

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Clerk  
Date: 12/15/2023 03:41 PM Pg: 1 of 9

Prepared by and upon recording,  
return to:

McGuireWoods LLP  
201 N. Tryon St.  
Suite 3000  
Charlotte, NC 28202  
Attention: Steven Ritchie, Esq.

CCHIR 108772LD  
NH 10/2

Space above this line for Recorder's use

## FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

This First Amendment to Mortgage, Assignment of Leases and Rents and Security Agreement (this "*Agreement*") is dated as of December 14, 2023, and is by and between KEDZIE BREWERY LLC, an Illinois limited liability company (the "*Mortgagor*"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("*Mortgagee*").

This Agreement refers to (1) that certain Mortgage and Assignment of Rents and Leases dated as of March 14, 2022, made by the Mortgagor for the benefit of the Mortgagee, and recorded with the Cook County (Illinois) Recorder of Deeds on April 13, 2022, as Document no. 2210322024 (as amended, restated, supplemented, or otherwise modified from time to time, the "*Mortgage*"); and (2) the Credit Agreement dated March 14, 2022, by and between Lender, Borrower (as defined in the Credit Agreement) and the other parties thereto (as amended, restated, modified, or replaced from time to time, the "*Original Credit Agreement*"), as most recently amended and restated pursuant to that certain Second Amended and Restated Credit Agreement dated as of December 14, 2023 (the "*Second Amended and Restated Credit Agreement*", and collectively with the Original Credit Agreement, as may be amended, restated, modified, or replaced from time to time, the "*Credit Agreement*"). The real property described in Exhibit A to this Agreement is subject to the Mortgage.

In connection with the Second Amended and Restated Credit Agreement, the parties desire to amend the Mortgage as set forth in this Agreement.

The parties therefore agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement have the meanings indicated in the Mortgage, after giving effect to Section 2 of this Agreement. In the event there are capitalized terms used but not defined in this Agreement, which are also not defined in the Mortgage (after giving effect to Section 2 of this Agreement), such terms shall have the meanings indicated in the Credit Agreement.

2. **Amendments to Mortgage.**

(a) **Obligations Secured.** Section 2.1(a) of the Mortgage is hereby amended and restated in its entirety to read as follows:

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“(a) subject to the provisions of that certain Second Amended and Restated Credit Agreement dated December 14, 2023 (as may be amended, restated, modified, or replaced from time to time, the “*Credit Agreement*”), payment and performance of all obligations whether now in existence or hereafter arising in connection with: (i) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) any loans or other obligations arising under or in connection with the Credit Agreement or any other Loan Document (as defined in the Credit Agreement); (ii) all sums at any time owing and performance of all other obligations arising under or in connection with each of (A) that certain Amended and Restated Term Note (“*Term Note*”) dated as of December 14, 2023, in the maximum principal amount of Twelve Million Nine Thousand Five Hundred Dollars (\$12,009,500.00), with interest as provided therein, executed by REVOLUTION BEER LLC, an Illinois limited liability company, and payable to Mortgagee or its order on or before December 14, 2028, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Term Note, whether or not specifically referenced therein, and (B) that certain Second Amended and Restated Revolving Note (“*Line of Credit Note*”, and individually and collectively with the Term Note, the “*Note*”) dated as of December 14, 2023, in the maximum principal amount of Four Million Dollars (\$4,000,000.00), with interest as provided therein, executed by REVOLUTION BEER LLC, an Illinois limited liability company, and payable to Mortgagee or its order on or before December 14, 2027, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Line of Credit Note whether or not specifically referenced therein; and (iii) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Loan Parties and each of their respective subsidiaries to the Lender (as defined in the Credit Agreement) or the Mortgagee, in each case under any Loan Document (as defined in the Credit Agreement), including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any debtor relief laws, naming such Loan Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; and”

(b) Incorporation. Section 2.3 of the Mortgage is hereby amended and restated in its entirety to read as follows:

“2.3 Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note, the Credit Agreement or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.”

(c) Maximum Secured Amount. Section 2.4 of the Mortgage is hereby amended and restated in its entirety to read as follows:

“2.4 Maximum Secured Amount. The maximum amount secured by this Mortgage may decrease or increase from time to time but shall never exceed \$25,000,000.00.

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The maximum amount secured by this Mortgage shall not in any way imply that Mortgagee shall be obligated to advance any amount at any time. Advances of disbursements made by Mortgagee to protect the security, under the terms hereof, shall not be deemed to be optional advances.”

(d) Default. Section 5.1 of the Mortgage is hereby amended and restated in its entirety to read as follows:

“5.1 Default. The occurrence of any of the following shall constitute a “Default” under this Mortgage: (a) Mortgagor shall fail to observe or perform any obligation or agreement contained herein; (b) any representation or warranty of Mortgagor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) any default in the payment or performance of any obligation, or any defined event of default, under any provisions of any Note, the Credit Agreement or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation.”

(e) Successors; Assignment. Section 6.5 of the Mortgage is hereby amended and restated in its entirety to read as follows:

“6.5 Successors; Assignment. This Mortgage shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, provided however, that this Section does not waive the provisions of the Section hereof entitled Due on Sale or Encumbrance. Mortgagee reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Mortgagee's rights and benefits under any Note, the Credit Agreement, any and all other Secured Obligations and this Mortgage. In connection therewith, Mortgagee may disclose all documents and information which Mortgagee now has or hereafter acquires relating to the Subject Property, all or any of the Secured Obligations and/or Mortgagor and, as applicable, any partners, joint venturers or members of Mortgagor, whether furnished by any Mortgagor or otherwise.”

(f) Each reference in the Mortgage to “this Mortgage”, “hereunder”, “hereof”, or words of like import, and each reference to the Mortgage in any and all instruments or documents delivered in connection therewith, shall be deemed to refer to the Mortgage, as amended by this Agreement.

(g) In the event of any inconsistency between the terms and provisions of the Mortgage and those of the Credit Agreement, unless otherwise required pursuant to applicable law, the terms and provisions of the Credit Agreement shall control.

3. **Reaffirmation.** The Mortgagor hereby (a) reaffirms each of the agreements and covenants in the Mortgage (including without limitation the Liens (as defined in the Credit Agreement) created by the Mortgage), as modified hereby, and in the other Loan Documents with the same force and effect as if each was separately stated herein and made as of the date hereof; (b) ratifies and reaffirms all of its payment and performance obligations and obligations to indemnify, contingent or otherwise, under the Mortgage, as modified hereby, and under the other Loan Documents and (c) confirms that the Mortgage, as modified hereby, and the other Loan Documents are in full force and effect.

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4. **Representations and Warranties.** To induce the Mortgagee to enter into this Agreement, the Mortgagor hereby certifies, represents, and warrants to the Mortgagee and the Lenders that:

(a) Authorization; Enforceability. That the execution, delivery, and performance of this Agreement (and performance of the Mortgage, as modified by this Agreement) by the Mortgagor have been duly authorized by all necessary corporate action required on its part, and each of this Agreement and the Mortgage, as modified by this Agreement, is a legal, valid and binding obligation of the Mortgagor enforceable against the Mortgagor in accordance with its terms, except as the enforcement thereof may be subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) No Conflicts. That neither the execution, delivery and performance of this Agreement by the Mortgagor nor the consummation of the transactions contemplated hereby does or shall contravene, result in a breach of or violate (i) any provision of the Mortgagor's certificate or articles of incorporation or bylaws; (ii) any law or regulation, or any order or decree of any court or government instrumentality applicable to Mortgagor or (iii) any indenture, mortgage, deed of trust, lease, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of its property is bound.

(c) Compliance with Representations and Warranties and Covenants. That each representation and warranty contained in the Mortgage, as modified by this Agreement, and the other Loan Documents to which the Mortgagor is a party is true and correct in all respects as of the date hereof, after giving effect to this Agreement, and that Mortgagor has complied with and is in compliance with all of the covenants set forth in the Mortgage, as modified by this Agreement.

(d) No Event of Default. That no Default or Event of Default has occurred and is continuing.

(e) Liens. The Liens (as defined in the Credit Agreement) granted to the Mortgagee pursuant to the Mortgage are in full force and effect and the Liens granted pursuant to the Mortgage constitutes the valid, perfected, first-priority Liens in the Subject Property.

5. **Release.** The Mortgagor hereby waives and releases any and all current existing claims, counterclaims, defenses, or set-offs of every kind and nature which it has or might have against the Mortgagee or any Lender arising out of, pursuant to, or pertaining in any way to this Agreement, the Credit Agreement, the Mortgage, any of the other Loan Documents, or any of the other documents and instruments delivered in connection with or relating to any of the foregoing. The Mortgagor hereby further covenants and agrees not to sue the Mortgagee or any Lender or assert any claims, defenses, demands, actions, or liabilities against the Mortgagee or any Lender which occurred prior to or as of the date of this Agreement arising out of, pursuant to, or pertaining in any way to this Agreement, the Credit Agreement, the Mortgage, any of the other Loan Documents, or any of the other documents and instruments delivered in connection with or relating to any of the foregoing.

6. **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, Mortgagor, Mortgagee and each of their respective successors and permitted assigns, as set forth in the Credit Agreement. All references herein to a Loan Party shall be deemed to include the successors

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and assigns of such Person. The successors and assigns of the Loan Parties shall include, without limitation, their respective receivers, trustees and debtors-in-possession.

7. **Further Assurances.** The Mortgagor hereby agrees from time to time, as and when requested by the Mortgagee, to execute and deliver or cause to be executed and delivered all such documents, instruments and agreements and to take or cause to be taken such further or other action as the Mortgagee may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement, the Mortgage and the other Loan Documents.

8. **Loan Document.** This Agreement shall be deemed to be a "Loan Document" for all purposes under the Credit Agreement.

9. **Governing Law.** Section 6.8 of the Mortgage is hereby incorporated into this Agreement by reference, *mutatis mutandis*.

10. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law. If any provision is found to be invalid under applicable law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of this Agreement shall remain in full force and effect.

11. **Entire Agreement.** Time is of the essence of this Agreement. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof, and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

12. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of a signature page of this Agreement by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

13. **Costs and Expenses.** The Mortgagor shall, in accordance with the terms and provisions of the Credit Agreement, reimburse Mortgagee and Lenders for all fees, costs, and expenses, including the reasonable fees, costs and expenses of counsel or other advisors for advice, assistance or other representation in connection with this Agreement.


14. **Reference to and Effect upon the Loan Documents.** The Loan Documents (including, without limitation, the Mortgage, as modified hereby) shall remain in full force and effect, and are hereby ratified and confirmed. The execution, delivery, and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Mortgagee or any Lender under any of the Loan Documents (including, without limitation, the Mortgage, as modified hereby) nor constitute a waiver or, except as expressly set forth in this Agreement with respect to the Mortgage, amendment of any provision of any of the Loan Documents. Each reference in the Mortgage to "this Agreement," "this Mortgage," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Mortgage as modified hereby, and each reference in any Loan Document to the Mortgage shall be deemed to be a reference to the Mortgage as modified by this Agreement.

15. **Section Headings.** The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.



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**KEDZIE BREWERY LLC,**  
an Illinois limited liability company, as Mortgagor

By:   
Name: Joshua C. Deth  
Title: Manager

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said county, in the state aforesaid, DO HEREBY CERTIFY that JOSHUA C. DETH, the Manager of KEDZIE BREWERY LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11<sup>th</sup> day of December, 2023.

  
Notary Public

My Commission Expires:  
10/23/26



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## EXHIBIT A

### LEGAL DESCRIPTION

Street Address of Subject Property: 3330, 3340 and 3350 N. Kedzie Ave., Chicago Illinois 60618  
 Permanent Real Estate Index Number: 13-23-411-004-0000 and 13-23-411-025-0000

#### Description of Property

##### PARCEL 1:

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF NORTH KEDZIE AVENUE WHICH POINT IS 150 FEET SOUTH MEASURED ALONG SAID WEST LINE OF NORTH KEDZIE AVENUE FROM THE POINT OF ITS INTERSECTION WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23; THENCE SOUTH ALONG SAID WEST LINE OF NORTH KEDZIE AVENUE, A DISTANCE OF 320.40 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 23, A DISTANCE OF 246.01 FEET; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 38 DEGREES 13 MINUTES, TO THE RIGHT WITH AN EXTENSION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 196.42 FEET TO A POINT WHICH IS A DISTANCE OF 400 FEET WEST, MEASURED ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23 FROM SAID WEST LINE OF NORTH KEDZIE AVENUE; THENCE NORTH PARALLEL WITH THE WEST LINE OF NORTH KEDZIE AVENUE, 198.90 FEET TO A POINT WHICH IS 150 FEET SOUTH, MEASURED ON A LINE PARALLEL WITH SAID WEST LINE OF NORTH KEDZIE AVENUE FROM SAID NORTH LINE OF THE SOUTH EAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23; THENCE EAST PARALLEL WITH SAID NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, A DISTANCE OF 400 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

##### PARCEL 2:

A TRACT OF LAND IN THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT POINT OF INTERSECTION OF THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 23, WITH THE WEST LINE OF NORTH KEDZIE AVENUE; THENCE SOUTH 00 DEGREE EAST ON THE WEST LINE OF SAID NORTH KEDZIE AVENUE, A DISTANCE OF 150.00 FEET; THENCE NORTH 89 DEGREES, 51 MINUTES, 00 SECOND WEST, PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 23, A DISTANCE OF 400.00 FEET TO THE PLACE OF



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BEGINNING; THENCE SOUTH 00 DEGREE EAST, PARALLEL WITH THE WEST LINE OF SAID NORTH KEDZIE AVENUE, A DISTANCE OF 198.95 FEET TO THE NORTHERLY LINE OF THE PROPERTY, AS CONVEYED BY DEEDS FROM THE GRANTOR, CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, A DELAWARE CORPORATION TO THE GRANTEE, PRAIRIE MATERIAL SALES INCORPORATED RECORDED NOVEMBER 17, 1977 AS DOCUMENTS 24199385 AND 24199384; THENCE NORTHWESTERLY ON SAID NORTHERLY LINE AS CONVEYED THE FOLLOWING (6) SIX COURSES:

NORTH 62 DEGREES, 46 MINUTES, 47 SECONDS WEST, A DISTANCE OF 11.07 FEET TO A POINT ON A CURVE, HAVING A RADIUS OF 908.52 FEET;

THENCE NORTHWESTERLY ON SAID CURVE, CONVEX NORTHEASTERLY AND HAVING A CHORD BEARING NORTH 56 DEGREES, 02 MINUTES, 16 SECONDS WEST, A DISTANCE OF 140.02 FEET TO A POINT ON A CURVE, HAVING A RADIUS OF 513.35 FEET;

THENCE NORTHWESTERLY ON SAID CURVE HAVING A RADIUS OF 513.35 FEET AND A CHORD BEARING OF NORTH 57 DEGREES 40 MINUTES 56 SECONDS WEST, CONVEX SOUTHWESTERLY, A DISTANCE OF 28.61 FEET TO A POINT;

THENCE NORTH 00 DEGREE EAST, A DISTANCE OF 94.79 FEET TO A POINT;

THENCE NORTH 76 DEGREES, 38 MINUTES, 46 SECONDS EAST, A DISTANCE OF 25.69 FEET;

THENCE NORTH 89 DEGREES, 51 MINUTES, 00 SECOND EAST, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING, IN THE CITY OF CHICAGO, IN COUNTY OF COOK, ILLINOIS.