

ENTERED UPON TRANSFER BOOKS AND FOR TAXATION
THIS 29 DAY OF September, 2008
PHYLLIS DEAN WAPELLO CO. AUDITOR
BY me (CLERK/DEPUTY)



Document 2008 4667

Book 2008 Page 4667 Type 03 011 Pages 15
Date 9/26/2008 Time 1:30:46PM
Rec Amt \$77.00 Aud Amt \$5.00
Rev Transfer Tax \$479.20
Rev Stamp# 71

INDE
RELA
PROV
SCAN

JOYCE HASS, RECORDER
WAPELLO COUNTY IOWA

REAL ESTATE TRANSFER	
TAX PAID	
71	
STAMP #	
\$ 479.20	
JAL by JE	
RECORDER	
9-26-08	#90
DATE	COUNTY

WARRANTY DEED

Grantor:

Developers Diversified Realty Corporation, an Ohio corporation

Grantee:

Devon Development Group, L.C., an Iowa limited liability company

Taxpayer:

Devon Development Group, L.C.
5726 120th Street
Lovilia, Iowa 50150

Legal Description:

See "Exhibit A" on Page 4

Tax Parcel Number(s):

007417610004000

Document prepared by:

Thomas C. Buckley, Esq.
Stanley, Esrey & Buckley, LLP
1170 Peachtree Street, N.E., Suite 750
Atlanta, Georgia 30309
Phone: (404) 835-6203

Recording requested by and return to:

First American Title Insurance Company
National Commercial Services
1111 Superior Avenue, Suite 1600
Cleveland, Ohio 44114
Attn. Kim Campbell
Phone: (216) 802-3537

First American Title Ins
82.62
Due 9/26/08
Twp 14 N
R 10 E
S 20

TRANSFER TAX DUE: \$479.20

WARRANTY DEED

Corporation or Partnership or Limited Liability Company
to Corporation, Partnership or Limited Liability Company

Date: Sept. 26, 2008

FOR THE CONSIDERATION OF \$10.00 dollars and other valuable consideration, DEVELOPERS DIVERSIFIED REALTY CORPORATION, a corporation under the laws of Ohio ("**Grantor**"), hereby conveys and warrants, subject to the terms herein, to DEVON DEVELOPMENT GROUP, L.C., a limited liability company under the laws of Iowa ("**Grantee**"), the following described real property in Wapello County, Iowa (the "**Property**"):

Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Together with all hereditaments and appurtenances belonging thereto, subject to the permitted exceptions attached hereto as Exhibit B ("**Permitted Exceptions**"), deed restrictions attached hereto as Exhibit C ("**Deed Restrictions**"), and the exclusive uses and restrictions attached hereto as Exhibit C-1 ("**Schedule of Exclusive Uses and Restrictions**"), and by this reference incorporated herein.

Grantor does hereby covenant with Grantee and its successors in interest that Grantor holds the Property by title in fee simple; that it has good and lawful authority to sell and convey the Property; that the Property is free and clear of all liens and encumbrances except as may be stated herein; and Grantor covenants to warrant and defend the Property against the lawful claims of all persons claiming by, through or under Grantee, but not otherwise, except as may be stated herein.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular of plural number, and as masculine or feminine gender, according to the context.

In witness whereof, Grantor has caused this instrument to be duly executed by the proper officer of Grantee.

Grantor: DEVELOPERS DIVERSIFIED REALTY CORPORATION,
an Ohio corporation

By: 

Name: DAVID E. WEISS

Its: SR. VICE PRESIDENT

STATE OF OHIO }
 }
COUNTY OF CUYAHOGA } ss.
 }

This instrument was acknowledged before me on September 23, 2008, by David E. Weiss
the Sylvia President of Developers Diversified Realty Corporation, a corporation under the laws of
Ohio, on behalf of the corporation.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK):



TONISHA SMITH
Notary Public, State of Ohio
My Commission Expires
January 22, 2011
Recorded in Cuyahoga County


SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

This instrument was drafted by:

Thomas C. Buckley, Esq.
Stanley, Esrey & Buckley, LLP
1170 Peachtree Street, N.E., Suite 750
Atlanta, Georgia 30309
Phone: (404) 835-6203

Tax Statements for the real property described in this
instrument should be sent to:

Mr. Randy Gottschalk
Devon Development Group, L.C.
5726 120th Street
Lovilia, Iowa 50150
Phone: (641) 946-7918

✓ 608-W-586-S
Pt of tract 4.
W&M Properties

EXHIBIT A
Legal Description

A survey of Parcel "C" in the Southeast Quarter (SE 1/4) of Section 23, Township 72 North (T72N), Range 14 West (R14W) of the Fifth Principal Meridian (5TH P.M.), in the City of Ottumwa, Wapello County, State of Iowa, more particularly described as follows:

Commencing at the Southwest corner of said Southeast Quarter (SE 1/4) of Section 23, Township 72 North (T72N), Range 14 West (R14W); Thence N89°57'03"E (recorded as N89°50'40"E) 237.47 feet, along the south line of said Southeast Quarter (SE 1/4) of Section 23, to a point of intersection with the southerly extension of the east line of Tract 3, Out Lot "C" ("Arby's"); thence N00°07'04"E (recorded as N00°07'00"E) 542.11 feet, along the southerly extension of the east line of Tract 3, Out Lot "C" ("Arby's"), and said east line to a point on the southerly right of way line of Primary Highway No. U.S. 34, said point also know as the northeast corner of said Tract 3, Out Lot "C" ("Arby's"); thence S89°53'00"E (recorded as S89°53'00"E) 36.00 feet, along the southerly right of way line of said Primary Highway No. U.S. 34, to the point of beginning of this description; thence continuing S89°53'00"E (recorded as S89°53'00"E) 236.98 feet, along the southerly right of way line of said Primary Highway No. U.S. 34, to a point; thence S00°07'04"W 193.00 feet, along a line parallel to and normally distant from the east line of Tract 3, Out Lot "C" ("Arby's"), to a point; thence N89°53'00"W 236.98 feet, along a line parallel to and normally distant from the southerly right of way line of said Primary Highway No. U.S. 34, to a point; thence N00°07'04"E 193.00 feet, along a line parallel to and normally distant from the east line of Tract 3, Out Lot "C" ("Arby's"), to the point of beginning, containing 45,737.2 square feet, or 1.050 acres.

LOCALIZATION WAPELLO COUNTY G.P.S. CONTROL NETWORK:
REFERENCE: MONUMENT RECORD FALL 1993
IOWA COORDINATE SYSTEM: SOUTH ZONE (1402)
U.S SURVEY FEET / NAD83

POINT NUMBER: 029
NORTHING: (FEET) 374670.411
EASTING: (FEET) 1930663.828
ELEVATION: 647.42 NGVD 1929
COMB. FACTOR: 0.999922169
DESIGNATION: 93-29 W. C. G.P.S. C. P.

POINT NUMBER: 033
NORTHING: (FEET) 361610.725
EASTING: (FEET) 1941382.372
ELEVATION: 640.23 NGVD 1929
COMB. FACTOR: 0.999924656
DESIGNATION: 93-33 W. C. G.P.S. C. P.

POINT NUMBER: 034
NORTHING: (FEET) 377578.803
EASTING: (FEET) 1941415.109
ELEVATION: 805.43 NGVD 1929
COMB. FACTOR: 0.999914211
DESIGNATION: 93-34 W. C. G.P.S. C. P.

EXHIBIT B
Permitted Exceptions

1. All real estate taxes and assessments, both general and special, not yet due and payable.
2. All declarations, conditions, covenants, restrictions, easements, rights of way and other matters of record, including without limitation, those items shown on the subdivision plat of property that included the Property; a pipeline easement dated February 7, 1989 and recorded March 16, 1989, in Wapello County Record Book 465, Page 81; Easements with Covenants and Restrictions (the "ECR") dated July 27, 1988 and recorded December 9, 1988, in Wapello County Record Book 462, Page 650; First Amendment to the ECR dated July 15, 1991 and recorded December 13, 1991, in Wapello County Record Book 478, Page 41; Second Amendment to the ECR dated January 5, 1993 and recorded April 16, 1993, in Wapello County Record Book 485, Page 127; Third Amendment to the ECR dated December 23, 1997 and recorded July 17, 1998, in Wapello County Record Book 508, Page 663; Reciprocal Easement Agreement with Aldi, Inc. dated December 4, 1992 and recorded April 16, 1993, in Wapello County Record Book 485, Page 111, and Easement Agreement with CDJ Johnson Family Partnership (Arby's) dated October 2, 1998 and recorded November 13, 1998, at Wapello County Record Book 512, page 43.
3. All applicable zoning and building ordinances.
4. Those matters which would be disclosed by an accurate survey of the Property.
5. The restrictions set forth herein.

EXHIBIT C

Deed Restrictions

1. The Property shall not be used for any purpose in violation of the ECR, as amended.
2. The Property shall not be used for the storage of any hazardous material as such term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. § 9601 et seq., as amended (“**CERCLA**”), nor shall it be used for the storage of asbestos, petroleum or petroleum based products or derivatives (collectively “**Hazardous Materials**”). Hazardous Materials shall not be stored in tanks, drums or any other container on the Property. No underground or aboveground storage tanks shall be installed on the Property.
3. Grantee, on behalf of itself and all future owners and occupants of the Property, hereby waives and releases Grantor’s Parties (as hereinafter defined) from any claims for recovery of costs associated with conduct of any voluntary action or any remedial responses, corrective action or closure under any applicable federal, state or local environmental laws (“**Environmental Laws**”). For purposes of this provision, the term “Environmental Laws” shall include, without limitation, CERCLA and the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. § 6901 et seq., as amended from time to time; and any similar federal, state and local laws and ordinances and the regulations and rules implementing such statutes, laws and ordinances, and any similar federal, state and local laws and ordinances and the regulations and rules implementing such statutes, laws and ordinances. The foregoing waiver and release shall be binding upon all future owners and occupants of the Property.
4. The Property shall not be used as a billiard parlor, night club or any other business serving or selling alcoholic beverages (except that restaurants may serve alcoholic beverages as an ancillary part of their business), funeral parlor, adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials, massage parlor, so-called “head shop,” unsupervised amusement arcade or game room, or off-track betting parlor.
5. The Property shall not be used for any purpose in violation of any restriction of record. In addition, the Property shall not be used for any purpose in violation of any exclusive use or restriction previously granted in favor of any other tenant or owner in the shopping center commonly known as Quincy Place Mall in Ottumwa, Iowa (the “**Shopping Center**”), as more particularly set forth on **Exhibit C-1** attached hereto.
6. The improvements to be constructed on the Property (the “**Improvements**”) shall be limited to one (1) one-story building[s] (the “**Building**”) not to exceed 6,000 square feet of enclosed floor area. In no event shall the Improvements be leased and/or occupied to more than one tenant, user and/or occupant. Notwithstanding anything to the contrary contained herein, in no event shall the Property/Improvements be used as a multi-tenant retail project. The Property shall be initially used as a Kentucky Fried Chicken fast food restaurant. Subject to the foregoing and the terms of these Restrictions, the Property/Improvements may be used for any lawful, retail use.
7. Prior to constructing any improvements on the Property, Grantee shall submit to Grantor (as long as Grantor retains any rights and/or obligations under the ECR, otherwise such shall mean Grantor’s successor-in-interest in the ECR, and the approving entity under the ECR or other entity with approval rights, if different from Grantor (collectively, “**Approving Party**”), a site plan and building layout (the “**Site Plan**”) in connection with Grantee’s proposed Improvements to be constructed on the Property for the review and written approval of the Approving Party, which review and approval shall not be unreasonably withheld, conditioned or delayed by Seller.

Prior to constructing any improvements on the Property, Grantee shall submit the to the Approving Party Grantee’s proposed Improvements, plans and drawings (the “**Plans**”) showing: (i) all exterior elevations; (ii) site lighting; (iii) traffic flow; (iv) color and materials for the proposed Building; (v) interior square footage of the Building; (vi) parking plan; (vii) grading, curbing, landscaping, drainage and utility plans; and (viii) such other information as is reasonably requested by the Approving Party, all for the review and written approval of the Approving Party, which review and approval shall not be unreasonably withheld, conditioned or delayed by Grantor. The Improvements shall in any event be required to be

architecturally compatible with other buildings contemplated by the ECR. Any proposed exterior changes to the Improvements located on the Property must be resubmitted to the Approving Party for approval.

For purposes of this Section 7, Grantor's address for receipt of the Site Plan and/or Plans shall be the following:

Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attn: Ken Stern
Fax: (216) 755-1840
Phone: (216) 755-5840

with a copy to: Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attn: Kevin Kessinger, Esq.
Fax: (216) 755-1678
Phone: (216) 755-5649

and a copy to: Stanley, Esrey & Buckley, LLP
1170 Peachtree Street, N.E.
Suite 750
Atlanta, Georgia 30309
Attn: Audra Esrey, Esq.
Fax: (404) 835-6221
Phone: (404) 835-6202

Grantor shall advise Grantee of Grantor's approval or disapproval of the Site Plan and/or Plans, as applicable in writing within seven (7) business days of receipt of the Site Plan and/or Plans, as applicable. If Grantor fails to respond to the Site Plan and/or Plans, as applicable, in writing within such seven (7) business day period, Seller shall be deemed to have approved the Site Plan and/or Plans, as applicable.

8. The minimum parking ratio for the Property shall be the greater of (a) as set forth in the ECR; (b) five (5) parking spaces for each one thousand (1,000) square feet of floor area within the Building to the extent the Building is used for purposes other than restaurant purposes; (c) ten (10) parking spaces for each one thousand (1,000) square feet of floor area within the Building provided the Building is used for restaurant purposes; or (d) as required by applicable law.

9. Any signage, including, without limitation, exterior signage located on or around the Building and/or freestanding identification signage shall comply with the ECR, any unified sign plan in effect for the Shopping Center and applicable law.

10. Grantee covenants and agrees to indemnify, defend and hold harmless Grantor from and against any and all claims or demands and any levy, assessment, fine, penalty, surcharge, loss, cost, damage or expense, including, without limitation, attorneys' fees, arising from the connection to or the use of public or private utilities at the Property by Grantee or any occupant of the Property.

11. Commencing January 1, 2009, and continuing thereafter on the first day of each calendar year, the owner of the Property as of the first day of each calendar year shall pay to Grantor an annual fee of Two Thousand and 00/100 Dollars (\$2,000.00) (subject to a fifteen percent (15%) escalation every five (5) years) (the "**Maintenance Fee**") to reimburse Grantor for the cost of maintaining certain access road(s) serving the Property as long as Grantor retains the obligation to maintain such access road(s), otherwise the owner of the Property shall reimburse Grantor's successor-in-interest with respect to such maintenance obligation. Grantor's maintenance responsibilities shall include snow removal and asphalt repair, as needed, as determined in Grantor's reasonable discretion. Payment of the Maintenance Fee shall be delivered to

Grantor at 3300 Enterprise Parkway, Beachwood, Ohio 44122, Attn: Property Manager – Quincy Place Mall, or to such other address as provided in writing to the owner or occupant of the Property.

REPURCHASE RIGHT

Right to Repurchase. The Property and any and all rights and interests appurtenant thereto are subject to the Right to Repurchase (as hereinafter defined) held by Grantor and its successors and assigns, on the following terms and conditions:

(a) Grantor has reserved and does hereby reserve unto itself and its successors and assigns, and Grantee does hereby grant and convey to Grantor and its successors and assigns, the right and option, but not the obligation, to repurchase the Property from Grantee or its successors, assigns or successors-in-title (the “**Right to Repurchase**”), for the Repurchase Price (as hereinafter defined) and on the other terms and conditions hereof if Grantee fails to commence construction on the Property on or before the expiration of the eighteenth (18th) full calendar month after the date of the Closing (for purposes of the Right to Repurchase (as hereinafter defined) set forth in this Deed the date of the Closing shall be deemed the date of this Deed) (the “**Commencement Deadline**”); *provided, however*, that in the event of acts of God, strikes, terrorism, war, unavailability of materials or any other cause outside the reasonable control of Grantee, the Commencement Deadline shall be reasonably extended to reflect the time loss due to the unexpected delay and the time to complete the same using reasonably prompt diligence. Commencement of construction shall be deemed by Grantor to have occurred when the Building footings have been poured and the foundation has been laid. Grantor must exercise the Right to Repurchase by written notice to Grantee delivered within six (6) full calendar months after the Commencement Deadline.

(b) If Grantor fails to deliver timely the required notice under paragraph (a), then the Right to Repurchase thereupon automatically ceases and terminates and is of no further force and effect without any further action by any of the parties. The Right to Repurchase likewise ceases and terminates in the event of a bona fide transfer to or sale of the Property by any bank, life insurance company, federal or state savings and loan association, real estate investment trust, or other institutional lender where title is acquired by said entity, as a result of the foreclosure of a first in priority mortgage or deed to secure debt encumbering the Property or a conveyance in lieu of such a foreclosure. The Right to Repurchase set forth herein shall automatically cease and terminate upon Grantee’s commencement of construction in accordance with the conditions in paragraph (a) on or before the Commencement Deadline without any further action on any part of the parties hereto; *provided, however*, that then Grantor shall, upon the request of Grantee or its successor-in-title, at Grantee’s cost, execute a termination agreement in recordable form terminating the Right to Repurchase and shall deliver the same to Grantee.

(c) If Grantor exercises the Right to Repurchase in accordance with the terms hereof, then the consummation of such transaction (hereinafter referred to as “**Repurchase Closing**”) will occur in the offices of Grantor’s counsel on that date which is sixty (60) days after the delivery to Grantee of the exercise notice or such earlier date upon which Grantor and Grantee agree.

(d) At the Repurchase Closing, Grantee shall execute and deliver to Grantor:

(i) a special or limited warranty deed conveying title to the Property to Grantor, subject only to the Permitted Exceptions, and such other matters established against title after the date of the Closing with the express written consent of Grantor (except financing liens established at or after the Closing, which Grantee shall discharge prior to or at the time of the re-conveyance);

(ii) any and all plans for development of the Property that Grantee may freely assign (collectively, the “**Development Plans**”), including, without limitation, all architectural and engineering drawings, layouts and studies, financial projections, forecasts and studies and any and all other documents, instruments, papers, graphs, charts, photographs and other data compilations that relate in any way to any facility, improvement and Grantee’s proposed development of the Property;

(iii) a bill of sale or other document specified by Grantor conveying to Grantor all of Grantee's right, title and interest in the Development Plans and any and all additional documents reasonably requested by Grantor for the purpose of allowing or confirming the right of Grantor to make any use it may desire of the Development Plans;

(iv) an affidavit that Grantee is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

(v) an affidavit that Grantee is duly created and validly existing pursuant to the laws of the jurisdiction of its organization and is duly qualified to do business in the jurisdiction in which the Property is situated;

(vi) such other documents, certificates, instruments and the like, as may be required by Grantor's title company to issue a policy of title insurance subject only to the Permitted Exceptions, with all standard exceptions removed; and

(vii) possession of the Property, subject to the matters permitted hereunder.

(e) In the event that Grantor elects to exercise the Right to Repurchase in accordance herewith the purchase price for the Property (hereinafter referred to as the "**Repurchase Price**") is (i) the Purchase Price paid by Grantee to Grantor under the Purchase Agreement between Grantor, as seller, and Grantee, as Buyer dated April 18, 2008 plus, (ii) Grantee's reasonable, actual out-of pocket expenses incurred by Grantee in connection with the preparation of plans for the Improvements and the applications for permits in connection with the construction of the Improvements and/or operation of the Property in an amount not to exceed five percent (5%) of the original Purchase Price, plus (iii) any special assessments on the Property paid by Grantee between the Closing and the Repurchase Closing. Grantor shall deliver the Repurchase Price to Grantor's title company in cash or other funds available for immediate credit to Grantee. Transfer taxes, deed stamps and other closing costs shall be shared by Grantor and Grantee according to the custom of the jurisdiction in which the Property is located.

INDEMNIFICATION/REMEDIES

Grantee and its successors and assigns shall indemnify, defend and hold Grantor, Grantor's partners, trustees, shareholders, members, controlling persons, directors, officers, attorneys, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns ("**Grantor's Parties**") harmless from any claims, damages, losses, costs, liabilities and expenses, including, but not limited to, attorneys' and other professional expenses, which, wholly or in part or directly or indirectly, are caused by, due to or are a result of any breach by the Grantee or its successors and assigns of the covenants and restrictions set forth herein. In addition to any other remedies as are available at law or in equity, in the event of a default or breach by Grantee or its successors or assigns of any of the covenants or restrictions set forth herein, Grantor and its successors and assigns shall be entitled to obtain an injunction specifically enforcing such covenants and restrictions.

EXHIBIT C-1

Schedule of Exclusive Uses and Restrictions

PROHIBITED USES:

1. Those restrictions set forth in the Declaration of Restrictions by Ottumwa Square Associates, dated July 21, 1988, as amended April 6, 1992 (Capitalized terms used in this Section 1 of this "Prohibited Uses" subsection that are not specifically defined herein shall have the meanings given such terms in the Declaration of Restrictions by Ottumwa Square Associates, dated July 21, 1988, as amended April 6, 1992):

Except with the prior written consent of Declarant, any building, structure or improvements on Outparcels A, B and C shall be used for retail purposes only (banks, savings and loans, and other financial institutions shall be considered retail). Except with the prior written consent of Declarant, no such building, structure or improvement on Outparcels A, B and C may be used as a theater, night club, bowling alley, health spa, cafeteria (provided that food restaurants serving cafeteria style (e.g. Wendy's) shall not be restricted hereby), billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages (unless the sale or service of alcoholic beverages is incidental to such business, such as a restaurant serving alcoholic beverages) or as a discount department store or a variety, general or "dollar" store.

Declarant hereby declares that the use of Outparcel A as a car wash (automatic and self service), petroleum products service station and convenience store selling lottery tickets, alcoholic beverages for off premises consumption and food products, and an automotive service operation shall not be deemed in violation of the terms of Paragraph 5 of the Declaration.

2. Those restrictions set forth in the Operation and Easement Agreement between Dayton Hudson Corporation and Developers Diversified Realty Corporation, dated June 7, 1993 (Capitalized terms used in this Section 2 of this "Prohibited Uses" subsection that are not specifically defined herein shall have the meanings given such terms in the Operation and Easement Agreement between Dayton Hudson Corporation and Developers Diversified Realty Corporation, dated June 7, 1993):

No part of the Shopping Center shall be used for other than retail sales, offices, restaurants or other commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics. Not more than fifteen (15%) of the total Floor Area on the Developer Tract (excluding Outlots 2 and 3) may be used for Retail Office and/or Business Office.

No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center;
- (ii) Any operation primarily used as a warehouse operation (but excluding retail or quasi-retail operations using a warehouse concept), and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (iii) Any "second hand" store or "surplus" store;
- (iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building;
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order), liquidator, or auction house operation;

- (vii) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, or not more than 2,500 square feet for dry cleaning or laundromat facilities, as long as said facilities are no closer than 300 feet to the Target Tract, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;
- (viii) Any automobile, truck, trailer or recreational vehicles sales, leasing, display or repair provided, however, Developer may have one repair shop not to exceed 2,000 square feet and located more than 300 feet from the Target Tract;
- (ix) Any bowling alley or skating rink;
- (x) Any theater unless otherwise approved in writing by the Approving Parties;
- (xi) Any living quarters, sleeping apartments, or lodging rooms;
- (xii) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- (xiii) Any mortuary or funeral home;
- (xiv) Any establishment selling or exhibiting pornographic materials;
- (xv) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business, except that with respect to Outlots 2 and 3 the permissible percentage of sales from alcoholic beverages shall be up to 50% of gross revenues;
- (xvi) Any health spa, fitness center or workout facility;
- (xvii) Any flea market, amusement or video arcade (excluding the incidental use of four (4) or less machines in another store), pool or billiard hall, car wash, or dance hall provided, however, one car wash shall be permitted on Outlot 3;
- (xviii) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center;
- (xix) Any gas station provided one gas station may be placed on Outlot 3.

The following use and occupancy restrictions shall be applicable to the Developer Tract:

- (i) No Restaurant shall be located thereon within 300 feet of the Building Area located on the Target Tract;
- (ii) No toy store exceeding 10,000 square feet of Floor Area shall be permitted;
- (iii) No junior department store and/or apparel store exceeding in the aggregate 45,000 square feet of Floor Area shall be permitted; and
- (iv) No drug store exceeding 20,000 square feet of Floor Area shall be permitted.

BATH & BODY WORKS:

Landlord shall not construct any sales areas: (a) which serve food products within the frontage area of the Demised Premises or within fifty (50) feet thereof, nor (b) of any other type within the area bounded by demising lines of the Demised Premises or within thirty (30) feet thereof, nor (c) which in any event impair full access to and visibility of the Demised Premises.

Landlord covenants that all of the Shopping Center shall be used only for retail sales and services.

Throughout the Term, Landlord shall not lease or permit the use of any portion of the Shopping Center, for the operation of any adult bookstore, adult movie theater, head shop, bar, massage parlor or other similar enterprise whose business is the sale, rental or promotion of sexually explicit materials, acts or entertainment. For the purpose of this lease, "adult bookstore" shall mean any store, a substantial part of the inventory of which is not available for sale to children under the age of 15 because it explicitly deals with or depicts human sexuality, and "head shop" shall mean any store which sells items commonly used or intended for use with or in the consumption of any narcotic, dangerous drug or other controlled substance, including without limitations, any hashish pipe, water pipe, bong, chillum, pipe screen, rolling papers, rolling devices, coke spoons or roach clips.

GOODY'S:

Landlord covenants and agrees (i) that it will during the Lease Term continuously operate the Shopping Center as a shopping center in a manner consistent with similar shopping centers in Ottumwa, Iowa; and (ii) that no portion of the Shopping Center shall be used for the following purposes: a bowling alley, skating rink, bar (as distinguished from a restaurant deriving at least 50% of its Gross Sales from the sale of nonalcoholic beverages and food), amusement park, carnival, meeting hall, banquet facility, disco or other dance hall, nightclub establishment, sporting events, for any manufacturing, for wholesale operation (except for a wholesale club), for offices in excess of ten percent (10%) of the gross leasable area of the Shopping Center (except as incidental to retail use), for the lease, sale or repair of cars or boats (new or used), trailers, mobile homes, lumber yard (except in connection with a retail home improvement store such as Lowe's or Home Depot), pool hall, billiard parlor, off-track betting establishment, flea-market, massage parlor (excluding any so-called day spa), tattoo or body piercing facility, a health club located within 150 linear feet of the entrance to the Premises, auditorium, or for the sale and display of obscene or pornographic materials (except as incident to a drug store, book store or video store), and (iii) no portion of the Shopping Center immediately adjacent to the Premises shall be used as a restaurant (provided that space adjacent to the Premises may be used for a carry-out restaurant (such as Quizno's, Subway, Donato's or Pizza Hut) provided such carryout restaurant contains 2,500 square feet or less of gross leasable area).

Notwithstanding the provisions of the foregoing paragraph, the provisions of clauses (i) and (ii) thereof shall not be applicable to any tenant or occupant of the Shopping Center which occupies space under a lease in existence on the date hereof (or any extensions or renewals of such lease), to the extent that such tenant or occupant would be permitted to engage in any of the uses prohibited by such clauses without Landlord's consent.

HIBBETT SPORTING GOODS:

Landlord shall not use or permit the use of any portion of the Shopping center as a massage parlor, "adult book or video store" or similar business catering to pornographic interests, bowling alley, funeral parlor, skating rink, head shop, off track betting facility, billiard parlor, automobile leasing facility or a business operation generally referred to as a "flea market, night club, country and western bar, teenage facility or dance hall".

JC PENNEY:

All buildings located on portions of the Landlord's Parcel lying outside the Demised Premises, except those having some other specific use which is designated on Exhibit H hereto or which comprise part of the Common Facilities, shall be used only for the operation of establishments selling goods, wares, merchandise, food, beverages and services to the public at retail, for financial institutions such as banks and savings and loan associations (provided, however, that the total Floor Area of such institutions does not collectively exceed 10% of the Floor Area of the Mall Store Buildings), and for such office and storage areas as may reasonably be needed in connection with the operation of the Shopping Center.

No food or beverage dispensing facility of any kind whatsoever shall be located within 150 feet of Tenant's Main Store Building.

EXCLUSIVE USES:

CLAIRE'S BOUTIQUE:

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose principal business is the operation of women's accessory store similar to Claire's, Earring Tree or Piercing Pagoda (the "Restriction"). Notwithstanding anything to the contrary contained herein, the foregoing restriction shall not be applicable to Wal-Mart Stores, Inc., Herberger's Department Store, J. C. Penney, Bo Dangles, Creations by Shari any other tenant whose lease as of the date of this Lease, permits the subject premises to be operated in violation of the Restriction, the Occupant of any outlot, or any of their successors, assigns and replacements.

DIAMOND DAVE'S TACO COMPANY:

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively, "Occupant") whose principal business is the sale of Mexican food. Notwithstanding any language to the contrary, the restriction contained herein shall not be applicable to Wal-Mart Stores, Inc., G.R. Herberger, Inc., J.C. Penney Co., Inc., any other tenant occupying more than ten thousand (10,000) square feet of space in the Shopping Center or any of their successors and assigns.

DOLLAR TREE:

Provided that Tenant is in possession of the Premises and operating its business therein, Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively, "Occupant") whose Principal Business (as hereinafter defined) is as a single price point variety retail store selling products at a price equal to or less than Five Dollars (\$5.00), which amount may be adjusted for inflation (the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any business devoting more than twenty five percent (25%) of square feet of its sales floor area for the operation of a single price point variety retail store selling products at a price equal to or less than Five Dollars (\$5.00). Landlord and Tenant acknowledge that the limitation of a selling price is intended solely to establish that the Exclusive Use is not applicable to Occupants whose business is a mid-priced variety retail store, and, except for such limitation, is not intended to dictate the price at which Tenant will sell its merchandise. Notwithstanding any provision to the contrary contained herein, the Exclusive Use shall not be applicable to: (a) the Occupant of any outparcel adjacent to the Shopping Center, which parcel Landlord does not own or control, (b) any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or (c) any of their respective successors, assigns or replacements of (a) and existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or (b) any of their respective successors, assigns or replacements of (a) and (b) above, provided, however, in the event Landlord's consent is required for a change in permitted use, Landlord shall not consent to a change in use which would violate Tenant's Exclusive Use. In addition to the above exclusions, and notwithstanding any provision to the contrary contained herein, the Exclusive Use shall not be applicable to: the units currently occupied by Herbergers and J C Penney, their respective successors, assigns or replacements (each to be individually referred to a "Exempted Unit"), except as hereinafter provided.

GARDNER COLLIER JEWELRY:

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center, which permits the operation of a store whose principal business is the retail sale of fine jewelry ("Competing Tenant").

GENERAL NOVELTY:
(Coach House Gifts)

GENERAL NOVELTY:

(Coach House Gifts)

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center, which permits the operation of a store whose principal business is the sale of greeting cards (the "Restriction"). Notwithstanding any language to the contrary, the Restrictions shall not be applicable to Wal-Mart Stores, Inc., G.R. Herberger's Inc. and J.C. Penney Co., Inc., or their successors and assigns.

GNC:

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose principal business is the retail sale of vitamins and mineral supplements, (the "Restriction"). Notwithstanding anything to the contrary contained herein, the foregoing Restriction shall not be applicable to Wal-Mart Stores, Inc. G.R. Herberger's, Inc., J.C. Penney Company, Inc., the occupant of any outparcel adjacent to the Shopping Center, any existing Shopping Center tenant whose lease, as of the date of this Lease, permits the subject premises to be used in violation of the Restriction, or any of their successors, assigns and replacements.

GOODY'S:

Provided that Tenant shall be conducting its business in the Premises as a "junior department store" (as defined in Section 1.8.1), Landlord covenants that during the term of the Lease or any Extension Period, if applicable, Landlord will not lease any space in the Shopping Center to be occupied by or used for a Kohl's department store (the "Exclusive Use Violation").

HERBERGER'S:

Throughout the Lease Term:

- (a) Landlord will not lease space (or allow the subletting or assignments to any lease) to any "similar department store" in excess of ten thousand (10,000) square feet, which would allow the retail selling of clothing (excluding shoes); and
- (b) Tenant shall have the right to approve (such approval not to be unreasonably withheld) any proposed lease between Landlord and any third party, and to approve the subletting and assignment of any such lease, for space in the Shopping Center which allows the use of retail selling of clothing (excluding shoes) and which lease (either singly or in combination with other leases) provides such third party more than ten thousand (10,000) square feet of selling area.

For purposes of this Section, stores which are categorized as "similar department stores", are Daytons, Donaldsons, Bretts, Ehlers, Younkers, and other stores of that nature. Discount stores such as Target, K-Mart, Wal-Mart or Shopko and traditional national chain stores such as J.C. Penney, Sears and Wards, are not classified as "similar department stores."

HIBBETT SPORTING GOODS:

Landlord agrees that it will not enter into a lease or consent to or permit the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose principal business is the display and retail sale of sporting goods, athletic shoes and sports fan-licensed products in an area exceeding the lesser of (i) 1,000 square feet of gross leasable area or (ii) twenty percent (20%) of the gross leaseable area of the Occupant's space (the "Exclusive Use"). Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the units occupied by Herbergers, J C Penney or the unit marked Wal-Mart on Exhibit A, the occupant of any outparcel adjacent to the Shopping Center, any existing Shopping Center tenant whose lease, as of the date of this Lease does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns or replacements.

REGIS:

Landlord agrees not to lease, or consent to the use and occupancy, of any other space in the Shopping Center to a tenant whose principal business is the operation of a unisex haircutting salon, barbershop or beauty shop. This exclusive shall not apply to Wal-Mart Stores, Inc., G.R. Herberger's, Inc. and J.C. Penney Co., Inc. or successors, assigns, or replacements.