

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 86538 / August 1, 2019

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 4061

ADMINISTRATIVE PROCEEDING

File No. 3-19300

In the Matter of

BRIXMOR PROPERTY GROUP INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Brixmor Property Group Inc. (“Brixmor” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from Brixmor's violations of the antifraud and books and records provisions of the Exchange Act. Brixmor is a publicly-traded real estate investment trust ("REIT") that is one of the nation's largest owners and operators of open-air shopping centers. Between the third quarter of 2013 and the third quarter of 2015 (the "Relevant Period"), Brixmor, acting through its then senior executives, manipulated and falsely reported its "Same Property Net Operating Income Growth Rate," or "SP NOI Growth Rate," a non-GAAP measure relied on by investors and analysts to assess Brixmor's financial performance. During the Relevant Period, Brixmor materially misstated its SP NOI Growth Rate in all but one of its quarterly filings (Forms 10-Q), each of its two annual filings (Forms 10-K), and its related Forms 8-K.

Respondent

2. **Brixmor** is a Maryland corporation with its principal executive offices located in New York, New York. Throughout the relevant period its common stock was registered with the Commission under Exchange Act Section 12(b) and publicly traded on the New York Stock Exchange "NYSE" (symbol: BRX). Brixmor files annual and quarterly reports under Exchange Act Section 13.

Facts

SP NOI and SP NOI Growth Rate

3. For financial reporting purposes, publicly traded issuers in the United States must follow accounting rules established by the Financial Accounting Standards Board and rules adopted by the Commission, which are commonly referred to as generally accepted accounting principles, or "GAAP." Additionally, many REITs, including Brixmor, report supplemental non-GAAP financial measures utilized by investors and analysts in understanding and assessing the companies' operating results. One of the most important non-GAAP measures that REITs typically report is same property net operating income ("SP NOI"), which is an adjusted version of net operating income ("NOI"), another non-GAAP measure. Brixmor, like many REITs, defined NOI as rental income less rental operating expenses such as property operating expenses, real estate taxes, and bad debt expense.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. SP NOI represents the NOI of the “Same Property Pool,” or the pool of properties owned by the REIT as of the end of both the current reporting period and the same reporting period in the prior year (the “Comparison Period”) for the entirety of both periods. SP NOI therefore excludes any NOI attributable to properties that were acquired, constructed, or disposed of between the current reporting period and the Comparison Period. Brixmor publicly stated that, in addition, it excluded corporate level income, lease termination income and straight-line rent amortization of above/below market leases from its calculation of SP NOI.

5. REITs not only report SP NOI as a dollar amount but also the percentage by which SP NOI has grown between the current reporting period and the Comparison Period, which is also known as “SP NOI Growth Rate.” Because SP NOI Growth Rate reflects the growth in the NOI of a static pool of properties, REIT management, including Brixmor’s, as well as REIT investors and analysts consider it a valuable measure of a REIT’s ability to generate growth from its existing properties over the course of a year, as opposed to growth through the acquisition or construction of new properties.

Brixmor Publicly Reported False SP NOI Growth Rates during the Relevant Period and Touted This Metric to Investors

6. During the Relevant Period, SP NOI and SP NOI Growth Rate were two of the most important performance metrics to Brixmor’s management because of their importance to analysts and investors. Each of Brixmor’s Forms 10-Q and 10-K during the Relevant Period reflected that importance. For example, each filing stated, in identical or substantially similar form, that SP NOI was “utilized to evaluate the operating performance of real estate companies and is frequently used by securities analysts, investors and other interested parties in understanding business and operating results regarding the underlying economics of our business operations,” and that it “provides a more consistent metric for comparing the performance of properties.”

7. From its inception as a public company, Brixmor touted its steady and consistent SP NOI Growth. In an initial public offering (“IPO”) roadshow presentation before the company went public in October 2013, Brixmor told investors that it would achieve strong and consistent SP NOI Growth over the next few years despite difficulties in the industry by “redeveloping and repositioning” its existing portfolio of properties, rather than by acquiring or constructing new properties. To accomplish this, Brixmor would capitalize on a significant number of expiring below-market rate leases that could soon be brought to market levels and upgrade its anchor tenants to “best-in-class” grocery stores and other marquee tenants, which in turn would drive small shop occupancy and rent gains. Over the next two years, Brixmor consistently pointed to its SP NOI Growth Rate to demonstrate that these business strategies were successful.

8. Brixmor issued guidance for its SP NOI Growth Rate to the market in the form of a range of projected full-year growth rates. In December 2013, shortly after completing its IPO, the Company issued SP NOI Growth Rate guidance of 3.9% to 4.0% for 2013 and 3.7% to 4.1% for 2014; in October of 2014, it narrowed the guidance to 3.8% to 4.0% for 2014. In February 2015, the Company issued SP NOI Growth Rate guidance of 3.0% to 3.7% for 2015, which it narrowed to 3.5% to 3.7% in October 2015.

9. Against this guidance, Brixmor, like most REITs, publically reported its actual SP NOI and SP NOI Growth Rate on a quarterly and year to date basis in each of its Form 10-Qs and 10-Ks as well as on a full-year basis in each of its Form 10-Ks, and on a quarterly basis in related Form 8-Ks. In every quarter but one during the Relevant Period, Brixmor reported SP NOI Growth Rate results that landed squarely within the guidance range it had issued for the year, and often directly in the middle of guidance.

10. In addition, in public statements in numerous earnings calls, investor presentations, industry conferences, and shareholder letters, Brixmor's then Chief Executive Officer ("CEO") and Brixmor's then Chief Financial Officer ("CFO") touted the company's consistent and predictable organic growth—as demonstrated by its SP NOI Growth Rate results—as proof that their business strategies were succeeding and that Brixmor was accomplishing the goals set forth during its IPO.

Brixmor Made Improper Adjustments to its Actual SP NOI to Achieve SP NOI Growth Rate Targets During the Relevant Period

11. Contrary to its public disclosures, however, Brixmor's actual SP NOI Growth Rate was volatile and frequently fell above or below the company's publically issued guidance range during the Relevant Period. Brixmor engaged in a multi-year effort to manipulate its accounting to achieve stable and predictable growth rates that hit its guidance, something its CEO, CFO, Brixmor's then Chief Accounting Officer ("CAO") and an employee who oversaw the company's property accounting department during the Relevant Period ("Accounting SVP") referred to internally as "mak[ing] the sausage."

12. During each quarter, CEO and CFO set an internal specific quarterly target, typically right down the middle of the Brixmor's publically issued guidance range, for the company's SP NOI Growth Rate. CFO then tasked CAO and Accounting SVP with making adjustments to Brixmor's actual SP NOI in order to achieve the desired results.

13. Brixmor manipulated its SP NOI Growth Rate using three methods, all of which lacked any proper accounting justification: (i) using an account referred to internally as a "cookie jar" to improperly time the recognition of revenue; (ii) incorporating lease termination income into SP NOI, contrary to the company's public representation that it excluded lease termination income from its calculation of SP NOI; and (iii) reducing the SP NOI for the Comparison Period in order to make the current quarter's SP NOI Growth Rate appear higher.

a. Improper Timing of Revenue Recognition Using the "Cookie Jar" Account

14. Brixmor used an internal books and records account, the "2617 Account," which was referred to internally as a "cookie jar," to improperly alter the timing of revenue recognition.

15. Among other things, the purported purpose of the 2617 Account was to hold deferred revenue items whose status was uncertain until it could be determined whether, and when,

the revenue should be properly recognized as income. For example, if the amount of a tenant's common area maintenance payment or real estate tax payment was in dispute, Brixmor should have held the payment in the 2617 Account until it could determine whether it was properly entitled to recognize the item as income, at which point it would recognize the revenue as income in the quarter that it was earned and collected, in accordance with GAAP.

16. On numerous occasions, however, Brixmor disregarded GAAP and improperly held amounts in the 2617 Account, or selectively recognized such amounts, for the sole purpose of meeting its SP NOI Growth Rate targets. For example, in February 2015, after Brixmor received a tenant common area maintenance payment, Accounting SVP was asked by his accounting staff whether to recognize all of the payment as income that month. Although the income should have been recognized when it was received under GAAP, Accounting SVP directed the staff member to leave it in the 2617 Account because it was only midway through the quarter, writing: "We were going to see where results shake out and take it in if we have to." Brixmor improperly held the payment in the 2617 Account until October 2015, when in discussing 3Q 2015 results, CAO relayed to CFO that CEO "wants to show a 40 bp increase (3.8%) next qtr [the fourth quarter of 2015]." Accordingly, Accounting SVP reported to CAO the total amount of revenue that was available in the 2617 Account to boost the SP NOI Growth Rate for the fourth quarter of 2015, which included the tenant common area maintenance payment that had been received in February of that year. CAO later acknowledged in an October 2015 email to Accounting SVP that "we are emptying the cookie jar to get to the [SP NOI Growth Rate] for this qtr [the fourth quarter of 2015]," consistent with CEO's earlier directive.

b. Improperly Incorporating Lease Termination Income into SP NOI

17. Lease termination income, also referred to internally at Brixmor as lease settlement income or "LSI," is a negotiated lump sum fee that a tenant pays Brixmor for exiting its lease early. Under GAAP, LSI should be recognized in full when the lease is terminated and the payment is received, thus becoming a part of reported GAAP income for that quarter. However, many REITs, including Brixmor, exclude LSI from their calculation of SP NOI because it represents a one-time payment that would otherwise skew the SP NOI Growth Rate as a comparative measure of the growth in SP NOI between the current period and the Comparison Period.

18. In keeping with that industry practice, Brixmor told investors that LSI was excluded from its SP NOI calculation in each of its Forms 10-Q and 10-K during the Relevant Period. It stated: "Same Property NOI excludes corporate level income (including transaction and other fees), lease termination income, straight-line rent and amortization of above- and below-market leases of the same property pool from the prior year reporting period to the current year reporting period."

19. In reality, however, and unbeknownst to investors, Brixmor incorporated LSI into SP NOI each quarter in a way that was intended to smooth its impact on Brixmor's reported quarter-to-quarter SP NOI Growth Rate and help the Company achieve its SP NOI Growth Rate targets. Brixmor improperly incorporated LSI into SP NOI in two ways:

20. First, Brixmor amortized each LSI payment over the period of the remaining term of the original lease, and then incorporated those amortized amounts into SP NOI each quarter, until

Brixmor secured a new tenant for the vacant space. Amortizing the LSI had the effect of making it appear that Brixmor was continuing to receive rental income as if the lease had never been terminated. If, however, Brixmor secured a new tenant for the vacant space, the company no longer had to maintain the appearance of a continuing lease because rental income would soon be coming in from the new tenant.

21. Second, on a number of occasions when additional income was needed to bridge the gap between the company's actual SP NOI Growth Rate and the Growth Rate target, Brixmor improperly reclassified portions of LSI as "Other Income," which would immediately be recognized as income. For example, in the third quarter of 2014, Brixmor improperly classified \$425,000 of a \$1.3 million LSI payment as "Other Income" so that it could include this amount in its SP NOI calculation for that quarter and thus reach its SP NOI Growth Rate target.

c. Adjusting Comparison Period SP NOI

22. Brixmor also manipulated its SP NOI Growth Rate for certain quarters by improperly reducing the SP NOI of Comparison Periods. The manipulation of Comparison Period SP NOI was done outside of the accounting system, on a spreadsheet. Specifically, CFO, CAO and Accounting SVP directed, with CEO's knowledge, a lower level accounting employee to record these improper adjustments to Comparison Period SP NOI on a spreadsheet that they knew would be provided to investor relations and financial reporting personnel to be included in the Company's public financial filings.

23. As noted above, the SP NOI Growth Rate for a particular quarter is determined by calculating the percentage by which the SP NOI of that quarter has grown from the SP NOI of the Comparison Period, measured on the Same Property Pool. To ensure that the SP NOI Growth Rate was calculated on the correct Same Property Pool, and consistent with Brixmor's statements to the public about how it calculated SP NOI Growth Rate as well as industry practice, Brixmor properly adjusted the SP NOI of the current quarter as well as the SP NOI of the Comparison Period to exclude any NOI attributable to properties that were not owned as of the end of both periods and for the entirety of both periods. Brixmor then calculated the SP NOI Growth Rate based on these adjusted SP NOI figures for both periods. Brixmor's Manager of Portfolio Reporting ("Manager 1") kept a "Reconciliation Spreadsheet" each quarter that contained all of the adjustments that were made to NOI to arrive at SP NOI for the current period.

24. In the first quarter of 2015, Brixmor devised the tactic of boosting its SP NOI Growth Rate in the current quarter by making improper adjustments to the Comparison Period SP NOI that had nothing to do with legitimate changes in the Same Property Pool. Specifically, at the end of the first quarter of 2015, CAO asked Manager 1 to create a new version of the Reconciliation Spreadsheet for the current quarter that made it easier to model the impact of adjustments to the SP NOI of both the current quarter as well as the Comparison Period. CAO then sent the spreadsheet to CFO, showing that actual SP NOI Growth Rate for the current quarter stood at 3.27%. Later that afternoon, CFO sent CAO a modified version of the spreadsheet, in which CFO had deducted \$250,000 from the SP NOI of the Comparison Period, thereby increasing the SP NOI Growth Rate for the current quarter from 3.27% to 3.39%. The deduction of \$250,000 from the SP NOI of the Comparison Period lacked any proper accounting justification and was done solely for the purpose

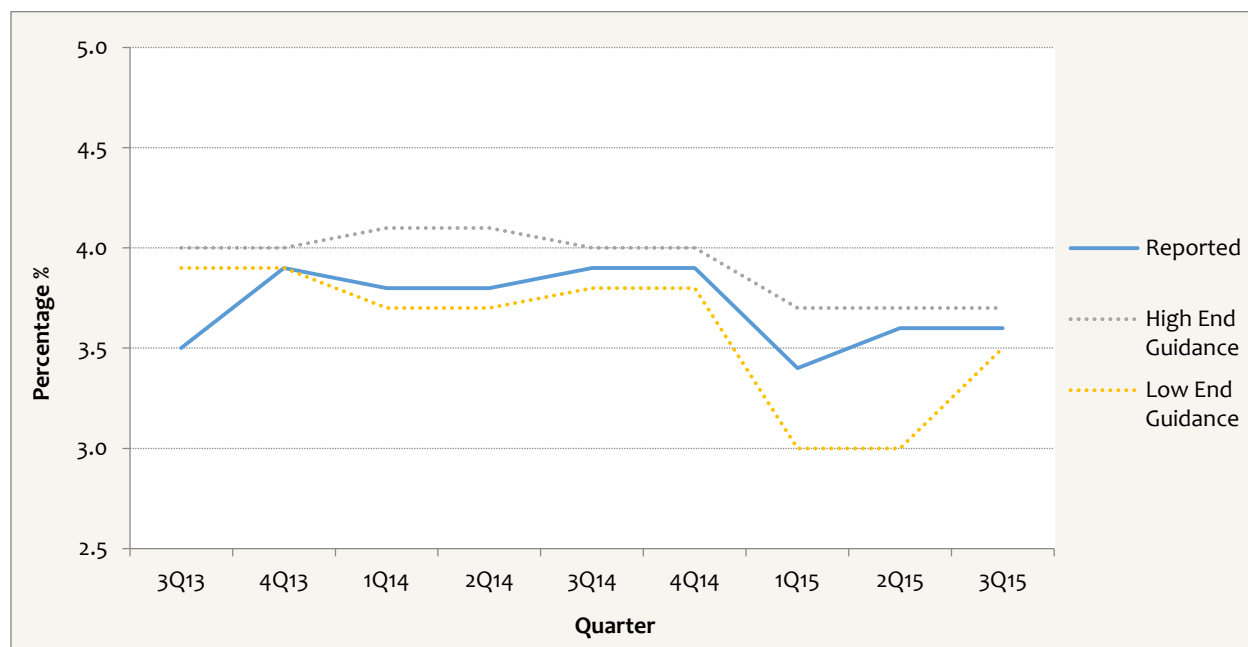
of boosting the reported SP NOI Growth Rate so that it landed more squarely within the publicly issued guidance range. Brixmor then reported a SP NOI Growth Rate for the first quarter of 2015 of 3.4% (which had been rounded up from 3.39%).

25. Brixmor employed the same tactic again in the third quarter of 2015. Specifically, Brixmor improperly reversed two payments of \$300,000 and \$56,000 from the reported SP NOI of the Comparison Period. This had the impact of boosting the SP NOI Growth Rate for the third quarter of 2015, from 3.4% to 3.6%, a rate that was right down the middle of the guidance range that the Company had publicly projected.

Brixmor Materially Misstated Its SP NOI Growth Rate Based on Improper Adjustments

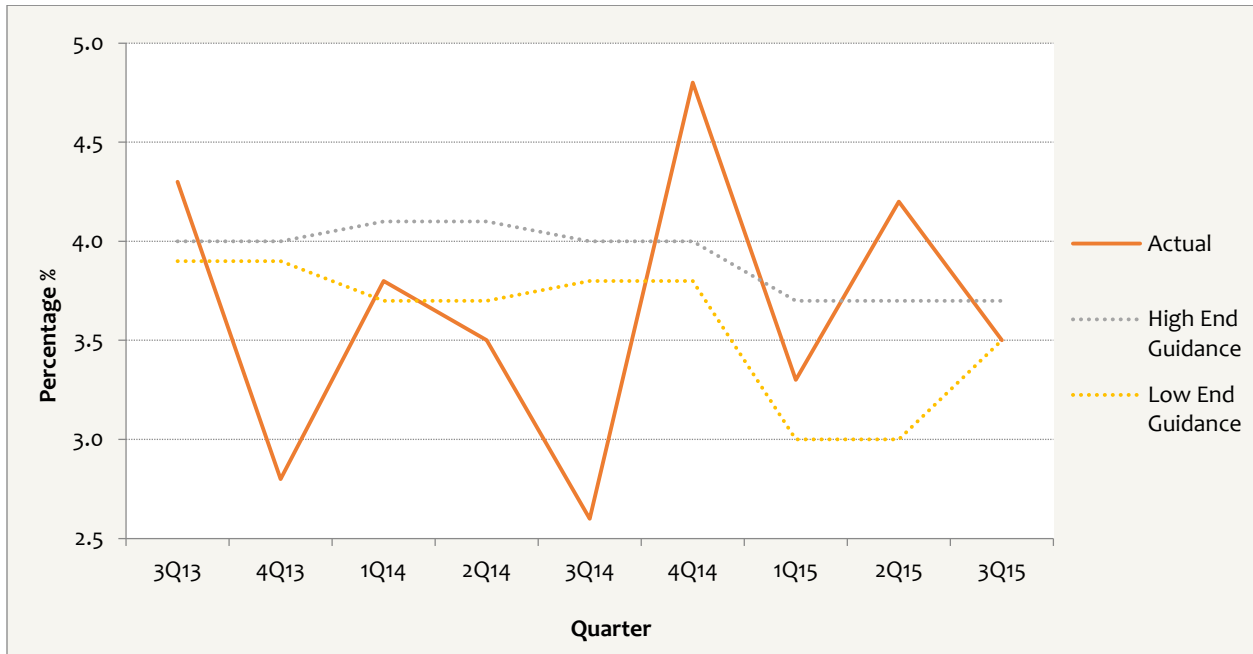
26. As a result of the improper adjustments, Brixmor reported false SP NOI Growth Rate figures throughout the Relevant Period, therefore misleading investors to believe that Brixmor’s growth was strong, steady, and hitting the middle of its annual guidance range virtually every quarter, as set forth in the following chart:

Reported Same Property NOI Growth vs. Guidance



27. In reality, Brixmor’s SP NOI Growth Rate fluctuated from quarter to quarter and was outside the range of annual guidance in six of the nine quarters of the Relevant Period, as set forth in the following chart:

Actual Same Property NOI Growth vs. Guidance



28. Indeed, in three of the nine quarters during the Relevant Period in which the actual SP NOI Growth Rate exceeded the annual guidance, Brixmor manipulated the figure downward, as the charts above demonstrate, choosing to hide stronger-than-expected growth in order to maintain the narrative of consistent and predictable growth that was central to the company’s investment thesis. Brixmor’s manipulation of SP NOI also allowed it to hit its full-year SP NOI Growth Rate targets for 2013 and its revised 2014 guidance, when the Company otherwise would have missed those targets in both years.

29. During the Relevant Period, Brixmor reported false SP NOI Growth Rate figures in all but one of its quarterly filings (Forms 10-Q), each of its two annual filings (Forms 10-K), and its related Forms 8-K furnishing a press release and supplemental financial disclosure in each quarterly reporting period. These misstatements are summarized below:

	3Q13 10-Q, 8-K	4Q13 8-K	FY 2013 10-K	1Q14 10-Q, 8-K	2Q14 10-Q, 8-K	3Q14 10-Q, 8-K	4Q14 8-K	FY 2014 10- K	1Q15 10-Q, 8-K	2Q15 10-Q, 8-K	3Q15 10-Q, 8-K
SP NOI Growth Rate as Reported in Contemporaneous Filings	3.5%	3.9%	4.0%	3.8%	3.8%	3.9%	3.9%	3.9%	3.4%	3.6%	3.6%
Actual SP NOI Growth Rate	4.3%	2.8%	3.8%	3.8%	3.5%	2.6%	4.8%	3.7%	3.3%	4.2%	3.5%
Full-Year Guidance	3.9- 4.0%	3.9- 4.0%	3.9- 4.0%	3.7- 4.1%	3.7- 4.0%	3.8- 4.0%	3.8- 4.0%	3.8- 4.0%	3.0- 3.7%	3.0- 3.7%	3.5- 3.7%
% by which Reported SP NOI Growth Rate was Misstated	-18.6%	39.3%	5.3%	0.0%	8.6%	50.0%	-18.8%	5.4%	3.0%	-14.3%	2.9%

Violations

30. As a result of the conduct described above, the Commission finds that Brixmor violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

31. Also, as a result of the conduct described above, the Commission finds that Brixmor violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

32. Lastly, as a result of the conduct described above, the Commission finds that Brixmor violated Rule 100(b) of Regulation G of the Exchange Act, which prohibits registrants from making public a non-GAAP financial measure that contains an untrue statement of material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

Brixmor's Internal Investigation, Remediation and Cooperation with SEC Staff

33. On December 23, 2015, an employee in Brixmor's accounting department submitted an anonymous complaint through the Company's internal compliance reporting system in which the individual accused Brixmor's senior management of directing the accounting team to book entries "that are needed solely to help upper management manage earnings to meet guidance or executive expectations." The employee reported that he believed that the "core piece of this earnings management" was conducted through a particular internal ledger account—the 2617 account—which was used as a "cookie jar" to hold funds to be "taken into income somewhere down the line to help the company meet earnings guidance." After receiving the employee's complaint, Brixmor's Audit Committee promptly engaged experienced

outside counsel and forensic accountants and together proceeded to conduct an internal investigation (the “Audit Committee Investigation”) into the allegations. At the conclusion of the Audit Committee Investigation, Brixmor’s Board of Directors asked for the resignation of the CEO, CFO, CAO, and Accounting SVP.

34. On February 8, 2016, Brixmor filed a Form 8-K disclosing that based on the Audit Committee Investigation, its Board had concluded that certain accounting and financial reporting personnel had “smoothed” income items, both up and down, between quarters in an effort to show consistent quarterly SP NOI growth during the Relevant Period. The Company also announced the resignations of CEO, CFO, CAO, and Accounting SVP. The announcement set forth revised SP NOI Growth Rates for each of the quarters of the Relevant Period.

35. The Audit Committee Investigation was focused on wrongdoing in the 2617 Account. Accordingly, the revised SP NOI Growth Rates that the Company publicly reported in its February 8, 2016 Form 8-K took into account improper 2617 Account-related adjustments, which comprised the bulk of the total adjustments ultimately recorded by the Company. The improper LSI and Comparison Period adjustments were later identified by the staff of the Commission.

36. Brixmor self-reported its Audit Committee’s findings to Commission staff before it filed the February 8, 2016 Form 8-K, voluntarily produced additional documents in response to the staff’s requests, and conducted additional analyses with respect to the improper LSI and Comparison Period adjustments.

37. In addition to replacing CEO, CFO, CAO, and Accounting SVP with experienced new management, Brixmor’s Board of Directors and new management team have initiated several remedial measures including: automating much of the process for calculating its non-GAAP measures; improving its reconciliation processes related to balance sheet accounts; increasing the segregation of duties within the accounting department; strengthening its internal audit function; and requiring ethics and fraud awareness training for all new employees with accounting or financial reporting responsibilities.

38. In determining whether to accept Brixmor’s Offer, the Commission has considered Brixmor’s cooperation and remediation specified herein.

Undertakings

39. Respondent Brixmor has undertaken to:

a. Within 30 days of this Order, retain at its own expense an independent consultant (the “Independent Consultant”), not unacceptable to the staff of the Commission. Within 60 days after retention, require the Independent Consultant to submit a Report (the “First IC Report”) to Brixmor and the Commission staff containing:

- (i) its assessment of Brixmor’s policies and procedures as to (x) the accuracy and consistency of Brixmor’s calculation and

- presentation of the following publicly-disseminated non-GAAP measures as defined by Brixmor: Funds from Operations, Same Property Net Operating Income, and Net Operating Income; and (y) the accuracy and consistency of Brixmor's calculation and presentation of its publicly-disseminated "Reconciliation of Net Income Attributable to Common Shareholders to Same Property Net Operating Income" and "Reconciliation of Net Operating Income to Net Income Attributable to Common Stockholders"; and
- (ii) its recommendations, if any, with respect to improving the Company's policies and procedures described in paragraph (a)(i), above.

b. Within 30 days following the filing of Brixmor's 2019 Form 10-K, require the Independent Consultant to submit a subsequent report to Brixmor and the Commission staff containing its assessment of Brixmor's implementation of its recommendations, if any, included in the First IC Report;

c. Respondent shall adopt and implement all recommendations contained in the First IC Report within 90 days of receiving the report, provided, however, that within 30 days after the Independent Consultant submits the report, Respondent shall in writing advise the Independent Consultant and the Commission of any recommendations that it considers to be unnecessary, impractical, or unduly burdensome or costly. As to any recommendation on which Respondent and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after Respondent advises the Independent Consultant of its objection. In the event Respondent and the Independent Consultant are unable to agree on an alternative proposal by the end of the 30 days, Respondent will abide by the determinations of the Independent Consultant and shall, within 30 days thereafter, adopt and implement all recommendations made by the Independent Consultant.

d. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Brixmor or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the New York Regional Office of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Brixmor, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

e. Brixmor shall certify, in writing to the Commission staff, within 30 days after implementing the recommendations contained in each of the IC Reports, compliance with the undertakings set forth above. The certifications shall provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. Respondent shall submit the certifications and supporting material to Sheldon Pollock, Assistant Regional Director, 200 Vesey Street, Suite 400, New York, New York 10281, with a copy to the Office of Chief Counsel of the Enforcement Division.

f. Upon request by the Independent Consultant or the Respondent, the Commission staff may extend any procedural time period set forth above for good cause shown.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Brixmor's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Brixmor cease and desist from committing or causing any violations and any future violations Section 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 and Rule 100(b) of Regulation G thereunder.

B. Respondent shall comply with its undertakings as enumerated in Section III above.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$7,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Brixmor as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa Countryman
Secretary