

# FLIX ENTERTAINMENT LLC

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Agreement is entered into as of \_\_\_\_\_ (the "Effective Date"), by and between Flix Entertainment LLC having offices at 2000 S. IH-35, Suite Q11, Round Rock, Texas 78681 ("Discloser") and \_\_\_\_\_, having offices at \_\_\_\_\_, (together with its affiliates, including, but not limited to its professional third party service providers, its successors and assigns, hereinafter collectively referred to as "Recipient").

WHEREAS, Discloser is in the business of owning and operating a cinema/eatery/micro-brewery concept called Flix Brewhouse, which is currently being expanded nationwide (the "Cinema").

WHEREAS, Recipient is generally familiar with the movie exhibition industry, and Discloser and Recipient hereby find it mutually beneficial to discuss business opportunities and technical matters with each other relating to Discloser's business, including, but not limited to strategy, planning, debt and/or equity financing solutions and ideas (collectively defined hereinafter as "Business Opportunities").

WHEREAS, it is in the interest of the parties hereto for Discloser to provide Recipient with certain valuable information that is considered highly confidential and proprietary, in order to most effectively further the discussions between Discloser and Recipient.

WHEREAS, Recipient acknowledges and understands that it would be highly injurious to Discloser should Discloser's valuable and confidential information or identity be disclosed generally, or find its way into the public domain through the Recipient.

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 Recipient:

1. **Confidential Information.** It is contemplated that Confidential Information (as defined herein) will be transferred from Discloser to Recipient in connection herewith and that Confidential Information shall be used by Recipient only for purposes of evaluating whether it might have interest in discussing Business Opportunities with Recipient.

a. For purposes of this Agreement, "Confidential Information" shall mean any proprietary information belonging to Discloser relating to: (i) Discloser's proprietary technology, systems, service offering and products, including without limitation, plans and specifications, technical data, trade secrets, know-how, research, product plans, ideas or

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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 the financial information of any of the principals of Discloser, Discloser’s corporate financial information or its operations and business or financial plans or strategies, including but not limited to its identity, 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 Recipient by Discloser, either directly or indirectly, in writing, orally or by drawings or inspection of samples, equipment or facilities. For purposes of this agreement, Confidential Information shall be assumed to be of a confidential and/or proprietary nature by Recipient, as it is reasonable to assume and expect that said Business Information is highly relevant to the success of its Discloser’s 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 Recipient at the time of receipt as evidenced by Recipient’s records; (ii) is or becomes a part of the public domain without breach of the Agreement by Recipient; (iii) is obtained by Recipient from a third party under conditions permitting its disclosure to others; (iv) is independently developed by Recipient; or (v) is disclosed by Recipient pursuant to judicial action or Government regulations provided Recipient 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 Recipient from the time of receipt of said notice. That being said, Recipient shall make every reasonable effort to mark all written copies of such information under its control as “Confidential” or “Proprietary” and to make every reasonable effort to inform Discloser of any disclosures by Recipient to third parties of such information that may have occurred between the time of receipt of the information and receipt by Recipient of notice that such information is confidential. Recipient has no responsibility to attempt to control the use of such information by such a third party.

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4. **Term, Non-Disclosure and Use.** For a period of two (2) years from the date of receipt, all Confidential Information shall be maintained in confidence by Recipient, shall not be disclosed, published, communicated, divulged or revealed in any manner, to any other person, firm, corporation or other third party entity, including employees of Recipient who do not have a need to know, or who should not know any such details pertaining to Confidential Information in the course of their employment, except as may otherwise provided in this Agreement. Recipient 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 Recipient, by the furnishing of Confidential Information by Discloser to Recipient 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, Recipient 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 Recipient agree that it would be impossible or inadequate to measure and calculate Discloser's damages from any breach of the covenants set forth herein, especially with regard any breach associated with Confidential Information that was to be maintained behind the Information Barrier. Accordingly, the Recipient agrees that 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. Recipient further agrees that no bond or other security shall be required in obtaining such equitable relief and that Recipient 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

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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 Recipient.

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.

**RECIPIENT:**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Please send to: [msilvers@flixbrewhouse.com](mailto:msilvers@flixbrewhouse.com)***