

## **DECLARATION OF USE RESTRICTIONS AND RIGHT OF FIRST REFUSAL**

This Declaration of Use Restrictions and Right of First Refusal (this “**Declaration**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”) by and between the **City of Naperville**, an Illinois Municipal Corporation and home rule unit of local government under the laws and Constitution of the State of Illinois (the “**City**”), and **LTF REAL ESTATE COMPANY, INC.**, a Minnesota corporation (together with its successors and assigns, “**LTF**”). The City and LTF may be referenced herein individually as a “**Party**” and together as “**Parties**”.

### **RECITALS**

A. By virtue of a Purchase and Sale Agreement between the City and LTF, effective March 15, 2023, as amended, LTF is purchasing approximately 10.55 acres of real property from the City which property is located at the southeast corner of Illinois Route 59 and 103rd Street in the City of Naperville in Will County, Illinois (the “**County**”) as described on **Exhibit A** and depicted on **Exhibit B** which, upon subdivision, will be known as Lot 1 (the “**Benefitted Property**”).

B. The City is the owner of approximately 4.22 acres of real property located to the south of the Benefitted Property and immediately east of Illinois State Route 59 as described on **Exhibit A** and depicted on **Exhibit B**. Upon subdivision, said real property will be known as Lot 2 and is referenced herein as “**City Lot 2**”.

C. The Parties have agreed to execute and record this Declaration in order to subject City Lot 2 to certain covenants and agreements by which:

- (1) **City Lot 2 Limitation of Uses**. The uses of City Lot 2 will be limited as set forth in Section 3 hereof; and
- (2) **Right of First Refusal**. City Lot 2 shall be subject to LTF’s right of first refusal as set forth in Section 5 hereof.

D. The City is also the owner of approximately 4.02 acres of real property located east of City Lot 2, which upon subdivision will be known as Lot 3 as depicted on **Exhibit B**. Only City Lot 2 is subject to the provisions of this Declaration. Lot 3 is not subject to any part of this Declaration, including but not limited to the ROFR set forth herein or to any limitation of use as set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Declaration, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, on behalf of themselves and their respective successors and assigns, agree as follows:

1. **Recitations.** The Recitals set out above are hereby incorporated by reference as though set forth fully herein.

2. **Term.** Subject to the provisions of Sections 3 and 5.4 hereof, this Declaration commences on the Effective Date and will continue for so long as the Benefitted Property is (i) owned or operated by LTF, LTF Lease Company, LLC, or Life Time, Inc. and any of its direct or indirect subsidiaries, and (ii) operated as a health, fitness or athletic facility as the primary use. The Parties acknowledge that the City Lot 2 Limitation of Uses and the Right of First Refusal described herein will be effective during the initial construction of the health, fitness or athletic facility on the Benefitted Property before such facility has begun operations.

3. **City Lot 2 Limitation of Uses.** During the Term of this Declaration, no portion of City Lot 2 shall be operated or used, without the prior written consent of the owner of the Benefitted Property which may be granted or denied in such owner's sole and absolute discretion, for any of the Prohibited Uses set forth on **Exhibit C** and City Lot 2 may only be used for one or more of the Allowed Uses listed on **Exhibit D**. Said Prohibited Uses and Allowed Uses are together referenced herein as "**City Lot 2 Limitation of Uses**". If there is any inconsistency between the Allowed Uses on **Exhibit D** and the Prohibited Uses on **Exhibit C**, the Prohibited Uses on **Exhibit C** shall prevail. Notwithstanding any other provision herein, the City Lot 2 Limitation of Uses runs in favor of the Benefitted Property and may only be enforced while (i) LTF, LTF Lease Company, LLC, or Life Time, Inc. and any of its direct or indirect subsidiaries, remains the owner or operator of the Benefitted Property; and (ii) the Benefitted Property is operated as a health, fitness or athletic facility as the primary use.

4. Intentionally omitted.

5. **Right of First Refusal.** The City hereby grants to LTF an exclusive right of first refusal to purchase or lease the City Lot 2 on the terms and conditions set forth in this Declaration.

5.1 Subject to the provisions of this Section 5, the City may sell or lease all or any portion of City Lot 2 (the "**Refusal Property**") either pursuant to an unsolicited offer from a third party or as a result of the City's seeking an offer to sell or lease all or any portion of the Refusal Property to a third party (hereinafter an "**Offer**") during the Term (as defined herein) of this Agreement. Except as set forth in Subsection 5.1.1 below, the City hereby grants to LTF a right of first refusal ("**Right of First Refusal**" or "**ROFR**") to purchase or lease City Lot 2, or a portion thereof, on the terms and conditions set forth in this Declaration.

5.1.1 Any offer received or obtained by the City to buy or lease all or any portion of the Refusal Property to be used for any of the following purposes shall be deemed an exempt offer ("**Exempt Offer**") and shall not be subject to the ROFR granted herein:

(i) market rate residential use; affordable or market rate senior (55+) housing; and/or affordable or market rate housing for individuals with intellectual or developmental disabilities; and

(ii) Any lease of the Refusal Property for the purposes of farming or for spreading of City collected leaves.

If the City closes on an Exempt Offer, then it will become an “**Exempt Transaction.**”

5.2 If the City intends to accept an Offer (that is not an Exempt Offer as defined in Subsection 5.1.1 above), the City shall give LTF written notice of the Offer, which written notice shall include a copy of such Offer and set forth an offer by the City to sell or lease (as applicable) the City’s interest in the Refusal Property to LTF on the same terms and conditions contained in the Offer (the “**ROFR Notice**”).

5.3 Within fifteen (15) business days from LTF’s receipt of the ROFR Notice given in accord with the provisions of Section 6 hereof (the “**ROFR Notice Period**”), LTF shall notify the City of its decision whether or not to purchase or lease the Refusal Property in accord with the terms contained in the ROFR Notice as set forth in Subsections 5.3.1 and 5.3.2 below.

5.3.1 If LTF notifies the City of its intent to exercise its ROFR and purchase or lease the Refusal Property (“**LTF Notice of Acceptance**”), within fifteen (15) business days of issuance of said LTF Notice of Acceptance LTF shall deposit with the City the sum of fifteen percent (15%) of the purchase price set forth in the Offer (hereinafter the “**Earnest Money**”) or fifteen percent (15%) of the base rent of the Offer for the first year thereof. If LTF does not respond to the ROFR Notice within the ROFR Notice Period or if said Earnest Money is not received by the City as provided above, LTF shall be conclusively deemed to have declined to exercise its Right of First Refusal with respect to the Refusal Property and the City shall have no further obligation to LTF with respect thereto (except as set forth in Sections 5.3.2 and 5.3.2.1 below).

If after deposit of the Earnest Money, LTF closes on the Refusal Property that is the subject of the Offer in accord with the terms contained in the ROFR Notice, or if a lease agreement for the Refusal Property is fully executed in accord with the terms contained in the ROFR Notice, the Earnest Money shall be applied toward the Purchase Price, or first year’s base rent, as applicable. If the sale is not closed or the lease is not fully executed as provided above, the City shall be entitled to retain the Earnest Money to be used for any purpose it elects and LTF shall be conclusively deemed to have declined to exercise its Right of First Refusal with respect to the Refusal Property and the City shall have no further obligation to LTF with respect thereto (except as set forth in Sections 5.3.2 and 5.3.2.1 below).

If the Refusal Property is less than the entire City Lot 2, then LTF’s Right of First Refusal shall continue to apply and be binding upon the City as provided herein with respect to such portion of the City Lot 2 not included in the Refusal Property.

5.3.2 If LTF notifies the City in writing of its intent not to exercise its ROFR (“**LTF Notice of Rejection**”), or if LTF does not respond to the City’s

notification within the ROFR Notice Period, LTF shall be conclusively deemed to have declined to exercise its Right of First Refusal with respect to the Refusal Property and the City shall have no further obligation to LTF with respect thereto except as provided in Subsection 5.3.2.1 below.

Notwithstanding the forgoing, (1) if the purchase transaction referenced in the ROFR Notice fails to close, or if the lease referenced in the ROFR Notice is not fully executed within the timeframe specified in the Offer, or any extension agreed to in writing by the City Manager (but any such extensions shall not exceed six (6) months in the aggregate), then LTF's Right of First Refusal shall not be extinguished, but shall continue to be binding on the City for any subsequent offers for the sale, conveyance or lease of the Refusal Property in accordance with the terms and conditions of this Agreement, and (2) if the purchase price or first year's base rent, as applicable, is reduced by more than 5.0% from the amount set forth in the ROFR Notice, then the City shall be required to provide another ROFR Notice to LTF as set forth in Section 5.2 and the provisions of this Section 5.3 shall again apply to said ROFR Notice.

5.3.2.1 If Refusal Property which is leased by the City to an entity other than LTF ceases to be encumbered by a lease, LTF's ROFR for future sale or lease of the Refusal Property shall not be extinguished and the City shall be obligated to issue LTF a ROFR Notice (as set forth in Section 5.2 above) if the Refusal Property is the subject of a subsequent lease or Offer to purchase (not including Exempt Offers).

5.4 In the event that LTF declines to exercise its Right of First Refusal pursuant to Sections 5.3.1 or 5.3.2 above, and the sale transaction that was the subject of the ROFR Notice closes as provided herein, then the ROFR granted in this Agreement shall not be binding upon such new owner or any subsequent owners of all or any portion of the Refusal Property. Notwithstanding the preceding sentence, the ROFR shall not be extinguished after the sale or lease in any Exempt Transaction and shall continue to apply to any subsequent offer to convey, sell, transfer, or lease the Refusal Property other than for an Exempt Transaction; provided, however, that if any buyer in an Exempt Transaction completes the construction of a building or buildings on the Refusal Property, the ROFR shall terminate and be extinguished.

5.5 If the City breaches any of its obligations under this Section 5 of this Agreement, including, but not limited to, its obligation to offer the Refusal Property to LTF as set forth in this Section 5, LTF shall have all rights and remedies available to it at law or in equity.

6. **Notices.** All notices hereunder shall be in writing, personally delivered, or mailed by first class or certified mail (with return receipt requested and postage prepaid), or delivered by Federal Express or another nationally recognized overnight commercial courier as follows:

if to LTF: LTF Real Estate Company, Inc.  
2900 Corporate Place  
Chanhassen, MN 55317  
Attn: Kari Broyles, Esq.

with a copy to: LTF Real Estate Company, Inc.  
2900 Corporate Place  
Chanhassen, MN 55317  
Attn: Property Management.

if to the City: City Manager  
400 South Eagle Street  
Naperville, IL 60540

with a copy to: City Attorney  
400 South Eagle Street  
Naperville, IL 60540

Such notice shall be deemed given on the date of receipt by the addressee if hand delivered, the next business day following deposit with Federal Express or another nationally recognized overnight commercial courier, or three (3) business days following deposit thereof in the United States mail, or the date receipt as aforesaid would have been effective if delivery was not refused. Each Party may designate a new address by written notice to the other in accordance with this Section. Either Party's counsel may deliver notice on behalf of such Party.

7. **Entire Agreement.** All recitals and exhibits referred to in this Declaration are incorporated herein by such reference and made a part of this Declaration for all purposes as if they had been set forth in the body of this Declaration. This Declaration sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof, and shall supersede any other agreements and understandings (written or oral) among the Parties on or prior to the date of this Declaration with respect to the subject matter of this Declaration. The consent or approval by any Party to, or of any act or request by, any other party to this Declaration requiring 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. This Declaration may only be amended or terminated by the Parties via a recordable instrument executed by all of the then-owners of the Benefitted Property and the City Lot 2. The invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, all of which shall remain in full force and effect.

8. **Covenants Running with the Land.** The terms of this Declaration shall constitute covenants running with and binding upon the City Lot 2 and benefitting the Benefitted Property throughout the Term of this Declaration and shall be binding upon any party which has, or obtains, any interest in any portion of the City Lot 2, whether such interest consists of a fee, leasehold or other ownership or possessory interest. The covenants and agreements in this Declaration shall not merge into the title of burdened and/or benefited land notwithstanding common ownership of any of the applicable benefitted and burdened portions of the properties described herein. It is intended that the covenants, agreements, rights and obligations of the Parties as set forth in this

Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land.

9. **No Third-Party Beneficiaries.** This Declaration is not intended, and shall not be deemed or construed, to confer any rights, powers or privileges on any person or entity that is not a party to this Declaration, other than the respective successors and assigns of the Parties with respect to their interests in the City Lot 2 and the Benefitted Property.

10. **Enforcement of Declaration.** In the event of any breach of this Declaration, the non-breaching Party shall have all rights and remedies available to it at law or in equity.

11. **Time is of the Essence.** Time shall be of the essence under the terms of this Declaration. If a date or the expiration of a date of any period that is set out in this Declaration falls upon a date that is not a Business Day, then, in such event, the date or expiration date of such period shall be extended to the next Business Day. For purposes of this Declaration, “**Business Day**” shall mean any day other than Saturday, Sunday or a U.S. federal legal holiday.

12. **Governing Law and Venue.** This Declaration shall be governed by the laws of the State of Illinois, without giving effect to any principles regarding conflict of laws. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

13. **Representation.** Each of the Parties hereby represents and warrants as follows:: (i) that it has the requisite authority to sign this Declaration and be bound by the terms hereof; (ii) that no other party or entity is required to sign this Declaration in order to bind said Party to the terms and conditions of this Declaration; and (iii) that no additional third party consents or approvals are required in connection with the execution and recordation of this Declaration in order to make it fully binding upon and against said Party.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Declaration as of the date first above written.

**CITY OF NAPERVILLE**  
an Illinois Municipal Corporation

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Douglas A. Krieger  
City Manager

ATTEST

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Dawn C. Portner  
City Clerk

STATE OF ILLINOIS:  
COUNTY OF DUPAGE: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Douglas A. Krieger, City Manager and Dawn C. Portner, City Clerk of the City of Naperville, on behalf of such Illinois Municipal Corporation and home rule unit of local government under the laws and Constitution of the State of Illinois.

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Notary Public  
My Commission Expires:

**LTF REAL ESTATE COMPANY, INC.,**  
a Minnesota corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_: to-wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of LTF REAL ESTATE  
COMPANY, INC., on behalf of such corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**EXHIBIT A**

**LEGAL DESCRIPTIONS**

(Upon recordation of the Final Plat of Naperville South Forty Lots 4, 5, 6, and 7 Resubdivision)

**Benefitted Property Legal Description:**

Lot 1 in Naperville South Forty Lots 4, 5, 6, and 7 Resubdivision, a reubdivision of the Northwest Quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, According to the Plat Thereof Recorded on \_\_\_\_\_, 2025 as \_\_\_\_\_ Document Number \_\_\_\_\_ in Will County, Illinois.

P.I.N.:

Common Address: 4111 Tower Court, Naperville, IL

**City Lot 2 Legal Description:**

Lot 2 in Naperville South Forty Lots 4, 5, 6, and 7 Resubdivision, a reubdivision of the Northwest Quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, According to the Plat Thereof Recorded on \_\_\_\_\_, 2025 as \_\_\_\_\_ Document Number \_\_\_\_\_ in Will County, Illinois.

P.I.N.:

Common Address: 4243 Tower Court, Naperville, IL 60564

**EXHIBIT B**  
**DEPICTION OF THE PROPERTIES**

(following page)



## **EXHIBIT C**

### **PROHIBITED USES ON CITY LOT 2**

Absent written permission of LTF (which may be granted or denied in LTF's sole and absolute discretion), no portion of City Lot 2 shall be used or operated for any of the following uses:

- (a) health or fitness club, gym or any commercial facility used for physical exercise or individual or group fitness or athletic training regardless of whether such business charges membership dues, class fees or any other arrangement;
- (b) Yoga studio or facility, except as part of the health or fitness component of the residential development described in (a)1. above;
- (c) Pilates studio or facility;
- (d) Cycle studio or facility (e.g. SoulCycle);
- (e) Barre studio or facility;
- (f) any specialty fitness studio or facility;
- (g) boutique gym or fitness training facility (e.g. Orange Theory);
- (h) Any of the services or uses that are offered on the Benefitted Property.

Notwithstanding the provisions of (a) through (h) above, a gym or fitness-type facility of not more than 3,000 total square feet may be operated on City Lot 2 as part of any residential development, (including but not limited to: (i) market rate residential; (ii) affordable or market rate senior (55+) housing; and/or (iii) affordable or market rate housing for individuals with intellectual or developmental disabilities) solely as an amenity for the exclusive use of residents and occupants of the residential development only (and overnight guests of the residents and occupants of the residential development).

## **EXHIBIT D**

### **ALLOWED USES ON CITY LOT 2**

City Lot 2, or any portion thereof, may be used for residential dwelling units, and uses ancillary thereto, where such dwelling units are constructed for: (i) market rate residential; (ii) affordable or market rate senior (55+) housing; and/or (iii) affordable or market rate housing for individuals with intellectual or developmental disabilities.

For the purposes of this Exhibit D, “ancillary uses” shall mean amenities for the sole use of residents and occupants of the residential development (and overnight guests of the residents and occupants of the residential development) consisting of not more than 3,000 total square feet, such as: gym or fitness-type facilities, yoga studios, Pilates studios, cycle studios, Barre studios, specialty fitness studios, or boutique gym/fitness training facilities.

Additional allowed uses on City Lot 2, or any portion thereof, are set forth below:

#### ***B1 NEIGHBORHOOD CONVENIENCE SHOPPING CENTER DISTRICT***

A shopping center which includes any of the following uses:

1. Bakeries.
2. Banks and financial institutions.
3. Barbershops.
4. Beauty shops/salons.
5. Candy and ice cream stores.
6. Civic buildings.
7. Drugstores.
8. Dwelling units.
9. Dry cleaning establishments and laundries employing not more than ten (10) persons.
10. Eating establishments, including outdoor cafes (but not including entertainment or dancing).
11. Food stores, grocery stores, meat markets and delicatessens.
12. Gift shops.
13. Internet cafes.
14. Health spas without lodging accommodation/massage establishment.
15. Offices—Business or professional.
16. Offices/clinics—Medical or dental.
17. Package liquor stores.

18. Shoe and clothing repair stores.
19. Business machine stores, sales and services.
20. Office machine stores, sales and services.
21. Video rentals.
22. Carryout establishments.
23. Coffee shops.
24. Learning centers.
25. Sleep clinics.
26. Pet grooming and training establishments.

***CONDITIONAL USES (if approved by the City of Naperville):***

1. Drinking establishments.
2. Intentionally omitted.
3. Public and private utility facilities.
4. Telecommunications facilities.
5. Nursery schools, preschools and daycare centers.
6. Vocational and trade schools operated entirely indoors.
7. Photography studios.

***B2 COMMUNITY SHOPPING CENTER DISTRICT***

A shopping center which includes any of the following uses:

1. Veterinary offices.
2. Antique shops.
3. Art shops or galleries, but not including auction rooms.
4. Bicycle sales, rental, and repair stores.
5. Blueprinting and photostating establishments.
6. Book and stationery stores.
7. Camera and photographic supply stores.
8. Carpet and rug stores, retail sales.
9. Catering establishments.
10. China and glassware stores.

11. Clothing and costume rental stores.
12. Coin and philatelic stores.
13. Custom dressmaking establishments.
14. Dairy product establishments, but not including processing or bottling.
15. Department stores and discount stores.
16. Drinking establishments.
17. Dry goods stores.
18. Electrical appliance stores including radio and television sales, and repair.
19. Employment agencies.
20. Frozen food stores, including locker rental in conjunction therewith.
21. Furniture stores, including upholstering when conducted as part of the retail operations and secondary to the principal use.
22. Furrier shops, including the incidental storage and conditioning of furs.
23. Garden supply, tool, and seed stores.
24. General retail.
25. Hearing aid stores.
26. Hobby shops, for retail of items to be assembled or used away from the premises.
27. Household appliance stores.
28. Interior decorating shops, including upholstering and making of draperies, slipcovers, and other similar articles, when conducted as a part of the retail operations and secondary to the principal use.
29. Jewelry stores, including watch repair.
30. Leather goods and luggage stores.
31. Locksmith shops.
32. Mail order, catalog store.
33. Millinery shops.
34. Musical instrument sales and repair.
35. Optician—Sales, retail.
36. Orthopedic and medical appliance stores.
37. Paint, glass, and wallpaper stores.
38. Pet shops.
39. Phonograph record and sheet music stores.

40. Photography studios, including the developing of film and pictures when conducted as part of the retail business on the premises.
41. Picture framing, when conducted for retail trade on the premises only.
42. Secondhand stores and rummage shops.
43. Sewing machine sales and service.
44. Shoe stores.
45. Sporting goods stores.
46. Tailor shops.
47. Theaters, indoor.
48. Ticket agencies.
49. Tobacco shops.
50. Toy shops.
51. Travel bureaus and transportation ticket offices.
52. Repair, rental, servicing of any article the sale of which is a permitted use in the district.
53. Commercial art studios.
54. Pet care establishments, accessory to a principal permitted use, where the pet care establishment does not exceed twenty-five percent (25%) of the gross floor area of the building, structure or premises. All activity shall be conducted completely within any building or structure; outdoor areas shall be prohibited.
55. Cannabis dispensing organization.

***CONDITIONAL USES (if approved by the City of Naperville):***

1. Amusement establishments including, but not limited to, bowling alleys, pool halls, dance halls, skating rinks.
2. Automobile service stations, repair facilities and car washes when used in conjunction with the automobile service station.
3. Daycare centers and nursery schools.
4. Garages for storage, repair, and servicing of motor vehicles, including body repair, painting, and engine rebuilding.
5. Hotels and motels.
6. Motor vehicle sales.
7. Intentionally omitted.
8. Public and private utility facilities.
9. Radio and television stations and studios.



10. Undertaking establishments/funeral parlors.
11. Telecommunications facilities.
12. Vocational and trade schools operated entirely indoors.
13. Pet care establishments, accessory to a principal permitted use, where the pet care establishment exceeds twenty-five percent (25%) of the gross floor area of the building, structure or premises. All activity shall be conducted completely within any building or structure; outdoor areas shall be prohibited.