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WAPELLO COUNTY IOWA

SCAN

**RECIPROCAL EASEMENT AND
RESTRICTIVE COVENANT AGREEMENT**

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 & Exhibit B" on pages 12, 13, 14, 15 and 16

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

*1st American Title Ins
87.00 pd*

RECIPROCAL EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS RECIPROCAL EASEMENT AND RESTRICTIVE COVENANT AGREEMENT (the "***Agreement***") is made and entered into as of the 26th day of September, 2008, by and between **DEVELOPERS DIVERSIFIED REALTY CORPORATION**, an Ohio corporation (hereinafter referred to as "***DDR***"), and **DEVON DEVELOPMENT GROUP, L.C.**, an Iowa limited liability company (hereinafter referred to as "***Devon***") (DDR and Devon are herein sometimes referred to individually as an "***Owner***" and collectively as the "***Owners***").

WITNESSETH:

WHEREAS, DDR is the owner of that certain tract of land lying and being in the City of Ottumwa, Wapello County, Iowa, and being more particularly described on **Exhibit "A"** attached hereto and incorporated by reference herein and as depicted on the site plan attached hereto as **Exhibit "C"** (the "***Site Plan***") and incorporated herein by reference (hereinafter referred to as the "***DDR Property***");

WHEREAS, Devon is the owner of that certain tract of land adjacent to the DDR Property and being more particularly described on **Exhibit "B"** attached hereto and incorporated by reference herein and as depicted on the Site Plan (hereinafter referred to as the "***Devon Property***"); and

WHEREAS, the DDR Property and the Devon Property (individually, each a "***Tract***", and sometimes collectively referred to as the "***Tracts***" or the "***Shopping Center***") are contiguous parcels of real property as more particularly set forth on the Site Plan; and

WHEREAS, the parties hereto desire, subject to the terms and conditions set forth herein, to grant and convey to each other certain easement rights over their respective Tracts and to impose certain restrictive covenants with respect to the use of the Tracts.

NOW THEREFORE, for and in consideration of the sum of TEN (\$10.00) DOLLARS, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DDR and Devon agree as follows:

1. **Access Easements.**

(a) DDR hereby grants, bargains, sells and conveys to Devon, for the benefit and use of Devon and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the Devon Property, as an appurtenance to the Devon Property, a perpetual non-exclusive easement over, across, upon, and through the parking/drive areas of the DDR Property, as the same may from time to time be constructed and maintained, for the sole purposes of vehicular and pedestrian ingress, egress, and access to and from the Devon Property. This easement shall be

non-exclusive so that DDR and DDR's tenants and their respective successors, assigns, guests, invitees and licensees shall also have rights of ingress, egress, and access to the DDR Property.

(b) Devon hereby grants, bargains, sells and conveys to DDR, for the benefit and use of DDR and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the DDR Property, as an appurtenance to the DDR Property, a perpetual non-exclusive easement over, across, upon, and through the parking/drive areas of the Devon Property for the sole purpose of vehicular and pedestrian ingress, egress, and access to and from the DDR Property. This easement shall be non-exclusive so that Devon and Devon's tenants and their respective successors, assigns, guests, invitees and licensees shall also have rights of ingress, egress, and access to the Devon Property.

(c) In no event shall either party have the right to park vehicles on the Tract owned by the other party hereto.

2. Utility Easements.

(a) DDR hereby grants, bargains, sells and conveys to Devon, for the benefit and use of Devon and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the Devon Property, as an appurtenance to the Devon Property, a perpetual non-exclusive easement over, across, upon, and through the DDR Property to install, use, connect, tap-in, maintain, relocate, repair and replace, at locations reasonably acceptable to DDR, and at times reasonably acceptable to DDR so as not to adversely affect the commercial operations of DDR, any reasonably required underground utility facilities including, without limitation, water, gas, electricity, telephone, storm and sanitary sewers and septic systems to provide proper service for the improvements built or to be built on the Devon Property. The foregoing easement shall include, without limitation, the right of Devon to install, use, maintain, repair and replace an underground water line in the general location shown on the Site Plan and demarcated as "***Proposed Water Line Easement Area***". Following the completion of the installation of such underground water line, Devon shall deliver to DDR a copy of an as-built survey depicting the precise location and parameters of such underground water line, and at DDR's request the parties shall enter into an amendment to this Agreement setting for the specific location and parameters of such underground water line easement.

(b) Devon hereby grants, bargains, sells and conveys to DDR, for the benefit and use of DDR and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the DDR Property, as an appurtenance to the DDR Property, a perpetual non-exclusive easement over, across, upon, and through the Devon Property to install, use, connect, tap-in, maintain, relocate, repair and replace, at locations reasonably acceptable to Devon, and at times reasonably acceptable to Devon so as not to adversely affect the commercial operations of Devon, any reasonably required underground utility facilities including, without limitation, water, gas, electricity, telephone, storm and sanitary sewers and septic systems to provide proper service for the improvements built or to be built on the Devon Property. The utility facilities described in subsections (a) and (b) above, including, without limitation, the proposed underground water line, are referred to herein individually as a "***Utility Line***" and collectively as "***Utility Lines***").

(c) If any Utility Line is to be installed pursuant hereto, the location of such Utility Line shall be subject to the prior written approval of the Owner whose Tract is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, an Owner's approval may be withheld for any reason with respect to a Utility Line proposed to be located within any area on such Owner's Tract where a building either is then

located or is expected to be located in the future. The easement area related thereto shall be no greater than is necessary to reasonably satisfy the utility company, as to an easement to a public utility, or a reasonable and customary distance on each side of the centerline of the Utility Line, as actually installed, as to a private easement. The Owner whose Tract is to be burdened shall have the right to require that a copy of an as-built survey depicting the precise location and parameters of any such Utility Line be delivered to it at the installing Owner's expense.

(d) Any Owner of a Tract installing, connecting to, maintaining, repairing, restoring and/or replacing a Utility Line on another Owner's Tract pursuant to this Section: (i) shall provide at least thirty (30) days prior written notice to such other Owner of its intention to do such work, together with copies of all applicable plans and specifications for such work, (ii) shall pay all costs and expenses with respect to such work, (iii) shall cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the conduct or operation of the business of the other Owner and its tenants, occupants, licensees and invitees, (iv) shall not increase the cost of the utility services to the other parties served by such Utility Line, shall not cause the current capacity of the existing Utility Line to be exceeded, and shall not interrupt, diminish, or otherwise interfere with the utility services to other Owners and their tenants and occupants served by such Utility Line (except during periods other than during the normal business operating hours of such other parties and during such periods as otherwise approved by such other Owners), (v) shall comply in all respects with all applicable governmental laws, regulations, and requirements, (vi) shall promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Shopping Center (including, without limitation, any disturbed landscaping improvements) to a condition equal to or better than the condition which existed prior to the commencement of such work, (vii) shall cause the contractor performing the work to maintain insurance with minimum coverage equal to the minimum coverage requirements set forth in Section 6 below, and (viii) indemnify and hold the Owner of the Tract on which such work is performed and any occupants and tenants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(e) Each Owner shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its Tract any Utility Line serving another Tract, provided such relocation shall be performed only after at least thirty (30) days written notice of such intention to so relocate has been given to the Owner of such other Tract and provided such relocation: (i) shall not increase the cost of the utility services to the parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility services to the parties served by such Utility Line (except during periods other than during the normal business operating hours of such parties and during such periods as otherwise approved by such parties); (ii) shall not materially reduce or materially impair the usefulness or function of such Utility Line; (iii) shall be performed without cost or expense to the parties served by such Utility Line; (iv) shall be completed in a good and workmanlike manner using materials (if and to the extent available) and design standards which equal or exceed those originally used; and (v) shall not unreasonably interfere with the conduct or operation of the business of the Owner of such other Tract and its tenants, occupants, licensees and invitees. Documentation of the relocated Utility Line easement area shall be at the expense of the Owner undertaking such relocation and shall be accomplished as soon as possible. Each party served by such relocated Utility Line shall have a right to require that an as-built survey of such relocated Utility Line be delivered to it at the relocating party's expense.

(f) The Owner of each Tract shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Utility Line to the building(s) located and/or constructed upon its Tract.

(g) The Owner of each Tract on which such Utility Lines are located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies any Utility Lines installed pursuant to this Section 2, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines by any other Owner or their tenants, occupants, licenses and invitees, and to grant any other easements or licenses to such appropriate governmental entities and public utility companies as are reasonably necessary or desirable for obtaining adequate utility service for the benefit of such Owner's Tract, provided such easements and licenses shall not interfere with the use and enjoyment of any other Tract and are located outside of the areas on any other Tract where a building either is located or is expected to be located in the future. Each Owner shall reasonably cooperate with and assist any other Owner and shall join in and consent to such dedications and conveyances if requested by such other Owner, at no cost, however, to such cooperating Owner.

(h) The Owner of each Tract on which such Utility Lines are located shall have the right to promulgate reasonable rules and regulations pertaining to the construction of such Utility Lines on such Owner's Tract and the Owner of a Tract installing, connecting to, maintaining, repairing, restoring and/or replacing a Utility Line on such other Owner's Tract shall comply with all such reasonable rules and regulations. The parties hereto acknowledge and agree that, without limitation, it shall be deemed reasonable to prohibit the installation and/or relocation of any such Utility Lines during the months of November, December and January.

3. Drainage Easements.

(a) DDR hereby grants, bargains, sells and conveys to Devon, for the benefit and use of Devon and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the Devon Property, as an appurtenance to the Devon Property, a non-exclusive easement over, across upon and through the DDR Property, for the sole purpose of allowing the drainage of storm and surface water from the Devon Property over the DDR Property, provided that the amount of such storm and surface drainage shall not materially increase from the amount of such drainage as of the date of this Agreement.

(b) Devon hereby grants, bargains, sells and conveys to DDR, for the benefit and use of DDR and its agents, successors, assigns, tenants, guests, invitees, and other occupants of the DDR Property, as an appurtenance to the DDR Property, a non-exclusive easement over, across upon and through the Devon Property, for the sole purpose of allowing the drainage of storm and surface water from the DDR Property over the Devon Property, provided that the amount of such storm and surface drainage shall not materially increase from the amount of such drainage as of the date of this Agreement.

(c) The owner of each Tract agrees not to use the other Owner's Tract for the discharge or disposal of materials or substances which are controlled or regulated by any federal, state or local environmental law, rule or regulation applicable to that Tract and which discharge is in excess of an allowable amount or in a prohibited form; provided, however, nothing contained herein shall be deemed to apply to incidental discharges of such materials or substances or the inclusion thereof in ordinary surface water drainage that may occur as a result of, or in connection

with, the ordinary conduct of business on that Tract unless the same cumulatively would result in a violation of such law, rule or regulation.

4. **Signage.** No more than one (1) pylon or monument sign may be located on the Devon Property, which must in all events comply with all applicable laws, rules, regulations, ordinances and codes from any and all applicable governing authorities.

5. **Maintenance of the Tracts.** At all times during the term of this Agreement, Devon shall maintain, at Devon's expense, the Devon Property in a clean and sightly condition consistent with the character and quality of improvements constructed thereon. At all times during the term of this Agreement, DDR shall maintain, at DDR's expense, all portions of the DDR Property in a clean and sightly condition consistent with the character and quality of improvements constructed thereon. The obligation of each party hereto contained in this Section 5 shall, include, without limitation, the obligation to:

(a) Maintain all pavement on its Tract in a level smooth and evenly covered condition;

(b) Remove all papers, debris, filth and refuse and thoroughly sweep its Tract to the extent reasonably necessary to keep such Tract in a clean and orderly condition;

(c) Keep in repair any directional sign, markers and lines hereafter installed or located on the Tracts;

(d) Keep in repair such artificial lighting facilities as may hereafter be installed or located on the Tract and keep such parking area of the Tract lit for at least one (1) hour each night following the closure of business on such Tract;

(e) Maintain all perimeter walls, if any, in a good condition and state of repair;

(f) Maintain all landscaped areas installed or located on the Tracts in a clean and orderly condition;

(g) During any period in which a Tract is vacant, plant grass or other suitable ground cover and keep such grass or other ground cover mowed and trimmed in a clean and sightly condition; and

(h) Expect as provided herein, maintain in good operating order all sewer, electricity, natural gas, water, telephone and other utility lines, pipes, and conduits crossing its Tract and/or serving any improvements located thereon.

6. **Insurance and Indemnity.**

(a) Each party shall maintain or cause to be maintained in full force and effect commercial general liability insurance with respect to such activities with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage arising out of any one occurrence, and the other party shall be an additional insured under such policy. The aforesaid limits may be met through a combination of an Owner's primary coverage and umbrella and/or excess coverage. Each party shall further maintain adequate worker's compensation insurance at all times during construction activities in the minimum statutory limits required by the State of Iowa. Such insurance shall be procured from a company

licensed in the State of Iowa and shall be rated by Best's Insurance Reports not less than A-/X. Such insurance shall provide that it shall not be cancelable without thirty (30) days prior, written notice to additional insureds. Upon request, each party shall provide a certificate of such insurance coverage to the other party.

(b) Each Owner of a Tract hereby indemnifies and saves the Owners of the other Tracts and their tenants (as applicable) harmless from and against any and all liabilities, damages, reasonable expenses, causes of action, suits, claims or judgments (including, without limitation, reasonable attorney's fees and court costs) arising from personal injury, death or property damage and occurring on or from its own Tract; provided, however, if such personal injury, death or property damage was caused by the intentional or grossly negligent acts or omissions of the Owner of a Tract or its employees, agents or contractors, then that party shall not be protected or held harmless by this indemnity.

7. **Release/Extent of Liability.** Any person or entity acquiring fee or leasehold title (including the parties hereto but excluding tenants occupying space within the DDR Property under leases executed prior to the date hereof) to any Tract (or any interest therein) shall be bound by this Agreement only as to the Tract or portion of the Tract (or interest therein) acquired by such person or entity. In addition, such person or entity shall be bound by this Agreement only during the period such person or entity is the fee or leasehold owner of such Tract or portion thereof (or interest therein), except as to obligations, liabilities or responsibilities that accrue during said period. Although persons or entities may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes upon said Tracts and to run with the title thereto. Notwithstanding any other provision contained in this Agreement to the contrary, each party hereto hereby expressly agrees that the obligations and liability of each of them shall be limited solely to such party's interest in its respective Tract, as such interest is constituted from time to time. In furtherance of the foregoing, each party hereto agrees that any claim against a party hereto shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its Tract, as such interest is constituted from time to time. Nothing contained in this paragraph shall limit or affect any right that any party might otherwise have to seek or to obtain injunctive relief or to specifically enforce the rights and agreements herein set forth.

8. **Taxes.** Each Owner of a Tract agrees to pay, prior to delinquency, all real and personal property taxes and assessments levied against its Tract directly to the appropriate taxing authorities.

9. **Liens.** No Owner will permit or suffer any liens to be placed upon the other Owner's Tract or any portion thereof as a result of an Owner's construction, maintenance or use of its Tract or the easements herein granted. All work done or performed by an Owner shall be diligently prosecuted to completion and shall be paid for by such Owner. No Owner shall be liable or responsible for any activities of the other Owner. Should anyone attempt to file a lien against the Tract of an Owner or any portion thereof by reason of the activities of the other Owner, or such other Owner's agents, contractors, subcontractors, successors or permitted assigns pursuant hereto, the Owner permitting or causing such lien to be filed shall cause such lien to be canceled and discharged of record within fifteen (15) days from the date the Owner permitting or causing such lien to be filed first receives notice of the filing of such lien. In the event that the Owner permitting or causing such lien to be filed fails to satisfy and discharge of record any such lien as set forth above within said fifteen (15) day period, the other Owner may do so and the non-complying Owner shall, upon demand, pay to the other Owner all costs and expenses incurred by such other Owner in connection with the satisfaction and discharge of such liens,

including attorneys' fees and the outstanding balance thereof shall bear interest at the rate of twelve percent (12%) per annum or the then highest rate allowable under applicable law, whichever is higher. Further, any Owner permitting or causing such a lien to be filed agrees to indemnify, defend and save the other Owner affected by said lien harmless from and against any damage or loss incurred by any said Owner as a result of any such lien.

(a) Notice is hereby given that (i) DDR shall not be liable for any acts or works performed by Devon nor for any labor or material furnished to Devon, and no mechanics', materialmens', or other liens shall attach to, encumber, or affect the estate or interest of DDR in and to the DDR Property as a result of any such acts, works, labor or material, and (ii) Devon shall not be liable for any acts or works performed by DDR nor for any labor or material furnished to DDR, and no mechanics', materialmens', or other liens shall attach to, encumber, or affect the estate or interest of Devon in and to the Devon Property as a result of any such acts, works, labor or material.

10. **Notice.** Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereto shall be in writing and shall be delivered in person or sent by nationally recognized overnight courier service or via the United States Postal Service, in registered or certified form, postage prepaid, return receipt requested, and addressed to such party at the address listed below, or to such other address as has been provided to the oilier parties hereto in accordance with this Section. All notices shall be effective (and the time period in which a response to any notice must be given, if any, shall commence to run on such effective date) depending on the form of delivery, as follows: (i) if personally delivered, on the date of receipt, or (ii) if sent by FedEx or similar service, on the date of receipt, or (iii) if sent by U.S. Certified or Registered Mail, three (3) business days after being deposited in the United States Mail. Rejection or failure to claim delivery of any such notice, demand or request, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice, demand or request sent as of the date of deposit in the United States Mail or the date of attempted personal or overnight delivery, as the case may be. By giving at least thirty (30) days written notice thereof, any party shall have the right from time to time and at any time to change their respective addresses. For the purposes of this paragraph, the notice addresses shall be initially as follows:

If to Seller: Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attn: Executive Vice President of Development

With copy to: Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attn: General Counsel

If to Buyer: Devon Development Group, L.C.
5726 120th Street
Lovilia, Iowa 50150
Attn: Randy Gottdchalk

14. **Miscellaneous.**

(a) The terms of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa.

(b) The fact that one party did substantially all of the drafting of this Agreement shall not result in the provisions hereof being construed in favor of any other party, it being understood and agreed that each party hereto has had the full opportunity for legal input into this document. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one party, and to either corporations, associations, trusts, partnerships, or individuals, male or female, shall in all instances be assumed as though in each case fully expressed.

(c) If any term or provision of this Agreement shall to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) Time shall be of the essence as to every provision of this Agreement.

(e) This Agreement may be executed in any number of counterparts, whether they be originals, copies of facsimiles which taken together, shall be and constitute a fully executed and enforceable Agreement as if all parties had signed the same copy of this Agreement.

(f) Nothing contained herein shall be deemed to create the relationship of principal and agent, partnership, or joint venture between DDR and Devon.

(g) In the event of a breach or threatened breach of this Agreement, only record owners of the Tracts at any time affected thereby and their successors and assigns at the time such breach occurs shall be entitled to institute proceedings for full and adequate relief, including without limitation injunctive relief, from the consequences of said breach or threatened breach. In no event shall such a breach result in a reversion of the title to any Tract.

(h) The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the title to each Tract. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.

(i) Except as specifically provided herein, the easements, rights and privileges created hereby shall be perpetual. Provided, however, if any restrictive covenant set forth herein would expire by operation of law if not renewed, then it shall be automatically renewed for successive ten (10) year periods unless all of the Tract owners and any parties owning at that time any security interest in any of the Tracts shall execute and record in the Wapello County, Iowa real estate records a statement terminating such restrictive covenant within sixty (60) days of the expiration of such statutory period or any ten (10) year renewal thereof.

(j) The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

(k) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. The owners from time to time of any of the Tracts shall not be entitled to rely upon any statement, promise or representation not herein expressed, and this Agreement shall not be modified or altered in any respect except by a writing executed and delivered by the then owner of each of the Tracts.

(l) DDR hereby represents and warrants to Devon that DDR is duly authorized to conduct business in the State of Iowa. The undersigned individuals signing on behalf of DDR hereby represent and warrant to Devon that they, as such officers, partners, or authorized agents, are authorized and empowered to bind DDR to the terms of this Agreement by their signatures hereto.

(m) Devon hereby represents and warrants to DDR that Devon is duly authorized to conduct business in the State of Iowa. The undersigned individuals signing on behalf of Devon hereby represent and warrant to DDR that they, as such officers, partners, or authorized agents, are authorized and empowered to bind Devon to the terms of this Agreement by their signatures hereto.


(n) The parties acknowledge that with respect to any provisions of that certain Easements with Covenants and Restrictions Affecting Land (ECR) dated July 27, 1988 between Wal-Mart Properties, Inc. and Ottumwa Square Associates Limited Partnership entered into that, recorded in the office of the Wapello County Recorder, State of Iowa on December 9, 1988 in Book 462, Page 650, as amended by that certain First Amendment to ECR, dated July 15, 1991, recorded in the office of the Wapello County Recorder, State of Iowa on December 13, 1991 in Book 478, Page 41; that certain Second Amendment to Easements with Covenants and Restrictions Affecting Land dated January 5, 1993, recorded in the office of the Wapello County Recorder, State of Iowa on April 16, 1993 in Book 485, Page 127; that certain Third Amendment to Easements with Covenants and Restrictions Affecting Land dated December 23, 1997, recorded in the office of the Wapello County Recorder, State of Iowa on July 17, 1998 in Book 508, Page 663 (collectively, the "**ECR**") that are applicable to the Devon Property, Devon shall be responsible for complying with such provisions, and with respect to any provisions of the ECR that are applicable to the DDR Property, DDR shall be responsible for complying with such provisions. Devon hereby indemnifies and saves DDR harmless from and against any and all liabilities, damages, reasonable expenses, causes of action, suits, claims or judgments (including, without limitation, reasonable attorney's fees and court costs) arising from Devon's failure to comply with the ECR as the same relates to the Devon Property, except where such failure is the result of the acts or omissions of DDR. DDR hereby indemnifies and saves Devon harmless from and against any and all liabilities, damages, reasonable expenses, causes of action, suits, claims or judgments (including, without limitation, reasonable attorney's fees and court costs) arising from DDR's failure to comply with the ECR as the same relates to the DDR Property, except where such failure is the result of the acts or omissions of Devon. Notwithstanding anything to the contrary contained herein, as it relates solely to the obligations and liabilities of DDR and Devon to each other only, in the event of a conflict between the terms of the ECR and the terms of this Agreement, the terms of this Agreement shall control.

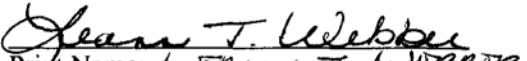
[Signatures Begin on Following Page]

IN WITNESS WHEREOF, DDR and Devon have set their respective hands and affixed their respective seals unto this Agreement, the day, month, and year first above written.

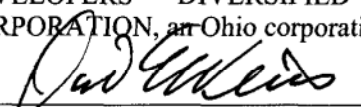
GRANTOR:

Witnesses:


Print Name: Rachel E. Heiser


Print Name: LEANN T. WEBSTER

DEVELOPERS DIVERSIFIED REALTY
CORPORATION, an Ohio corporation

By: 
Name: David E. Weiss
Title: Senior Vice President

STATE OF OHIO

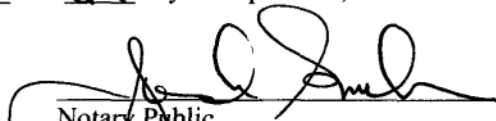
COUNTY OF CUYAHOGA

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, DAVID E. WEISS, known to me to be the Senior Vice President of Developers Diversified Realty Corporation, an Ohio corporation, which executed the foregoing instrument, who acknowledged that he/she did sign and seal the foregoing instrument for, and on behalf of, said corporation, being thereunto duly authorized, and that the same is his/her free act and deed as such officer and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio this 24th day of September, 2008.



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


Notary Public

[Notary Seal]

[signatures continued on following page]

[signatures continued from previous page]

DEVON:

Witnesses:

[Signature]
Print Name: Joseph F. Starcevic

[Signature]
Print Name: Judy Conner

DEVON DEVELOPMENT GROUP, L.C.,
an Iowa limited liability company

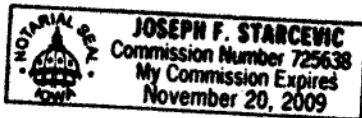
By: [Signature]
Name: Janet L. Gottschalk
Title: Member

STATE OF IOWA

COUNTY OF MONROE

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Janet L. Gottschalk, known to me to be the Member of Devon Development Group, L.C., an Iowa limited liability company, which executed the foregoing instrument, who acknowledged that he/she did sign and seal the foregoing instrument for, and on behalf of, said company, being thereunto duly authorized, and that the same is his/her free act and deed as such officer and the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Albia, Iowa this 24th day of September, 2008.



[Signature]
Notary Public

[Notary Seal]

EXHIBIT "A"

LEGAL DESCRIPTION OF DDR PROPERTY

PARCEL 1:

PART OF TRACT NUMBER FOUR (4) IN W & M PROPERTIES SUBDIVISION OF A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY-THREE (23), AND ALSO, A PART OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-SIX (26), ALL IN TOWNSHIP SEVENTY-TWO NORTH (T72N), RANGE FOURTEEN WEST (R14W) OF THE 5TH P.M., IN THE CITY OTTUMWA, WAPELLO COUNTY, IOWA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION TWENTY-SIX (26) OF TOWNSHIP SEVENTY-TWO NORTH (T72N), RANGE FOURTEEN WEST (R14W) IN THE CITY OF OTTUMWA, WAPELLO COUNTY, IOWA; THENCE N89°57'03"E ALONG THE NORTHERLY LINE OF SAID SECTION TWENTY-SIX (26) THIRTY AND NO HUNDREDTHS (30.00) FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF QUINCY AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY SECTION LINE N89°57'03"E TWENTY-TWO AND EIGHTEEN HUNDREDTHS (22.18) FEET; THENCE N00°40'03"W TO THE SOUTHERLY LINE OF TRACT NO. TWO (2) OF W & M PROPERTIES SUBDIVISION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY-THREE (23) FORTY-NINE AND SEVENTY-TWO HUNDREDTHS (49.72) FEET; THENCE S89°56'43"E ALONG SAID SOUTHERLY LINE ONE HUNDRED EIGHTY-FOUR AND EIGHTY-SEVEN HUNDREDTHS (184.87) FEET; THENCE N00°07'00"E TWO HUNDRED THIRTY-FIVE AND FORTY-SEVEN HUNDREDTHS (235.47) FEET; THENCE S89°53'00"W ONE HUNDRED EIGHTY-TWO AND FIFTY-EIGHT HUNDREDTHS (182.58) FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF QUINCY AVENUE; THENCE N00°40'30"W SIXTY-FIVE AND NO HUNDREDTHS (65.00) FEET ALONG SAID RIGHT OF WAY LINE TO THE SOUTHERLY LINE OF TRACT NO. THREE (3) OF W & M PROPERTIES SUBDIVISION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY-THREE (23); THENCE S89°53'00"E ONE HUNDRED EIGHTY-ONE AND EIGHTY-EIGHT HUNDREDTHS (181.88) FEET ALONG SAID SOUTHERLY LINE; THENCE N00°07'00"E ONE HUNDRED NINETY-THREE AND NO HUNDREDTHS (193.00) FEET TO THE NORTHERLY LINE OF TRACT NO FOUR (4) OF W & M PROPERTIES SUBDIVISION OF SECTION TWENTY-THREE (23), BEING ALSO THE SOUTHERLY RIGHT OF WAY LINE OF PRIMARY HIGHWAY NO. U.S. 34; THENCE S89°53'00"E ALONG SAID RIGHT OF WAY LINE FOUR HUNDRED FIFTY-TWO AND EIGHTY-SEVEN HUNDREDTHS (452.87) FEET; THENCE S00°12'57"W FIVE HUNDRED SIXTY-SIX AND NO HUNDREDTHS (566.00) FEET; THENCE S89°52'50"W TWENTY-ONE AND EIGHTY-NINE HUNDREDTHS (21.89) FEET; THENCE S00°02'17"W ONE HUNDRED SIXTY AND THIRTY-THREE HUNDREDTHS (160.33) FEET; THENCE N89°53'00"E ONE HUNDRED FIFTY AND NO HUNDREDTHS (150.00) FEET; THENCE S00°07'31"W ONE HUNDRED NINETY AND FOUR HUNDREDTHS (190.04) FEET; THENCE S45°11'15"W FOURTEEN AND EIGHTEEN HUNDREDTHS (14.18) FEET TO THE SOUTHERLY LINE OF TRACT NO. FOUR (4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-SIX (26); THENCE N89°53'03"W SEVEN HUNDRED SEVENTY-EIGHT AND TWENTY-THREE (778.23) FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF QUINCY AVENUE; THENCE N00°14'53"E ALONG SAID EASTERLY RIGHT OF WAY LINE SIXTY-FIVE AND THIRTY-ONE HUNDREDTHS (65.31) FEET TO THE SOUTHERLY LINE OF TRACT NO. ONE (1) OF THAT PART OF SAID NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY-SIX (26); THENCE S89°44'40"E ALONG SAID SOUTHERLY LINE ONE HUNDRED EIGHTY-EIGHT AND SIX HUNDREDTHS (188.06) FEET; THENCE N00°04'55"E TWO HUNDRED SEVENTY AND THIRTEEN HUNDREDTHS (270.13) FEET; THENCE N89°44'40"W ONE HUNDRED EIGHTY-SEVEN AND TWENTY-EIGHT HUNDREDTHS (187.28) FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE; THENCE N00°04'03"W FORTY-SEVEN AND SEVENTY-FOUR HUNDREDTHS (47.74) FEET TO THE POINT OF BEGINNING CONTAINING FOUR HUNDRED NINETY THOUSAND AND SIX HUNDRED TWENTY-FIVE AND NO TENTHS (490,625.0) SQ. FT. OR ELEVEN AND TWO HUNDRED SIXTY-THREE THOUSANDTHS (11.263) ACRES.

Less and except:

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,

EXHIBIT "A"

LEGAL DESCRIPTION OF DDR PROPERTY

CONTINUED

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 "A"

LEGAL DESCRIPTION OF DDR PROPERTY

CONTINUED

PARCEL 2:

Developers Parcel or Tract-5 DESCRIPTION

A part of the Accretions to Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Five (5) of the Accretions to said Government Lot Four (4), located in a part of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, ALSO, a part of the Accretions to Government Lot One (1), in Section Twenty-six (26), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Two (2) of the Accretions to said Government Lot One (1) located in a part of the Northeast Quarter (NE $\frac{1}{4}$) of said Section 26, being more particularly described as follows, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23 and also a part of the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, all in Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the North One-quarter (NE $\frac{1}{4}$) Corner of said Section 26; thence North 89°-55'-50" East along the North line of said Section 26, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa; thence North 00°-40'-30" East along the East right of way line of Quincy Ave., a distance of 542.60 feet to an angle point in said right of way line; thence South 89°-53' East along the South right of way line of U. S. Highway No. 34 as found described in said Book 307, Page 376 and also found described in Book 307, Page 378, in the said Office of the Recorder, Wapello County, Iowa on a line that is 135 feet normally distant Southerly from centerline of Primary Road No. U. S. 34, a distance of 714.00 feet to the point of beginning of the Tract of Land herein described; thence continuing South 89°-53' East along the said right of way line, a distance of 602.35 feet; thence leaving the said right of way line and running South 00°-07' West, a distance of 405.50 feet; thence South 45°-07' West, a distance of 458.70 feet; thence South 00°-07' West, a distance of 117.15 feet; thence North 89°-53' West, a distance of 139.30 feet; thence South 45°-07' West, a distance of 102.81 feet; thence North 00°-07' East, a distance of 181.00 feet; thence North 89°-53' West, a distance of 190.00 feet; thence North 00°-07' East, a distance of 158.70 feet; thence South 89°-53' East, a distance of 101.00 feet; thence North 00°-07' East, a distance of 568.00 feet to the point of beginning, containing 432,334.62 square feet or 9.9223 Acres.

EXHIBIT "B"

LEGAL DESCRIPTION OF DEVON PROPERTY

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.

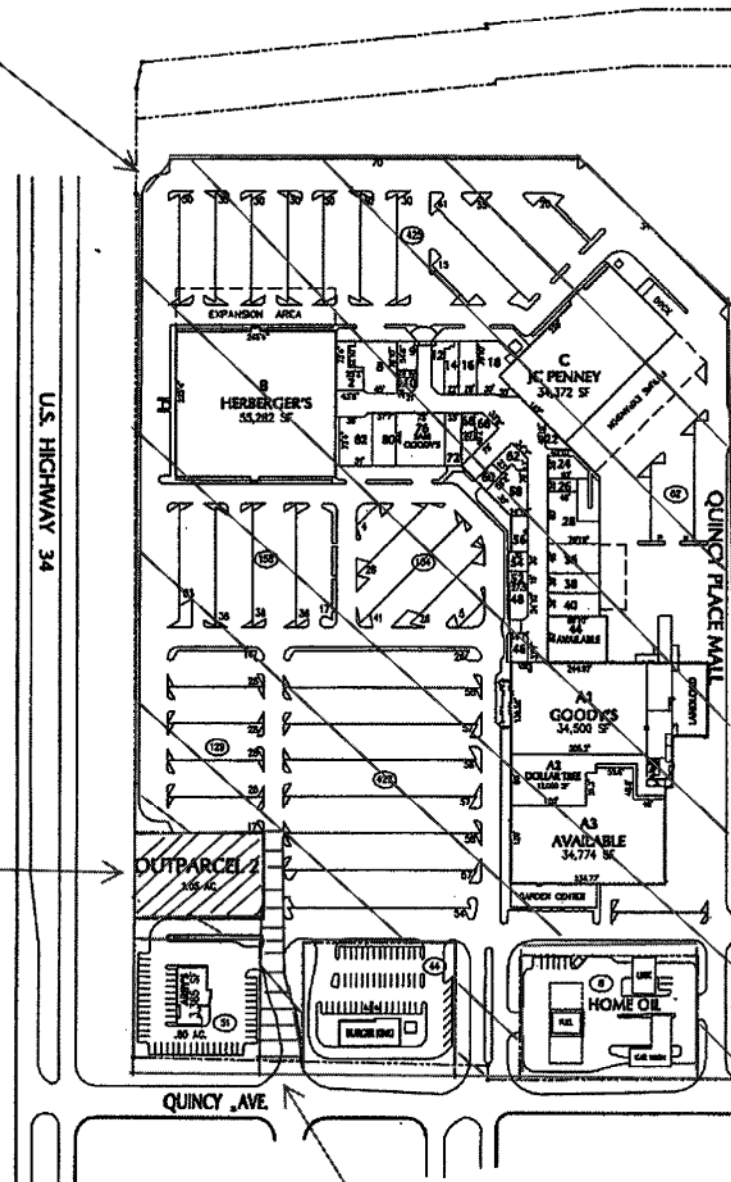
Exhibit C
Site Plan



QUINCY PLACE MALL
Ottumwa, Iowa

DDR Property

Devon Property



Proposed Water Line Easement Area