



Adams County Clerk/Recorder  
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Recording Fee: \$46.00  
Rental Housing Support Program  
State Surcharge Pd 10/16/2007  
\$10.00

Authorized By: *Marjorie Volkmann*

Date Recorded: 10/16/2007 1:51:13 PM



Envelope

**DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF RESTRICTIVE COVENANTS** (this "Declaration") is made and entered into as of this 11<sup>th</sup> day of October, 2007 (the "Effective Date"), by and between **SANSONE QUINCY VENTURE**, an Illinois general partnership ("ORIX"), and **BWW OF QUINCY, LLC**, an Illinois limited liability company ("Outparcel Owner").

**RECITALS**

- A. ORIX is the owner in fee of certain parcels of real property located in the Prairie Crossing Shopping Center, Quincy, Illinois, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "ORIX Parcels").
- B. ORIX has conveyed to Outparcel Owner that certain parcel of real property commonly known as Outparcel 5 in the Prairie Crossing Shopping Center, and more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Outparcel," and together with the ORIX Parcels, the "Parcels").
- C. The ORIX Parcels and the Outparcel are generally depicted on the Site Plan attached hereto as Exhibit "C" and made a part hereof (the "Site Plan").
- D. ORIX and Outparcel Owner desire by this Declaration to provide for the efficient operation of their respective Parcels and to protect the respective values of each such Parcels by providing, declaring and creating certain covenants and restrictions burdening the Outparcel. The covenants and restrictions set forth in this Declaration are intended to create interests in real property, run with the land and be binding upon Outparcel Owner and all future owners of the Outparcel and their respective heirs, successors, grantees and assigns during and throughout the term hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants, restrictions, declarations and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, ORIX and Outparcel Owner hereby grant, create, covenant and agree to burden, subject and encumber the Outparcel, as follows:

**ARTICLE I - USE RESTRICTIONS; NO SOLICITATION**

1.01 Use Restrictions. Outparcel Owner hereby covenants and agrees that (and hereby subjects the Outparcel to the restriction that) during and through the Term no part or portion of the Outparcel may be used or leased for any of the uses listed on Exhibit "D" attached hereto and made a part hereof (collectively, the "Prohibited Uses"), which are uses of existing tenants of ORIX on the ORIX Parcels (each, an "ORIX Tenant") pursuant to written lease agreements entered into by and between ORIX and each such ORIX Tenant listed on Exhibit "D" attached hereto (each an "ORIX Tenant Lease") and for any of the uses listed on "Exhibit D1", which are uses of Lowe's Home Centers, Inc., the owner of a portion of the Prairie Crossing Shopping Center.

**ARTICLE II - REMEDIES**

2.01 Injunctive and Other Remedies. In addition to any other remedies provided for herein, upon the default of either party hereto, any non-defaulting party shall be entitled to any other remedy available to it at law or in equity, including, without limitation, the prosecution or pursuit of a proceeding at law or in equity to enjoin or prevent any person or entity that has violated or is attempting or threatening to violate any of the terms, provisions, covenants, conditions, restrictions and other declarations contained in this Declaration from doing so.

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K.

2.02 Nonwaiver. No failure, delay or omission of either party hereto in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by either party hereto of a breach or default of any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, (i) no remedy provided in this Declaration shall be exclusive but each shall be cumulative with all other remedies provided in this Declaration, and (ii) all remedies at law or in equity shall be available.

2.03 Nonterminable Declaration. No breach of the provisions of this Declaration shall entitle either party hereto to cancel, rescind or otherwise terminate this Declaration, and shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Declaration.

### ARTICLE III – TERM

3.01 Term. The terms, provisions, covenants, agreements, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for a term of ninety-nine (99) years from the date of this Agreement, after which time said terms, provisions, covenants, agreements, conditions and restrictions shall be automatically extended without further act or deed of any of the Owners, except as may be required by Law, for successive periods of ten (10) years. If and to the extent that any of the terms, provisions, covenants, conditions, restrictions or easements contained in this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities, or (b) any other applicable statute or common law rule analogous or similar thereto or otherwise imposing limitations upon the time for which such terms, provisions, covenants, conditions, restrictions or easements may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of current United States of America President George W. Bush, living at the date of this Agreement. Notwithstanding anything set forth herein to the contrary, (i) upon the expiration or earlier termination of an ORIX Tenant Lease, the Prohibited Use associated with said expired or terminated ORIX Tenant Lease shall no longer burden, restrict or otherwise be a prohibited use of the Outparcel hereunder, and (ii) the Term of this Declaration shall automatically expire and terminate upon the expiration or earlier termination of all ORIX Tenant Leases. The Owner of the ORIX Parcels shall deliver written notice to the Owner of the Outparcel upon the expiration or earlier termination of any one or more of the ORIX Tenant Leases.

### ARTICLE IV - EFFECT OF INSTRUMENT

4.01 Mortgage Subordination. Any security instrument affecting, burdening or encumbering all or any portion of the Outparcel shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such security instrument or acquiring title by deed in lieu of foreclosure or by committee's deed in a foreclosure by sale shall acquire title subject to all of the terms and provisions of this Declaration.

4.02 Binding Effect. Every declaration, covenant, promise, undertaking, condition, right, privilege, agreement and restriction made, granted or assumed, as the case may be, by Outparcel Owner is made for the benefit of ORIX, and shall constitute equitable servitude on the Outparcel appurtenant to and for the benefit of the ORIX Parcels. Any transferee of the Outparcel shall automatically be deemed, by acceptance of the fee or leasehold title to any portion of the Parcels, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its Parcel and to have agreed with the then owner or owners of all other portions of the Parcels to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration and the transferor shall upon the completion of such transfer be

relieved of all further liability under this Declaration, except liability with respect to matters that may have arisen during its period of ownership of the portion of the Parcels so conveyed that remain unsatisfied.

4.03 Non-Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Declaration, expressed or implied, shall confer upon any person or property, other than the Parcels and the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Declaration.

#### ARTICLE V - MISCELLANEOUS

5.01 Notices. Each notice, demand, request, consent, approval, disapproval, designation or other communication that either party is required, permitted or desired to give or make or communicate to the other party shall be in writing and shall be given or made or communicated by personal delivery, certified or registered mail, return receipt requested, or nationally recognized overnight courier service addressed as follows:

If to ORIX, to:

c/o ORIX Real Estate Capital, Inc.  
100 North Riverside Plaza, Suite 1400  
Chicago, Illinois 60606  
Attention: David R. Brown  
John Thurmond, Esq.  
Facsimile: 312-669-6464

With a copy to to:

ORIX Realty Asset Management  
c/o ORIX Real Estate Capital, Inc.  
100 North Riverside Plaza, Suite 1400  
Chicago, Illinois 60606  
Attention: Michael J. Moran, Esq.  
Facsimile: 312-669-6464

If to Outparcel Owner, to:

BWW of Quincy, LLC  
C/o Douglas G. Cekander  
422 E. Washington Street, Suite 200  
East Peoria, Illinois 61611

With a copy to:

Troy N. Pudik  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 200  
Peoria, Illinois 61602  
Facsimile: 309-637-8514

Either party may designate a different address from time to time to which such notice shall be sent, provided however it has given at least ten (10) days advance notice of such change of address. If either party ceases to own all or any part of its respective portion of the Parcels, and the succeeding owner of that portion of the Parcels shall fail to give a notice of change of address, then notice may be sent to any one of the following: (i) to the last owner of record disclosed to the party giving notice, (ii) to "Owner of Record" at the street address for that owner's portion of the Parcels as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or (iii) to the grantee of such portion of the Parcels at the address shown in that last recorded conveyance of the portion of the Parcels in question. Any such notice or communication shall be deemed received: upon receipt, if given by personal delivery; on the next business day following consignment for overnight delivery if sent by overnight delivery service;

on the third (3<sup>rd</sup>) business day following deposit into the United States mail, if sent by registered or certified mail. In the event any date on which any notice or election is required to be made hereunder falls on a Saturday, Sunday or federal holiday, then, the date on which such notice is required to be given or made hereunder shall, for all purposes, be deemed to be the next following business day.

5.02 Miscellaneous.

(a) If any provision of this Declaration, or portion thereof, or the application thereof to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Declaration; and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by Law.

(b) This Declaration shall be construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law.

(c) The Article and Section headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

(d) Neither anything contained in this Declaration nor any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between them.

(e) This Declaration may not be amended, modified, or terminated at any time except by an amendment hereto in writing, executed and acknowledged by Outparcel Owner and ORIX. This Declaration shall not be otherwise amended, modified or terminated during the term hereof.

(f) Time is of the essence in the performance by the relevant parties of the obligations set forth in this Declaration.

(g) This Declaration contains the entire agreement of the parties hereto, and binding upon and burdening the Outparcel, with respect to the subject matter hereof. Any prior correspondence, memoranda or declarations concerning the subject matter hereof are superseded in total by and integrated into this Declaration. The provisions of this Declaration shall be construed liberally as a whole according to their common meaning and not strictly for or against any person or party.

(h) If any action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) shall be brought by either party hereto against the other party by reason of the breach or alleged violation of any term, provision, covenant, condition, restriction, or obligation of this Declaration, or for the enforcement of any provision of this Declaration, or otherwise arising out of this Declaration, then the prevailing party (as determined by the court) in such action or proceeding shall be entitled to receive from the other its costs and expenses of suit including, without limitation, reasonable attorneys' fees and disbursements, which shall be payable whether or not such action is prosecuted to judgment.

(i) This Declaration may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*


IN WITNESS WHEREOF, ORIX has caused this Declaration to be executed as of the day and year first above written.

**ORIX:**

**ORIX SANSONE QUINCY VENTURE,**  
an Illinois general partnership

By: ORIX Quincy, LLC, an Illinois  
limited liability company, its general  
partner

By: ORIX Real Estate Capital, Inc.,  
a Delaware corporation, its  
sole member

Name:   
Print Name: Michael J. Moran  
Title: SVP & General Counsel

By: Sansone Quincy, LLC, an Illinois  
limited liability company, its  
general partner

By: Sansone Bros. Holding Co., LLC,  
a Missouri limited liability  
company, its sole member

Name: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledgement:

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK )

I, Maja Spahovic, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael S. Moran, as SVP & GC of ORIX REAL ESTATE CAPITAL, INC., the sole member of ORIX QUINCY, LLC, a general partner of ORIX SANSONE QUINCY VENTURE, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11<sup>th</sup> day of October, 2007.



Maja Spahovic  
\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
                                  )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of SANSONE BROS. HOLDING CO., LLC, the sole Member of SANSONE QUINCY, LLC, a general partner of ORIX SANSONE QUINCY VENTURE, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of October, 2007.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, ORIX has caused this Declaration to be executed as of the day and year first above written.

**ORIX:**

**ORIX SANSONE QUINCY VENTURE,**  
an Illinois general partnership


By: ORIX Quincy, LLC, an Illinois  
limited liability company, its general  
partner

By: ORIX Real Estate Capital, Inc.,  
a Delaware corporation, its  
sole member

Name: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Sansone Quincy, LLC, an Illinois  
limited liability company, its  
general partner

By: Sansone Bros. Holding Co., LLC,  
a Missouri limited liability  
company, its sole member

Name:   
Print Name: Timothy G. Sansone  
Title: Member



**Acknowledgement:**

STATE OF ILLINOIS )  
  )  
COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid. DO HEREBY CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of ORIX REAL ESTATE CAPITAL, INC., the sole member of ORIX QUINCY, LLC, a general partner of ORIX SANSONE QUINCY VENTURE, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of October, 2007.

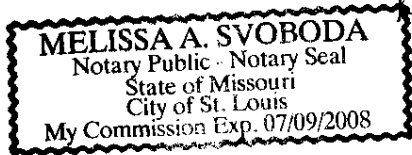
\_\_\_\_\_  
Notary Public

STATE OF Missouri)  
  )  
COUNTY OF St. Louis)

I, Melissa A Svoboda, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Timothy Sansone as Member of SANSONE BROS. HOLDING CO., LLC, the sole Member of SANSONE QUINCY, LLC, a general partner of ORIX SANSONE QUINCY VENTURE, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10<sup>th</sup> day of October, 2007.

Melissa A. Svoboda  
\_\_\_\_\_  
Notary Public



IN WITNESS WHEREOF, Outparcel Owner has caused this Declaration to be executed as of the day and year first above written.

**OUTPARCEL OWNER:**

**PURCHASER:**

**BWW OF QUINCY, LLC**, an Illinois limited liability company

By: [Signature]  
Name: Douglas G. Cekander  
Title: Manager

**Acknowledgement:**

STATE OF ILLINOIS }  
COUNTY OF PEORIA } ss.

On the 8<sup>th</sup> day of October, 2007, before me personally appeared Douglas G. Cekander, as Manager of BWW OF QUINCY, LLC, a Illinois limited liability company, who acknowledged the foregoing as his/her free act and deed and the authorized free act and deed of such Manager.

[Signature]  
Commissioner of Superior Court  
Notary Public



207-320.d1

PREPARED BY & MAILED TO:  
JOHN THURMOND  
ORIX REAL ESTATE CAPITAL  
100 NO. RIVERSIDE PLAZA  
14TH FLOOR  
CHGO, IL. 60606

**EXHIBIT "A"**

**LEGAL DESCRIPTION - ORIX PARCELS**

LOTS 1, 2, 3, 4, 5, 6, 8 (EXCEPT THE WEST 20 FEET THEREOF), 9, 10 AND 11 IN PRAIRIE CROSSINGS SUBDIVISION, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 3 AND THE NORTHEAST QUARTER OF SECTION 4 IN TOWNSHIP 2 SOUTH, RANGE 8 WEST OF THE FOURTH PRINCIPAL MERIDIAN, IN ADAMS COUNTY, ILLINOIS.

**EXHIBIT "B"**

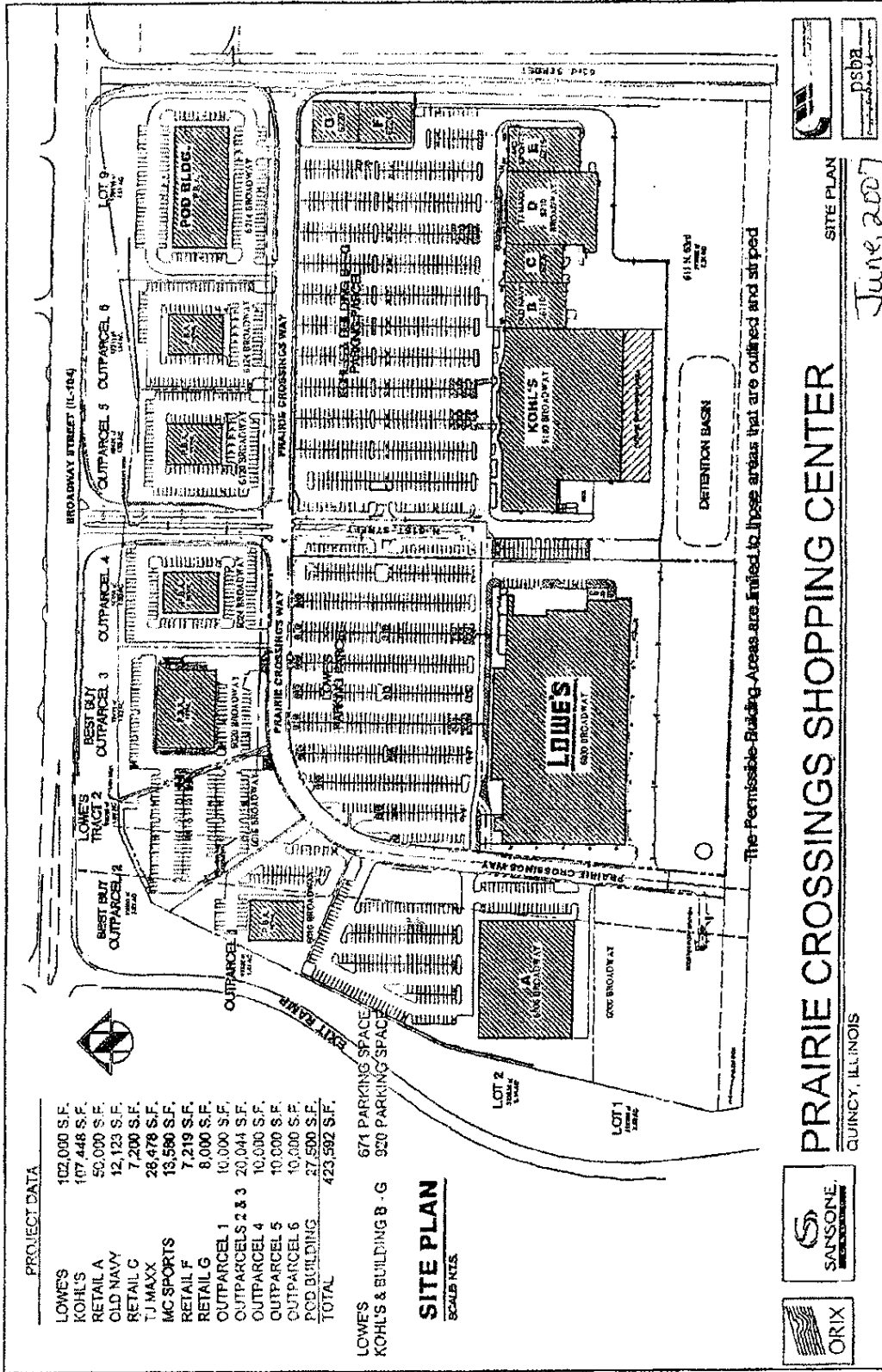
**LEGAL DESCRIPTION - OUTPARCEL**

LOT 7 AND THE WEST 20 FEET OF LOT 8 IN PRAIRIE CROSSINGS SUBDIVISION, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 3 AND THE NORTHEAST QUARTER OF SECTION 4 IN TOWNSHIP 2 SOUTH, RANGE 8 WEST OF THE FOURTH PRINCIPAL MERIDIAN, IN ADAMS COUNTY, ILLINOIS.

**EXHIBIT "C"**

**SITE PLAN**

[SEE ATTACHED]



**PROJECT DATA**

LOWE'S	102,000 S.F.
KOHL'S	107,448 S.F.
RETAIL A	50,000 S.F.
OLD NAVY	12,123 S.F.
RETAIL C	7,200 S.F.
TJ MAXX	28,478 S.F.
MC SPORTS	18,580 S.F.
RETAIL F	7,219 S.F.
RETAIL G	8,000 S.F.
OUTPARCEL 1	10,000 S.F.
OUTPARCELS 2 & 3	20,044 S.F.
OUTPARCEL 4	10,000 S.F.
OUTPARCEL 5	10,000 S.F.
OUTPARCEL 6	10,000 S.F.
POD BUILDING	37,500 S.F.
<b>TOTAL</b>	<b>423,592 S.F.</b>

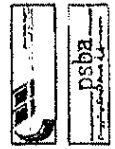
LOWE'S 671 PARKING SPACE  
 KOHL'S & BUILDING B - G 930 PARKING SPACE

**SITE PLAN**  
 SCALE: N1/2"



**PRAIRIE CROSSINGS SHOPPING CENTER**  
 QUINCY, ILLINOIS

SITE PLAN  
 June, 2007



The Permissible-Building Areas are limited to those areas that are outlined and stippled

**EXHIBIT "D"**  
**TENANT PROHIBITED USES**

**ORIX Tenant**

1. Old Navy

**ORIX Tenant Lease**

Lease dated May 3, 2005

**Prohibited Use:**

No portion of the Outparcel shall be used for any of the Prohibited Uses set forth below and no portion of the Outparcel shall be used for any of the following purposes: a bowling alley; a video or amusement arcade (other than as an incidental use); the sale of alcoholic beverages so long as such restaurant does not derive more than forty percent (40%) of its gross revenue from the sale of alcoholic beverages; the sale, rental or display of materials that are pornographic in nature (provided that the foregoing restriction shall not prohibit a full line bookstore, music store or video store such as Borders Books and Music or Blockbusters Video which is operating as a typical Borders or Blockbusters store from selling adult books or videos); any unusual fire, explosive or dangerous hazards (including the storage, display or sale of explosives or fireworks other than "sparklers"); a carnival or amusement park; the sale of Christmas trees or pumpkins within the parking lot or other Common Areas; an assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation; storage (other than as an incidental use); a commercial laundry or dry cleaning plant (provided the foregoing restriction shall not prohibit a dry cleaning drop off and pick up facility provided such facility is not located adjacent to the Premises); a Laundromat; a veterinarian or veterinary hospital (other than as an incidental use in conjunction with a full service pet store such

as Petco or Petsmart, provided such pet store is not located adjacent to the Premises); a mortuary or funeral establishment; the sale of coffins or caskets; a pawn shop; a flea market; a shooting gallery; any use that permits a pest infestation; any use that permits noxious odors to be smelled outside of the Premises; and any use that permits vibrations to be felt outside of the Premises. No portion of the Outparcel may be used for any of the following purposes: (i) an adult bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (ii) a massage parlor; (iii) a skating rink; (iv) a mortuary, crematorium or funeral home; (v) a mobile home or trailer court, labor camp, junkyard or stockyard; (vi) a landfill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage; (vii) a telephone call center; (viii) a gambling establishment or betting parlor; (ix) veterinary hospital or animal raising or keeping facilities; (x) assembling, manufacturing, industrial, distilling, refining or smelting facility; (xi) a hardware store containing more than Five Thousand (5,000) square feet of floor area; (xii) an appliance, home electronics and/or lighting store containing more than Five Thousand (5,000) square feet of floor area; provided, however, such restriction shall not apply to a Best Buy store or to a Circuit



City store (or to a store which in the future is equivalent to Circuit City or Best Buy in that the size of such store, the products earned and sold by such store and the merchandising and marketing format of such store are substantially similar to existing Circuit City or Best Buy stores, and the majority of the products sold from such equivalent store are essentially similar to the products presently carried by Circuit City or Best Buy); (xiii) a nursery and/or lawn and garden store containing more than Three Thousand (3,000) square feet of floor area (including any outdoor area); (xiv) a paint and/or home-décor center containing more than Four Thousand (4,000) square feet of useable floor area; (xv) a retail and/or warehouse home improvement center, lumber yard, building materials' supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply; (xvi) a tavern, bar nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than thirty (30%) percent of the restaurant's gross revenues; (xvii) a bowling alley, billiard parlor, bingo parlor, arcade, game room or other amusement center; (xviii) a theater (motion picture or live performance); (xix) a health club, gymnasium or spa; (xx) a service station, automotive repair

shop or truck stop; provided, however, this shall not preclude a single convenience store with fuel pumps such as a "QuikTrip" or "Breaktime" from being located on Outparcels 1, 2, or 3, the Pod Building or the Mini Storage Building; (xxi) a flea market or pawn shop; (xxii) a training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers); (xxiii) a car wash, other than a car wash which is ancillary to a convenience store with gas pumps located on Outparcels 1, 2 or 3, the Pod Building or the Mini Storage Building; (xxiv) a medical clinic or medical office; (xxv) a dry cleaning plant, central laundry or Laundromat; (xxvi) an establishment for sale of automobiles, trucks, mobile homes, recreational motor vehicles; (xxvii) a child day care facility; (xxviii) a hotel or motel, except that the foregoing restriction shall not prohibit a single hotel or motel being located on Retail A or the Mini Storage Building; (xxix) a storage or mini warehouse building; (xxx) Governmental offices; (xxxi) any restaurant located within two hundred and fifty (250) feet of any entrance to the Building located on the Kohl's parcel.

2. MC Sports

Lease dated May 4, 2005

No portion of the Outparcel shall be used for the sale of Sporting Goods (as hereinafter defined); provided, however, that the foregoing restriction shall not apply to: (i) an occupant selling the Sporting Goods from an area consisting, in the aggregate, of less than the lesser of one thousand (1,000) square feet of space (inclusive of aisles) in the premises or ten percent (10%) of the retail floor space of such premises; (ii) the

sale of footwear as a primary business by a national or regional chain store, such as Foot Locker, but excluding the sale of specialty sporting footgear, such as, without limitation, cleats, skiing boots and shoes, ice and hockey skates and in-line and roller skates and the sale of apparel bearing the names and logos of professional or college sports teams. "*Sporting Goods*" shall mean: (i) all goods, equipment, apparel and merchandise typically used in team or individual sports or athletics (including, without limitation, baseball, basketball, football, hockey, tennis, golf, bowling, etc.), fitness activities (including, without limitation, aerobics, training, boxing, etc.), and outdoor recreational activities (including, without limitation, camping, fishing, hunting, skiing, etc.); (ii) sporting apparel and footwear (including, without limitation, sweat suits, exercise and weightlifting outerwear, hunting outerwear, boots, skates, etc.); and (iii) the following items: 1. Hunting, Field and Stream: knives / binoculars / compasses / fishing rods, reels and combos / tackle boxes / tackle / waders / marine electronics / ice augers / ice shanties / fishing nets / tents / hiking backpacks / sleeping bags / outdoor cookers and appliances (stoves, heaters) / outdoor lighting (lanterns, flashlights) / camping furniture / outdoor cookware / guns and firearms / ammunition / bows and arrows / accessories related to firearms and bows (scopes, ammunition belts, quivers); 2. Fitness: treadmills, steppers, skiers and rowers / bikes (stationary and riding) / trampolines / anaerobic systems / anaerobic benches / weight sets / exercise mats / weights (plates, dumbbells) and related

accessories / boxing equipment (bags, gloves, related accessories) / martial arts (bags, gloves, related accessories) / health and fitness videos, books and magazines; 3. Athletics: baseball and softball balls, gloves, bats, batting gloves, uniforms and related clothing, protective gear and accessories / football balls, uniforms and related clothing, protective gear and accessories / soccer balls, uniforms and related clothing, protective gear and accessories / volleyball balls, uniforms and related clothing, protective gear and accessories / ice and street hockey pucks, sticks, uniforms and related clothing, protective gear and accessories / lacrosse balls, uniforms and related clothing, protective gear and accessories / basketball balls, backboards, poles, rims, combos and portables, and uniforms and related clothing, protective gear and accessories; 4. Pro Shop: golf sets, loose clubs, bags, carts, balls and related accessories / tennis racquets, balls and related accessories / squash balls, equipment and related accessories / handball balls, equipment and related accessories / paddleball, table tennis and platform tennis balls, equipment and related accessories / racquetball balls, equipment and related accessories; 5. Winter/Summer Sports: skis (downhill snow, cross country snow, water slalom, water combo) and ski bindings / snow boards, knee boards and wave boards / ski boots, poles and goggles / snow sleds / life vests / rafts, kayaks, canoes and boats and related accessories (oars, towlines) / underwater snorkels, underwater masks, diving gear / ice and in-line skates / bicycles, bicycle equipment and related clothing, protective gear and accessories / specialty footwear (football

cleats, soccer cleats, baseball cleats, bowling shoes, golf shoes).

3. TJ Maxx

Lease dated June 1, 2005

No portion of the Outparcel shall at any time contain more than (i) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of apparel and related accessories, and/or (ii) seven thousand five hundred (7,500) square feet of floor area therein used or occupied for, or devoted to the sale or display of shoes, footwear and related accessories; and/or (iii) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, house wares, table top goods, items and home accessories (all of the foregoing hereinafter referred to as a "Competing Use" and the merchandise referred to therein as the "Protected Merchandise"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors, or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise. All of the foregoing uses are hereinafter collectively referred to as "Competing Use" and the merchandise referred to therein as the "Protected Merchandise." However, the following retailers shall not be deemed a Competing Use and shall be permitted within the Outparcel: a retailer operating under the trade name "Cost Plus" as such

retailer operates on the date hereof, a retailer operating under the trade name of Kohl's, A.J. Wright, T.J. Maxx, T.J. Maxx 'N' More, Bob's, Marshalls and Marshall's Megastore.

4. Shoe Carnival      Lease dated December 11, 2006

No portion of an Outparcel shall be occupied by an occupant whose primary business is the sale of footwear; provided, however, a specialty footwear store (such as orthopedic footwear) shall be a permitted use.

5. Best Buy      Lease dated November 27, 2006

No occupant of the Outparcel shall sell, rent, service and/or warehouse (and, if applicable, install in motor vehicles) the following product categories: electronic equipment or appliances (including, without limitation, televisions, stereos, radios and DVD or video machines); major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers); personal computers and peripherals, computer software, car radios, stereos, tape decks or phones; entertainment software including compact disks, music videos, DVDs and prerecorded tapes; accessories and connectors for products sold by Best Buy (including, without limitation, cable connectors, surge protectors, cables, wires and batteries); telephones, telecopy, facsimile and photocopy machines; photographic cameras or equipment, office equipment, supplies or furniture; any substitutes for or items which are a technological evolution of the foregoing items; and/or any other related items without the prior written consent of Best Buy which may be granted or withheld in the sole and

absolute discretion of Best Buy. The foregoing shall not prohibit the incidental sale or display of the foregoing items from an area not to exceed the lesser of (i) ten percent (10%) of the floor area of the premises or (ii) 1,000 square feet, including in such determination of area all of any interior or aisle space and one-half (1/2) of the area of any aisles adjacent to such areas.

**EXHIBIT D-1**  
**LOWE'S PROHIBITED USE**

Lowe's

No portion of the Outparcel shall be used for: (i) a hardware store containing more than 5,000 square feet of floor area; (ii) an appliance, home electronics and/or lighting store containing more than 5,000 square feet of floor area; provided, however, such restriction shall not apply to a Best Buy store or to a Circuit City store (or to a store which in the future is equivalent to Circuit City or Best Buy in that the size of such store, the products carried and sold by such store and the merchandising and marketing format of such store are substantially similar to existing Circuit City or Best Buy stores, the majority of the products sold from such equivalent store are essentially similar to the products presently carried by Circuit City or Best Buy); (iii) a nursery and/or lawn and garden store containing more than 3,000 square feet of floor area (including any outdoor areas); (iv) a paint and/or home décor center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply; (v) a retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber,



McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply. These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d).