DISTRICT – 2<sup>ND</sup> AMENDED, - a Multiple Use Subdivision, amending Lots 1, 2, 5 and 6 of River Heights at the North District Subdivision according to the official plat thereof, filed in Book “2012P” of Plats, at Page 47 of the Official Records of the Salt Lake County Recorder (the “WB Property”).

Parcel ID Nos. 27-20-153-008 and 27-20-153-009

The BDN Property, District-North Property and WB Property are collectively referred to herein as the “Declarant Property”.

B. Prior to the date hereof, BDN, as seller, and 7-Eleven, as buyer, entered into that certain Purchase Contract dated on or about June 7, 2012 (the “Purchase Contract”), pursuant to which 7-Eleven agreed to purchase certain property located adjacent to or nearby the Declarant Property (the “Convenience Store Property”) legally described as follows:

See Attached Exhibit B

Parcel ID No. 27-20-177-009

C. The Declarant Property together with the Convenience Store Property (collectively, the “Property”) make up a shopping center development commonly referred to as “The North District”. The Property is shown outlined on the site plan attached hereto as Exhibit A (the “Property Site Plan”).

D. 7-Eleven closed on its purchase of the Convenience Store Property pursuant to the Purchase Contract.

E. As a condition to the closing, BDN agreed to record certain restrictions against the Declarant Property on the terms and conditions set forth herein.

NOW, THEREFORE, Declarant and 7-Eleven each covenants and agrees as follows:

1. Recitals. The foregoing Recitals are incorporated herein by this reference.
2. Restrictions on Use.

(a) Exclusives. For so long as 7-Eleven, its successors and assigns, and/or any subtenant thereof (a “Store Operator”), opens and operates the Convenience Store Property for the retail sale, rental or provision of merchandise and services customarily sold, rented or provided from time to time, at stores operated or franchised by 7-Eleven or at supermarkets or grocery markets of any type and character operated within the supermarket or grocery industry as of the date hereof or in the future (the “Convenience Store Use”), Declarant agrees that no portion of the Declarant Property (or such smaller portion of the Declarant Property as set forth below with respect to the Coffee Exclusive (as defined below) only) shall be used for the operation of a business which provides for sale or rental, in connection with all or any part of its business operations, any of the following items (the “Exclusives”), subject to the terms and conditions set forth herein:

- (i) beer and wine for off-premise consumption;
- (ii) cigarettes and tobacco products, unless vended by machine;
- (iii) coffee or hot chocolate sold by a specialty coffee shop (e.g.: Starbucks, Panera, Caribou, Daz Bog) located within 100 yards of any portion of the Convenience Store Property (the "Coffee Exclusive");
- (iv) retail motor fuels or petroleum products.

(b) Carve-Back on Exclusives. Notwithstanding anything to the contrary contained here, the Exclusives shall not apply to the following tenants (or their successors, assigns and subtenants, or any replacement tenant using such property for substantially the same use as the named tenant that it is replacing) leasing a portion of the Declarant Property as shown on the Property Site Plan attached hereto as Exhibit A:

Olive Garden  
McDonalds  
Buffalo Wild Wings  
Longhorn Steakhouse

3. Termination. This Covenant shall automatically terminate upon the earliest to occur of the following: (i) eighteen (18) months following the date this Covenant is recorded if the Convenience Store Property has not, prior to such date, been open to the public for the Convenience Store Use, or (ii) once open to the public, the date that is eighteen (18) months following the date that operation of the Convenience Store Use on the Convenience Store Property ceases if the Convenience Store Property has not, prior to such date, been reopened to the public for the Convenience Store Use. Upon expiration or termination of the Covenant pursuant to any of the conditions above, 7-Eleven (or its successors or assigns) shall execute such documentation provided by Declarant as reasonably required, in recordable form, to clear title of the recorded Covenant.

4. Enforcement. If any of the above covenants are found by a court of competent jurisdiction to be unreasonable or unenforceable, then such covenants shall be limited only to the extent that such court determines is reasonable and enforceable. Declarant hereby grants Store Operator the right to institute an action, including an action for damages or injunctive relief, against any owner, tenant or other occupant of the Declarant Property operating in violation of the Exclusives reserved for Store Operator.

5. Representations.

(a) BDN represents and warrants to 7-Eleven the following as of the date of this Covenant: (i) BDN is the fee owner of the BDN Property; and (ii) BDN has all requisite power and authority to execute and deliver this Covenant, and the execution, delivery and performance of this Covenant has been duly authorized by all necessary action on the part of such party.

(b) District-North represents and warrants to 7-Eleven the following as of the date of this Covenant: (i) District-North is the fee owner of the District-North Property; and (ii) District-North has all requisite power and authority to execute and deliver this Covenant, and the execution, delivery and performance of this Covenant has been duly authorized by all necessary action on the part of such party.

(c) WB represents and warrants to 7-Eleven the following as of the date of this Covenant: (i) WB is the fee owner of the WB Property; and (ii) WB has all requisite power and authority to execute and deliver this Covenant, and the execution, delivery and performance of this Covenant has been duly authorized by all necessary action on the part of such party.

6. Covenants Running with the Land. The rights and restrictions herein shall be binding upon and shall inure to the benefit of any owner(s) of the Property or any portion thereof and their successors and assigns, including all tenants and other occupants of the Property. This Covenant shall burden the Declarant Property and each portion thereof, shall be appurtenant to and for the benefit of the Convenience Store Property, and shall run with the land.

7. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly given when sent by overnight courier such as Federal Express, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses which follow, as the same may be changed by notice sent in accordance with this Section 7:

DECLARANT: BDN LAND INVESTMENT, L.C.  
WB II LAND INVESTMENT, L.C.  
WB III LAND INVESTMENT, L.C.  
THE DISTRICT-NORTH, L.C.  
c/o The Boyer Company, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attention: Scott Verhaaren

7-ELEVEN: 7-ELEVEN, INC.  
P.O. Box 711  
Dallas, Texas 75221-0711  
Attention: Corporate Real Estate

with a copy to: 7-ELEVEN, INC.  
1722 Routh Street, Suite 1000  
Dallas, Texas 75201-2506  
Attention: Property Specialist

8. Amendment. No amendment to this Covenant shall be effective without the written consent of 7-Eleven, which consent shall not be unreasonably withheld, conditioned or delayed.

9. Headings. Headings in this Covenant are for convenience only and shall not be used to interpret or construe its provisions.


10. Governing Law. This Covenant shall be construed in accordance with and governed by the laws of the State of Utah. The invalidity or unenforceability of any provision of this Covenant shall not affect or impair any other provision.

[Signature Pages Follow]

EXECUTED BY DECLARANT this 18<sup>th</sup> day of December, 2012.


BDN LAND INVESTMENT, L.C.  
a Utah limited liability company

By: The Boyer Company, L.C.  
Its: Manager

  
\_\_\_\_\_  
By: Don Glen  
\_\_\_\_\_  
Its: Manager  
\_\_\_\_\_

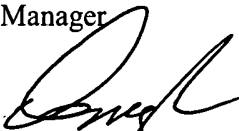
WB II LAND INVESTMENT, L.C.  
a Utah limited liability company

By: The Boyer Company, L.C.  
Its: Manager

  
\_\_\_\_\_  
By: Don Glen  
\_\_\_\_\_  
Its: Manager  
\_\_\_\_\_

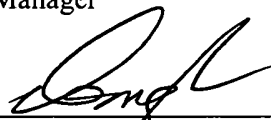
WB III LAND INVESTMENT, L.C.  
a Utah limited liability company

By: The Boyer Company, L.C.  
Its: Manager

  
\_\_\_\_\_  
By: Don Glen  
\_\_\_\_\_  
Its: Manager  
\_\_\_\_\_

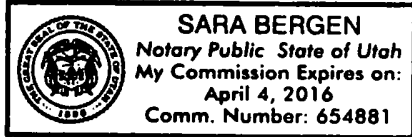
THE DISTRICT-NORTH, L.C.  
a Utah limited liability company

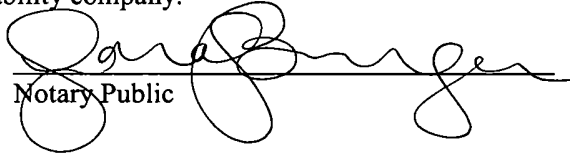
By: The Boyer Company, L.C.  
Its: Manager

  
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By: Don Glen  
\_\_\_\_\_  
Its: Manager  
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STATE OF UTAH  
COUNTY OF SALT LAKE

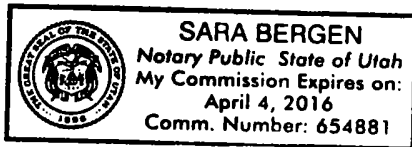
On the 18<sup>th</sup> day of December, 2012 personally appeared before me Devon Glenn who duly acknowledged to me that he executed the foregoing Restrictive Covenant Agreement as Manager of THE BOYER COMPANY, the Manager of BDN LAND INVESTMENT, L.C., a Utah limited liability company.

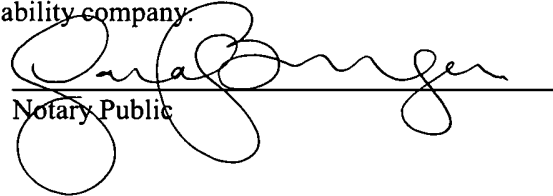


  
Notary Public

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 18<sup>th</sup> day of December, 2012 personally appeared before me Devon Glenn who duly acknowledged to me that he executed the foregoing Restrictive Covenant Agreement as Manager of THE BOYER COMPANY, the Manager of WB II LAND INVESTMENT, L.C., a Utah limited liability company.

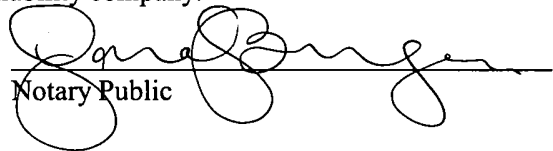


  
Notary Public

STATE OF UTAH  
COUNTY OF SALT LAKE

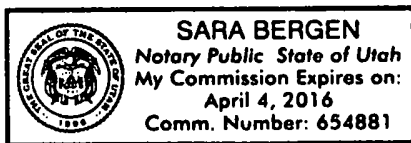
On the 18<sup>th</sup> day of December, 2012 personally appeared before me Devon Glenn who duly acknowledged to me that he executed the foregoing Restrictive Covenant Agreement as Manager of THE BOYER COMPANY, the Manager of WB III LAND INVESTMENT, L.C., a Utah limited liability company.

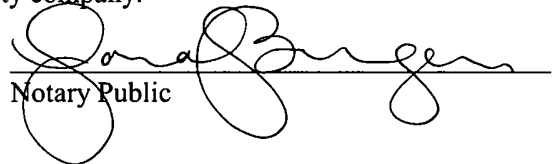


  
Notary Public

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 18<sup>th</sup> day of December, 2012 personally appeared before me Devon Glenn who duly acknowledged to me that he executed the foregoing Restrictive Covenant Agreement as Manager of THE BOYER COMPANY, the Manager of THE DISTRICT-NORTH, L.C., a Utah limited liability company.



  
Notary Public

[Joinder of Lender (attached, if any) to be signed by holder(s) of any lienholder with ability to foreclose on the Declarant Property. Declarant represents and warrants for the benefit of 7-Eleven all such holders (if any) have provided a Joinder of Lender.]



EXECUTED BY 7-ELEVEN this 19<sup>th</sup> day of December, 2012.

7-ELEVEN, INC., a Texas corporation

Attest:

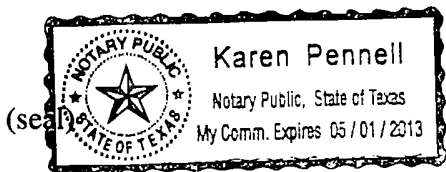
By: [Signature]  
Name: Kristen Williams Cook  
Title: Assistant Secretary

By: [Signature]  
Name: Rankin L. Gasaway  
Title: Vice President  
Sr.

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Rankin L. Gasaway and Kristen Williams Cook, a Sr. 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 each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17 day of December, 2012.



[Signature]  
(Notary signature)  
Karen Pennell  
(typed or printed name)

My commission expires: 5-1-2013



JOINDER OF LENDER

By its execution hereunder, Symetra Life Insurance Company, a Washington corporation, as the record holder of a mortgage lien dated June 24, 2010 on the Declarant Property prior in interest to this Covenant, consents to this Covenant and agrees to subordinate its mortgage lien on the Declarant Property to the agreements, covenants, conditions and restrictions set forth herein, and agrees that if the undersigned (or its successors or assigns) forecloses on all or any portion of the Declarant Property or takes a deed in lieu thereof, or otherwise acquires all or any portion of the Declarant Property, the undersigned (and its successors and assigns) will take ownership subject to the terms of this Covenant.

SYMETRA LIFE INSURANCE COMPANY,  
A WASHINGTON CORPORATION

By: *Colin M. Elder*  
Name: Colin M. Elder  
Its: Senior Vice President

State of Washington  
County of King

I certify that I know or have satisfactory evidence that Colin M. Elder is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Senior Vice President of Symetra Life Insurance Company formerly known as Safeco Life Insurance Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

CHERYL A. FORD  
STATE OF WASHINGTON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
07-18-13

Dated: 12-21-12  
*Cheryl A. Ford*  
Notary Signature  
Cheryl A. Ford  
Printed Notary Name:

Residing at: Bellevue  
My commission expires: 7-18-13

*Notary Acknowledgement for Restrictive Covenant, Joinder of Lender*

EXHIBIT "A" [To Restrictive Covenant Agreement]

Property Site Plan

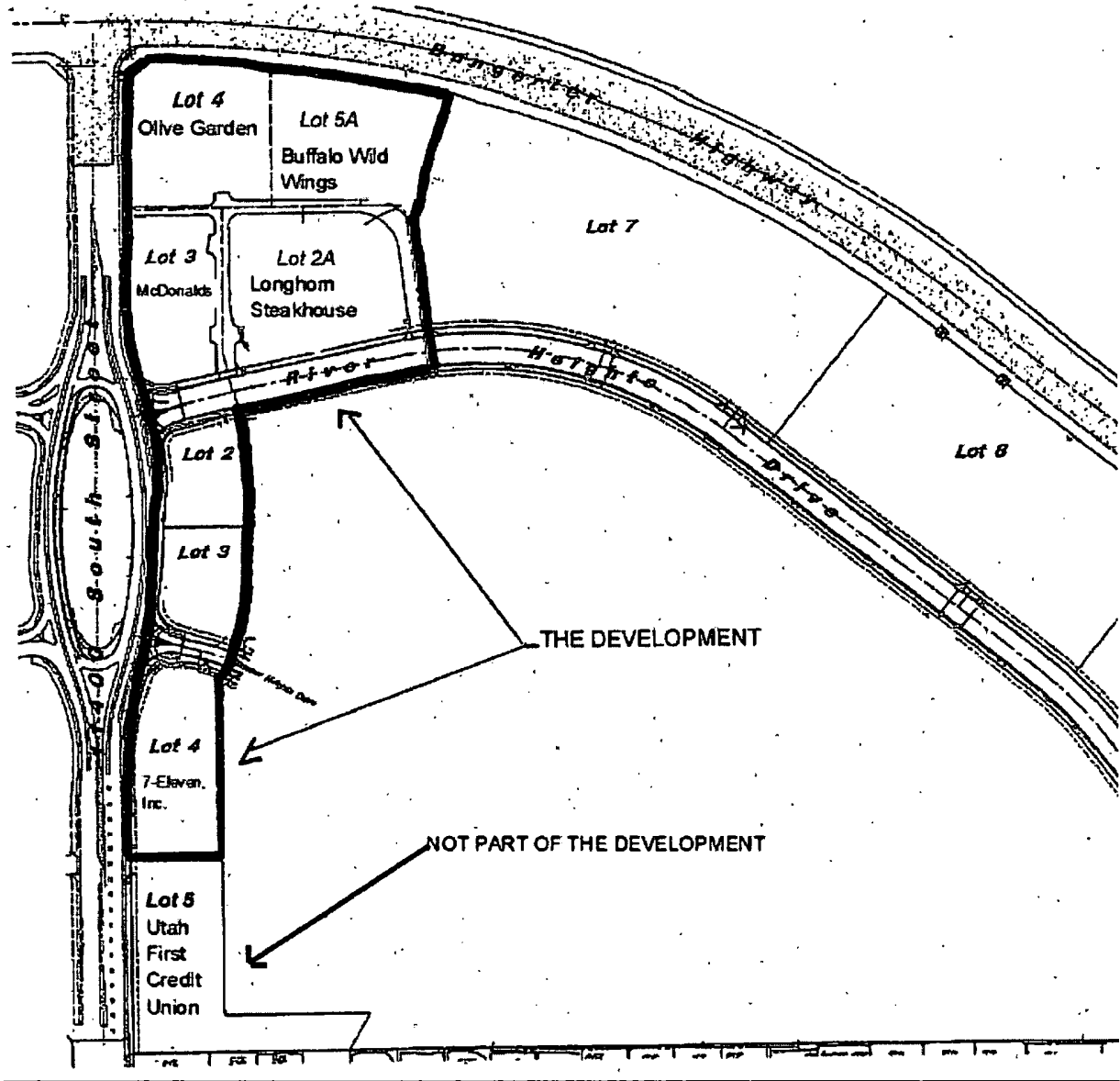


EXHIBIT "B" [To Restrictive Covenant Agreement]

Legal Description of Convenience Store Property

All of Lot 4 and a part of Lot 5, THE NORTH DISTRICT - A Multiple Use Subdivision, within the Northwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in Salt Lake County, Utah, according to the official plat thereof, filed in Book "2007P" of Plats, at Page 413 of the Official Records of the Salt Lake County Recorder, more particularly described as follows:

A part of the Northwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in Salt Lake County, Utah, more particularly described as follows: Beginning at a point on the Northerly Line of 11400 South Street as it is widened being 374.91 feet North 89°47'29" West along the Quarter Section Line; and 60.50 feet North 0°12'31" East from the Center of said Section 20; and running thence along said Northerly Line of 11400 South Street the following three courses: North 89°47'29" West 191.80 feet to a point of curvature; Northwesterly along the arc of a 381.50 foot radius curve to the right a distance of 118.84 feet (Central Angle equals 17°50'52" and Long Chord bears North 80°52'03" West 118.36 feet) to a point of tangency; and North 71°56'37" West 57.66 feet to a point of curvature; thence Northwesterly along the arc of a 54.00 foot radius curve to the right a distance of 80.86 feet (Central angle equals 85°47'54" and Long Chord bears North 29°02'40" West 73.52 feet); thence North 6°39'01" East 39.87 feet; thence Northeasterly along the arc of a 322.50 foot radius curve to the right a distance of 49.82 feet (Center bears South 76°08'43" East; Central Angle equals 8°51'04" and Long Chord bears North 18°16'49" East 49.77 feet); thence South 58°04'19" East 5.91 feet; thence South 89°47'29" East 373.96 feet; thence South 0°00'33" West 184.00 feet to the point of beginning.

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PARCEL ID NO. 27-20-177-009