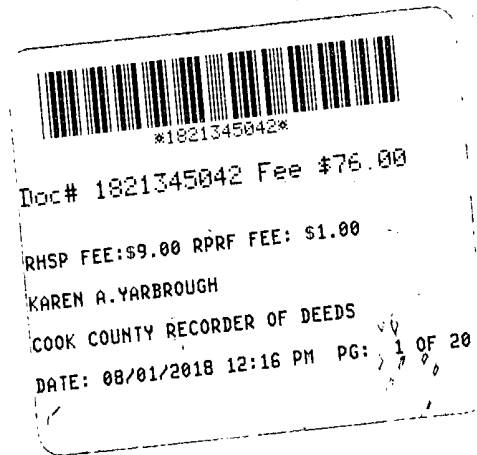


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Prepared by and after recording mail to:

Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
Attn: Chuck Picton, Esq.



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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

This Declaration of Covenants, Conditions and Restrictions and Grant of Easements (this "**Declaration**") is made and entered into this 27<sup>th</sup> day of July, 2018 (the "**Effective Date**"), by and among **BRIXMOR HOLDINGS 1 SPE, LLC**, a Delaware limited liability company ("**Brixmor**"), **ELK GROVE HOLDINGS, LLC**, a Delaware limited liability company ("**Elk Grove Holdings**"), and **SOUTH LONDON HOLDINGS LLC**, a Delaware limited liability company ("**South London**"); and together with Brixmor and Elk Grove Holdings, the "**Parties**");

### RECITALS

WHEREAS, Brixmor is the fee simple owner of certain real property located at 980 Elk Grove Town Center, Elk Grove Village, Cook County, Illinois, which is legally described on Exhibit A attached hereto and made a part hereof (the "**Town Center Property**");

WHEREAS, the Town Center Property has been subdivided into, and consists in its entirety of, four (4) lawfully separate parcels as follows: (i) the parcel of land legally described on Exhibit B-1 attached hereto and made a part hereof (the "**Main Parcel**"), (ii) the parcel of land legally described on Exhibit B-2 attached hereto and made a part hereof (the "**Outlot Parcel**"), (iii) the parcel of land legally described on Exhibit B-3 attached hereto and made a part hereof ("**Inline Parcel 1**"), and (iv) the parcel of land legally described on Exhibit B-4 attached hereto and made a part hereof ("**Inline Parcel 2**"). The general locations of the Main Parcel, the Outlot Parcel, Inline Parcel 1 and Inline Parcel 2 are depicted on the site plan attached hereto on Exhibit C and made a part hereof (the "**Site Plan**"). The Main Parcel, the Outlot Parcel, Inline Parcel 1 and Inline Parcel 2 have historically been operated as an integrated shopping center known as Elk Grove Town Center ("**Town Center**");

WHEREAS, immediately prior to the execution and delivery of this Declaration, Brixmor will convey to Elk Grove Holdings fee simple title to Inline Parcel 1, including all structures, buildings, improvements, equipment and fixtures located thereon, and Brixmor will convey to South London fee simple title to Inline Parcel 2, including all structures, buildings, improvements, equipment and fixtures located thereon;

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WHEREAS, the following existing agreements (as amended, the “**Existing Agreements**”) affect the Town Center Property and will continue to be applicable to, and binding upon, each of the Parcels (as defined below) from and after the conveyance of Inline Parcel 1 and Inline Parcel 2 to Elk Grove Holdings and South London, respectively, for so long as such Existing Agreements remain in effect: (i) that certain Redevelopment Agreement dated March 11, 1997, recorded at the office of the Cook County, Illinois Recorder (the “**Recorder’s Office**”) on August 5, 1997 as instrument number 97566663, (ii) that certain Reciprocal Easement Agreement dated March 13, 1997, recorded at the Recorder’s Office on August 5, 1997 as instrument number 97566666, and (iii) that certain Reciprocal Easement Agreement dated July 25, 1997, recorded at the Recorder’s Office on August 5, 1997 as instrument number 97566670;

WHEREAS, certain existing leases of various premises at Town Center (the “**Preexisting Leases**”) contain use prohibitions and/or exclusive use rights, as more particularly described on Exhibit D attached hereto and made a part hereof (the “**Preexisting Prohibitions and Exclusive Use Rights**”) that burden the Town Center Property and that will continue to be applicable to and binding upon each of the Parcels after the conveyance of Inline Parcel 1 and Inline Parcel 2 to Elk Grove Holdings and South London, respectively, for so long as the Preexisting Leases identified on Exhibit D remain in effect;

WHEREAS, from and after the Effective Date, no Owner shall permit any portion of its Parcel to be used or operated in violation of either the Preexisting Prohibitions and Exclusive Use Rights or the Prohibited Uses (as defined below);

WHEREAS, from and after the Effective Date, for so long as substantially all of Inline Parcel 1 is operated as a fitness center, no Owner shall permit any portion its Parcel (except Inline Parcel 1) to be used or operated for any of the purposes described on Exhibit E attached hereto and made a part hereof (the “**Inline Parcel 1 Exclusive Use Rights**”);

WHEREAS, the Parties are entering into this Declaration to establish certain covenants, conditions, and restrictions and to grant and reserve certain easements upon the Town Center Property, which will constitute a general scheme for the operation and maintenance of Town Center on an integrated basis and for the use, occupancy, and enjoyment thereof;

WHEREAS, Brixmor and Elk Grove Holdings entering into this Declaration was a material inducement to Brixmor and Elk Grove Holdings entering into that certain Agreement of Sale and Purchase dated April 24, 2018, regarding the purchase and sale of Inline Parcel 1 and to the consummation of the closing of the sale of Inline Parcel 1 to Elk Grove Holdings; and

WHEREAS, Brixmor and South London entering into this Declaration was a material inducement to Brixmor and South London entering into that certain Agreement of Sale and Purchase dated July 20, 2018, regarding the purchase and sale of Inline Parcel 2 and to the consummation of the closing of the sale of Inline Parcel 2 to South London.

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) and in consideration of the mutual rights and obligations set forth herein, the Parties hereby covenant and agree as follows:

1. **Recitals.** The Recitals set forth above shall be deemed incorporated into this Declaration as if fully set forth in the body of this Declaration.
2. **Definitions.** For purposes of this Declaration, the following defined terms (which shall include both the plural or singular form thereof as the context requires) shall have the meanings set forth below throughout this Declaration, except as otherwise expressly provided herein:

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(a) **“Building”** means any enclosed structure permanently placed, constructed or located on the Town Center Property, including any appurtenant canopies, overhangs and supports.

(b) **“Common Area”** means all those areas on the Main Parcel which are neither Buildings nor the locations of Buildings, as the same may exist from time to time; provided, however, that any column or post supporting a Building shall be deemed to be a part of the Building to which it is attached and not a part of the Common Area. The use of any portion of the Common Area shall not be construed as a permanent inclusion of such portion within the Common Area, and such portions may, at any time thereafter, be improved with Buildings and appurtenances except as prohibited by this Declaration.

(c) **“Inline Parcel 1 Owner”** means the Owner of Inline Parcel 1.

(d) **“Inline Parcel 2 Owner”** means the Owner of Inline Parcel 2.

(e) **“Main Parcel Owner”** means the Owner of the Main Parcel.

(f) **“Occupant”** means any person or entity from time to time entitled to use and occupy any portion of any Parcel under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

(g) **“Outlot Parcel Owner”** means the Owner of the Outlot Parcel.

(h) **“Owner”** means the record holder, at any given time, of fee simple title to a Parcel. Each Parcel may have only one Owner at any given time.

(i) **“Parcel”** or **“Parcels”** means, individually or collectively, the Main Parcel, the Outlot Parcel, Inline Parcel 1, and Inline Parcel 2.

(j) **“Parking Area”** means that portion of the Common Area designated and improved for the passage and parking of motor vehicles, as the same may exist from time to time, including, without limitation, incidental and interior roadways, walkways, curbs and landscaping within areas used for such purpose, traffic lanes, aisles, vehicle parking stalls, gutters, grade separations, beams and retaining walls, lighting standards, traffic striping and markings, shared driveways providing ingress and egress to and from Biesterfield Road and Arlington Heights Road and the shared driveway and access point located to the southwest of the Outlot Parcel currently operated as a Walgreens as of the Effective Date and all other improvements located thereon for the purpose of accommodating the foregoing uses.

(k) **“Permittee”** means any Occupant and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, assignees, subtenants, and concessionaires of such Occupant insofar as their activities relate to the intended use of the Parcels.

(l) **“Utility Lines”** means facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage systems, water mains, sewer lines, lift stations, electrical conduits or systems, gas mains and other public or private utility facilities and systems providing service to any Parcel and all lines, conduits, connections, appurtenances, structures, equipment and facilities related to the installation or operation of any of the foregoing.

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## 3. Access Easements.

(a) Main Parcel Owner, as grantor, hereby grants and conveys to the other Owners, as grantees, and their respective Permittees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic appurtenant to the grantees' Parcels, upon, over and across the roadways, driveways and accessways located on the Common Area from time to time. Main Parcel Owner may, from time to time, build on and otherwise modify and reconfigure the Common Area including, without limitation, modifications to the roadways, driveways and accessways located on the Main Parcel, and the construction of an additional Building on the northeast portion of the Common Area in the area generally depicted on the Site Plan as "Proposed Pad A" (the "**Proposed Pad A Building Area**"), provided that (I) no Building shall be permitted to be constructed within the no-build area identified on the Site Plan (the "**No-Build Area**"), and (II) any such modifications that will materially affect access to the other Parcels (i) shall be performed only after ninety (90) days' prior written notice to Inline Parcel 1 Owner, Inline Parcel 2 Owner and Outlot Parcel Owner (each individually an "**Inline and Outlot Owner**" and collectively the "**Inline and Outlot Owners**") of Main Parcel Owner's intention to undertake the modification shall have been given to the Owners of the other Parcels, (ii) shall not prevent ingress and egress to and from the other Parcels, although the Owners of the other Parcels acknowledge that any temporary inability to use any specific access routes during construction will not be deemed to violate this clause, provided that Main Parcel Owner shall make reasonable efforts to minimize such disruptions, (iii) shall be performed without cost or expense to the Owners of the other Parcels, (iv) shall be completed using materials and design standards which equal or exceed those originally used, and (v) shall have been approved, to the extent required, by any federal, regional, state, county, city, township or local governmental or quasi-governmental authority, entity or body (or any department, agency or political subdivision thereof) having jurisdiction over the Town Center Property or the applicable portion thereof.

(b) Main Parcel Owner reserves the right to temporarily close portions of the Common Area for such reasonable period of time as may be necessary, (i) in connection with any maintenance, repair, modification or construction on the Common Area, or (ii) in the reasonable opinion of Main Parcel Owner's legal counsel, to prevent the acquisition of prescriptive rights by any person or entity; provided, however, that prior to closing off any portion of the Common Area as herein provided, Main Parcel Owner shall give reasonable prior written notice to the other Owners of its intention to do so (except in the case of emergency) and Main Parcel Owner shall give details to the other Owners of the area to be closed off and a depiction of alternative routes through the Common Areas. At no time shall any points of ingress and egress to and from Biesterfield Road or Arlington Heights Road and/or the access points located to the southwest of the Outlot Parcel currently operated as a Walgreens as of the Effective Date be reduced except during temporary construction and/or repair of such access points or, to the extent necessary, in the reasonable opinion of Main Parcel Owner's legal counsel, to prevent the acquisition of prescriptive rights by any person or entity.

(c) Main Parcel Owner reserves the right at any time and from time to time to exclude and restrain anyone (i) who is not a Permittee from using the Common Area, or (ii) any Permittee from using the Common Area for purposes other than those for which the Common Area is intended.

(d) Each Owner, as grantor, hereby grants to each of the other Owners, as grantee, the right, privilege and easement to use such portions of the granting Owner's Parcel, for the location of, and to reconstruct and maintain, any roofs, building overhangs, awnings, and other similar appurtenances to the grantee's Building, in the locations, and to the extent, such appurtenances exist as of the Effective Date. Each Owner covenants and agrees that its exercise of such easements will not result in damage or injury to the improvements of any other Owner and will not interfere with the business operations conducted by any other person in Town Center. No such easement for reconstruction or maintenance by any grantee will permit the use of the grantor's Building for load-bearing purposes. The easements



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provided for in this Section 3(d) shall continue after the expiration of this Declaration pursuant to Section 17 for so long as the particular appurtenance for which the easement is granted continues to exist and is not razed, destroyed or demolished and not rebuilt within one (1) year after such appurtenance ceased to exist.

4. **Parking Easements.** Subject to any express conditions, limitations or reservations contained in this Declaration, Main Parcel Owner grants to each other Owner and their respective Permittees a perpetual, non-exclusive easement for parking of automobiles, vans, trucks, motorcycles and other motor vehicles and of bicycles and other non-motor vehicles on and within the Parking Areas from time to time located on the Main Parcel. Main Parcel Owner shall be permitted to build on, modify and reconfigure the Parking Areas in its sole discretion (subject to the restrictions expressly set forth in this Declaration), provided, that no Building shall be permitted to be constructed within the No-Build Area. However, no such construction, modification or reconfiguration shall permanently reduce the parking stalls available to Inline Parcel 1 or Inline Parcel 2 below the amount required by applicable law, including, but not limited to, the zoning code of the Village of Elk Grove Village, provided that the foregoing restriction shall not apply to construction within the Proposed Pad A Building Area for which Main Parcel Owner obtains a zoning code variance from the Village of Elk Grove Village.

5. **Utility Easements.** To the extent any Utility Lines in existence as of the Effective Date serve any Parcel (any such Utility Line an "Existing Line"), the Owner of any Parcel on, over, across, upon, under or through which any Existing Line is located hereby grants, to the extent permitted by and subject to the terms and conditions of any underlying agreements creating any such utility easements, to the other Owner(s) (whose Parcel(s) is (or are) served by such Existing Lines), for the benefit of such benefitted Parcel(s), a perpetual, non-exclusive easement, for the operation, maintenance, repair, and replacement of any Existing Lines and to allow any Existing Lines to continue to be located over, across, upon, under or through the burdened Parcel in their existing locations. In addition, if it is necessary for the Owner of any Parcel to lay a new Utility Line to secure sewer, water and/or storm water service to its Parcel, the Owner(s) of abutting Parcel(s) shall cooperate with the Owner seeking a new Utility Line. The abutting Owners shall grant such easements as may be necessary for the Owner seeking the new Utility Line to make the required connections on terms that are reasonably acceptable to the parties; provided, however, no Owner shall be required to grant an easement that unreasonably interferes with its use and enjoyment of its Parcel.

6. **Maintenance.**

(a) Each Owner covenants to keep and maintain, at its sole cost and expense, its Parcel (including any Buildings and other improvements located thereon from time to time) in good order, condition and repair. In the event of any damage to, or destruction of, any Building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such Building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (b) tear down and remove all portions of such damaged or destroyed Building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a safe, level, graded condition. Exterior architectural compatibility (shape, general design, color and materials) between Buildings in Town Center is deemed highly desirable and therefore no alterations shall be made to the exterior of the Buildings on Inline Parcel 1 or Inline Parcel 2 which are architecturally incompatible with other Buildings in Town Center.

(b) Main Parcel Owner, at its sole cost and expense, shall promptly cause all gas and electric utilities serving Inline Parcel 1 and Inline Parcel 2 to be metered separately from the other Parcels. Each Owner shall at all times during the term hereof operate and maintain, or cause to be operated and maintained, in good order, condition and repair, at its sole expense, any utility or other

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installations serving the Parcel of such Owner.

(c) Subject to Main Parcel Owner's rights with respect to the Common Area otherwise set forth in this Declaration, Main Parcel Owner covenants at all times during the term hereof to maintain, or cause to be maintained, the Common Area in good order, condition and repair, and, in connection therewith, to make any and all repairs and replacements with respect to the Common Area, including, without limitation, capital repairs and replacements, as may be necessary from time to time. In addition: (i) upon the written request of either Inline Parcel 1 Owner or Inline Parcel 2 Owner, Main Parcel Owner will remove the trees located immediately in front of the Buildings located on such Parcels, if not prohibited from doing so by the Village of Elk Grove Village, and replace them with similar species trees that are no taller than eight (8) feet; and (ii) in no event is Main Parcel Owner permitted to replace such trees with any landscaping that is more robust or taller than eight (8) feet. The Inline and Outlot Owners shall pay to Main Parcel Owner on a monthly basis and within thirty (30) days after receipt of a written demand therefor accompanied by reasonable supporting documentation, each such Inline and Outlot Owners' proportionate share of the costs incurred by Main Parcel Owner in performing such maintenance, repairs and replacements relative to the Common Area, including, for the avoidance of doubt, costs incurred by Main Parcel Owner in performing tree removals and replacements pursuant to the immediately preceding sentence. Main Parcel Owner shall provide to each of the Inline and Outlot Owners a comprehensive reconciliation with supporting documentation of all Common Area charges incurred and charged to each of the Inline and Outlot Owners within thirty (30) days after the end of the calendar year (the "**Reconciliation Statement**"). Inline and Outlot Owners, each at their sole cost and expense, may examine and audit the books and records of Main Parcel Owner pertaining to the Common Area expenses, for the purposes of verifying that such costs and expenses were paid, the amounts thereof and the accuracy of Main Parcel Owner's accounting and billing for such matters. If an Inline and Outlot Owner fails to object to Main Parcel Owner's Reconciliation Statement within ninety (90) days after receipt of the same, the Inline and Outlot Owner that failed to object shall be deemed to have approved such Reconciliation Statement and shall have no further right to object to or contest such Reconciliation Statement. Any overpayment of such costs and expenses correctly shown by such audit shall be promptly reconciled by a payment equal to the amount thereof by Main Parcel Owner to the Inline and Outlot Owner whose audit shows the overpayment. Any underpayment of such costs and expenses correctly shown by such audit shall be promptly reconciled by a payment equal to the amount thereof by the Inline and Outlot Owner whose audit shows the underpayment to Main Parcel Owner. If the results of such audit correctly show that the amount billed by Main Parcel Owner to the Inline and Outlot Owner has been overpaid then (i) Main Parcel Owner shall reimburse the Inline and Outlot Owner, as the case may be, the amount overpaid, and (ii) if the results of such audit correctly show that the amount billed by Main Parcel Owner to the Inline and Outlot Owner has been overpaid by more than five percent (5%) in the aggregate for any calendar year, Main Parcel Owner shall reimburse the Inline and Outlot Owner, as the case may be, for the reasonable cost of such audit. In the event an Inline and Outlot Owner engages a third-party auditor to perform such audit, such auditor shall be compensated on a fixed fee basis and not on commission. The term "**proportionate share**" shall mean, in the case of Inline Parcel 1, Thirteen and 64/100ths percent (13.64%), in the case of Inline Parcel 2, Forty-One and 28/100ths percent (41.28%) and in the case of the Outlot Parcel, Ten and 55/100ths percent (10.55%). Inline Parcel 1 Owner shall not be responsible for the first \$13,000 of Common Area maintenance expenses that are attributable to Inline Parcel 1 pursuant to this Section 6(c) and Inline Parcel 2 Owner shall not be responsible for the first \$37,000.00 of Common Area maintenance expenses that are attributable to Inline Parcel 2 pursuant to this Section 6(c). For the avoidance of doubt, the foregoing credit shall be a one-time, and not an annual, credit. If applicable, upon the sale of Inline Parcel 2 to a new Owner, any unused portion of the \$50,000 credit described in the previous sentence shall thereafter be applied only to Common Area maintenance expenses that are attributable to Inline Parcel 1 pursuant to this Section 6(c). Maintenance of the Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing snow and ice, removing all papers, debris and other refuse

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from and periodically sweeping all parking and roadway areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the Parking Areas and roadways, paying utility charges for the operation of the applicable Common Area lighting, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping and performing any and all such other duties (including, without limitation, making all capital and non-capital repairs and replacements as may be necessary from time to time) as are necessary to maintain the Common Area in a clean, safe and orderly condition.

(d) For the avoidance of doubt, no portion of Inline Parcel 1, Inline Parcel 2 or the Outlot Parcel, including, without limitation, sidewalk areas, loading dock areas and other unimproved areas located thereon, shall be deemed "Common Area" for purposes of this Declaration. Notwithstanding the foregoing Main Parcel Owner shall be responsible for removing snow and ice, removing all papers, debris and other refuse from and periodically sweeping such excluded areas located on Inline Parcel 1 and Inline Parcel 2 to the extent necessary to maintain the same in a reasonably clean and orderly condition. Costs incurred by Main Parcel Owner in performing the obligations described in this Section 6(d) shall be paid by Inline Parcel 1 Owner and Inline Parcel 2 Owner to Main Parcel Owner in the same manner as described in Section 6(c) above.

## 7. Prohibited Uses; Existing Agreements.

(a) Each Owner covenants and agrees that the Town Center Property shall only be used for retail and retail service (i.e., services typically found or provided in retail shopping centers similar to Town Center) purposes and each Owner shall cause all Occupants of its Parcel to observe and comply with the foregoing. Without in any way limiting the immediately preceding sentence, each Owner covenants and agrees that it shall not permit its Parcel, or any portion thereof, to be used for any of the uses or activities listed on Exhibit F attached hereto and made a part hereof (collectively, the "**Prohibited Uses**"). Notwithstanding the foregoing, the requirement of the Owners to comply with this Section 7(a) with respect to their Parcels shall apply only to Future Lease Transactions (as defined below) and any violation of this Section 7(a) by an Occupant under any lease or occupancy agreement in existence as of the Effective Date shall not be deemed to be a breach of this Section 7(a) (to the extent such existing agreement does not prohibit the Prohibited Uses).

(b) Each Owner hereby acknowledges that the Existing Agreements are applicable to and bind the Parcels, and each Owner covenants and agrees to observe and comply with, and to cause all Occupants of its Parcel to observe and comply with, the Existing Agreements in all respects for so long as such Existing Agreements remain in effect.

## 8. Exclusive Uses.

(a) Each Owner hereby acknowledges and agrees that, prior to the Effective Date, the Town Center Property was operated as an integrated shopping center and that, from and after the Effective Date, the Preexisting Prohibitions and Exclusive Use Rights described on Exhibit D shall continue to apply to and burden all Parcels. Accordingly, from and after the Effective Date, no Owner shall enter into any new lease or other agreement, or any modification or amendment to any existing lease or other agreement (each, a "**Future Lease Transactions**") that would entitle or in any way permit any Occupant of any portion of such Owner's Parcel to violate the Preexisting Prohibitions and Exclusive Use Rights (the "**Future Leasing Requirement**"). Each Owner covenants and agrees to observe and comply with, and to cause all Occupants of its Parcel to observe and comply with, the Future Leasing Requirement and Preexisting Prohibitions and Exclusive Use Rights, and shall not cause or suffer any violation, breach or default of any of the Preexisting Prohibitions and Exclusive Use Rights relating to or resulting from any use or activities conducted on or conditions created at any Parcel by Occupants under

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any Future Lease Transactions. For purposes of this Declaration, the Preexisting Prohibitions and Exclusive Use Rights shall apply during the current term of the applicable Preexisting Lease and during any renewal thereof, whether such renewal is set forth in the applicable Preexisting Lease or such renewal is otherwise agreed to by the applicable Owner and the applicable Occupant. Notwithstanding the foregoing to the contrary, the Future Leasing Requirement shall not, however, apply to the extent that a court of competent jurisdiction issues a non-appealable order holding that there is no violation of the Preexisting Prohibitions and Exclusive Use Rights or that the Preexisting Prohibitions and Exclusive Use Rights are not enforceable under state or federal law.

(b) Inline Parcel 2 Owner, Main Parcel Owner and Outlot Parcel Owner hereby acknowledge and agree that the Inline Parcel 1 Exclusive Use Rights described on Exhibit E shall apply to and burden Inline Parcel 2, the Main Parcel and the Outlot Parcel, and that the Inline Parcel 1 Exclusive Use Rights described on Exhibit E do not violate any Preexisting Prohibitions and Exclusive Use Rights. Accordingly, from and after the Effective Date, Inline Parcel 2 Owner, Main Parcel Owner and Outlot Parcel Owner shall not: (i) enter into any new lease or other agreement that would entitle or in any way permit any future Occupant of such Owner's Parcel to violate the Inline Parcel 1 Exclusive Use Rights (a "**Future Fitness Lease Transaction**") and (ii) enter into any assignment, modification or amendment to any existing lease or other agreement that would entitle or in any way permit any Occupant of any portion of such Owner's Parcel to violate the Inline Parcel 1 Exclusive Use Rights (an "**Existing Lease Modification**"). Inline Parcel 2 Owner, Main Parcel Owner and Outlot Parcel Owner covenant and agree to observe and comply with, and to cause all future Occupants of their respective Parcels to comply with, the Inline Parcel 1 Exclusive Use Rights and shall not cause or suffer any violation, breach or default of any of the Inline Parcel 1 Exclusive Use Rights relating to or resulting from any use or activities conducted on or conditions created at any Parcel by any future Occupants under any Future Fitness Lease Transaction or under any Existing Lease Modification. If, following Inline Parcel 1 Owner's (or its Occupant's) initial opening for business on Inline Parcel 1, Inline Parcel 1 Owner (or its Occupant, as the case may be) ceases to operate for a period in excess of three hundred sixty (360) consecutive days (unless such cessation is on account of (a) remodeling, not to exceed ninety (90) days in the aggregate within any consecutive two (2) year period, or (b) repairs, reconstruction, casualty or condemnation (in each such case, not to exceed three hundred sixty (360) days, provided that in all such cases, Inline Parcel 1 Owner (or its Occupant, as applicable) shall commence such work as soon as reasonably practicable and shall thereafter continuously and diligently pursue completion thereof) or unless such cessation has been approved by the other Owners (collectively, the "**Exempted Discontinuances**")), the Inline Parcel 1 Exclusive Use Rights shall no longer be applicable.

(c) For the avoidance of doubt, (i) the requirement of Inline Parcel 2 Owner, Main Parcel Owner and Outlot Parcel Owner to comply with the Inline Parcel 1 Exclusive Use Rights with respect to their Parcels shall apply to Future Fitness Lease Transactions and Existing Lease Modification transactions and any violation of the Inline Parcel 1 Exclusive Use Rights by an Occupant under a leasing or occupancy agreement in existence as of the Effective Date shall not be deemed to be a breach of the Inline Parcel 1 Exclusive Use Rights, provided that such existing agreement does not prohibit the violation of the Inline Parcel 1 Exclusive Use Rights and provided such existing agreement is not later modified in a way that would constitute an Existing Lease Modification, and (ii) the requirement of Owners to comply with the Preexisting Prohibitions and Exclusive Use Rights with respect to their Parcels shall apply only to Future Lease Transactions and any violation of the Preexisting Prohibitions and Exclusive Use Rights by an Occupant under any lease or occupancy agreement in existence as of the Effective Date shall not be deemed to be a breach of the Preexisting Prohibitions and Exclusive Use Rights.

(d) Each Owner acknowledges and agrees that a violation, breach or default of any of the Preexisting Prohibitions and Exclusive Use Rights by such Owner or by Occupants of such



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Owner's Parcel under any Future Lease Transactions or a Future Fitness Lease Transaction could expose another Owner to losses, liabilities and damages under the applicable Preexisting Leases, including, without limitation, full or partial rent abatement and/or lease termination. Each Owner shall indemnify, protect, defend and hold the other Owners harmless from and against any and all causes of action, claims, demands, liabilities, losses, damages, penalties, liens, fines, costs and expenses (including reasonable attorneys' fees and court costs (i) regardless of whether any lawsuit is filed, and (ii) at trial or any applicable appellate level) (collectively, "**Claims**") incurred by such Owners resulting from any such violation, breach or default of any of the Preexisting Prohibitions and Exclusive Use Rights by the defaulting Owner or by any Occupant of any such Owner's Parcel under a Future Lease Transaction. Each Owner acknowledges and agrees that a violation, breach or default of any of the Inline Parcel 1 Exclusive Use Rights by such Owner or by Occupants of such Owner's Parcel under any Future Fitness Lease Transaction or an Existing Lease Modification could expose Inline Parcel 1 Owner to losses and damages. Each Owner shall indemnify, protect, defend and hold Inline Parcel 1 Owner harmless from and against any and all Claims incurred by Inline Parcel 1 Owner resulting from any such violation, breach or default of the Inline Parcel 1 Exclusive Use Rights by the defaulting Owner or by any Occupant of any such Owner's Parcel under a Future Fitness Lease Transaction or Existing Lease Modification. However, the foregoing indemnification obligations do not apply to any violation, breach or default of any of the Preexisting Prohibitions and Exclusive Use Rights or the Inline Parcel 1 Exclusive Use Rights by an Occupant so long as the Owner of the Parcel occupied by such Occupant complies with the terms of Section 8(e) or Section 8(f) below, as applicable.

(e) Upon the occurrence of any violation, breach or default of the covenants or restrictions imposed upon the Owners under Section 8(a) hereof, the affected non-defaulting Owner shall notify the defaulting Owner thereof in writing. If the defaulting Owner fails to promptly cure any such violation, breach or default within thirty (30) days after receipt of such written notice, the non-defaulting Owner shall have the right to exercise all legal and equitable remedies available to it hereunder and under the laws of the State of Illinois including, without limitation, obtaining temporary restraining orders, injunctions and monetary damages and each of such remedies shall be cumulative with and not exclusive of, any and all others. Any expense, including, without limitation, reasonable attorney's fees and court costs, incurred by any non-defaulting Owner in the enforcement of the rights set forth in this Section 8(e) shall be deemed paid or incurred for the account of the defaulting Owner, and the defaulting Owner agrees to reimburse the non-defaulting Owner therefor on demand and save the non-defaulting Owner harmless therefrom. However, if any Occupant violates, breaches or defaults under the covenants or restrictions imposed upon the Owners under Section 8(a), then the affected Owner's right to take enforcement action against the defaulting Owner as a result of such breach shall not be available to the non-defaulting Owner so long as the defaulting Owner shall have commenced appropriate action against such Occupant within ten (10) days after receipt of written notice from the non-defaulting Owner of such violation ("**Non-Defaulting Owner's Notice**"), which appropriate action shall include instituting legal proceedings, if necessary, within ninety (90) days after receipt of Non-Defaulting Owner's Notice, and shall thereafter diligently prosecute such action to completion so as to terminate any such breach of the Preexisting Prohibitions and Exclusive Use Rights. If the defaulting Owner shall have failed to commence such proceedings within the timeframes set forth herein, or shall fail thereafter to diligently prosecute the same, then upon such failure, the non-defaulting Owner shall notify the defaulting Owner in writing of such failure and thereafter the non-defaulting Owner's right to take enforcement action shall apply for as long as such breach of the Preexisting Prohibitions and Exclusive Use Rights exists. Notwithstanding the foregoing to the contrary, if the defaulting Owner institutes legal proceedings against any Occupant breaching the Preexisting Prohibitions and Exclusive Use Rights as provided in this paragraph, and a court of competent jurisdiction issues a non-appealable order holding that there is no violation of the Preexisting Prohibitions and Exclusive Use Rights or that the Preexisting Prohibitions and Exclusive Use Rights is not enforceable under state or federal law, then no violation of the Preexisting Prohibitions and Exclusive Use Rights shall be deemed to have occurred and the non-defaulting Owner's

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right to take enforcement action shall not apply.

(f) Upon the occurrence of any violation, breach or default of the covenants or restrictions imposed upon the Owners under Section 8(b) hereof, Inline Parcel 1 Owner shall notify the defaulting Owner thereof in writing. If the defaulting Owner fails to promptly cure any such violation, breach or default within thirty (30) days after receipt of such written notice, Inline Parcel 1 Owner shall have the right to exercise all legal and equitable remedies available to it hereunder and under the laws of the State of Illinois including, without limitation, obtaining temporary restraining orders, injunctions and monetary damages and each of such remedies shall be cumulative with and not exclusive of, any and all others. Any expense, including, without limitation, reasonable attorney's fees and court costs, incurred by Inline Parcel 1 Owner in the enforcement of the rights set forth in this Section 8(f) shall be deemed paid or incurred for the account of the defaulting Owner, and the defaulting Owner agrees to reimburse Inline Parcel 1 Owner therefor on demand and save Inline Parcel 1 Owner harmless therefrom. However, if any Occupant violates, breaches or defaults under the covenants or restrictions imposed upon Main Parcel Owner, Inline Parcel 2 Owner and the Outlot Parcel Owner under Section 8(b), then Inline Parcel 1 Owner's right to take enforcement action against the defaulting Owner as a result of such breach shall not be available to Inline Parcel 1 Owner so long as the defaulting Owner shall have commenced appropriate action against such Occupant within ten (10) days after receipt of written notice from Inline Parcel 1 Owner of such violation ("**Inline Parcel 1 Owner's Notice**"), which appropriate action shall include instituting legal proceedings, if necessary, within ninety (90) days after receipt of Inline Parcel 1 Owner's Notice, and shall thereafter diligently prosecute such action to completion so as to terminate any such breach of the Inline Parcel 1 Exclusive Use Rights. If the defaulting Owner shall have failed to commence such proceedings within the time frames set forth herein, or shall fail thereafter to diligently prosecute the same, then upon such failure, Inline Parcel 1 Owner shall notify the defaulting Owner in writing of such failure and thereafter Inline Parcel 1 Owner's right to take enforcement action shall apply for as long as such breach of the Inline Parcel 1 Exclusive Use Rights exists. Notwithstanding the foregoing to the contrary, if the defaulting Owner institutes legal proceedings against any Occupant breaching the Inline Parcel 1 Exclusive Use Rights as provided in this paragraph, and a court of competent jurisdiction issues a non-appealable order holding that there is no violation of the Inline Parcel 1 Exclusive Use Rights or that the Inline Parcel 1 Exclusive Use Rights are not enforceable under state or federal law, then no violation of the Inline Parcel 1 Exclusive Use Rights shall be deemed to have occurred and Inline Parcel 1 Owner's right to take enforcement action shall not apply.

9. **Signage.** Inline Parcel 1 Owner shall be permitted, at the sole cost and expense of Inline Parcel 1 Owner, to place its name and/or advertisement (with an appearance consistent in character with typical Planet Fitness locations owned by Inline Parcel 1 Owner) in the most prominent space on the two existing illuminated pylon signs (the "**Inline Parcel 1 Signage**"), one on Biesterfield Road and the other one on Arlington Heights Road, the general locations of which are depicted on the Site Plan. Inline Parcel 1 Owner shall have the right, at any time and at its sole option, to divide the Inline Parcel 1 Signage at its sole cost and expense, provided, such Inline Parcel 1 Signage may be divided into no more than three (3) sections. The repair and maintenance of the pylon signs shall be considered Common Area maintenance, as described in Section 6(c). Each Owner shall have the exclusive right to place and maintain signs and advertisements in, on and about its Parcel, including the exterior and interior walls, canopy, roof and windows of each Building; provided, however, that the same shall in all events be aesthetically compatible with the general character of Town Center as a whole and the applicable Owner shall receive the prior approval of the Village of Elk Grove Village, Illinois, if required, for any exterior signs.

10. **Taxes.** Each Owner shall pay direct to the tax collector, prior to delinquency, the real property taxes and other special taxes and assessments levied and assessed against such Owner's Parcel; subject, however, to the right of such Owner to contest the amount or validity of all or any, part of said

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taxes and assessments. Prior to the first year in which each Parcel is separately taxed and assessed, Inline Parcel 1 Owner shall be responsible for Thirteen and 64/100ths percent (13.64%) of the real property taxes and other special taxes and assessments levied and assessed against the Town Center Property, the Inline Parcel 2 Owner shall be responsible for Forty-One and 28/100ths percent (41.28%) of such taxes, Outlot Parcel Owner shall be responsible for Ten and 55/100ths percent (10.55%) of such taxes, and the Main Parcel Owner shall be responsible for Thirty-Four and 53/100ths percent (34.53%) of such taxes. If the Parcels are separated for tax billing purposes at different times, real property taxes and other special taxes and assessments shall be equitably divided in good faith between the Owners. Each Owner is responsible for the real property taxes and other special taxes and assessments levied and assessed against each Owner's Parcel starting in the year in which each respective Parcel is separately taxed and assessed. Each Owner is hereby prohibited from taking actions with respect to its Parcel which such Owner actually knows, or should actually know, will result in an increase in the real estate taxes attributable to the Parcel of another Owner.

11. **Height Restrictions.** Throughout the term of this Declaration, no Building on the Town Center Property shall be more than one-story high and, without limiting the foregoing, no Building within the Proposed Pad A Building Area may exceed 26 feet in height (above grade) at its highest point.

12. **Self-Help.** If any Owner fails to perform any provision of this Declaration, including, without limitation, any maintenance and restoration obligations, then, upon thirty (30) days prior written notice, the other Owners shall have the right, but not the obligation, to enter upon the Parcel of the defaulting Owner to cure such default for the account of and at the expense of the defaulting Owner. If any Owner exercises its self-help right described in this Section 12, then, within ten (10) days after receipt of an invoice from such Owner, the defaulting Owner shall reimburse the non-defaulting Owner all costs reasonably incurred by such Owner in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the non-defaulting Owner shall have the right, if such invoice is not paid within said ten (10) day period, to record a lien against defaulting Owner's Parcel for the amount of the unpaid costs incurred by the non-defaulting Owner pursuant to this Section 12. The lien provided for in this Section 12 shall only be effective when filed of record by the non-defaulting Owner as a claim of lien against the defaulting Owner's Parcel in the Recorder's Office, signed and verified, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of the defaulting Owner's Parcel; (iii) the name of the owner or reputed owner of the defaulting Owner's Parcel; and (iv) the name and address of the non-defaulting Owner filing the lien. The lien, when so established against the defaulting Owner's Parcel described in the lien, shall be prior and superior to all right, title, interest, lien or claim which may be or has been acquired or attached to the defaulting Owner's Parcel after the time of filing the lien, except for the first mortgage lien, if any, affecting the defaulting Owner's Parcel, so long as the same is held by a lienholder which routinely engages in the business of making loans secured by commercial real estate, such as banks, insurance companies and similar institutions. The Owner's lien may be enforced and closed in a suit or action brought in any court of competent jurisdiction.

13. **Party Walls; Certain Other Rights.**

(a) There currently exist certain walls (the "Party Walls"), as generally identified on the Site Plan, which are being used as support walls by Main Parcel Owner and Inline Parcel 1 Owner or Inline Parcel 2 Owner (collectively, the "Party Wall Owners"), as applicable, to support their respective Buildings on their respective Parcels. The Party Wall Owners agree that such Party Walls shall be for the perpetual benefit of and use by the Party Wall Owners, as applicable, and the Occupants of their respective Parcels.

(b) In the event of any damage to or destruction of any Party Wall from any cause

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whatsoever, other than the negligence or willful misconduct of a Party Wall Owner, the Party Wall Owners whose Parcels includes such Party Wall shall, at their joint expense (shared equally), repair and rebuild such Party Wall, and each Party Wall Owner whose Parcel includes such Party Wall shall have the right to full use of the Party Wall as repaired or rebuilt. In the event it shall become necessary to perform maintenance on the whole or any part of a Party Wall, such expense shall be shared equally by each Party Wall Owner whose Parcel includes such Party Wall; provided, however, that if any such damage or destruction, or the need for any such maintenance, referenced above is brought about solely by the negligence or willful misconduct of one (1) Party Wall Owner, any expense incidental thereto shall be borne solely by such wrongdoer. Whenever any Party Wall, or any part thereof, shall be rebuilt, it shall be erected in the same manner and at the same location as it currently stands and shall be of the same size, of the same or similar materials and of like quality. If any Party Wall Owner shall refuse to pay its share of the cost of any necessary repair, rebuilding or maintenance, the adjacent Party Wall Owner may have the Party Wall repaired, rebuilt or maintained and shall be entitled to a lien on the property of the Party Wall Owner so failing to pay, for the amount of such defaulting Party Wall Owner's share of the reasonable cost of any such repair, rebuilding or maintenance, plus an administrative fee equal to fifteen percent (15%) of such costs. In the event any repair, rebuilding or maintenance shall be necessary, all necessary entries onto the Parcels shall not be deemed a trespass so long as the repair, rebuilding or maintenance work shall be done in a workmanlike manner at reasonable times and on reasonable notice, and consent is hereby given to enter onto the Parcels to effect necessary repairs, rebuilding and maintenance.

(c) Any Party Wall Owner removing its improvements from any Party Wall or making use of any Party Wall shall do so in such manner so as to preserve all rights of the adjacent Party Wall Owner in the Party Wall, and shall save the adjacent Party Wall Owner harmless from all damage caused thereby to improvements then existing.

(d) No Party Wall Owner shall possess the right to cut windows or other openings in any Party Wall, nor the right to make any alterations, additions or structural changes in any Party Wall.

(e) The Owner of Inline Parcel 1 and the Owner of Inline Parcel 2 may from time to time mount signage on the west and east exterior walls of the Building and provide for certain other items to be affixed to the west and east exterior walls of the Building located on Inline Parcel 1 and Inline Parcel 2 including, but not limited to, door handles (collectively, the "Inline Fixtures") which Inline Fixtures may protrude onto the Main Parcel. Main Parcel Owner grants to the Owner of Inline Parcel 1 and the Owner of Inline Parcel 2, and their respective Permittees, the right, privilege and easement to use a 12 inch portion (to the extent such portion is unimproved, from time-to-time) along the west and east exterior walls of the Building located on Inline Parcel 1 and Inline Parcel 2 to accommodate any protrusion of the Inline Fixtures onto the Main Parcel.

14. **Declaration Runs With the Land**. All covenants and provisions of this Declaration shall run with the land and shall be binding upon each Owner (including any successor owner) of any Parcel. All Occupants of the Parcels and all those having any rights by, under or through any of them, shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances. This Declaration shall inure to the benefit of each Owner (including any successor owner) of any Parcel. Any party acquiring any interest in any Parcel shall, by acceptance of such interest, be deemed to have restated, assumed and agreed to be bound by the terms and conditions of this Declaration. At the time of any transfer of ownership in any Parcel, the transferor shall be relieved of any liability accruing under this Declaration from and after the date that the transferor notifies the other Owners that such transfer has occurred. Notwithstanding the foregoing, in order for the transferor of any Parcel to be released from all further obligations and liabilities imposed by this Declaration, there shall be delivered to the other Parties



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(delivery thereof to be a condition of such transfer and release), a written undertaking, in which the transferee of such Parcel expressly assumes and covenants effective upon the transfer of such Parcel, to perform and be bound by all the terms, covenants and conditions under this Declaration to be performed by the transferor including, without limitation, this Section 14 being applicable to any future transfer of such Parcel.

15. **Prohibition on Solicitation.** Each Owner (a “**Competing Owner**”) hereby agrees not to encourage, solicit, lure, entice or in any other manner persuade or attempt to persuade any Occupant of another Owners’ Parcel, while an Occupant of such other Owner’s Parcel, to relocate to the Competing Owner’s Parcel or to not renew, or to otherwise terminate, its existing lease or occupancy agreement with the other Owner. Notwithstanding the foregoing to the contrary, it is understood and agreed that advertising of any kind including maintenance of a webpage or other information on the internet for an Owner’s Parcel (other than direct mail addressed personally to an Occupant of another Owner’s Parcel) by any Owner is not restricted in any way by this Section 15 or otherwise. In addition, if an Occupant of an Owner’s Parcel contacts another Owner without such Competing Owner’s breach of this Section 15 (for example, if such Occupant responds to an advertisement in a newspaper or on the internet), then any interactions, agreements, etc. with such Occupant shall not be restricted in any way by this Section 15 or otherwise.

16. **Insurance.**

(a) **Duty to Carry Casualty Insurance-Release and Waiver of Subrogation.**

(i) Main Parcel Owner shall carry (or cause to be carried) policies of all-risk property insurance on the Common Areas, covering the full insurable value thereof. Such insurance shall be carried by Main Parcel Owner commencing with the date of this Declaration. Except as otherwise expressly provided in this Declaration, Inline Parcel 1 Owner and Inline Parcel 2 Owner shall not be liable to Main Parcel Owner, or to any insurance company insuring Main Parcel Owner, for any loss or damage to any building or improvements which was or could have been covered by such insurance even though such loss or damage might have been occasioned by the negligence of Inline Parcel 1 Owner and/or Inline Parcel 2 Owner, its agents or employees, and Main Parcel Owner hereby releases all of its rights to recover from Inline Parcel 1 Owner and Inline Parcel 2 Owner for such loss or damage. Without in any manner limiting or conditioning the effectiveness of the foregoing waiver and release, Main Parcel Owner covenants that it will obtain for the benefit of Inline Parcel 1 Owner and Inline Parcel 2 Owner a waiver of any right of subrogation the insurer of Main Parcel Owner may acquire against Inline Parcel 1 Owner, Inline Parcel 2 Owner or other parties by virtue of the payment of any such loss covered by such insurance.

(ii) Inline Parcel 1 Owner and Inline Parcel 2 Owner shall carry (or cause to be carried) policies of all-risk property insurance on the Building and improvements located on Inline Parcel 1 and Inline Parcel 2 that are not considered to be Common Areas, covering the full insurable value thereof. Such insurance shall be carried by Inline Parcel 1 Owner relating to Inline Parcel 1 and Inline Parcel 2 Owner relating to Inline Parcel 2 commencing with the date of this Declaration. Except as otherwise expressly provided in this Declaration, Main Parcel Owner shall not be liable to Inline Parcel 1 Owner or Inline Parcel 2 Owner, or to any insurance company insuring Inline Parcel 1 Owner or Inline Parcel 2 Owner, for any loss or damage to any building or improvements which was or could have been covered by such insurance even though such loss or damage might have been occasioned by the negligence of Main Parcel Owner, its agents or employees, and Inline Parcel 1 Owner and Inline Parcel 2 Owner hereby release all of their rights to recover from Main Parcel Owner for such loss or damage. Without in any manner

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limiting or conditioning the effectiveness of the foregoing waiver and release, Inline Parcel 1 Owner and Inline Parcel 2 Owner each covenant that they will obtain for the benefit of Main Parcel Owner a waiver of any right of subrogation the insurer of Inline Parcel 1 Owner or Inline Parcel 2 Owner may acquire against Main Parcel Owner or other parties by virtue of the payment of any such loss covered by such insurance.

(b) Duty to Carry Liability Insurance. Each Owner shall carry (or cause to be carried) with financially responsible insurance companies, with a minimum A.M. Best rating of A-VIII, commercial general liability insurance covering its legal liability in connection with claims for personal injury or death and property damage incurred upon or about its Parcel. Such insurance shall have a single limit of coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) in the aggregate. Main Parcel Owner shall name Inline Parcel 1 Owner, Inline Parcel 2 Owner and any additional individuals, partnerships, associations, corporations and any other form of business organization, or one or more of them or combination of them, as reasonably requested by Inline Parcel 1 Owner or Inline Parcel 2 Owner as additional insureds. Inline Parcel 1 Owner and Inline Parcel 2 Owner shall name Main Parcel Owner and any additional individuals, partnerships, associations, corporations and any other form of business organization, or one or more of them or combination of them, as reasonably requested by Main Parcel Owner as additional insureds.

17. Term. Except as otherwise provided herein, the term of this Declaration shall be for forty-nine (49) years from the Effective Date. The term of this Declaration shall automatically renew for five (5) additional terms of ten (10) years each, unless Main Parcel Owner, Inline Parcel 1 Owner and Inline Parcel 2 Owner unanimously agree in writing to terminate the Declaration. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination, and, provided further, that the easements described in Sections 3(a), 4, 5 and 13(e) and the Party Wall obligations described in Section 13 and, in each case, the rights and duties related thereto, shall continue in effect in perpetuity until such time as the easements or Party Walls, as applicable, cease to be used to serve a Building or Parcel in Town Center.

18. Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any violation, breach or default by another Owner under this Declaration 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 violation, breach or default. A waiver by any Owner of a violation, 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 violation, breach or default of the same or any other provision of this Declaration.

19. Notices. Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Declaration to be made or accepted by either party must be in writing. Notice may, unless otherwise provided herein, be given or served by: (i) delivering the same to such party, or an agent of such party, in person or by commercial courier or personal messenger; (ii) confirmed receipt of electronic delivery; or (iii) depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or UPS. Notice given in any of the foregoing manners shall be effective only if and when delivered (or refusal to accept delivery) by the party to be notified. However, electronic notice is effective on the date of transmission, provided that the date of transmission is a business day (and the transmission is transmitted prior to the close of business) and further provided that: (i) an overnight delivery is forwarded to the party being noticed on the same

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day as the electronic transmission; or (ii) there is a confirmed receipt of electronic delivery (i.e. reply email) which may include a PDF or Word formatted file; or (iii) it is an email with reply email evidencing receipt.

If to Main Parcel Owner: c/o Brixmor Property Group Inc.  
450 Lexington Avenue, 13<sup>th</sup> Floor  
New York, New York 10017  
Attention: General Counsel  
Email: darryl.heslop@brixmor.com

with a copy to: Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Attention: Chuck Picton, Esq.  
Chicago, Illinois 60606  
Email: Chuck.Picton@bfkn.com

If to Outlot Parcel Owner: c/o Brixmor Property Group Inc.  
450 Lexington Avenue, 13<sup>th</sup> Floor  
New York, New York 10017  
Attention: General Counsel  
Email: darryl.heslop@brixmor.com

with a copy to: Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Attention: Chuck Picton, Esq.  
Chicago, Illinois 60606  
Email: Chuck.Picton@bfkn.com

If to Inline Parcel 1 Owner: Elk Grove Holdings, LLC  
1022 East Lancaster Avenue  
Bryn Mawr, Pennsylvania 19010  
Attention: Real Estate Department  
Email: corporate@pfchicago.com

with a copy to: Much Shelist, P.C.  
2 Park Plaza, Suite 1075  
Irvine, California 92614  
Attention: Glenn D. Taxman  
Email: gtaxman@muchlaw.com

If to Inline Parcel 2 Owner: South London Holdings LLC  
1022 East Lancaster Avenue  
Bryn Mawr, Pennsylvania 19010  
Attention: Real Estate Department  
Email: corporate@pfchicago.com

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with a copy to:

Much Shelist, P.C.  
 2 Park Plaza, Suite 1075  
 Irvine, California 92614  
 Attention: Glenn D. Taxman  
 Email: gtaxman@muchshelist.com

An Owner may change its address for Notices by giving written notice thereof to all other Owners in the manner set forth herein. The attorneys for the Owners may give Notices on behalf of their respective clients. If a notice must be given to a party other than one designated above, such notice will be sent to the party(ies) and address(es) shown on the then current real property tax rolls of Cook County, Illinois.

20. **Amendment; Modification.** This Declaration shall not be amended, modified or terminated except by a written instrument executed by each of Main Parcel Owner, Inline Parcel 1 Owner and Inline Parcel 2 Owner.

21. **Estoppel Certificates.** Any Owner may, at any time and from time to time, in connection with the sale or transfer of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's property by mortgage, deed of trust or sale leaseback, deliver written notice to the other Owners requesting that such Owners certify in writing that to the best of the knowledge of the certifying Owner, (i) this Declaration is in full force and effect, (ii) this Declaration has not been amended or modified, either orally or in writing, and if so amended, identifying the amendment(s), and (iii) to the actual knowledge of the Owner providing such certificate, neither the Owner requesting the certificate, nor any other Owner, is in default in the performance of its obligations under this Declaration, or, if in default, to describe the nature of any and all defaults. The Owners receiving such request shall execute and return such certificate within ten (10) business days following the receipt thereof.

22. **Indemnification.** To the extent that any Owner exercises any easement rights granted pursuant to this Declaration, such Owner (the "Grantee") will defend, indemnify and save the grantor of the applicable easement (the "Grantor") harmless from and against any and all Claims arising out of or resulting from the Grantee's exercise of such easement rights; provided, however, that the foregoing indemnity will not apply to any Claims arising from the willful act or the active negligence of the Grantor, or its agents, servants or employees.

23. **Severability.** In the event any provision or portion of this Declaration is held by final judgment of any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

24. **Arm's Length Relationship.** Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Owners. It is understood that the relationship between the Owners is an arm's length one that shall at all times be and remain separate. No Owner shall have the right to act for or on behalf of any other Owner, as agent or otherwise, unless expressly authorized to do so pursuant to this Declaration or otherwise by a separate written instrument signed by the Owner to be charged or bound.

25. **Governing Law.** This Declaration is to be governed, construed and enforced in accordance with the laws of the State of Illinois.

26. **VENUE.** THE OWNERS AGREE THAT THE VENUE OF ANY ACTION,



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PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OWNER AGAINST ANOTHER OWNER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS DECLARATION OR ANY OWNER'S USE OR OCCUPANCY OF ANY PARCEL, INCLUDING ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY AND OTHER STATUTORY REMEDY WITH RESPECT THERETO SHALL BE IN THE COUNTY AND STATE IN WHICH TOWN CENTER IS LOCATED.

27. **Costs of Suit.** If any Owner brings action for relief against any other Owner, declaratory or otherwise, arising out of this Declaration, the non-prevailing party shall pay the prevailing party its reasonable costs, fees and expenses incurred in connection with and in preparation for said action, including its court costs and reasonable attorneys' fees.

28. **Counterparts.** This Declaration may be executed in multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one Declaration.

29. **REA for Exclusive Benefit of Parties.** The provisions of this Declaration are for the exclusive benefit of the Owners hereto and not for the benefit of any other individuals, partnerships, associations, corporations and any other form of business organization, or one or more of them or combination of them, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person. Nothing herein shall be construed to create any rights in or for the benefit of any lessee, sublessee or licensee of any part of the Parcels.

30. **Waiver of Default.** No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained herein. The consent or approval by a party to or of any act or request by another party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Unless expressly herein provided to the contrary, the rights and remedies given to a party by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which a party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by a party shall not impair such party's standing to exercise any other right or remedy.

31. **No Partnership, Joint Venture or Principal-Agent Relationship.** Neither anything in this Declaration contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties to this Declaration.

32. **Default Shall Not Permit Termination of Declaration.** No default under this Declaration shall entitle any party to terminate, cancel or otherwise rescind this Declaration; provided, however, this limitation shall not affect any other rights or remedies the parties may have by reason of any default under this Declaration.

33. **No Dedication of Easement and Benefit to Occupants.** Nothing contained in this Declaration, including the grant of any or all easements herein provided, shall be deemed to constitute a dedication of any Parcel, or any portion or portions thereof, to any governmental body or agency or to the general public, or be construed to create any rights in or for the benefit of any Occupant of any part of any

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Parcel, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed. Main Parcel Owner, Inline Parcel 1 Owner and Inline Parcel 2 Owner each may, however, extend the benefit of the easements created by this Declaration to their respective Occupants.

[SIGNATURE PAGES TO FOLLOW]

Property of Cook County Clerk's Office

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

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IN WITNESS WHEREOF, the Parties have executed this Declaration as of the Effective Date set forth above.

ELK GROVE HOLDINGS:

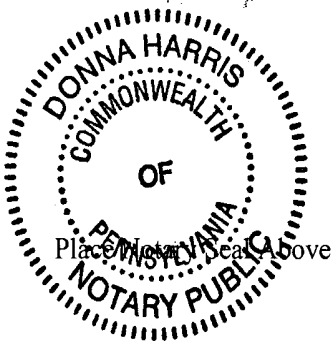
**ELK GROVE HOLDINGS, LLC,**  
a Delaware limited liability company

By: [Signature]  
Name: [Signature]  
Title: Manager

STATE OF Pennsylvania  
) ss.  
COUNTY OF Delaware )

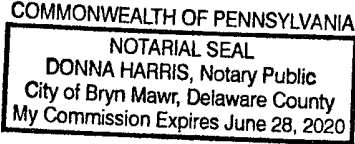
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT Byron Reshforth the Manager of ELK GROVE HOLDINGS, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged he signed, sealed and delivered the instrument as his free and voluntary act, on behalf of said company for the purposes therein set forth.

Given under my hand and notarial seal, this 17<sup>th</sup> day of July, 2018.



Signature [Signature]


Signature of Notary Public



# UNOFFICIAL COPY

SOUTH LONDON:


**SOUTH LONDON HOLDINGS LLC,**  
a Delaware limited liability company

By:   
Name: Jeremy Pappas  
Title: Manager

STATE OF Pennsylvania  
) ss.  
COUNTY OF Delaware

I, the undersigned, a Notary Public in and for said County in the State aforesaid, CERTIFY THAT Jeremy Pappas, the Manager of SOUTH LONDON HOLDINGS LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged he signed, sealed and delivered the instrument as his free and voluntary act, on behalf of said company for the purposes therein set forth.

Given under my hand and notarial seal, this 18<sup>th</sup> day of July, 2018.

Signature 

Signature of Notary Public

