

NON-DISCLOSURE CONFIDENTIALITY AGREEMENT

This Agreement is entered into as of _____ (the “Effective Date”), by and between **HOSPITALITY INVESTORS, INC.**, having offices at 2000 S. IH-35, Suite Q11, Round Rock, Texas 78681 (“Discloser”) and _____, having offices at _____, (together with its affiliates, successors and assigns, hereinafter collectively referred to as “Receiver”).

WHEREAS, Discloser is in the business of owning and operating various retail enterprises, including, but not limited to a movie theater concept commonly known as Flix Brewhouse.

WHEREAS, Discloser and Receiver find it mutually beneficial to discuss business and technical matters with each other relating to the establishment, financing and operation of Flix Brewhouse (“Flix”) theaters throughout the United States (the “Flix Growth Plan”).

WHEREAS, it is in the interest of both Discloser and Receiver to disclose, one party to the other, certain information that is considered confidential and proprietary in order to most effectively further the purpose of these discussions and to, mutually and in cooperation, develop and promote various business endeavors relating to the Flix Growth Plan.

NOW, THEREFORE, it is agreed that, except where modified in writing, the following terms and conditions shall be applicable to all communications between Discloser and Receiver:

1. **Confidential Information.** It is contemplated that Confidential Information (as defined herein) will be transferred from Discloser to Receiver in connection herewith and that Confidential Information shall be used by Receiver only for purposes of evaluating whether it might have interest in the Flix Growth Plan, and for no other purpose.

a. For purposes of this Agreement, “Confidential Information” shall mean any proprietary information belonging to Discloser relating to: (i) Discloser’s proprietary technology and products, including without limitation, plans and specifications, technical data, trade secrets, know-how, research, product plans, ideas or concepts, services, software, inventions, intellectual property rights, techniques, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering, and hardware configuration information (collectively referred to as “Technical Information”); and (ii) proprietary information relating to Discloser’s operations and business or financial plans or strategies, including but not limited to customers, customer lists,

markets, real estate development plans, financial statements and projections, products, product pricing and marketing, financial or other strategic business plans or information (collectively referred to as “Business Information”), disclosed to Receiver by Discloser, either directly or indirectly, in writing, orally or by drawings or inspection of samples, equipment or facilities. Business Information may be designated as confidential and/or proprietary by Discloser if it is reasonably believes that said Business Information is relevant to the success of its business and is not known to the public.

b. The restrictions set forth herein shall not apply with respect to information designated by Discloser as Confidential which: (i) is known by Receiver at the time of receipt as evidenced by Receiver’s records; (ii) is or becomes a part of the public domain without breach of the Agreement by Receiver; (iii) is obtained by Receiver from a third party under conditions permitting its disclosure to others; (iv) is independently developed by Receiver; or (v) is disclosed by Receiver pursuant to judicial action or Government regulations provided Receiver notifies Discloser prior to such disclosure and cooperates with Discloser in the event Discloser elects to legally contest and avoid such disclosure.

2. **Identification of Confidential Information.** For the purpose of the Agreement, written Business or Technical Information (including that which is delivered electronically) that is considered to be Confidential Information by Discloser, shall be so marked by Discloser. Information that is furnished orally shall be considered Confidential Information if Discloser so indicates. Additionally, information furnished by Discloser shall be deemed Confidential Information if it is obvious from its content, in the context under which it is furnished.

3. **Subsequent Notice of Confidentiality.** Discloser may give notice in writing that written or verbal information that has been previously furnished, but not declared confidential, is in fact confidential. This information is to be treated as Confidential Information by Receiver from the time of receipt of said notice. Receiver is to make a reasonable efforts to mark all written copies of such information under its control as “Confidential” or “Proprietary” and to make all reasonable effort to inform Discloser of any disclosures by Receiver to third parties of such information that have occurred between the time of receipt of the information and receipt of notice that it is confidential. Receiver has no responsibility to attempt to control the use of such information by such a third party.

4. **Term, Non-Disclosure and Use.** For a period of three (3) years from the date of receipt, all Confidential Information shall be maintained in confidence by Receiver, shall not be disclosed, published, communicated, divulged or revealed to any other person, firm, corporation or other third party entity, including Receiver’s employees who do not have a need to know such Confidential Information in the course of their employment, except as otherwise provided in this Agreement. Confidential Information shall be protected with the same degree of care as Receiver

normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care. Receiver further affirmatively agrees not to use any Confidential Information received from Discloser except for the express purposes set forth herein.

5. **No License Granted.** Except as expressly provided herein, this Agreement shall not be construed as granting or conferring, either expressly or implicitly, any rights or licenses to Receiver, by the furnishing of Confidential Information by Discloser to Receiver pursuant to this Agreement.

6. **Ownership and Return of Confidential Information.** All tangible information, including drawings, specifications and other information furnished hereunder shall remain the property of Discloser. Upon request, or if either party elects not to pursue any further business undertaking with the other, Receiver shall promptly return all tangible information, including any and all copies or partial copies thereof and thereupon confirm destruction of all information held electronically.

7. **No Warranty.** No warranty or representation is made by Discloser that any information transmitted by it hereunder is true and correct, patentable or copyrightable, or that any such information involves concepts or embodiments that are free of infringement of other rights.

8. **Equitable Relief.** Discloser and Receiver agree that it would be impossible or inadequate to measure and calculate Discloser's damages from any breach of the covenants set forth herein. Accordingly, the Receiver agrees that if in the event of a breach of any of the covenants contained in this Agreement, Discloser will have available, in addition to any other right or remedy available, the right to obtain an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision of this Agreement. Receiver further agrees that no bond or other security shall be required in obtaining such equitable relief and that Receiver hereby consents to the issuance of such injunction and to the ordering of specific performance. If any action or proceeding is brought to enforce this Agreement because of an alleged or actual dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, should it prevail, Discloser shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding in addition to any other relief to which it may be entitled.

9. **Effective Date.** This Agreement shall become effective as of date hereof and shall terminate upon the express written termination by either one of the parties hereto. Termination of the Agreement shall not relieve either party of any obligation set forth in Paragraphs 4 or 6

with respect to Confidential Information, and all such obligations shall continue until expiration of the period set forth in Paragraph 4.

10. **General Provisions.** The following general provisions shall apply:
- (a) **Governing Law:** This Agreement will be governed by the laws of the State of Texas, without regard to its conflict of laws provisions.
 - (b) **Severability:** If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.
 - (c) **Successors and Assigns:** This Agreement will be binding upon the successors and/or assigns of the parties hereto.
 - (d) **Headings.** All headings used herein are intended for reference purposes only and shall not affect the interpretation, or validity of this Agreement.
 - (e) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Agreement. Any amendment or modification of this Agreement shall be in writing and executed by a duly authorized representative of either the Discloser or Receiver.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read and understand each and every term of this Agreement and agree to be bound by its terms and conditions, and agree that the effective date of this Agreement is as set forth herein.

HOSPITALITY INVESTORS, INC.



Name: _____

Name: _____

Title: Senior Vice President Real Estate

Title: _____