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Doc#: 0801833128 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/18/2008 01:59 PM Pg: 1 of 14

This instrument was prepared by  
And after recording return to:  
Tracy H. Wolfe, Esq.  
Freeborn & Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606

## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made as of this 11<sup>th</sup> day of January, 2008 (the "Effective Date") by **OPP II, L.L.C.**, an Illinois limited liability company (hereinafter referred to as "Declarant").

### RECITALS:

A. Declarant is the current owner (the owner from time to time of all or any portion of the Encumbered Lot (as herein defined), and their respective heirs, successors and assigns (including mortgagees) is referred to herein as the "Encumbered Owner") of the property commonly known as Lot 8 in Lowe's Subdivision and legally described on **Exhibit A** attached hereto and made a part hereof ("Encumbered Lot"). The Encumbered Lot consists of (i) a Staples building consisting of 20,388 square feet and adjacent real property (together, the "Staples Lot"), and (ii) a proposed Retail H Building consisting of 2,400 square feet ("Retail H Building") as depicted on the site plan attached hereto and made a part hereof as **Exhibit A-1**.

B. Declarant entered into a Purchase and Sale Agreement dated August 22, 2007, as amended by that certain First Amendment to Purchase and Sale Agreement dated October 19, 2007 for the sale of the Encumbered Lot to Huntington Tower Associates, as assigned to RDG Orland Park, LLC, an Illinois liability company ("Buyer"), which deed effectuating the purchase and sale thereof shall be recorded after the recording of this Declaration. Declarant desires to record this Declaration for the benefit of certain property near the Encumbered Lot, which benefited property is legally described on **Exhibit B** attached hereto and made a part hereof (the "Benefited Property").

C. Declarant desires to subject the Encumbered Lot to the covenants, conditions and restrictions hereinafter set forth (collectively referred to herein as the "Covenants"), each of which is and shall be binding upon the Encumbered Lot and each owner thereof and any other party having any interest therein, and each of which shall be deemed to be Covenants running with the land.

D. Declarant further desires to subject the Retail H Building on the Encumbered Lot and the Declarant's Other Property (as herein defined) to the covenants, conditions and

H  
J

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restrictions hereinafter set forth (collectively referred to herein as the "Staples Covenants"), which is and shall be binding upon the Retail H Building on the Encumbered Lot and each owner of the Retail H Building, and any other party having any interest therein, and which shall be deemed to be covenants running with the land, and each of which is and shall also be binding upon the Declarant's Other Property and each owner of the Declarant's Other Property, and any other party having any interest therein, and each of which shall be deemed to be covenants running with the land.

E. This restrictions set forth in this Declaration are intended to be for the benefit of (a) as to the Covenants, those tenants of the Benefited Property and each of their respective successors, assigns and/or subtenants ("Benefited Tenants"); (b) as to the Covenants, the owner or owners from time to time (collectively, the "Benefited Owner") of the Benefited Property; (c) as to the Staples Covenants, for the benefit of the owners of the Staples Lot, its successors and/or assigns; and (d) as to the Staples Covenants, for the benefit of Staples the Office Superstore East, Inc. ("Staples").

F. In connection with the sale of the Encumbered Lot from Declarant to Buyer, and in consideration of Buyer agreeing to permit (i) the Covenants to be recorded against, and binding upon the Encumbered Lot, and (ii) the Staples Covenants to be recorded against, and binding upon the Retail H Building on the Encumbered Lot, Declarant hereby agrees to represent and warrant to Buyer that, other than the Covenants, the Staples Covenants and the exclusive use right granted to Lowe's Home Centers, Inc. in Section 3.4 of that certain Declaration of Easements, Covenants, Conditions and Restrictions dated July 21, 2006 and recorded in the Cook County Recorder of Deeds on August 3, 2006 as Document No. 0621542194, no other exclusive use rights exist in favor of any tenant, licensee, contract purchaser or other user of the Benefited Property, all as more particularly described herein.

**NOW, THEREFORE**, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant declares that the Encumbered Lot is and shall be held, transferred, sold, conveyed, used and occupied subject to the following Covenants:

## ARTICLE I

### Definitions; Recitals

For purposes of this Declaration, the following terms have the following meanings:

A. **Intentionally Omitted.**

B. **Permittees.** The term "Permittees" means and refers to all Encumbered Owners and any person or persons who are entitled to the use and occupancy of the Encumbered Lot from time to time under any lease, sublease, license or concession agreement or any other instrument or arrangement under which such rights are acquired, and other invitees of the Encumbered Owners.

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C. **Recitals.** The above stated recitals are incorporated into the body of this Declaration by this reference.

## **ARTICLE II**

### **Declaration of Conditions and Restrictions**

The purpose of this Declaration is to impose protective restrictions on the Encumbered Lot for the benefit of the Benefited Owner, the Benefited Tenants and the Benefited Property. Declarant declares that the Encumbered Lot shall be subject to the terms of this Declaration and that any conveyance or transfer of the Encumbered Lot or part thereof, will remain subject to and bound by the Covenants all of which are as set forth on **Exhibit C** attached hereto.

In addition, the purpose of this Declaration is to impose protective restrictions on the Retail H Building located on the Encumbered Lot and on the Declarant's Other Property, for the benefit of Staples and any owner of the Staples Lot. Declarant declares that the Retail H Building on the Encumbered Lot and the Declarant's Other Property shall be subject to the terms of this Declaration and that any conveyance or transfer of the Retail H Building on the Encumbered Lot or part thereof, or any conveyance of the Declarant's Other Property, will remain subject to and bound by the Staples Covenants, each of which is set forth on **Exhibit C-1** attached hereto.

## **ARTICLE III**

### **Remedies for Breach**

The Benefited Owner, and the Benefited Tenants, shall have the right to sue for and obtain a prohibitive or mandatory injunction or any other equitable remedy to prevent the breach of, or to enforce the observance of, the Covenants. The Encumbered Owner shall have the right to sue for and to seek any equitable remedy to prevent the breach of, or to enforce the observance of Declarant's representations and warranties set forth in this Declaration. In addition, any such party (including the Encumbered Owner) shall have the right to bring a monetary action for damages. These remedies will all be cumulative with, in addition to and non-exclusive of one another and any other remedies available to the Encumbered, Owner, Benefited Owner and/or the Benefited Tenants at law or in equity, and any or all such remedies may be pursued by the Encumbered, Owner, Benefited Owner and/or the Benefited Tenants, either successively or concurrently as the Encumbered, Owner, Benefited Owner and/or the Benefited Tenants may determine, and the exercise of any one remedy will not be construed as or constitute a bar to the exercise of any other remedy. In the event any legal action is commenced, the prevailing party has the right to collect from the other person or persons actual attorney fees and costs as may be fixed by the court.

Staples, and any owner of the Staples Lot, shall have the right to sue for and obtain a prohibitive or mandatory injunction or any other equitable remedy to prevent the breach of, or to enforce the observance of, the Staples Covenants. In addition, Staples and any owner of the

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Staples Lot shall have the right to bring a monetary action for damages. These remedies will all be cumulative with, in addition to and non-exclusive of one another and any other remedies available to Staples and any owner of the Staples Lot at law or in equity, and any or all such remedies may be pursued by Staples and any owner of the Staples Lot, either successively or concurrently as Staples and any owner of the Staples Lot may determine, and the exercise of any one remedy will not be construed as or constitute a bar to the exercise of any other remedy. In the event any legal action is commenced, the prevailing party has the right to collect from the other person or persons actual attorney fees and costs as may be fixed by the court.

Notwithstanding the above or anything contained herein to the contrary, and in consideration of Buyer's permitting the Covenants described herein to be recorded against, and to burden the Encumbered Lot, Declarant hereby represents and warrants to Buyer that, other than the Covenants, the Staples Covenants and the exclusive use right granted to Lowe's Home Centers, Inc. in Section 3.4 of that certain Declaration of Easements, Covenants, Conditions and Restrictions dated July 21, 2006 and recorded in the Cook County Recorder of Deeds on August 3, 2006 as Document No. 0621542194, Declarant has not constructed, sold, leased, granted, conveyed, contracted for or otherwise permitted or agreed to any other covenants, conditions, restrictions or exclusive use rights with any other tenant, lessee, subtenant, assignee or licensee or any other person or persons or any other invitees thereof, who are or may be entitled to the use and occupancy of any of the property currently owned by Declarant within the integrated shopping complex where the Encumbered Lot is located (such other property owned by Declarant is hereby referred to as the "Declarant's Other Property") under any lease, sublease, license or concession agreement or any other instrument or arrangement under which such rights are acquired, and other invitees, which would otherwise be binding upon, restrict or otherwise encumber the Encumbered Lot, the description of Declarant's Other Property is hereby legally described on Exhibit B-1 attached hereto and incorporated herein by this reference.

## ARTICLE IV

### Covenants Binding

As to the Covenants, this Declaration will run with the land and the ownership of the Encumbered Lot, and the various provisions hereof will act as an appurtenant burden for the Encumbered Lot. As to the Staples Covenants, this Declaration will run with the land and the ownership of the Retail H Building and the Declarant's Other Property, and the various provisions hereof will act as an appurtenant burden for the Retail H Building and the Declarant's Other Property. Such burdens will inure to the applicable Encumbered Owner, Staples, and any owner of the Staples Lot or the Retail H Lot (if owned independently from the Staples Lot), respectively, and their respective Permittees, successors, transferees and assigns as to the Encumbered Lot and the Declarant's Other Property. All express benefits and burdens of Declarant hereunder will attach to the Encumbered Lot, the Retail H Lot (if owned independently of the Staples Lot) and the Declarant's Other Property. If any Encumbered Owner conveys all or any portion of its interest in all or any portion of the Encumbered Lot by an instrument recorded in the Cook County Recorder's Office, then the transferee will automatically be deemed to have assumed and agreed to be bound by this Declaration, and the transferor will thereupon be released and discharged from any and all obligations under this Declaration

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applicable to the Encumbered Lot, or portion thereof, so transferred that accrue after the date of transfer. This Declaration shall be, as to the Covenants, for the benefit of, and appurtenant to, the Benefited Property, and, as to the Staples Covenants, for the benefit of, and appurtenant to, the Staples Lot. As to the Covenants, such benefits will accrue to the Benefited Owner and its respective successors, transferees and assigns in and to the Benefited Property, and as to the Staples Covenants, such benefits will accrue to Staples, and any owner of the Staples Lot, and its respective successors, transferees and assigns in and to the Staples Lot.

Notwithstanding any future vesting of title to the Encumbered Lot and the Benefited Property in the same party, such commonality of ownership interests will not give rise to any extinguishment or merger of any provisions hereof, it being the controlling and dominant intent of Declarant that no such merger or extinguishment will occur, and that all such provisions of this Declaration will remain in full force and effect regardless of any commonality of ownership interests in the Encumbered Lot and/or the Benefited Property. Except as otherwise expressly provided herein, any such provision of this Declaration may be extinguished, as it applies to the Encumbered Lot (as to the Covenants) and/or to the Retail H Building (as to the Staples Covenants) either by the written consent of the owners of the Benefited Property, which consent must be recorded in the Cook County Recorder's Office (as to the Covenants) or written consent of Staples and any owner of the Staples Lot, which consent must be recorded in the Cook County Recorder's Office, or the termination of the existing tenancies or existing exclusive use rights in any lease, license, declaration, sale contract, or other similar agreement creating the Covenants or Staples Covenants described herein.

## ARTICLE V

### Severability

If any provision of this Declaration is held invalid or unenforceable, no other provision of this Declaration will be affected by such holding and all other provisions of this Declaration will continue in full force and effect. This Declaration is governed by and construed under the laws of the State of Illinois.

The benefits and burdens of the provisions hereof shall commence on the Effective Date and shall, with respect to each Benefited Property, expire on the earlier of the expiration or termination of the lease existing as of the Effective Date on that respective Benefited Property. This Declaration may be amended from time to time or terminated only upon the written consent of the owners of the Benefited Property, the Declarant, the Encumbered Owner and any owner of the Retail H Building (if different than the owner of the Encumbered Lot); provided however, that the owner of the Benefited Property may unilaterally terminate this Declaration as to the Covenants with respect to its interest in this Declaration. Any such amendment or termination of this Declaration will become effective upon its recordation in the Cook County Recorder's Office.

No breach of this Declaration will entitle the Encumbered Owner of the Encumbered Lot to cancel, rescind or otherwise terminate this Declaration, but such limitation will not affect in any manner any other rights or remedies which the Benefited Owner, Staples and any owner of

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the Staples Lot (if owned independently from the Retail H Lot), respectively, may have hereunder by reason of such breach nor shall it affect in any manner the Encumbered Owner's rights or remedies set forth herein. No purported relinquishment by the Encumbered Owner of any of its rights or benefits under this Declaration will absolve such Encumbered Owner of any of its obligations, including, without limitation, its obligation to pay any amounts owed, under this Declaration.

## ARTICLE VI

### Notices

Any notices required or permitted under this Declaration must be in writing and will be deemed given and received (1) when hand delivered; (2) three business days after mailed, United States mail, postage prepaid, registered or certified, return receipt requested; or (3) delivered to a nationally recognized overnight courier, with delivery charges for next business day delivery prepaid and addressed to any Encumbered Owner at their current address. Declarant and any Encumbered Owner entitled to notice under this Declaration may change the address to which notices are to be given by written notice given in accordance with this article.

The current addresses for Declarant is:

OPP II, L.L.C.  
707 Skokie Blvd.  
Suite 400  
Northbrook, Illinois 60062  
Attn: Barry Sidel or Doug Johnson

With a copy to:

Freeborn and Peters LLP  
311 S. Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
Attn: Tracy H. Wolfe, Esq

The current addresses for Buyer is:

RDG Orland Park, LLC,  
an Illinois limited liability company  
707 Skokie Blvd. - Suite 400  
Northbrook, Illinois 60062  
Attn: Roy Gottlieb

With a copy to:

Schain, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601  
Attn: Linsey Cohen, Esq.

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IN WITNESS WHEREOF, this Declaration has been signed as of this 11<sup>th</sup> day of January, 2008.

**DECLARANT:**

**OPP II, L.L.C.** an Illinois limited liability company

By: [Signature]  
 Name: Barry Sider  
 Its: Managing Member

STATE OF ILLINOIS )  
 ) ss.  
 COUNTY OF WILL )

I, the undersigned, a Notary Public, in and for such County and State hereby verify that Barry Sider, who is the Managing Member of **OPP II, L.L.C.**, an Illinois limited liability company, appeared before me this day in person, and acknowledged that he/she signed and delivered this instrument in his/her stated capacity for the uses and purposes set forth.

Given under my hand and notarial seal this 11<sup>th</sup> day of January, 2008.

[Signature]  
 Notary Public



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## EXHIBIT A

### Legal Description of Encumbered Lot

LOT 8 IN THE FINAL PLAT OF LOWE'S ORLAND PARK SUBDIVISION BEING A SUBDIVISION OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 0517503092, IN COOK COUNTY, ILLINOIS.

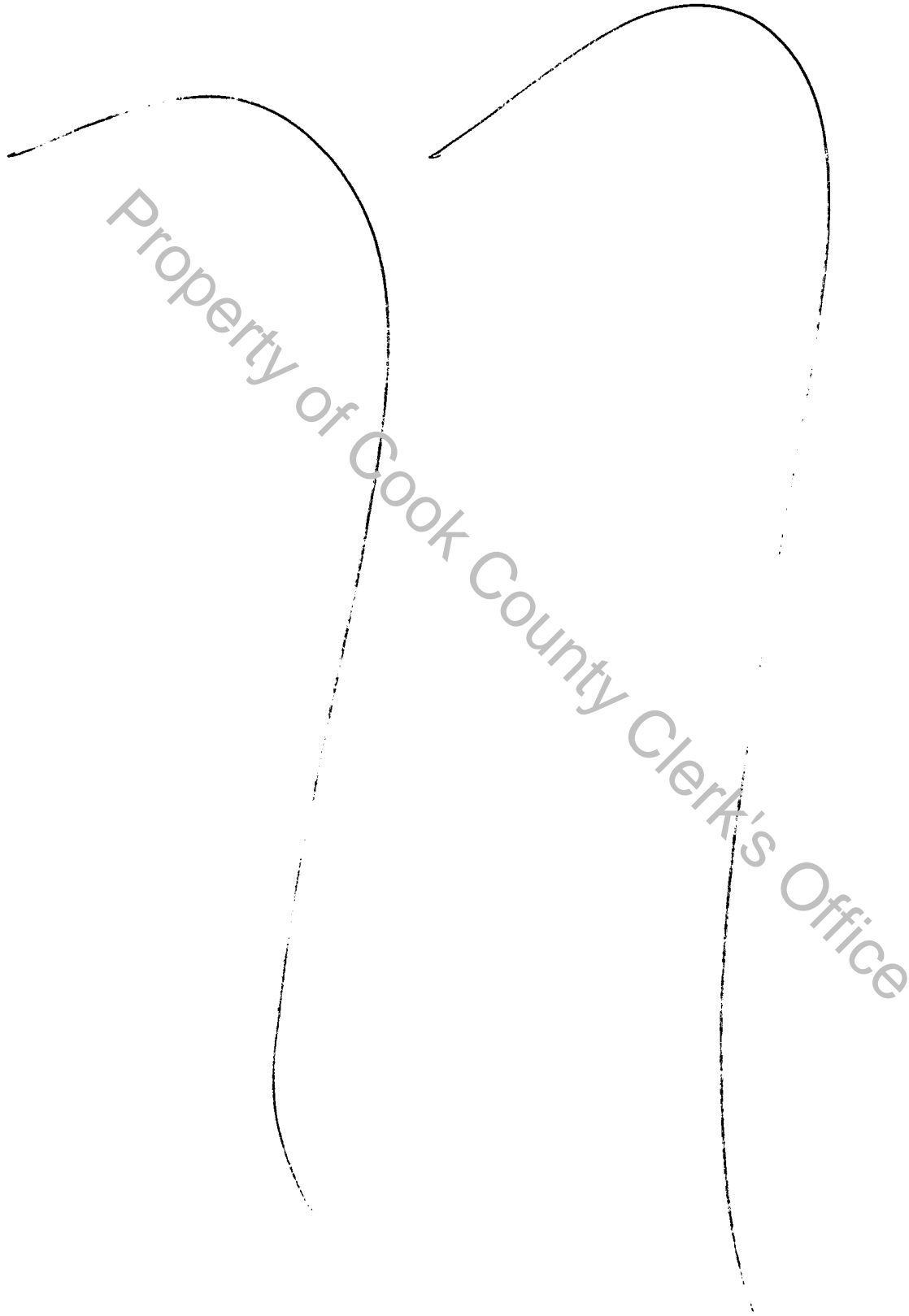
Property of Cook County Clerk's Office  
PIN 27-15-308-001



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## EXHIBIT A-1

### SITE PLAN DEPICTING STAPLES LOT AND RETAIL H BUILDING



B-1

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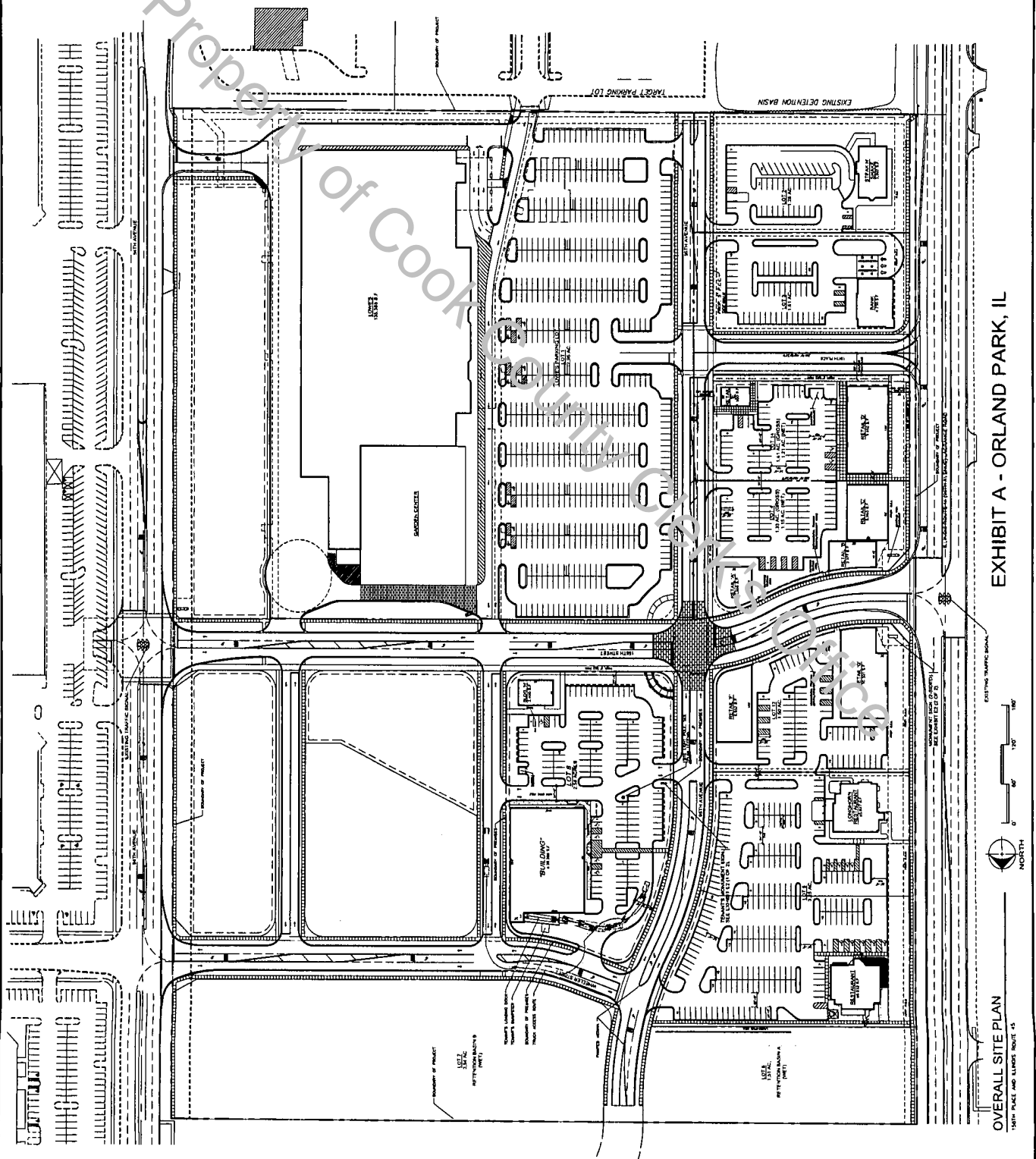
 <p><b>DZA ASSOCIATES, INC.</b> 179122 S. WILSON AVENUE, SUITE 400 ORLAND PARK, ILLINOIS 60451 TEL: (708) 585-5500 FAX: (708) 585-5754</p>	<p>ROAD FOR REVIEW 08/10/08</p> <p>ROAD FOR REVIEW 09/11/08</p> <p>ROAD FOR REVIEW 10/02/08</p> <p>ROAD FOR REVIEW 11/02/08</p> <p>ROAD FOR REVIEW 12/02/08</p> <p>ROAD FOR REVIEW 01/02/09</p> <p>ROAD FOR REVIEW 02/02/09</p> <p>ROAD FOR REVIEW 03/02/09</p> <p>ROAD FOR REVIEW 04/02/09</p> <p>ROAD FOR REVIEW 05/02/09</p> <p>ROAD FOR REVIEW 06/02/09</p> <p>ROAD FOR REVIEW 07/02/09</p>
	<p>LOWERS ORLAND PARK SUBDIVISION LOT 8</p> <p>156TH STREET AND LAGRANGE ROAD GRAND PARK, ILLINOIS</p> <p>EXHIBIT 'A' / PRELIMINARY PLAN</p>

**SITE INFORMATION**

LOT LEASABLE AREA	1 70,308 S.F.
RETAIL "A"	1 2,400 S.F.
TOTAL AREA	1 27,788 S.F.
TOTAL GOLF PARKING (PATIO, 1,500/1,000 S.F.)	1 120 CARS

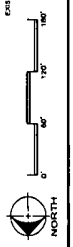
**PLAN LEGEND**

- BOUNDARY OF PROJECT
- BOUNDARY OF PREMISES
- SITE LIGHT POLE WITH TWO FLOOD LIGHTS AIMED AT ENTRY
- TRAFFIC LIGHT



O.P.P. II, L.L.C.  
707 SMOKE BOULEVARD, SUITE 400  
ORLAND PARK, ILLINOIS 60451  
PHONE: (708) 585-5500 FAX: (708) 585-5754

EXHIBIT A - ORLAND PARK, IL



OVERALL SITE PLAN  
156TH STREET AND LAGRANGE ROAD

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## EXHIBIT B

### Legal Description of Benefited Property

Lot 5

LOT 5 IN THE FINAL PLAT OF RESUBDIVISION OF LOT 5 IN THE FINAL PLAT OF LOWE'S ORLAND PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JUNE 11, 2007 AS DOCUMENT NO. 0716222080 IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

27-15-100-003-0000

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## EXHIBIT B-1

### Legal Description of Declarant's Other Property

#### Lot 5

LOT 5 IN THE FINAL PLAT OF RESUBDIVISION OF LOT 5 IN THE FINAL PLAT OF LOWE'S ORLAND PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JUNE 11, 2007 AS DOCUMENT NO. 0716222080 IN COOK COUNTY, ILLINOIS.

#### Lot 15

LOT 15 IN THE FINAL PLAT OF RESUBDIVISION OF LOT 5 IN THE FINAL PLAT OF LOWE'S ORLAND PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JUNE 11, 2007 AS DOCUMENT NO. 0716222080 IN COOK COUNTY, ILLINOIS.

#### Lot 14

THE SOUTH 194.15 FEET OF LOT 4 IN LOWE'S ORLAND PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JUNE 24, 2005 AS DOCUMENT NO. 0517503092 IN COOK COUNTY, ILLINOIS.

27-15-300-003-0000

27-15-302-035-0000

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## EXHIBIT C

### **Covenants**

[Provisions may be quoted verbatim; if so, references to other exhibits or sections shall be deemed to incorporate those exhibits/sections of the relevant leases or other agreements and capitalized terms shall have the respective meanings ascribed in the lease or other agreement containing the exclusive/use restrictions]

#### 1. Longhorn Steak

Exclusive: Seller agrees that, at Closing, it shall record a Declaration of Restrictive Covenants (the "Declaration") against the Adjacent Parcels which provide that no portion of the Adjacent Parcels shall be sold, leased and/or used for the operation of a restaurant featuring primarily steakhouse items similar to LongHorn Steakhouse (including but not limited to "Chop House", "Golden Corral", "Logan's Roadhouse", "Lone Star Steakhouse", "Original Roadhouse Grill", "Outback Steakhouse", "Roadhouse Grill", "Ryan's Steakhouse", "Sagebrush", "Saltgrass Steakhouse", "Sizzler", "Smokey Bones", "Steak and Ale", "Texas Roadhouse", "Texas Steakhouse", "Ted's Montana Grill", "Trail Dust Steakhouse", or "Tumbleweed) and commencing on the Effective Date of this Agreement and expiring on the Closing Date, Seller shall not sell or lease any portion of the Adjacent Parcels without the restrictions set forth in this Section being in place.

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## EXHIBIT C-1

### Staples Covenants

[Provisions may be quoted verbatim; if so, references to other exhibits or sections shall be deemed to incorporate those exhibits/sections of the relevant leases or other agreements and capitalized terms shall have the respective meanings ascribed in the lease or other agreement containing the exclusive/use restrictions]

#### 1. Staples

Exclusive: Subject to Landlord's acquisition of such Lots, no part of Lot(s) 3, 4, 5, 13 and/or 14 (as shown on Exhibit A) so long as such Lot(s) are owned by Landlord or by an entity under common control with Landlord, shall be used for the (a) operation of a so-called "office supply superstore" as such retailing concept is generally defined and acknowledged within the retail industry, or (b) sale or leasing of office equipment (including computers), office furniture or office supplies, or the provision of copying or printing services or any office services then provided by Tenant. Notwithstanding the foregoing, this Section shall not prohibit any tenant under a lease existing on the date of this Lease from using space occupied by it for its present permitted use, nor prohibit any future tenant from selling and/or leasing office equipment, office furniture or office supplies or providing office services incidental to such tenant's primary business in no more than an aggregate of 5% of such tenant's selling space. Further, Section 5.2.1 shall not preclude the operation of a so-called consumer electronics superstore or a so-called computer superstore which sells computers and computer related products (so long as the aforesaid five percent restriction is not violated in any respect other than in connection with computers and computer related accessories including computer hardware and software), nor shall Landlord be precluded from leasing space to Radio Shack (as such retailing concept is generally operated as of the date hereof) or a similar retailer, or to Ameritech Cellular (as such retailing concept is generally operated as of the date hereof) or a similar retailer, nor shall Landlord be precluded from leasing to a video rental tenant such as Blockbuster or Hollywood Video (as such retailing concept is generally operated as of the date hereof) or a similar retailer.