



LETTER OF COMMENT NO. 29

October 15, 2007

By Electronic Delivery to: director@fasb.org

Mr. Russell G. Golden
Director of Technical Application
and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed FSP APB 14-a, "Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement)"

#### Dear Mr. Golden:

Developers Diversified Realty Corporation ("DDR" or the "Company") is a self-administered and self-managed real estate investment trust (a "REIT") based in Cleveland, Ohio. The Company is in the business of acquiring, expanding, owning, developing, redeveloping, leasing and managing shopping centers. The Company is publicly traded and listed on the New York Stock Exchange under the symbol "DDR".

DDR appreciates the opportunity to respond to the Financial Accounting Standards Board (the "Board") regarding Proposed FASB Staff Position APB 14-a, "Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement)" (the "FSP").

### Financial Statement Impact of FSP

In August 2006 and March 2007, the Company issued \$250 million and \$600 million of Senior Convertible Notes, respectively, with certain characteristics of "Instrument C convertible debt" as described in EITF No. 90-19.

If the proposed FSP is issued in its current form, the financial statement results relating to these securities would be impacted as follows:

Mr. Russell G. Golden October 15, 2007 Page 2

- The liability would be understated as compared to the face amount of the debt and the proceeds received;
- Interest expense would be overstated as compared to interest expense paid and payable;
- Based upon our understanding of the mechanics of valuing the equity component of the debt, the amount allocated to equity may not provide a relevant measure of actual fair value (as described in CON 7 and SFAS 157) of the conversion option; and
- As a result of the above, we believe that our reported leverage and interest coverage ratios would be inconsistent with the economics of the debt and misleading to the users of our financial statements. Further, we believe that upon adoption and through the maturity of the debt, the proposed FSP would result in reducing the proceeds from the debt issuance by the imputed value of the equity conversion option resulting in the understatement of our current obligation and accordingly adversely impacts the comparability of financial statements between reporting entities.

In addition, we are also concerned about the valuation assumptions and methodology and the amount of judgment required to determine the value of the liability component at both inception and extinguishment as well as the equity component in the FSP.

Moreover, we have discussed the impact of the proposed FSP with several of our lenders and rating agencies, all of whom are primary users of our financial statements. Based upon these discussions, it is our understanding that the lenders and rating agencies will be making adjustments to our GAAP financial statements to more appropriately reflect our actual outstanding debt obligations and our actual interest expense for purposes of calculating leverage ratios, debt service coverage and fixed-charge coverage. In addition, based upon discussions with our lenders, we will be required to amend our existing loan agreements to calculate covenants using modified GAAP rather than GAAP in order to reflect the adjustments to leverage and ratios, as discussed above. Accordingly, we believe that the Proposed FSP is inconsistent with the fundamental objective of financial reporting as described in CON 1, which states the overall objective of financial reporting is to provide information to help present and potential investors and creditors and other users in assessing the amounts, timing, and uncertainty of cash flows.

We do not believe the accounting in the proposed FSP is consistent with the economics and ultimate financial substance of the transaction nor does it accurately or representatively reflect the security's lifecycle behavior. Further, as the current accounting for convertible debt is supported by existing GAAP, we believe that the Board should consider deferring the implementation of FSP APB 14-a until the broader issues that we believe exist pervasively in the complex financial instrument area are resolved in the Liabilities/Equity Project to avoid undue cost and complexity in preparing financial statements.

Mr. Russell G. Golden October 15, 2007 Page 3

### Clarification of Paragraph 12 of APB Opinion No. 14

The proposed FSP takes the position that it clarifies "convertible debt instruments that may be settled in cash upon conversion (including partial cash settlements) are not addressed by paragraph 12 of APB Opinion No. 14, "Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants."

We believe that paragraph B3 of the FSP does not provide sufficient basis to conclude that Instrument C convertible debt is not subject to paragraph 12 of APB Opinion No.14. Paragraph B3 contends that because the form of settlement can vary between stock and cash, the Instrument C debt and conversion option are subject to separation and, therefore, are more consistent with debt issued with detachable warrants. However, neither the holder nor the issuer can separate the debt and conversion option; both must be exercised together. Consistent with paragraph 7 of APB Opinion No. 14, "the holder cannot exercise the option to convert unless he foregoes the right to redemption, and vice versa". Also, conversion settlement is not valued as par plus any stock value above par, it is simply the lesser of par or the conversion value. This methodology would not apply if the instrument was a bond plus detachable warrants. This inseparability of the debt and conversion option was critical to the conclusion in paragraph 12 of APB Opinion No. 14. In addition, Instrument C debt complies with the definition of convertible debt securities in paragraph 3 of APB Opinion No. 14. As a result, we believe the FSP should provide more significant reasoning for reaching a conclusion that would seem inconsistent with existing category (a) accounting guidance.

# **Position**

We believe the current accounting under APB Opinion No. 14, EITF No. 90-19 and EITF No. 00-19 for Instrument C convertible debt provides a consistently applied and reasonable framework for accounting for these instruments, and any prospective changes to the accounting model should be made in conjunction with the overall consideration of the Liabilities/Equity Project.

We do not agree with the Board's view that the accounting guidance proposed in the FSP is appropriate and in the best interest of our investors, nor is the proposed FSP consistent with the manner in which management of the Company evaluated the economics of alternative financing arrangements. As previously discussed, many of the primary users of our financial statements have already indicated they will be reversing the impact of the proposed FSP. As a result, it is difficult for our Company to understand the benefit of a standard that we have been told will be largely ignored by the investor groups it is intended to benefit.

The proposed guidance would result in considerable change to existing accounting, including the restatement of prior periods. We believe such a change would be more appropriately accomplished utilizing the full due diligence process of the Board's standard setting process, especially given that a project to address Liability and Equity accounting is currently in progress.

Mr. Russell G. Golden October 15, 2007 Page 4

# **Timing**

If the proposed FSP is issued in its current form, we strongly recommend that the implementation date be extended until fiscal years beginning after December 15, 2008. Given the new standard will not be finalized until the fourth quarter of 2007, we believe registrants will need additional time to implement the new standard, including retroactive application and making the necessary amendments to loan agreements to allow for covenant calculations based upon modified GAAP, as requested by lenders. The amendment of public indenture agreements in particular will be time consuming and costly.

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Thank you for your consideration. If you have any questions regarding the comments set forth in this letter or if we can provide additional information, please contact us directly.

Sincerely,

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Chief Financial Officer

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