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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 09/27/2019 12:04 PM PG: 1 OF 10

THIS DOCUMENT WAS PREPARED BY:

Seyfarth Shaw LLP
233 S. Wacker Drive, Suite 8000
Chicago, Illinois 60606
Attn: Melissa Vandewater, Esq.

AFTER RECORDING RETURN TO:

Miller, Canfield Paddock &
Stone, PLC
225 West Washington, Suite 2600
Chicago, Illinois 60606
Attn: Joseph C. Huntzicker, Esq.

Property Address:

Sawmill Station Shopping Center
6731-6939 Dempster Street
Morton Grove, Illinois

PINs: 10-19-103-001-0000; 10-19-
200-007-0000; 10-19-200-010-0000

CCH/1900ALD

ABM 14715

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made and entered into as of the 26th day of September, 2019 by and between ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Administrative Agent for itself and certain other lenders ("**Lender**"), and **ELIX BREWHOUSE MGR LLC**, an Illinois limited liability company ("**Tenant**").

A. Lender and certain other lenders (collectively, "**Other Lenders**") have made or are making a loan (the "**Loan**") to IM Kensington MG LLC, a Delaware limited liability company ("**Borrower**"), evidenced by a promissory note or notes executed by Borrower in favor of Lender and Other Lenders (as amended, restated, supplemented or otherwise modified from time to time, the "**Note**") and secured by a mortgage or deed of trust (as amended, restated, supplemented or otherwise modified from time to time, the "**Security Instrument**") executed by Borrower in favor of Lender, in its capacity as Administrative Agent for itself and Other Lenders, encumbering that certain real property and the improvements thereon located in Cook County, Illinois and more particularly described on **Exhibit A** attached hereto (the "**Property**"). The Security Instrument, together with all other documents evidencing and/or securing the Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time, is sometimes hereinafter referred to collectively as the "**Loan Documents**".

B. Tenant is the holder of a leasehold estate in a portion of the Property (the "**Leased Premises**") pursuant to that certain lease executed as of June 28, 2019 between Borrower (or Borrower's predecessor(s) in title to the Property), as landlord thereunder, and Tenant, as tenant thereunder (the "**Lease**").

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C. Tenant and Lender have agreed to enter into this Agreement to memorialize Tenant's agreement to subordinate the Lease to the Security Instrument, and Lender's agreement not to disturb Tenant's possession of the Leased Premises under the Lease, in each case upon and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms of which are incorporated herein by this reference, the mutual covenants and agreements of the parties hereto, Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Lender hereby agree as follows:

1. **Subordination.** Subject to the terms and conditions of this Agreement, the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms and provisions of the Security Instrument and to the lien thereof, including without limitation all renewals, increases, modifications, spreads, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution, delivery or recordation of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds from policies maintained by Borrower and condemnation awards (or other similar awards arising from eminent domain proceedings, but excluding condemnation awards attributable to Tenant's leasehold estate) with respect to damage to or the condemnation (or similar taking) of any of the Property and/or the Leased Premises, shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents.

2. **Non-Disturbance.** If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided that such joinder shall not result in the termination of the Lease or disturb Tenant's possession or use of the Leased Premises. The sale of the Property in any such action or proceeding and the exercise by Lender of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, and Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Lender and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond any applicable notice or grace period and in each case subject to the terms and provisions of this Agreement.

3. **Attornment.** If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed in lieu of foreclosure (Lender or such other purchaser being referred to herein as "**Purchaser**"), the Lease shall not be terminated or affected thereby but shall continue in full force and effect between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease, subject to the terms and provisions of this Agreement. In such event, Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of such acquisition of the Property, shall be deemed to have agreed to accept such attornment. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees that any liability of Purchaser to Tenant under this Agreement or the Lease shall be limited and restricted to Purchaser's interest in the Property, as well as any rental streams, sale proceeds, and insurance proceeds therefrom, and shall in no event exceed such interest. Subject to the observance and performance by Tenant of all of the terms, covenants and conditions of the Lease to be

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observed and performed by Tenant, Purchaser shall recognize the leasehold estate of Tenant under the Lease for the remaining Lease term with the same force and effect as if Purchaser were the initial named landlord under the Lease, provided that Purchaser shall not be:

- (a) liable for any act, omission, default, misrepresentation, or breach of warranty, of any prior landlord, including Borrower ("**Prior Landlord**"), or obligations accruing prior to Purchaser's actual ownership of the Property, except for non-monetary defaults of a continuing nature of which Lender has received notice and an opportunity to cure as provided in Sections 6 and 7 below;
- (b) subject to any offsets, defenses, abatement, claims or counterclaims which Tenant might have against any Prior Landlord, except (i) for those which, as of the date of foreclosure, were already commenced or notice of their commencement was sent, and (ii) for the exercise of rights expressly set forth in the Lease;
- (c) liable for the return of security or other deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser;
- (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless such sums are actually received by Purchaser;
- (e) bound by any agreement terminating, amending or modifying the Lease, or by any voluntary surrender of the Leased Premises, made without Lender's (or Purchaser's, if such agreement is made after Purchaser has taken title to the Property) prior written consent;
- (f) liable for or obligated to pay for repairs, replacements, damages or allowances not made, performed or paid by any Prior Landlord if such performance or payment was due prior to the transfer of title to Purchaser (provided, however, nothing contained herein shall limit Purchaser's maintenance or repair obligations under the Lease arising or accruing while Purchaser is the landlord, provided Tenant shall have the right to offset Rent by any unpaid amount); or
- (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the transfer of title to Purchaser.

Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Leased Premises or the Property, or any portion thereof or any interest therein; and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Security Instrument and is hereby waived and released as against Lender and Purchaser.

4. **Construction Allowance.** If (a) Purchaser takes title to the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed in lieu of foreclosure or otherwise (which shall mean Lender if and only if Lender becomes Purchaser) and (b) provided Tenant is not then in default under the Lease or this Agreement beyond all applicable notice and cure periods, Lender will pay the then unpaid portion of the Construction Allowance (as defined in Section 7.1 of Exhibit B-1 (Construction Agreement) to the Lease) subject to the terms of said Exhibit B-1 and other applicable provisions of the Lease. If the unpaid portion of the Construction Allowance is not so paid, Tenant shall have the right to terminate the Lease. For clarity, in no event shall Lender be obligated to pay any of the Construction Allowance unless and until Lender becomes a Purchaser by obtaining title to the Property.

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5. **Rent Payment.** After notice is given to Tenant by Lender that Borrower is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Borrower to Lender, in its capacity as Administrative Agent for itself and Other Lenders in connection therewith, Tenant shall thereafter pay to Lender or as directed by Lender all rentals and all other monies due or to become due to Borrower under the Lease. Borrower (i) hereby expressly authorizes Tenant to make such payments to Lender, (ii) hereby releases and discharges Tenant from any liability to Borrower on account of any such payments and (iii) hereby agrees to indemnify Tenant from any claims by Borrower for any rentals or other payments made to, or as directed by, Lender hereunder.

6. **Notice to Lender and Right to Cure.** Tenant agrees to notify Lender in the manner set forth in Section 7 hereof of any default on the part of Borrower under the Lease which would entitle Tenant to exercise any rights or remedies under the Lease, and will accept any cure thereof by Lender. Tenant further agrees that, except as set forth above, no cancellation or termination of the Lease thereunder shall be effective unless Lender has received notice of the same and has failed within (a) thirty (30) days after Lender's receipt of said notice to remedy such default that can be cured by the payment of money, or (b) sixty (60) days after Lender's receipt of said notice, or such longer period as may be afforded Borrower under the Lease, to remedy such default that cannot be cured by the payment of money. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Borrower unless Lender has become the Purchaser of the Property.

7. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any nationally recognized reputable overnight delivery service with the overnight delivery charges prepaid and addressed (i) if to Tenant, at the address set forth below Tenant's signature below, and (ii) if to Lender, at the following address:

Associated Bank, National Association
525 West Monroe Street, 24th Floor
Chicago, Illinois 60661
Attention: Daniel P. Barrins

The term "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in the state in which the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. **Miscellaneous.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and their respective successors and assigns. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located. The parties hereto hereby waive any right to trial by jury in connection with any claims, actions or proceeding relating to the Lease, this Agreement or the Property. This Agreement shall automatically terminate upon the release or termination of the Security Instrument upon the Property.

[remainder of page left intentionally blank; signature page to follow]

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TENANT:

FLIX BREWHOUSE MGR LLC,
an Illinois limited liability company
d/b/a Flix Brewhouse

By: Hospitality Investors Inc.,
a Texas corporation,
its Sole Manager

By: *Allan L. Reagan*
Name: Allan L. Reagan
Title: President

Tenant's Address:

2000 South IH 35, Suite Q-11
Round Rock, TX 78681
Attention: Lease Administrator (Matt Silvers)

State of TX)
County of Williamson) ss.

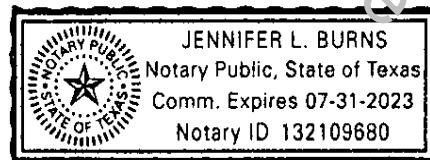
On 9-17, 2019 before me, Jennifer L. Burns, a Notary Public,
personally appeared Allan L. Reagan, who proved to me on the basis of satisfactory evidence to be the
person whose name is subscribed to the within instrument and acknowledged to me that such person executed
the same in such person's authorized capacities and that by such person's signature on the instrument, such
person, or the entity on behalf of which such person acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Jennifer L. Burns
Notary Public
Commission expires: 7/31/2023

Notary Seal or Stamp



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GUARANTOR'S CONSENT

FLIX ENTERTAINMENT LLC, a Texas limited liability company, guarantor of the Lease, signs below to express its consent to the foregoing Agreement and its agreement that its guaranty of the Lease is and shall remain in full force and effect.

FLIX ENTERTAINMENT LLC,
a Texas limited liability company

By: *Allan R. Reagan*
Print Name: Allan R. Reagan
Title: President

State of TX)
County of Williamson) ss.

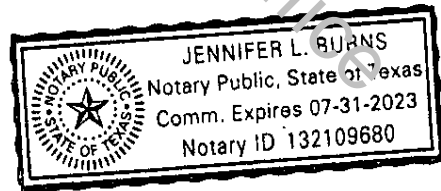
On 9-17, 2019 before me, Jennifer L. Burns, a Notary Public, personally appeared Allan L. Reagan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that such person executed the same in such person's authorized capacities and that by such person's signature on the instrument, such person, or the entity on behalf of which such person acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Jennifer L. Burns
Notary Public
Commission expires: 7/31/2023

Notary Seal or Stamp



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EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF LOT 1 OF WHITE'S SUBDIVISION IN SECTION 19, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, (ALL REFERENCES TO DEEDS, MICROFICHE, PLATS, SURVEYS, ETC. REFER TO THE RECORDS OF THE COOK COUNTY RECORDER'S OFFICE, UNLESS OTHERWISE NOTED) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE WEST 763.00 FEET OF THE EAST 26.31 ACRES OF SAID LOT 1 WITH THE NORTH LINE OF SAID LOT 1;

THENCE ALONG SAID EAST LINE, SOUTH 00 DEGREES 45 MINUTES 01 SECOND WEST, A DISTANCE OF 50.01 FEET TO A POINT ON THE SOUTH LINE OF DEMPSTER STREET AS REFERENCED IN DOCUMENT NUMBER 11634381;

THENCE CONTINUING ALONG SAID EAST LINE, SOUTH 00 DEGREES 45 MINUTES 01 SECONDS WEST, A DISTANCE OF 757.08 FEET TO A POINT ON THE SOUTH LINE OF AFORESAID LOT 1;

THENCE ALONG THE SOUTH LINE OF SAID LOT 1, SOUTH 89 DEGREES 18 MINUTES 53 SECONDS WEST, A DISTANCE OF 257.07 FEET TO **THE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID SOUTH LINE OF LOT 1, SOUTH 89 DEGREES 18 MINUTES 53 SECONDS WEST, A DISTANCE OF 1248.00 FEET TO A POINT ON THE EAST LINE OF WAUKEGAN ROAD AS REFERENCED IN DOCUMENT NUMBER 19952575;

THENCE ALONG THE EAST LINE OF WAUKEGAN ROAD AND THE SOUTH LINE OF DEMPSTER STREET, BOTH AS REFERENCED IN DOCUMENT NUMBER 19952575, THE FOLLOWING SIX (6) COURSES:

- 1) NORTH 00 DEGREES 47 MINUTES 16 SECONDS WEST, A DISTANCE OF 452.96 FEET;
- 2) NORTH 06 DEGREES 08 MINUTES 12 SECONDS EAST, A DISTANCE OF 91.24 FEET;
- 3) NORTH 00 DEGREES 29 MINUTES 06 SECONDS EAST, A DISTANCE OF 90.03 FEET;
- 4) NORTH 00 DEGREES 47 MINUTES 16 SECONDS WEST, A DISTANCE OF 50.00 FEET;
- 5) NORTHEASTERLY, 110.12 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 70.00 FEET, SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 44 DEGREES 16 MINUTES 49 SECONDS EAST AND A LENGTH OF 99.11 FEET;
- 6) NORTH 89 DEGREES 20 MINUTES 54 SECONDS EAST, A DISTANCE OF 671.41 FEET TO THE SOUTHEAST CORNER OF LAND CONVEYED TO THE DEPARTMENT OF PUBLIC WORKS & BUILDINGS PER DOCUMENT NUMBER 19952575, BEING ALSO THE SOUTHWEST CORNER OF LAND CONVEYED TO THE DEPARTMENT OF PUBLIC WORKS & BUILDINGS PER DOCUMENT NUMBER 19952576;

THENCE ALONG THE SOUTH LINE OF DEMPSTER STREET AS REFERENCED IN DOCUMENT NUMBER 19952576, NORTH 89 DEGREES 20 MINUTES 54 SECONDS EAST, A DISTANCE OF 391.29 FEET TO THE SOUTHEAST CORNER OF LAND CONVEYED TO THE DEPARTMENT OF PUBLIC WORKS & BUILDINGS PER DOCUMENT NUMBER 19952576;

THENCE ALONG THE EAST LINE OF SAID LAND CONVEYED PER DOCUMENT NUMBER 19952576, NORTH 00 DEGREES 38 MINUTES 46 SECONDS WEST, A DISTANCE OF 4.00 FEET TO THE SOUTH LINE OF DEMPSTER STREET AS REFERENCED IN DOCUMENT NUMBER 11634381;

THENCE ALONG SAID SOUTH LINE OF DEMPSTER STREET AS REFERENCED IN DOCUMENT NUMBER 11634381, NORTH 89 DEGREES 20 MINUTES 54 SECONDS EAST, A DISTANCE OF 98.10 FEET;

THENCE SOUTH 00 DEGREES 39 MINUTES 06 SECONDS EAST, A DISTANCE OF 198.51;

THENCE SOUTH 44 DEGREES 18 MINUTES 53 SECONDS WEST, A DISTANCE OF 20.51 FEET;

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THENCE SOUTH 00 DEGREES 41 MINUTES 07 SECONDS EAST, A DISTANCE OF 197.00 FEET;
THENCE SOUTH 37 DEGREES 12 MINUTES 56 SECONDS EAST, A DISTANCE OF 33.60 FEET;
THENCE SOUTH 00 DEGREES 41 MINUTES 07 SECONDS EAST, A DISTANCE OF 320.00 FEET
TO THE POINT OF BEGINNING;

CONTAINING 931,458 SQUARE FEET OR 21.383 ACRES (MORE OR LESS).

THE ABOVE DESCRIBED PROPERTY IS TO BE KNOWN AS LOTS 1, TO 4 AND 6 TO 13 IN
KENSINGTON SUBDIVISION.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON THE ILLINOIS STATE PLANE
COORDINATE SYSTEM EAST ZONE (NAD83).

Property Address: 6731-6939 Dempster Street, Morton Grove, IL 60053

Tax P.I.N.s: 10-19-103-001-0000
10-19-200-007-0000
10-19-200-010-0000

Property of Cook County Clerk's Office