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Doc#: 1813818121 Fee: \$66.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/18/2018 11:42 AM Pg: 1 of 10

PREPARED BY AND WHEN RECORDED MAIL TO:

18005791 OP
Chicago Title

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**") is made this 16TH day of May, 2018 between **MILLER'S ALE HOUSE, INC.**, a Delaware corporation (hereinafter called "**Tenant**"), **CENTIER BANK**, an Indiana state banking association (hereinafter called "**Lender**"), and **SWC 156th LLC LOT 2**, an Illinois limited liability company (hereinafter called "**Landlord**").

WITNESSETH:

WHEREAS, the Tenant has entered into a Miller's Ale House Lease, dated July 29, 2016, as evidenced by a Memorandum of lease dated as of July 29, 2016, recorded in the Office of the Recorder of Deeds of Cook County on April 9, 2018 as Document Number 1809945060, by an Assignment of Lease dated as of May __, 2018, whereby SWC 156th LLC, as original landlord, assigned all rights and obligations as landlord to Landlord (as amended from time to time, the "**Lease**"), with Landlord, as lessor, covering premises (the "**Premises**") described as follows:

Lot 2 in the Final Plat of Subdivision of LaGrange Retail Development, being part of the Southeast Quarter of Section 16, Township 36 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof recorded February 15, 2018, as Document Number 1804629086, in Cook County, Illinois

Permanent Tax Numbers:

27-16-401-004-0000 (includes subject property and other property)
27-16-401-005-0000 (includes subject property and other property)
27-16-401-008-0000 (includes subject property and other property)

Commonly known as:

15630 South LaGrange Road, Orland Park, Cook County, Illinois 60462

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WHEREAS, the Lender did heretofore make a loan or loans in the aggregate original principal amount of \$2,890,000.00, and may make additional loans or future advances to the Landlord for improvement of the subject property (the initial loan and any future loans or advances referred to herein as the "**Loan**"). The Loan is secured by a Mortgage (the "**Mortgage**"). The Mortgage encumbers the property of which the Premises are a part, and pursuant to the terms of the Mortgage and/or the related Loan documents, the Lease is required to be made subordinate to the lien of the Mortgage; and

WHEREAS, in connection with such subordination, Lender has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. Lender hereby consents to the Lease in accordance with the terms of this Agreement. The Lease and the rights of Tenant in and under the Lease and in and to the Premises, are hereby subjected and subordinated and shall remain in all respects and for all purposes subject and subordinate to the Mortgage and to any and all advances made on the security thereof and to any and all increases, amendments, supplements, modifications, renewals, consolidations, extensions or replacements thereto, thereof or therefor, and to the rights and interests of any of Lender's successors or assignees. This provision is acknowledged by Tenant to be self-operative, and no further instrument shall be required to effect such subordination of the Lease. Tenant shall, however, upon demand at any time or times, execute, acknowledge, and deliver to Lender any reasonable instruments and certificates that may be necessary or proper to confirm or evidence such subordination. However, notwithstanding the generality of the foregoing provisions of this paragraph, Tenant agrees that the Lender shall have the right at any time to subordinate any such Mortgage to the Lease on such terms and subject to such conditions as the Lender may deem appropriate in its discretion.

2. In the event of foreclosure of the Mortgage or in the event Lender comes into possession or acquires title to the Premises as a result of the enforcement of foreclosure of the Mortgage, or as a result of any other means, or in the event Lender exercises its rights under any collateral assignment(s) of leases and rents, and Lender succeeds to the interest of Landlord under the Lease, and provided that Tenant is not in default in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond any applicable period given Tenant to cure such default) Lender agrees to recognize Tenant and all of Tenant's rights and privileges under the Lease, the Lease shall not be terminated except in accordance with its terms, nor shall Tenant's use, possession, or enjoyment of the Premises be interfered with, nor shall the leasehold state created thereby be affected and further agrees that Tenant shall not be disturbed in its possession of the Premises for any reason other than one which would entitle Landlord to terminate the Lease under its terms or would cause without further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises.

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3. If the interests of Landlord in the Premises shall be transferred to or owned by Lender by reason of foreclosure or other proceedings brought by it, or by any other manner, including Lender's exercise of its rights under any collateral assignment(s) of leases and rents, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term hereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of the Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender within fifteen (15) days after Lender succeeds to the interest of the Landlord under the Lease, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. If Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any action or omission of any prior landlord under the Lease, except:

(i) that Tenant shall retain all rights and remedies available to Tenant at law or pursuant to the Lease against such prior landlord, and

(ii) for defaults of an ongoing or continuing nature that occur subsequent to Lender's succession of which Lender has written notice and has failed to cure within a reasonable time;

(b) subject to any offsets or defenses which Tenant might have against any prior landlord;

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, except to the extent any such advance payments are required under the Lease (e.g., last month's rent) or have actually been transferred to Lender;

(d) bound by any security deposit which Tenant may have paid to any prior landlord, unless such deposit is actually transferred to Lender;

(e) bound by any material amendment or modification of the Lease made without Lender's consent, which consent shall not be unreasonably withheld, delayed or conditioned;

(f) required to perform any construction obligations of the Landlord under the Lease (provided in the event such work fails to be accomplished Tenant shall retain the right to terminate the Lease in accordance with the terms therein);

(g) bound by any provision of the Lease which provided for warranties of construction from Landlord to Tenant;

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(h) liable or responsible for payment of any brokerage or other commission or compensation due with respect to the Lease or any amendment, renewal, extension, expansion, contraction, termination, or surrender thereof;

(i) liable to Tenant under the Lease or otherwise from and after such time as Lender ceases to be the owner of the Premises;

(j) liable for any failure to provide any additional space pursuant to an option or right under the Lease, if such failure is a result of any prior landlord's prior leasing or granting of a conflicting option or right on such space to another tenant;

(k) bound by, or liable for any breach of, any representation or warranty or indemnity agreement of any kind contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(l) personally liable or personally obligated to perform any such term, covenant, or provision, Lender's liability being limited in all cases to its interest in the Premises.

Neither Lender nor any other party who, from time to time, shall be included in the definition of "Lender" hereunder shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own or have an interest in or to the Loan. Nothing in this Agreement shall be construed to require Lender to see to the application of the proceeds of the Loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing the Loan. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan only on the terms and subject to the conditions set forth in the agreements between Lender and Landlord pertaining to the Loan. Tenant further acknowledges and agrees that neither Lender nor any purchaser of the Premises at foreclosure sale or any grantee of the Premises named in a deed in lieu of foreclosure, nor any heir, legal representative, successor, or assignee, or any such purchaser or grantee, has or shall have any personal liability for the obligations of Landlord under the Lease.

5. In the event that the Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to the Lender and the Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including and without limitation, any action in order to terminate, rescind or avoid the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by the Lender with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of such written notice thereof by the Lender with respect to any other such default.

6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, the term "Tenant" shall include the Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure and the word "Lender" shall include the Lender herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under any such foreclosure.

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7. This Agreement shall not be modified or amended except in writing signed by all parties hereto or their successors or assigns.

8. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

9. Tenant and Landlord will only be bound by this Agreement following full execution by all of the parties hereto and the return of a fully executed copy to each of them, delivered in accordance with Section 10 below.

10. **Notices.** All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered personally, or sent by a nationally recognized overnight courier service or United States Mail, certified or registered, return receipt requested, postage prepaid, addressed as follows:

If to Tenant: Miller's Ale House, Inc.
Attn.: General Counsel
5750 Major Boulevard, Suite 400
Orlando, Florida 32819
Telephone: (407) 547-1120
Facsimile: (321) 400-6196

With a copy to: Miller's Ale House, Inc.
Attn.: Chief Financial Officer
5750 Major Boulevard, Suite 400
Orlando, Florida 32819
Telephone: (407) 547-1120
Facsimile: (321) 400-6196

If to Lender: Centier Bank
Attention: Jennifer Willis
9701 Indianapolis Boulevard
Highland, Indiana 46322
Telephone: (219) 922-2410, ext. 4317
Facsimile: (219) _____

With a copy to: Krieg DeVault LLP
Attn.: Terry Retson
8001 Broadway, Suite 400
Merrillville, Indiana 46410
Telephone: (219) 227-6089
Facsimile: (219) 227-6101

If to Landlord: SWC 156th LLC - Lot 2
c/o Location Finders International
9440 Enterprise Drive
Mokena, Illinois 60448

With a copy to: Johnson and Colmar
2201 Waukegan Road – Suite 260

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Bannockburn, Illinois 60015
Attn: Murray J. Lewison

11. **Assignment of Lease.** Pursuant to the Mortgage, Landlord has assigned its interest in the rents and payments due under the Lease to Lender as security for repayment of the Loan. If in the future there is a default by the Landlord in the performance and observance of the terms of the Mortgage, the Lender may, at its option under the Mortgage, require that all rents and other payments due under the Lease be paid directly to it. Landlord hereby authorizes and directs Tenant and Tenant agrees to pay any payments due under the terms of the Lease to or as directed by Lender. The making of such payments directly to or as directed by Lender shall satisfy Tenant's obligation to make such payments to Landlord whether or not Lender had the right to give notice to Tenant to make such payments directly to Lender.

12. **Notice to Lender by Tenant.** In the event of any act or omission by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or claim a partial or total eviction, Tenant shall, at the time it provides written notice to Landlord of such breach, use commercially reasonable efforts to mail a copy of such written notice to Lender by certified or registered mail, return receipt requested, addressed to Lender, at Lender's address.

13. **Termination.** This Agreement will automatically terminate upon Landlord's full payment and satisfaction of the Loan.

14. **Counterparts; Electronic Delivery.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Delivery of an executed counterpart hereof by email or facsimile shall constitute delivery of an executed original.

15. **Conflict.** If there shall be any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall be controlling.

16. **Choice of Law and Venue.** This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the state of Illinois. If any party to this Agreement, including their successors and assigns, desires to bring an action in connection with this Agreement, such action shall be brought in Cook County, Illinois. The parties consent to the jurisdiction of such court and waive any right to have such action transferred from such court on the grounds of improper venue or inconvenient forum.

17. **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO: (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS

18. **Waiver of Special Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BOTH TENANT AND LANDLORD SHALL NOT ASSERT, AND HEREBY WAIVE, ANY

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CLAIM AGAINST THE LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

19. **No Partnership or Co-Venture.** Neither the execution and delivery by Lender of this Agreement, nor the exercise by the Lender of any of its rights, privileges or remedies hereunder or under the Loan and Mortgage or under applicable law, shall be deemed to render the Lender a co-partner, or co-venturer, with the Landlord, Tenant or any other person or entity, it being expressly understood, acknowledged and agreed by the parties that all of such rights, privileges and remedies are being conferred upon, and exercised by, the Lender solely in furtherance of its role as a secured lender.

[Signature Pages Follow]

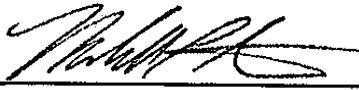
Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have placed their hands and seals, the day and year first above written.

Tenant:

MILLER'S ALE HOUSE, INC., a Delaware corporation

By: 

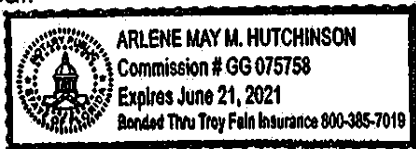
Mark A. Peterson
Vice President and Chief Financial Officer

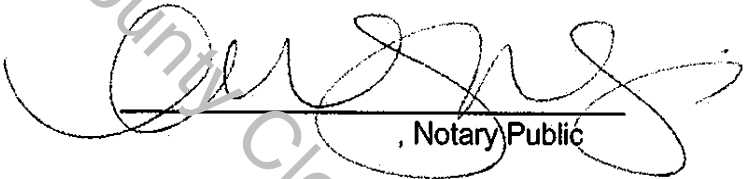
STATE OF FLORIDA)
)
COUNTY OF ORANGE)

SS:

BEFORE ME, the undersigned, a Notary Public, on May 14, 2018, personally appeared MARK A. PETERSON personally known to me to be the same person whose name is subscribed to the foregoing Subordination, Non-Disturbance and Attornment Agreement as VP & CFO of Miller's Ale House, Inc., and being first duly sworn by me upon oath, acknowledged that such person has read and understands the foregoing and that such person has affixed such person's name to and delivered said document as such person's own free and voluntary act and as the free and voluntary act of said entities for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.




, Notary Public

Commission Expires: 6/21/21

County of Residence: ORANGE

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Landlord:

SWC 156th LLC LOT 2, an Illinois limited liability company

By: 

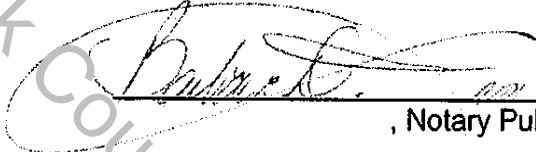
 Joseph T. Bochenski, Manager

STATE OF Illinois)
)
 COUNTY OF Will)

SS:

BEFORE ME, the undersigned, a Notary Public, on May 15th, 2018, personally appeared Joseph T. Bochenski, personally known to me to be the same person whose name is subscribed to the foregoing Subordination, Non-Disturbance and Attornment Agreement as Manager of SWC 156th LLC Lot 2, and being first duly sworn by me upon oath, acknowledged that such person has read and understands the foregoing and that such person has affixed such person's name to and delivered said document as such person's own free and voluntary act and as the free and voluntary act of said entities or the uses and purposes therein set forth.

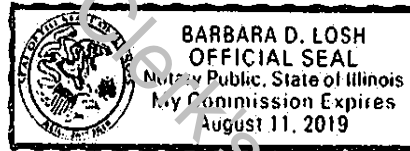
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



 , Notary Public

Commission Expires: 8/11/19

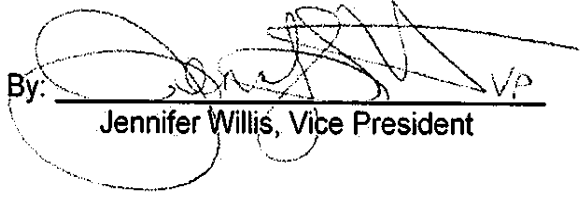
County of Residence: Kankakee



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Lender:

CENTIER BANK, an Indiana state banking association

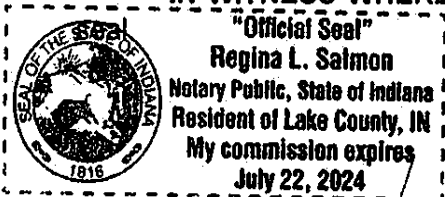
By:  VP
Jennifer Willis, Vice President

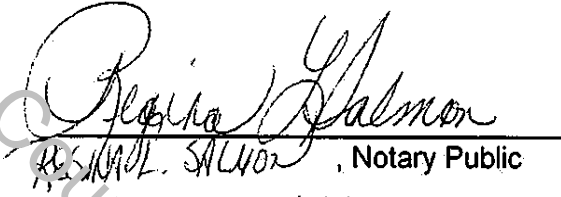
STATE OF INDIANA)
)
COUNTY OF LAKE)

SS:

BEFORE ME, the undersigned, a Notary Public, on May 16, 2018, personally appeared Jennifer Willis, personally known to me to be the same person whose name is subscribed to the foregoing Subordination, Non-Disturbance And Attornment Agreement as Vice President of Centier Bank, and being first duly sworn by me upon oath, acknowledged that such person has read and understands the foregoing and that such person has affixed such person's name to and delivered said document as such person's own free and voluntary act and as the free and voluntary act of said entities for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official




REGINA L. SALMON, Notary Public

Commission Expires: 7/22/2024

County of Residence: LAKE

This instrument was prepared by and please return to:

**Demetri J. Retson
Krieg DeVault LLP
8000 Broadway, Suite 400
Merrillville, Indiana 46410
219-227-6000**