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September 30, 2003

BY HAND DELIVERY

Mr. Geoffrey H. Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application No. 17021

Dear Mr. Griffis:

In response to the Board's request at the conclusion of the September 23, 2003 hearing in this matter, the Applicant is submitting a list of the following proposed conditions:

1. Approval shall be for a period of six (6) years from the date of the final order. [See discussion of additional accountability to justify approval period].

2. The hours of operation shall not exceed from 7:00 a.m. to 11:00 p.m. daily.

3. 7-Eleven delivery trucks will make their deliveries between 8:00 p.m. and 10:00 p.m. only.

4. Non-7-Eleven deliveries will be made on a scheduled basis between 9:30 a.m. and 3:30 p.m. so that only one delivery vehicle is at the site at any given time.

5. All deliveries will be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.

6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.

BZA
Case No. 17021
Exhibit No. 52

Board of Zoning Adjustment
District of Columbia
CASE NO. 17021
EXHIBIT NO. 52

7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.

8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.

9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.

10. Applicant will take reasonable steps to prevent loitering and panhandling inside and outside of the store.

11. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measures to minimize the light visible from the inside of the store, including tinted windows and doors.

12. No signs or posters will be posted in the windows and no public telephones, teller machines or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.

13. No storage containers or other items will be stored on the exterior of the store.

14. Applicant will maintain the exterior landscaping at the property, including regular maintenance and replacement, through a qualified contractor.

15. The Applicant and its Franchisee will attend at least one (1) ANC 2A meeting in September of each year.

16. Both the Applicant and the Franchisee will maintain a point of contact for the ANC and community and respond promptly to all inquiries.

17. Applicant and its Franchisee, on an annual basis, will consider changes to the Management Agreement as reasonably requested by the ANC and/or members of the community.

In addition to these proposed conditions, the Applicant and its Franchisee have updated and revised the Management Agreement to respond to a number of specific issues raised by the Board and community and provide enhanced and regularly scheduled accountability during the period between BZA applications. A Redlined draft of the revised agreement is attached.

Specifically, the Applicant has established a point of contact system to facilitate community comments and to ensure a prompt response. This point of contact system was adopted informally at the hearing and has already been utilized successful by Mr. Talisman to provide written notice directly to 7-Eleven. The Applicant has also adopted an annual meeting provision with the ANC. Finally, the Applicant has incorporated an ongoing and periodic review of the Management Agreement to allow for a timely response to arising issues and changing circumstances.

These additional provisions are intended to increase accountability through regular and additional forums for community interaction. They are not a substitute for the BZA process, but a method for enhanced and ongoing participation and responsiveness between the parties during the approval period. Also, the Applicant and its counsel have established separate systems to track the BZA approval expiration to ensure renewal applications are filed on a timely basis. Based on this direct, enhanced and more frequent accountability, a six (6) year approval period is justified and consistent with the Board's previous approvals in No. 14196 (6 years) and No. 15526 (5 years) and the Applicant's twenty (20) year proven track record at the site.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By:_____
John Patrick Brown Jr.

JPB:sp
Enclosure
cc: Ms. Dorothy Miller, Chair, ANC 2A (by hand)
Ms. Maria Tyler, ANC 2A (by hand)
Mr. Harold L. Talisman, Party (by hand)
Mr. Benjamin Klotz, Party (by hand)
Mr. Stephen Mordfin, Office of Planning (by hand)
7-Eleven, Inc.
216091v1

MANAGEMENT AGREEMENT COVERING THE OPERATIONS OF THE 7-11 STORE AT 912 NEW HAMPSHIRE AVENUE, N. W., BETWEEN ANC-2A, THE ~~SOUTHLAND CORPORATION~~7-ELEVEN, INC. AND THE FRANCHISEE OF THE 7-11

~~**Corrected Copy (Paragraph 15) - Monday, October 6, 1997**~~

Made this ~~6th~~_____ day of ~~October, 1997~~**September, 2003** by and between ~~the Southland Corporation~~**7-Eleven, Inc.** [(lessee of property at 912 New Hampshire Avenue, N.W. (Square 28, Lot 122) ~~—~~ **(**7-~~11~~**Eleven)**], the 7-~~11~~**Eleven** franchisee, and the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A).

1.Whereas the special exception expired on ~~September 1, 1997~~**November 11, 2000,** that was granted by the Board of Zoning Adjustment (BZA) under Order No. ~~15526,~~**16261,** dated ~~September 2, 1991~~**November 12, 1997** and that permitted a retail/delicatessen store on the first floor with the basement for storage to be operated in an **FBOD/**R-~~5-D~~**3** District at the above sited premises; and

2.Whereas on April ~~21, 1997,~~**11, 2003,** Estelle Goldman et al., ~~owners~~**owner** of said property, filed an application before the BZA for a special exception to continue the nonconforming use at the above-cited premises; and

3.Whereas the BZA ~~will hold~~**held** a hearing on the above application on ~~October 1, 1997~~**September 23, 2003**; and

4.Whereas the premises at 912 New Hampshire Avenue, N.W. are within the boundaries of ANC-2A and are located in the Foggy Bottom Overlay District, the boundaries of which coincide _with those of the Foggy Bottom Historic District; and

5.Whereas the Foggy Bottom Overlay District, established in Chapter 15, Section 1521, of 11 DCMR, is zoned R-3, a purely residential and more restrictive category than the previous R-5-D and R-5-B; and

6.Whereas the Foggy Bottom Overlay District was established by the Zoning Commission to ensure inter alia that the historic and residential character of the Overlay District is preserved and enhanced; and

7.Whereas 11 DCMR 2003.3 dealing with nonconforming uses specifies the following : "The proposed use shall not create any deleterious effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor and design and siting effects,"; and

8.Whereas since the Management Agreement of 1992 was concluded, there have been improvements in the operation but problems regarding cleanliness, landscaping, design, siting effects and, in particular, parking and loading have still arisen;

9.Whereas parking and loading pose special problems at the premises because of the unusual geometry of the intersection of 24th Street and New Hampshire Avenue, N.W., the fact ~~thatcustomers~~**that customers** of the operation frequently use the loading zone, the fact that delivery trucks do not always obey the delivery schedule as regards its timing and the obligation to have only one delivery truck at a time, all of which cause problems for nearby residents, and hazardous conditions for pedestrians and motorists, as well as impacting adversely on the residential character of the Foggy Bottom Overlay District; and

10.Whereas problems, including derelicts and panhandlers remain a potential problem, as does cleanliness because of customers' actions; and

11.Whereas the parties desire to continue an agreement setting forth understandings regarding the operation of the 7-Eleven; and

12.Therefore in consideration of the above-cited conditions and the covenants and promises set forth below, the parties agree as follows:

13.**Conditions relating to traffic and delivery of merchandise by trucks**

To reduce the hazardous conditions to pedestrians and motor vehicles resulting from the use of the loading zone fronting the above-cited premises, ~~Southland Corporation~~**7-Eleven** agrees to undertake the following:

a. ~~Southland Corporation~~**7-Eleven** delivery trucks will make their deliveries between ~~8.00~~**8:00** PM and ~~10.00~~**10:00** PM only and ~~no more than twice per week and~~ such deliveries will be made from the ~~Southland~~**7-Eleven**'s depot in Fredericksburg, Virginia, where consolidation of merchandise will take place;

b. ~~Southland Corporation~~**7-Eleven** will work with other suppliers to the 7-Eleven store to ensure ~~that~~ their truck deliveries are scheduled, one truck at a time, between ~~9.30.~~**9:30** AM and ~~3.30.~~**3:30** PM only; and

c. ~~Southland Corporation~~**7-Eleven** will post a conspicuous sign inside the premises consistent with the requirements **of 18 DCMR** 2402.6 that sign indicates that loading zones

are to be used by commercial vehicles for delivery only and by noncommercial vehicles for drop-off only, to the extent that such use does not interfere with commercial deliveries.

14.**Conditions relating to sanitation and health**

~~Southland Corporation~~**7-Eleven** will ensure that the 7-Eleven franchisee will;

a. Empty the trash containers belonging to 7-Eleven and to the District government directly in front of the 7-Eleven store twice a day or more frequently if needed;

b. Clean the sidewalk and gutter in front of the 7-Eleven to ensure that they be clean at all times;

c. Clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the 7-Eleven to the extent that such trash results from the operation of the 7-Eleven store;

d. As required by law and regulations, clear snow and ice from the sidewalk in front of the premises to provide safe passage; and

e. Comply with all aspects of the Civil Infractions Act and the Litter Control. Administration Act, any alleged violations of which, if left uncorrected, may be referred by ANC-2A to the appropriate agency.

15.**Conditions relating to derelicts and panhandlers**

~~Southland Corporation~~**7-Eleven** together with the 7-Eleven franchisee will ensure that:

a. Hospitality (such as free coffee or food) will not be extended to derelicts and other people loitering in front of the store that encourage their presence in the area;

b. The franchisee will work closely with the Metropolitan Police department and call the police when needed to remove derelicts and panhandlers way from the store and its immediate surroundings.

16.**Conditions relating to the appearance of the premises**

~~Southland Corporation~~**7-Eleven** and the 7-Eleven franchisee shall pay special regard to maintain the exterior appearance of the premises consistent with its characteristic as a contributing residential townhouse in the Foggy Bottom Historic District **and Foggy Bottom Overlay District**. In particular, no signs, posters in the windows, public telephones, teller machines or like devices will be added to the exterior of the building that detract from the residential character of the Foggy Bottom Historic District~~. Southland Corporation~~ **or the Foggy Bottom Overlay District. 7-Eleven** and the 7-Eleven franchisee will ensure that the shrubs along the handicapped railing are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping be provided so as to beautify the premises. **7-Eleven and/or the Franchise shall employ a reputable landscaping service to regularly maintain and replace the landscaping, as warranted.** In the event that alterations are proposed to the exterior of the premises, ~~the Southland Corporation~~**7-Eleven** and the 7-Eleven franchisee will discuss this with the Commissioner of SMD 2A03 and ANC-2A

prior to any application to the DC Historic Preservation Review Board **and any such proposed exterior changes shall be consistent with the Foggy Bottom Historic District and Overlay District**.

17.~~Southland Corporation~~**7-Eleven** and the 7-Eleven franchisee store manager will meet with the Commissioner of SMD 2A03, or with ANC-2A at the request of either or at its own request to discuss any such problems as may arise from the operation of the 7-Eleven and to hear and respond to the concerns of the ANC and the community regarding their perspectives on its implementation. **. At least annually, at the ANC 2A's regularly scheduled September meeting, Representatives of 7-Eleven and the Franchisee shall attend the ANC-2A meeting to ensure direct and regular communication with and feedback from the community. ANC 2A, each year, shall provide 7-Eleven and its Franchisee with timely written notice of the ANC's September meeting. To facilitate, additional communication between 7-Eleven, the Franchise and the community, the following Points of Contact are established:**

7-ELEVEN, INC.

Nancy A. Wade
Washington, DC/Baltimore City Market
Market Manager

8605 Old Harford Road
Baltimore, Maryland 21234
(410) 882-3105 Ext. 104
Pager: (877) 459-1564
Voice Mail: (800) 450-3693 Ext. 565
Email: nwade01@7-11.com

7-Eleven Franchisee

Sam Motamedi

912 New Hampshire Avenue, NW
Washington, DC
Store: (202) 333-7550
Cell: (703) 338-0778
Fax: (202) 333-9301

7-Eleven and its Franchise shall use its best efforts to respond to all communications from ANC-2A and/or the community within twenty-four (24) hours or the next business

day, if over the weekend. Written communications, when warranted, will be provided within five (5) business days of receipt.

18.In particular, ~~the Southland Corporation~~**7-Eleven** and the 7-Eleven franchisee shall work closely with the Commissioner of SMD 2A03, ANC-2A and the community and with appropriate agencies of the District government to help solve any problems that may arise.

19.ANC-2A and ~~the Southland Corporation~~**7-Eleven** will request that the terms of this agreement be incorporated as conditions in any BZA Order approving the application. Any envisaged change to 7-Eleven's operations and the undertakings by ~~the Southland Corporation~~**7-Eleven** or its franchisee that would affect the terms of this Agreement will be brought to the attention of ANC-2A and will not be implemented without prior approval by ANC-2A which approval shall not be unreasonably withheld, and the BZA, if necessary**. On an annual basis, the parties shall review this agreement to determine if any additional terms or other modifications are warranted and shall negotiate in good faith to incorporate any such changes**.

20.**Conclusion**

In consideration of, and in reliance upon, the above commitment reflected in paragraphs 13, 14, 15 and 16 above, ANC-2A will communicate with the BZA its non-objection . to ~~Southland Corporation~~**7-Eleven**'s pending application for a special exception to operate a nonconforming use in the Foggy Bottom Overlay District.

21.To ensure that the conditions and undertakings entered into in this Agreement will be adequate to protect the adjoining and surrounding area from potential adverse effects, ANC-2A

limits its non-objection to the application before the BZA for a period of three years only ~~and the applicant agrees to modify its request to a period of three years only for the special exception to continue nonconforming use on the premises:~~.

22.Except to the extent that they are inconsistent with the terms of this Agreement, the parties further agree that the provisions of the prior Orders Nos. 14596, ~~14196~~**14196, 15526,** and ~~15526~~**16261** (including provisions such as hours of operation and signage) with respect to nonconforming use of this site shall be incorporated as conditions of approval of said application.

23.The parties further agree that any failure by ~~the Southland Corporation~~**7-Eleven** or its 7-Eleven franchisee would constitute grounds for ANC-2A to petition the BZA for the issuance of an order to Southland Corporation and its franchisee to show cause why the special exception should not be revoked.

~~Bernard Mozer.~~
~~Chair, ANC-2A~~

~~Nancy: Wade~~
~~Marketing Manager~~
~~Southland Corporation~~

~~Maria Tyler.~~
~~Commissioner, ANC-2A03~~

~~Franchisee, 7-Eleven~~

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Dorothy Miller
Chair, ANC-2A

Nancy: Wade
Marketing Manager
7-Eleven

Maria Tyler **Commissioner, ANC 2A03**	**Franchisee, 7-Eleven**

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