

5/13/2014

**38-R-14**

**A RESOLUTION**

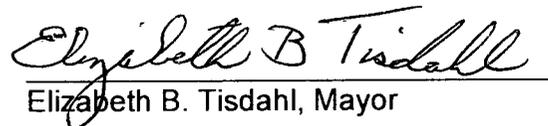
**Authorizing the City Manager to Negotiate and Execute a Loan Agreement with FEW Spirits, LLC**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

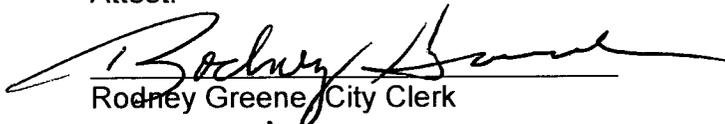
**SECTION 1:** The City Manager is hereby authorized and directed to negotiate and execute a loan agreement and associated loan documents between the City and FEW Spirits, LLC, an Illinois limited liability company, attached hereto as Exhibit A and incorporated herein by reference (the "Agreement").

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

**SECTION 3:** This Resolution 38-R-14 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: June 23, 2014

**EXHIBIT A**  
**Loan Agreement**

## PROMISSORY NOTE

### Name and Address of Borrower:

FEW Spirits, LLC  
918 Chicago Ave.  
Evanston, IL 60202

Dated: \_\_\_\_\_, 2014

### 1. BORROWER'S PROMISE TO PAY

FOR VALUE RECEIVED, the undersigned, FEW Spirits, LLC, an Illinois limited liability company (referred to hereafter as the "Borrower"), promise to pay to the order of the City of Evanston, an Illinois home rule municipal corporation, acting through its Community and Economic Development Department, with its principal office located at 2100 Ridge Avenue, Evanston, Illinois (the "Lender"), in the manner provided in this Note, the principal sum of \$250,000.00 (Two Hundred Fifty Thousand and 00/100 Dollars) (the "Loan").

The Loan is secured by a Uniform Commercial Code financing statement (the "UCC Financing Statement") and security agreement (the "Security Agreement"), which includes the Borrower's equipment and fixtures ("Equipment and Fixtures") to be located at 918 Chicago Ave., Evanston, Illinois (the "Property") for the operation of the business, dated the date of this Note and recorded with the Cook County Recorder of Deeds on \_\_\_\_\_, 2014 and as Document Number \_\_\_\_\_ (the "Security"), together with interest computed on the basis of a 365 day year, from the date of disbursement on the balance of principal remaining from time to time unpaid at an annual rate equal to six percent (6.0%). Any principal amount not paid when due (at maturity, by acceleration, or otherwise) will bear interest thereafter until paid at a rate, which will be eighteen percent (18%). The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called "Note Holder".

### 2. LOAN TERM, FORGIVENESS AND REPAYMENT

The term of the Loan is ten (10) years commencing on July 1, 2014 and ending on June 30, 2024 (the "Loan Term"). The Loan will bear interest during the Loan Term at 6.0% interest per annum and payable in monthly installments of **\$2,775.51 on or before the 1st of each month**. If the Borrower's Loan payment is five days after the first of the month or more, there shall be assessed a late fee of \$100 per day until payment is received by Lender. Attached as Exhibit "1" is the repayment schedule for the entire Loan Term and incorporated herein by reference. The Loan can be pre-paid with no penalty or fee assessed against the Borrower.

### 3. SECURITY FOR NOTE: UCC FINANCING STATEMENT

The indebtedness evidenced by this Note (including all principal, interest, charges, fees, and expenses) is secured by the aforementioned Security, dated of even date herewith encumbering the fixtures and personal property of the Borrower. The Note, Security Agreement, and UCC Financing Statement shall be collectively referred to as the "Loan Documents" and the terms of which are hereby incorporated by this reference. The Lender will record the UCC Financing Statement following the execution of this Note, which shall remain a valid lien on the Equipment and Fixtures until the Loan is paid off in full and until the end of the Loan Term. The Note, Security Agreement, Project Agreement, and UCC Financing Statement shall be collectively referred to as the "Loan Documents" and the terms of which are hereby incorporated by this reference.

#### 4. DEFAULT AND REMEDIES

A. The occurrence of any one or more of the following events ("Event of Default") with respect to Borrower shall constitute a default hereunder ("Default"):

- 1) If Borrower ceases to manufacture spirituous liquors within the borders of the City of Evanston (including by incidence of death of the Borrower). The Lender shall give written notice to Borrower of this Default. The Borrower shall have a period of thirty days to cure the Default ("Cure Period").
- 2) If all or any part of the Fixtures and Equipment or any interest in it is sold or transferred (or if a legal or beneficial interest in Borrower's interest in the Fixtures and Equipment is sold or transferred) without Lender's prior written consent.
- 3) If a default or event of default occurs and is continuing under any representation or covenant under the Loan Documents.
- 4) If a default or event of default occurs and is continuing under any other mortgage or loan agreement encumbering the Fixtures and Equipment.
- 5) Borrower or any beneficiary thereof shall (i) file a petition for liquidation, reorganization, or adjustment of debt under Title 11 of the United States Code or any similar law, state or federal, whether now or hereafter existing, or (ii) file any answer admitting insolvency or inability to pay debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten days, as hereinafter provided.
- 6) Borrower or any beneficiary thereof shall make an assignment for the benefit of creditors of this Note, or shall admit in writing of its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of the Fixtures and Equipment.

B. The Borrower also promises that, if the Event of Default specified above, 4(A)(1), shall occur (after applicable notice and the Occupancy Cure Period detailed above) before the expiration of the Loan Term, the Borrower agrees to repay to the order of the Lender or its designee an amount equal to the original principal amount of the Loan and it is immediately due and payable. Provided however, if an Event of Default is solely with respect any other Event of Default specified above in 4(A), the Borrower shall have

sixty (60) days after the date on which the notice is delivered to Borrower to cure such breach, provided, however, that if the curing of such non-monetary breach cannot be accomplished with due diligence within said period of sixty (60) days then Borrower shall have such additional reasonable period of time to cure such breach as may be necessary, provided Borrower shall have commenced to cure such breach within said period, such cure shall have been diligently prosecuted by Borrower thereafter to completion ("Other Default Cure Period"). The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the Borrower does not cure the Default within the specified Other Default Cure Period within the notice, then this Note is due and payable only with respect to the remaining balance of the Loan at the time of Default.

C. If the Borrower Defaults hereunder and fails to cure the Default, during the 10-year loan Term, the Loan shall be immediately due and owing and the balance of the Loan shall be immediately repaid to Lender in full, subject to the availability of net proceeds from sale of the Fixtures and Equipment. Lender can auction the Fixtures and Equipment and use the proceeds and apply it to the loan balance.

D. If any payments of interest or the unpaid principal balance due under this Note or any escrow fund payments for taxes or insurance required under the Security Agreement become overdue for a period in excess of ten days, the Borrower shall pay to Lender a late charge of \$50 per day. If any attorney is engaged by Lender, including in-house staff (a) to collect the indebtedness evidenced hereby or due under the Loan Documents, whether or not legal proceedings are thereafter instituted by Lender; (b) to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) to protect the lien of any of the Loan Documents; (d) to represent Lender in any other proceedings whatsoever in connection with this Note or any of the Loan Documents or the real estate described therein; or (e) as a result of the Borrower's Default and collection efforts, the Borrower shall pay to Lender all reasonable attorneys' fees and expenses incurred or determined to be due in connection therewith, in addition to all other amounts due hereunder.

E. Lender's remedies under this Note, and all of the other Loan Documents shall be cumulative and concurrent and may be pursued singly, successively, or together against the Borrower and any other Obligors (as defined below), the Property, and any other security described in the Loan Documents or any portion or combination of such real estate and other security, and Lender may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein, all in Lender's sole discretion. Failure of Lender, for a period of time or on more than one occasion to exercise its option to accelerate the maturity date shall not constitute a waiver of the right to exercise that option at any time during the continued existence of the Default or in the event of any subsequent Default. Lender shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent

specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event.

#### 5. PAYMENT OF NOTE HOLDER'S COSTS AND EXPENSES

If the Lender is required to initiate legal process as the result of the Borrower's Default as described above, the Lender will have the right to be paid back for all of its costs and expenses incurred as a result of such Default, to the extent not prohibited by applicable law. Those costs and expenses include but are not limited to, reasonable attorneys' fees, court costs, and related litigation expenses.

#### 6. BORROWER'S WAIVERS

To the extent permitted by law, the Borrower waives all rights to require the Lender to do certain things. These things are: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice to dishonor"); (C) to obtain an official certification of nonpayment (known as "protest"). If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Notes, including the promise to pay the full amount owed. Any person, who takes over these obligations, is also obligated to keep all promises made in this Note. The Lender may enforce its rights under this Note against each person individually or against all of us together.

#### 7. GIVING OF NOTICES

Any notices that must be given to the Borrower under this Note will be given by delivering or by mailing by certified mail addressed to the Borrower at the address of the Property set forth above.

Any notice that must be given to the Lender under this Note will be given by delivering it or mailing it by certified mail to the Lender at the following address:

City of Evanston  
Attn: Economic Development Division  
2100 Ridge Avenue, Room 3103  
Evanston, Illinois 60201

with a copy to:  
City of Evanston  
Attn: Corporation Counsel  
2100 Ridge Avenue, Room 4400  
Evanston, Illinois 60201

#### 8. RESPONSIBILITY OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note. The Lender may enforce its rights under this Note against the signatories either individually or together. This means that both signatories, either individually or together, may be required to pay all of the amounts owned under this Note. Any person who takes over the rights or obligations of the Borrower, with the written permission of the Lender, will have all of the Borrower's rights and must keep all of the Borrower's promises made in this Note. Notwithstanding anything in the Security Agreement to the contrary, the Loan is a recourse obligation of the Borrower.

#### 9. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

This Promissory Note shall be governed by the laws of the State of Illinois. **Borrower hereby represents and warrants that it knowingly and voluntarily waives any rights to trial by jury for any litigation related to or arising out of, under, or in any way connected with the obligations of this Note.**

#### 10. MISCELLANEOUS

The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Note, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires. If any provision of this Note, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Note shall be construed as if such invalid part were never included herein. Time is of the essence of this Note.

Upon any endorsement, assignment, or other transfer of this Note by Lender or by operation of law, the term "Lender," as used herein, shall mean such endorsee, assignee, or other transferee or successor to Lender then becoming the holder of this Note.

This Note and all provisions hereof shall be binding on all persons claiming under or through the Undersigned. The terms "Undersigned" and "Borrower," as used herein, shall include the respective beneficiaries, successors, assigns, legal and personal representatives, executors, administrators, devisees, legatees, and heirs of the Undersigned and Borrower and shall be binding upon the same

In the event the Undersigned is an Illinois land trust, then this Note is executed by the Trustee, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred on and vested in it as the Trustee, and is payable only out of the property specifically described in the Loan Documents securing the payment hereof, by the enforcement of the provisions contained therein. No personal liability shall be asserted or be enforceable against the Trustee because or in respect of this Note or the making, issue, or transfer thereof, all such liability, if any, being expressly waived by each taker and holder hereof, and each original and successive holder of this Note

accepts the Note on the express condition that no duty shall rest on the Trustee to sequester the rents, issues, and profits arising from the property described in the Loan Documents, or the proceeds arising from the sale or other disposition thereof, but that in case of Default in the payment of this Note or of any installment hereof, the sole remedies of the holder hereof shall be by foreclosure of the UCC Financing Statement, realization on the other security given under the other Loan Documents to secure indebtedness evidenced by this Note, in accordance with the terms and provisions set forth herein, or any combination of the above.

The Undersigned have caused this Note to be executed as of the \_\_\_\_ day of June, 2014.

BORROWER:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

## EXHIBIT A

### LOAN REPAYMENT SCHEDULE

<u>DATE</u>	<u>PAYMENT #</u>	<u>PAYMENT AMOUNT</u>
Jan-14	1	\$2,775.51
Feb-14	2	\$2,775.51
Mar-14	3	\$2,775.51
Apr-14	4	\$2,775.51
May-14	5	\$2,775.51
Jun-14	6	\$2,775.51
Jul-14	7	\$2,775.51
Jul-14	8	\$2,775.51
Aug-14	9	\$2,775.51
Sep-14	10	\$2,775.51
Oct-14	11	\$2,775.51
Nov-14	12	\$2,775.51
Dec-14	13	\$2,775.51
Jan-15	14	\$2,775.51
Feb-15	15	\$2,775.51
Mar-15	16	\$2,775.51
Apr-15	17	\$2,775.51
May-15	18	\$2,775.51
Jun-15	19	\$2,775.51
Jul-15	20	\$2,775.51
Aug-15	21	\$2,775.51
Sep-15	22	\$2,775.51
Oct-15	23	\$2,775.51
Nov-15	24	\$2,775.51
Dec-15	25	\$2,775.51
Jan-16	26	\$2,775.51
Feb-16	27	\$2,775.51
Mar-16	28	\$2,775.51
Apr-16	29	\$2,775.51
May-16	30	\$2,775.51
Jun-16	31	\$2,775.51
Jul-16	32	\$2,775.51
Aug-16	33	\$2,775.51
Sep-16	34	\$2,775.51
Oct-16	35	\$2,775.51
Nov-16	36	\$2,775.51
Dec-16	37	\$2,775.51
Jan-17	38	\$2,775.51
Feb-17	39	\$2,775.51
Mar-17	40	\$2,775.51
Apr-17	41	\$2,775.51
May-17	42	\$2,775.51
Jun-17	43	\$2,775.51

Jul-17	44	\$2,775.51
Aug-17	45	\$2,775.51
Sep-17	46	\$2,775.51
Oct-17	47	\$2,775.51
Nov-17	48	\$2,775.51
Dec-17	49	\$2,775.51
Jan-18	50	\$2,775.51
Feb-18	51	\$2,775.51
Mar-18	52	\$2,775.51
Apr-18	53	\$2,775.51
May-18	54	\$2,775.51
Jun-18	55	\$2,775.51
Jul-18	56	\$2,775.51
Aug-18	57	\$2,775.51
Sep-18	58	\$2,775.51
Oct-18	59	\$2,775.51
Nov-18	60	\$2,775.51
Dec-18	61	\$2,775.51
Jan-19	62	\$2,775.51
Feb-19	63	\$2,775.51
Mar-19	64	\$2,775.51
Apr-19	65	\$2,775.51
May-19	66	\$2,775.51
Jun-19	67	\$2,775.51
Jul-19	68	\$2,775.51
Aug-19	69	\$2,775.51
Sep-19	70	\$2,775.51
Oct-19	71	\$2,775.51
Nov-19	72	\$2,775.51
Dec-19	73	\$2,775.51
Jan-20	74	\$2,775.51
Jan-20	75	\$2,775.51
Mar-20	76	\$2,775.51
Mar-20	77	\$2,775.51
Apr-20	78	\$2,775.51
May-20	79	\$2,775.51
Jun-20	80	\$2,775.51
Jul-20	81	\$2,775.51
Aug-20	82	\$2,775.51
Sep-20	83	\$2,775.51
Oct-20	84	\$2,775.51
Nov-20	85	\$2,775.51
Dec-20	86	\$2,775.51
Jan-21	87	\$2,775.51
Feb-21	88	\$2,775.51
Mar-21	89	\$2,775.51
Apr-21	90	\$2,775.51
May-21	91	\$2,775.51

Jun-21	92	\$2,775.51
Jul-21	93	\$2,775.51
Aug-21	94	\$2,775.51
Sep-21	95	\$2,775.51
Oct-21	96	\$2,775.51
Nov-21	97	\$2,775.51
Dec-21	98	\$2,775.51
Jan-22	99	\$2,775.51
Feb-22	100	\$2,775.51
Mar-22	101	\$2,775.51
Apr-22	102	\$2,775.51
May-22	103	\$2,775.51
Jun-22	104	\$2,775.51
Jul-22	105	\$2,775.51
Aug-22	106	\$2,775.51
Sep-22	107	\$2,775.51
Oct-22	108	\$2,775.51
Nov-22	109	\$2,775.51
Dec-22	110	\$2,775.51
Jan-23	111	\$2,775.51
Feb-23	112	\$2,775.51
Mar-23	113	\$2,775.51
Apr-23	114	\$2,775.51
May-23	115	\$2,775.51
Jun-23	116	\$2,775.51
Jul-23	117	\$2,775.51
Aug-23	118	\$2,775.51
Sep-23	119	\$2,775.51
Oct-23	120	\$2,775.51

## SECURITY AGREEMENT

This Security Agreement dated July 1, 2014 by and between the FEW Spirits, LLC, an Illinois limited liability company hereinafter referred to collectively as the "Debtor" for value received, hereby grants to the City of Evanston, Illinois, an Illinois home rule municipality, with its principal address at 2100 Ridge Avenue, Evanston, Illinois 60201, hereinafter referred to as the "Secured Party," a security interest in the collateral listed in the attached **EXHIBIT A**, hereinafter referred to as the "Collateral" and incorporated by reference.

This security interest is given for the purpose of securing payment of any and all indebtedness of the Debtor to the Secured Party in connection with the loan made to the Debtor and evidenced by promissory note dated July 1, 2014, together with all costs and expenses in connection therewith including but not limited to expenses of retaking, preserving, repairing, maintaining, preparing for sale, and selling said collateral as well as reasonable attorney's fees, court costs, and other legal expenses. In the event that Debtor defaults in the payment of said indebtedness, or becomes insolvent, or fails to keep said collateral free of all other liens, or if for any reason the secured party feels insecure, Secured Party has the option of declaring the entire indebtedness immediately due and payable, and shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code as the same may be amended from time to time. The requirement of the reasonable notice of any sale hereunder shall be met if such notice is mailed, postage prepaid, to the address of the Debtor shown at the beginning of this agreement at least 5 days before the time of sale or disposition.

Secured Party and Debtor have caused this Agreement to be executed and delivered as of the date set forth opposite their name.

**City of Evanston, Illinois**

**FEW Spirits, LLC**

By: \_\_\_\_\_  
City Manager, Wally Bobkiewicz

By: \_\_\_\_\_  
Manager

**EXHIBIT A**  
**SCHEDULE OF COLLATERAL**

Description	Model or Serial #	Amount
Aqua Products Glycol Chiller 5-ton Packge - 208-230/#PH	C-DCP-060B-S41	36583.38
Hande TANK - Custom DistilleryMash- Fermenter, 30B	FED-UNIT11	21356
Toyota Electric Forklift	M# - 7FBEU18; S# - 20486	13220
Hover TANKS SS350	42X48FMFN	8330
ATLAS 144x42 Frames and Beams	UF33C14442TOG	15451.29
ALDRICH Co. Broiler Maker Series 100HP w/ water coil, piping, gas burner, feed unit and 1/2 HP pump	14E-704	156089
	Total	251029.67