

Of Brewpubs and Breweries, Crowlers and Growlers: Craft Beverages and the Texas Municipality

David T. Ritter

BROWN & HOFMEISTER, LLP

740 East Campbell Road, Suite 800

Richardson, Texas 75081

214.747.6100

www.bhlaw.net dritter@bhlaw.net

Texas City Attorneys Association

Summer Conference

June 13-15, 2018

Hyatt Regency Lost Pines Resort and Spa

Bastrop, Texas

I.

The Craft Beverage Revolution Comes to Texas

The 18th Amendment to the United States Constitution was passed in 1919, making the “manufacture, sale, or transportation of intoxicating liquors within . . .the United States” illegal. Prohibition was officially lifted in 1933 with the ratification of the 21st Amendment, which repealed the prior amendment and once again legalized the production and sale of alcoholic beverages subject to the constraints of individual state regulatory schemes.

In the post-Prohibition era, the number of United States breweries increased rapidly at first, from 331 in 1933 to 766 in 1935, but then began a steady decline to a low of only 89 breweries in 1978.¹ The primary players in the United States brewing arena during this time were major brands with national distribution networks. However, against this backdrop of a few nationally dominant brands, a movement arose of smaller “craft” brewers focused on small-batch brewing and independence from the major brewing conglomerates. The movement began in the 1980s with the introduction of now familiar brands such as Sierra Nevada (1980) and Sam Adams (1984). Inspired by the success of these and other brewers, craft startups flourished and the number of US breweries rapidly increased, passing the thousand brewery mark in 1996. The majority of craft beer growth, however, has come in the last decade:²

Year	Number of Domestic Breweries
2010	1,813
2011	2,047
2012	2,495
2013	2,952
2014	3,785
2015	4,588
2016	5,491
2017	6,372

¹<https://www.brewersassociation.org/statistics/number-of-breweries/> (June 2, 2018).

² Ibid.

The below graphic with its “U-shaped” profile strikingly illustrates the historical trends of industry consolidation and the recent craft brewing revolution during the 1873 to 2017 time period.³

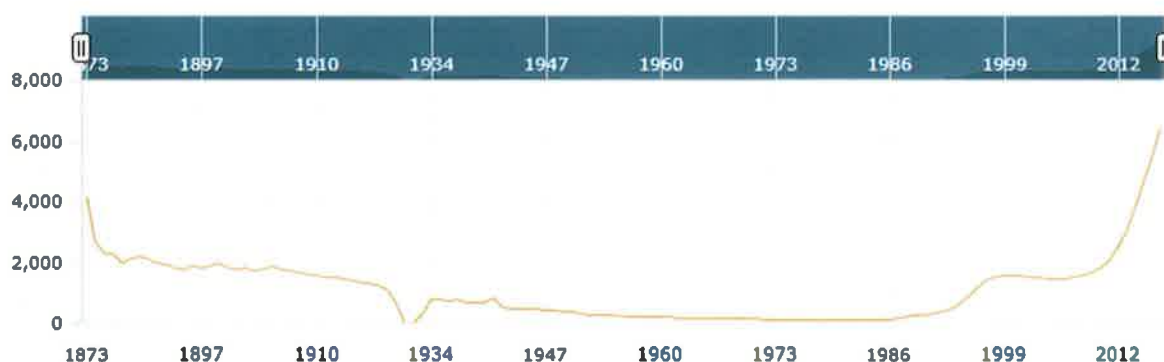
STATISTICS



NUMBER OF BREWERIES

Historical U.S. Brewery Count

Slide the bar at the top of the graph to see number of breweries from 1873 to present day.



The number of Texas breweries has increased in a similarly dramatic fashion: in 2015, Texas had only 20 breweries; a number that expanded to 218 in 2017, an increase of 990%.⁴ Some commentators are suggesting that the brewery industry has reached a level of saturation that will mean slower growth in the future, but the facts suggest that Texas’ market is not yet as mature as some other states, and that growth could continue to be robust. Although Texas is second in population, 2017 statistics show that it ranks 9th in terms of craft breweries, 8th in total craft beer production, 30th in terms of gallons of craft beer per adult, and --- perhaps most telling --- 46th in number of breweries per capita per 100,000 adults of legal drinking age.⁵ Should Texas eventually reach a level of breweries per capita on par with California (which, at 22nd, is near the median), the number of breweries would roughly double, to about 500. In addition, legislative changes allowing

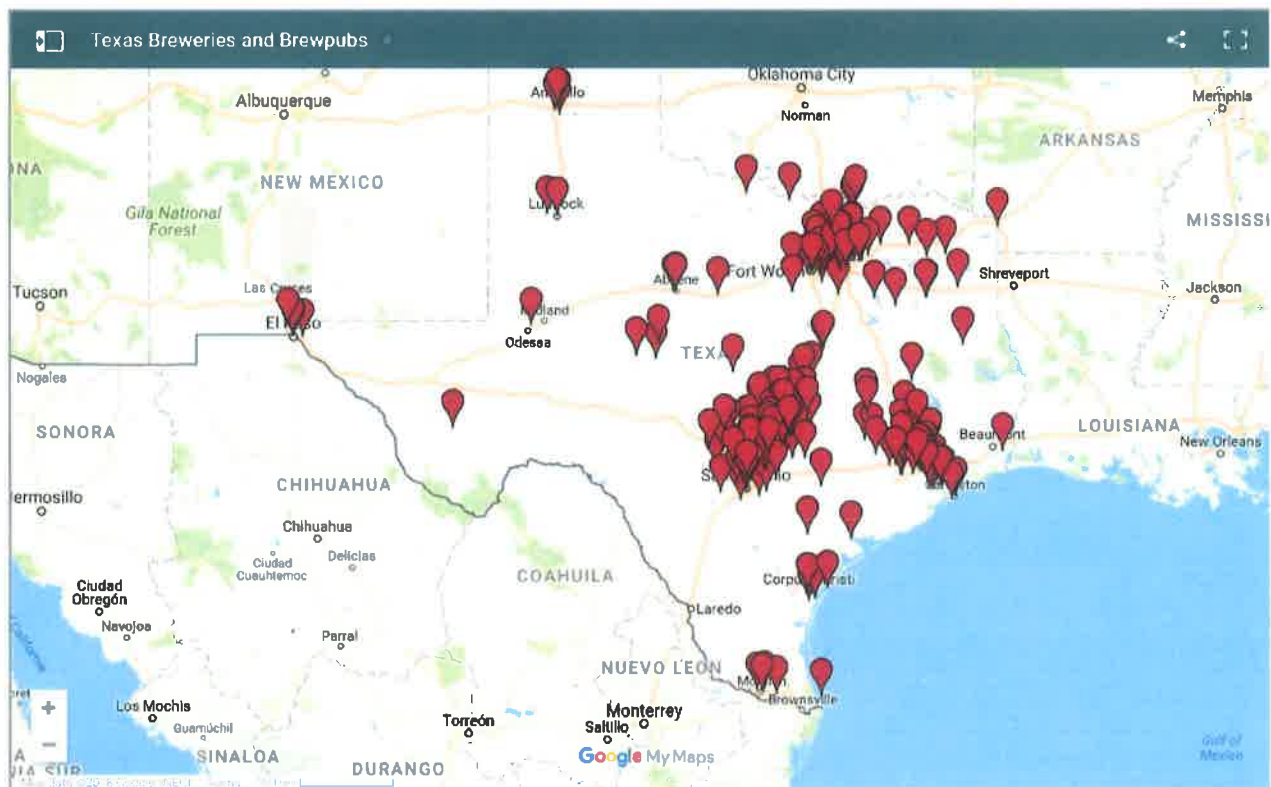
³ *Ibid.*

⁴ Kramp, R. and Geobel, L. The Craft Beer Revolution: Got beer? Lone Star Craft Brewers Quench Consumers’ Tastes, *CBRE Viewpoint*, September 2017. As noted by statistics from the Brewers Association, the actual number of operating Texas breweries in 2017 is 251; which is even higher than CBRE reported numbers.

⁵ <https://www.brewersassociation.com/statistics/by-state/> (June 10, 2018).

more direct-to-consumer sales as exceptions to the three-tier system⁶ would provide additional revenue opportunities for craft brewers and serve as an additional catalyst for craft brewing startups. In any event, the explosive growth in Texas craft brewing appears to be a trend that will likely continue, thus posing both challenges and opportunities for Texas municipalities of all sizes.

Map of Texas Craft Breweries:⁷



⁶ The three-tier system is a regulatory scheme adopted in response to pre-Prohibition and Prohibition Era control of the alcoholic beverage industry by organized crime interests and the phenomenon of “tied-houses,” where establishments would be “tied” to one brewer or distiller’s products. It divides business entities into three categories in the alcoholic beverage industry: manufacturers, distributors/wholesalers, and retail outlets.

⁷ <https://www.craftbeeraustin.com/texas-brewery-brewpub-tour-listings-map/> (June 10, 2018).

II.

Breweries and Brewpubs

The production of alcoholic beverages in Texas is governed by the Texas Alcoholic Beverage Code (the “Code”) and regulated by the Texas Alcoholic Beverage Commission (“TABC”). An “alcoholic beverage” for purposes of the Code is “any beverage containing more than ½ of one percent of alcohol by volume.”⁸ The Code also makes a distinction between “beer” (a malt beverage containing more than ½ % and less than 3.2% alcohol by volume), and “ale” (a malt beverage containing more than 3.2% alcohol by volume).⁹

For municipalities, the two most important types of TABC licenses and permits are the Brewer’s Permit – assigned code “B” under TABC’s abbreviation system, and the Brewpub License (code “BA”).¹⁰

A. Brewer’s Permit:

The Brewer’s Permit is governed by Chapter 12 of the Code. TABC’s summary explanation of the Brewer’s Permit is as follows:

BREWER’S PERMIT (B)

Permit authorizes holder to manufacture ale and malt liquor and sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state. If annual production of ale together with annual production of beer by the holder of a manufacturer’s license at the same premises does not exceed a total of 225,000 barrels, the holder may sell ale produced on the brewer’s premise under the permit to ultimate consumers on the brewer’s premises. Combined sales of ale together with sales of beer to the ultimate consumer may not exceed 5,000 barrels annually.¹¹

⁸ TEX. ALCO. BEV. CODE § 1.04(1).

⁹ *Ibid.*, § 1.04(15) and (12)(conversion factors applied). For ease of reference, when this paper refers to “brewing” or “beer,” both beer and ale (also called “malt liquor” under the Code) are encompassed in the definition.

¹⁰ In addition, there is a Manufacturer’s license, assigned code (BA), that “authorizes the holder to manufacture beer and sell it to holder of general, local, and branch distributor’s license and to qualified persons outside the state, and to dispense beer for on-premise consumption. Permit holder may enter into an alternating brewery proprietorship or contract brewing arrangement.” This license may be held in conjunction with a Brewer’s Permit.

¹¹ https://www.tabc.state.tx.us/licensing/license_and_permit_description.asp (June 10, 2018)

B. Brewpub License

The Brewpub License is governed by Chapter 74 of the Code. TABC's summary explanation of the Brewpub Permit is as follows:⁹

BREW PUB LICENSE (BP)

License authorizes the holder to manufacture, brew, bottle, can, package and label malt liquor, ale, and beer; sell or offer without charge, on the premises of the brewpub, to ultimate consumers for consumption on or off those premises, malt liquor, ale or beer produced by the holder in or from a lawful container, to the extent the sales or offers are allowed under the holder's other permits or licenses; must be held with permit or license authorizing on-premise consumption. Total production cannot exceed 10,000 barrels for each licensed brewpub. Permit holders who also hold a wine and beer retailer's permit and who sell alcoholic beverages manufactured only on the brewpub's premises may sell malt liquor or ale produced under the license to retailers and private clubs and beer to distributors, retailers, and private clubs or to qualified persons for shipment and consumption outside the state.¹²

Understanding the impact that B and BA-uses may have on the local level is key. Both types of permits/licenses may have direct-to-consumer sale operations that may surprise local planners, code inspectors, and fire marshals, who assumed a purely industrial use that presents minimal occupancy, parking, and fire safety issues.¹³ Ensuring that local land use codes are consistent with the TABC-defined brewer's and brewpub operations and educating cross-department staff in the unique land use challenges posed by craft brewers and brewpubs may be a worthwhile investment of time for Texas cities.

III.

Craft Brewing Litigation

One of the recent trends in Texas craft brewing is increasingly frequent litigation, often challenging TABC or state-level legislation. Below are cases of municipal importance in the area of craft beverage production and sales:

¹² *Ibid.* Additional TABC clarification on the 83rd Legislature's change can be found in their guidance letter of March 20, 2014, addressed "To Texas Brewpubs" and available on the TABC website.

¹³ *See, e.g.,* ¹³ Gooden, M. No, the Dallas Fire Marshal is Not Cracking Down on Breweries (Cough, Cough), *D Magazine (Frontburner)*, January 5, 2018.

Granholm v. Heald

544 U.S. 460 (2005)

Michigan and New York laws that treated out-of-state direct winery sales differently from in-state sales were found to be unconstitutionally discriminatory against interstate commerce. The Court also held that the Twenty-First Amendment did not grant states the ability to pass such discriminatory laws. The court noted that “[it had] previously recognized that the three-tier system itself is “unquestionably legitimate.”¹⁴

Municipal Takeaway: The Three-Tier system, generally, has been tested and upheld by SCOTUS.

Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Commission
518 S.W.3d 318 (Tex. 2017)

Foemento Economico Mexicano, S.A.B. de C.V. (“FEMSA”), through a complex series of corporate relationships, owned twenty percent of the stock in two Heineken companies which owned breweries that held TABC non-resident manufacturer’s permits. FEMSA was also the owner of convenience store operator Cadena Comercial USA Corp, which sought to obtain a TABC retailer’s permit to sell alcohol. TABC opposed the permit claiming that issuance would run contrary to the state’s anti-“tied house” laws. TABC won at the administrative, district, and court of appeals level, and the case was considered by the Texas Supreme Court.

The court examined the Texas “tied house statutes, which are located at TEX. ALCO. BEV. CODE §§ 102.01-82, and which date --- through prior legislation --- to the Texas Liquor Control Act, which was adopted after the passage of the Twenty-First Amendment and return of control over alcoholic beverage regulation to the states. The court notes that:

“[t]he catalyst for the tied house provisions was a fear of returning to the state of affairs before Prohibition when tied houses played what was through to be a substantial role in over-intoxicating society.” The prohibitions are designed to prevent certain overlapping relationships between those engaged in the

¹⁴ *Id.* at 489, (citing *North Dakota v. United States*, 495 U.S. 423 (1986)).

alcoholic beverage industry at different levels, or tiers. (citing TEX. ALCO. BEV. CODE § 102.01(a)-(b)).¹⁵

The facts of the case were relatively uncontested --- FEMSA, through a complex array of intermediary business entities and holding companies, held minority stock interests in at least two mid-level Heineken holding companies that, through various intermediary companies, operated breweries in Italy, the Netherlands, and Mexico. FEMSA also owned (again through intermediate subsidiaries) Cadena Comercial USA, Corp., an entity that was intended to operate convenience stores in Texas that wished to sell beer and wine at a retail level. At issue was the language of TEX. ALCO. BEV. CODE § 102.07(a), which states that “no person who owns or has an interest in the business of a brewer . . . may . . . own or have a direct or indirect interest in the business . . . of a retailer.”¹⁶ The appellate court had adopted an expansive definition of the term “interest,” and defined it as: “broadly encompass[ing] any commercial or economic interest that provides a stake in the financial performance of an entity engaged in the manufacture, distribution, or sale of alcoholic beverages.”¹⁷

Cadena urged the same arguments presented at the court of appeals --- including that the court of appeals’ definition of “interest” under section 102.07(a) was erroneously broad, and that the correct reading of the statute, taken in historical context required a control-based test. In rejecting the petitioner’s arguments, the Court examined the Code’s stated historical policies of maintaining “as strict separation between the manufacturing, wholesaling, and retailing levels” of the alcoholic beverage industry to prevent “the creation or maintenance of a tied house,”¹⁸ and that the “Legislature clearly concerned not only with preventing paradigmatic, pre-Prohibition tied houses, but also with “related practices” that might negatively affect public health and safety.”¹⁹ The Court also found that the term “interest” as used in the Code was intended by the Legislature to encompass virtually all commercial and economic interests – passive as well as active --- in the alcohol industry.²⁰ The court’s ultimate holding was that FEMSA’s stock holdings in the Heineken Group provided a stake in the

¹⁵ *Ibid.* at 321.

¹⁶ *Id.* at 323. (citing *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Com'n*, 449 S.W.3d 154, 159 (Tex. App. --- Austin, 2014))

¹⁷ *Id.* at 166.

¹⁸ 518 S.W.3d at 327 (citing TEX. ALCO. BEV. CODE § 6.03(i)).

¹⁹ *Id.*

²⁰ *Id.* at 328.

financial performance of an entity engaged in alcoholic beverage brewing operations sufficient to prevent its subsidiary Cadena from obtaining a retail-level permit from TABC.

Municipal Takeaway: The three-tier system, despite its Prohibition-Era roots, is alive and well in Texas, and TABC has taken a rigid approach in regard to preservation of that system. This indicates that changes or exceptions to the three-tier system may come slowly, with difficulty, and through Legislative activity. This case was decided by a 7-2 decision, and both the dissent and majority response give detailed historical summaries of the tied-house system and efforts to legislatively address its perceived problems.

Texas Alcoholic Beverage Commission v. Live Oak Brewing Co., LLC
537 S.W.3d 647 (Tex. App. --- Austin, 2017 pet. filed)

Section 102.75 of the Texas Alcoholic Beverage Code was part of a 2013 Legislative package that addressed the craft brewing industry. Part of the three-tier system is a requirement that “holders of beer manufacturer licenses generally are required to ‘designate territorial limits in the state within which the brands of beer the licensee manufacturers may be sold by general, local, or branch distributor’s licenses.’”²¹ The sales territory under the Code must also be exclusive --- the same sales territory may not be assigned to more than one distributor. In addition, Section 102.75(a)(7) of the code states that a manufacturer cannot “accept payment in exchange for an agreement setting forth territorial rights.”

The Plaintiff companies were Texas-licensed brewers who had been paid or were negotiating rights in the \$250,000-\$300,000 range. After passage of the bill, those rights became worthless, as the traditionally-paid fee was rendered illegal by the legislation package. The Plaintiffs filed suit, alleging in part that the “true purpose” of the legislation was for “the illegitimate purpose of naked economic protectionism” of the distributors aimed at “[e]nriching distributors at the expense of brewers” “with no public benefit whatsoever.”²²

On August 25th, a Travis County district court found that Section 102.75 of the Texas Alcoholic Beverage Code violated the due course guarantees of Article I, Section 19 of the Texas Constitution and enjoined the Texas Alcoholic Beverage Commission from enforcing it against all producers of beer, ale and malt liquor.

²¹ *Ibid* at 650 (citing TEX. ALCO. BEV. CODE § 102.51(a)).

²² *Id.* at 657.

TABC appealed and was successful at the appellate level. The court found that section 102.75(a)(7) did not deprive brewers of constitutionally protected occupational freedom, and that the provision, when considered “in the context of the statutory framework of the three-tier system within which appellees operate,” was part of a larger “commonplace compromise among various [alcoholic beverage industry] stakeholders that takes place as part of the legislative process.”²³

The decision was issued on December 15, 2017. A petition for review has been filed by the brewer parties on February 13, 2018. Amici curiae briefs have been filed on behalf of the petitioners by two public policy groups.

Municipal Takeaway: If upheld, Section 102.75(a)(7) may continue to negatively impact Texas craft brewers by reducing revenue possibilities that would be available for sale of the distribution rights, which, as noted in the decision, can be in the six figures. This decision also illustrates the perceived legislative bias (in favor of the second-tier distributors and wholesalers) claimed by at least some brewer-tier parties.

Deep Ellum Brewing, LLC v. Texas Alcoholic Beverage Commission
Case 1:15-CV-00821-RP (W.D Tex. 2018)

In December 2015, Deep Ellum Brewing Company, LLC, (later joined by Grapevine Craft Brewery, LLC) challenged the constitutionality of the Texas Alcoholic Beverage Code that prohibits on-site product sales to consumers for off-site consumption on equal protection and substantive due process grounds. Deep Ellum noted that brewpub license holders, wineries, and distillers can all sell alcoholic beverages directly to the public, but holders of manufacturer’s licenses (for malt beverages under 4% ABW) or brewer’s permits (for malt beverages over 4% ABW) cannot.

TABC identified three rational-relationship government interests protected by the challenged Code sections: (1) maintaining the integrity of the three-tier system; (2) promoting responsible consumption of alcoholic beverages; and (3) ensuring fair competition within the alcoholic beverage industry. In its March 30, 2018 Order granting TABC’s Motion for Summary Judgment, the court agreed with TABC that “it is rational for the state to limit the retail sales of the Brewers as a method to preserve the three-tier system... [and] the legislature has allowed other alcohol producers to sell alcohol for off-site consumption, making one exception and not another exception in this context is not irrational.”²⁴ The court also found that preventing approximately 190 retail outlets from

²³ *Id.* at 658.

²⁴ PACER Case Document 49 (Order) at 11-12.

engaging in sales for off-site consumption is rationally related to promoting the legitimate government end of encouraging temperance.

Municipal Takeaway: This is a very recent decision, with the case being closed in May 2018. It reinforces prior decisions that find support of the three-tier system to be constitutionally sufficient reasons for legislative actions that appear to treat craft brewers differently from distillers or winemakers. It appears that any further ability of craft brewers to increase direct-to-consumer sales will have to come on the legislative front, as litigation challenges have largely been unsuccessful. If that occurs, it may further increase already significant growth rates in the number and expansion of Texas craft breweries.

Texas Alcoholic Beverage Commission v. EATX Coffee, LLC
SOAH Docket No. 458-16-1365 (Travis County, Texas), May 13, 2017

The TABC, in issuing this order, recognized an administrative law judge's ruling that crowlers could not be used as a canning process for sending beer into the stream of commerce and that crowlers were not designed to can beer for resale. Selling beer in crowlers was thus found not to violate the Texas Alcoholic Beverage Code.

Municipal Takeaway: Beer sales in crowlers is permissible in Texas, (as long as the seller otherwise possesses the necessary TABC licenses/permits).

IV.

Economic Development Opportunities in the Craft Beverage Area

In the North Texas area, the author is aware of at least three brewers that have received economic development funds --- Lakeview Brewing Company, in Garland (which received economic development incentives as part of a \$6 million expansion in 2014); Tupps Brewery, in McKinney (which is located in the historic Cotton Mill building); and 903 Brewers, in Sherman (which has plans to creatively re-use a historic building as part of its expansion plans).

Texas craft beverage producers may present outstanding opportunities for the expenditure of local economic development funds. Breweries and brewpubs can emphasize the local origin of the product and serve as a catalyst to community building. In addition, creative use and reuse of

existing historic buildings may be a welcome added incentive of municipal support for the craft beverage industry.²⁵

I have attached a series of four economic development agreements between the Sherman Economic Development Corporation (“SEDCO”) and 903 Brewers as an appendix and an example of success in this area. Particularly notable is the fact that the first investment of \$7,500 was both relatively minimal and directed towards start-up promotion; this both protects the EDC from a large loss should a then-unproven brewer fail and aids the recipient in start-up marketing during the most crucial phase of a new craft brewer’s life cycle. As the brewer met with initial success and expanded operations, subsequent economic development incentives were more substantial. The end result is a thriving brewery with distribution to multiple locations around North Texas and a record of medals at national beer festival competitions. 903 Brewers has also obtained a SUP for a creative reuse of a formerly vacant school for its new brewery complex, which also features two restaurant concepts, a taproom, and an event center.

²⁵ See, e.g., Craft Breweries and Downtown Revitalization, University of Texas Land Use Conference, March 22-23, 2018 (Austin, Texas), Paper: Walts, E., Speakers: Anciria, J. and Davis, I.

PROMOTIONAL AGREEMENT

by and between

903 Brewers ("903")

and

Sherman Economic Development Corporation ("SEDCO")

THIS AGREEMENT (this "Agreement") is made, by and between 903 Brewers ("903"), whose address is 1718 S. Elm St., Sherman, Texas 75090, and Sherman Economic Development Corporation ("SEDCO"), a Texas non-profit corporation, whose address is 307 West Washington Street, Suite 102, Sherman, Texas 75090.

WHEREAS, **SEDCO** is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Sherman and dedicated exclusively to economic development. This sales tax supporting **SEDCO** is authorized as a local option under V.A.C.S. Art. 5190.6, Sec. 4A. **SEDCO** exists for the primary purpose of developing, stabilizing, diversifying, and expanding the Sherman economy through the retention, expansion, and recruitment of employment opportunities in order to benefit citizens of Sherman and the surrounding areas.

WHEREAS, **903** will operate a brewery located at 1718 S. Elm St., Sherman, Texas 75090. The vision of **903** is to grow a distribution network of their brewery products in the North Texas Regional area.

WHEREAS, **SEDCO** has agreed to provide funding to **903** for the purpose of promoting the brewery throughout the North Texas Regional area.

WHEREAS, The **SEDCO** Board of Directors makes an affirmative finding that this agreement promotes the City of Sherman, Texas.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants, warranties, and agreements of the parties, it is agreed as follows:

SECTION 1 – PROMOTIONAL EXPENDITURE

1.1 Promotional Expenditure: **SEDCO** will provide promotional expenditures to **903** for the limited purpose of promoting the brewery operations in Sherman, Texas. It is specifically provided that the promotional expenditures shall assist **903** to market and promote the brewery operations in Sherman, Texas that will benefit the City of Sherman, Texas. **SEDCO** will reimburse up to \$7,500.00 dollars (the "Promotional Expenditure") from June 1, 2013 through May 31, 2014, with payments limited to no more than one per month over the term of this

agreement not to exceed \$7,500.00. 903 shall provide SEDCO documented proof of promotional expenditures prior to the payment addressed above.

SECTION 2. REPRESENTATION AND WARRANTIES

2.1 903 represents and warrants to SEDCO as of the date hereof and as of the request for reimbursement, as follows:

- A. 903 is in good standing, and has all requisite power and authority to enter into and perform its obligations hereunder and to carry out the terms hereof and the transactions contemplated hereby.
- B. This Agreement is in full force and effect and has been duly executed and delivered on behalf of 903, and constitutes the legal, valid and binding obligation of 903, enforceable against 903 in accordance with the terms.
- C. There is no litigation or governmental proceeding pending or, to the knowledge of 903, threatened against or affecting 903 that may result in any material adverse change in 903's Sherman, Texas operation.
- D. To the best of its knowledge, 903 has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business operation in Sherman, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
- E. 903 represents that no SEDCO officer or employee, has been or will be compensated in any manner with respect to directly or indirectly bringing the parties hereto together, agreement negotiations, or the entering into of this agreement. In no event will 903 pay a fee to or in any other manner compensate any SEDCO officer or employee, in connection with the acceptance of this agreement. A breach of this provision shall result in automatic and immediate termination of this agreement, and shall be an act of default by 903.

2.2 The SEDCO represents and warrants to 903 as of the date hereof and as of each promotional expenditure, as follows:

- A. This Agreement is in full force and effect and has been duly executed and delivered on behalf of SEDCO, and constitutes the legal, valid and binding obligation of 903, enforceable against SEDCO in accordance with the terms.
- B. There is no litigation or governmental proceeding pending or, to the knowledge of SEDCO, threatened against or affecting SEDCO that may result in any material adverse change in SEDCO's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this agreement or the transactions contemplated hereby.

- C. There is no bankruptcy proceedings or other proceedings currently pending or contemplated, and SEDCO has not been informed of any potential involuntary bankruptcy proceedings.
- D. To the best of its knowledge, SEDCO has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

SECTION 3 SUSPENSIONS/TERMINATION

- 3.1 SEDCO, under the following circumstances, and at its sole discretion, may suspend its obligations under this agreement or terminate this agreement without any liability whatsoever to 903, upon any one of the following events, which are an act of default.
 - A. 903 does not fulfill the intent and spirit of developing a distribution network for their brewery products throughout the North Texas Regional area.

SECTION 4. REPORTING

- 4.1 Reports: 903 agrees to the following reporting provisions, and failure to fully and timely comply with any one requirement shall constitute an act of default:
 - A. Pursuant to Section 1.1, 903 shall provide SEDCO with documented proof of promotional expenditures for the Sherman, Texas operation, and certification by 903 that all representations and warranties set forth in Section 2.1 are true and correct as of the date of the notice and that 903 is in compliance with all its obligations under the Agreement.
 - B. 903, during normal business hours, shall allow SEDCO reasonable access to its books, to verify that the expenditures contemplated in 1.1 have been paid, as stated in this agreement, but the confidentiality of such records and information shall be maintained by SEDCO unless disclosure of such records and information shall be required by a court order, lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

SECTION 5. DEFAULT AND REMEDIES

- 5.1 A breach of this Agreement, which breach remains uncured and uncorrected for thirty (30) days after written notice from the non-breaching party of the existence of such breach shall be deemed to be an "Event of Default" under this Agreement,
- 5.2 If an Event of Default has occurred, the non-defaulting party shall be entitled to terminate this Agreement. Neither party shall be liable to the other for any alleged consequential, incidental, punitive, exemplary or indirect damages.

- 5.3 Any delay for any amount of time by the non-breaching party in providing notice of a breach to the other party shall in no event be deemed or constitute a waiver of such breach by such party of any of its rights and remedies available in law or in equity.

SECTION 6. PAYMENT PROCEDURES

- 6.1 SEDCO shall only be required to pay promotional expenditures as outlined in Section 1.1, and the promotional expenditures shall not exceed \$7,500.00. Payment by SEDCO is strictly limited to the funds utilized for promotional purposes.

SECTION 7. GENERAL TERMS

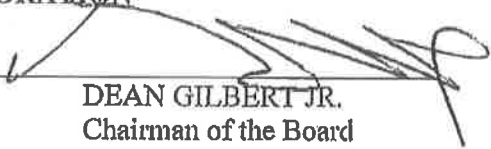
- 7.1 **Entire Agreement:** This Agreement is the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- 7.2 **Legal Relationships:** No term or provision of this Agreement or act of 903 in the performance of this Agreement shall be construed as making 903, or its employees, the agent, servant, employee or contractor of SEDCO or shall create a partnership or a joint enterprise with SEDCO.
- 7.3 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 7.4 **Governing Law/Venue:** This Agreement and the relationship between SEDCO and 903 shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Jurisdiction and Venue for any suit arising out of any relationship between SEDCO and 903 shall be proper and exclusive in the State District Courts located in Grayson County, Texas.
- 7.5 **Legal Construction:** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 7.6 **Notices:** All notices from one party to the other, required under this Agreement, shall be delivered personally or sent by certified mail, postage prepaid, addressed to such party at the addresses shown on the signature page. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change its address for notice by sending written notice of such change to the other in the manner provided herein.

- 7.7 **Other Contracts:** It is understood by 903 that SEDCO has heretofore entered, and may hereafter enter, into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this Agreement, and 903 has no standing to object whatsoever to any such contracts or require any modifications or changes to its agreement due to such other agreements.
- 7.8 **Confidentiality:** SEDCO, its officers and employees, and its agents or contractors shall treat as confidential information provided by 903 and shall not release such information to the public, unless required by law or court order. SEDCO shall immediately notify 903 of requests or court orders to release such information.
- 7.9 **Term:** This Agreement becomes effective on June 1, 2013 through May 31, 2014 and shall terminate when the promotional expenditures contemplated in 1.1 have been paid up to a maximum of \$7,500.00, unless earlier terminated as provided for herein or, by mutual written agreement of the parties.
- 7.10 **Third Party Beneficiaries.** Except as expressly provided herein, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the parties, any right, remedy, or claim under or by reason of this Agreement and any and all covenants, terms, conditions, and provisions in this Agreement by and on behalf of the parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with any agreements of any party with any third party.
- 7.11 **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

IN WITNESS WHEREOF, 903 and SEDCO have executed this Agreement.

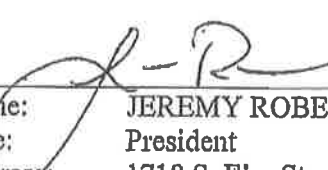
Date 5/14/13

**SHERMAN ECONOMIC DEVELOPMENT
CORPORATION**

By: 
Name: DEAN GILBERT JR.
Title: Chairman of the Board
Address: 307 West Washington, Ste.102,
Sherman, Texas 75090

Date 5/14/13

903 BREWERS

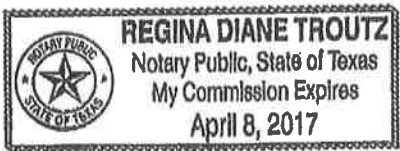
By: 
Name: JEREMY ROBERTS
Title: President
Address: 1718 S. Elm St.
Sherman, Texas 75090

THE STATE OF TEXAS §

COUNTY OF GRAYSON §

BEFORE ME, on this day personally appeared **DEAN GILBERT JR.**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of May, A.D., 2013.



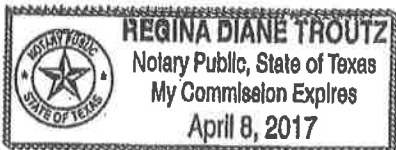
Regina Diane Troutz
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

THE STATE OF TEXAS §

COUNTY OF GRAYSON §

BEFORE ME, on this day personally appeared **JEREMY ROBERTS**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **903 BREWERS**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of May, A.D., 2013.



Regina Diane Troutz
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

**SHERMAN ECONOMIC DEVELOPMENT CORPORATION
ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**

TERM OF AGREEMENT – JULY 8, 2014 THROUGH OCTOBER 1, 2015

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS AGREEMENT is entered into between the SHERMAN ECONOMIC DEVELOPMENT CORPORATION ("SEDCO"), a Texas Non-Profit Corporation whose address is 307 West Washington Street, Ste. 102, Sherman, Texas 75090, and 903 BREWERS ("903"), whose address is 1718 South Elm Street, Sherman, Texas 75090.

**I.
BACKGROUND**

1.1 **Purpose:** SEDCO is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Sherman and dedicated exclusively to economic development. This sales tax supporting SEDCO is authorized as a local option under V.A.C.S. Art. 5190.6, Sec. 4A. SEDCO exists for the primary purpose of developing, stabilizing, diversifying, and expanding the Sherman economy through the retention, expansion, and recruitment of employment opportunities in order to benefit citizens of Sherman and the surrounding areas.

1.2 **Project:** Subject to the terms and conditions hereof, the project to be implemented by means of this Agreement is generally described as follows:

903 will invest \$389,000.00 in facility improvement and new equipment at its facility at 1718 S Elm Street, Sherman, Texas. Over the term of this agreement, 903 will add an additional ten (10) full-time employment positions at the Sherman, Texas facility.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, warranties, and agreements of the parties, it is agreed as follows:

**II.
ECONOMIC BENEFITS AND INCENTIVES**

2.1 BY THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION

A. **Money Grant:** SEDCO will convey by grant to 903 a total of \$22,000.00 in three (3) installment(s), as set forth in Schedule A, subject to the conditions

precedent that 903 has timely and fully complied with all applicable terms and conditions contained in this agreement and specifically but not limited to the described capital investment, and the staffing of additional full-time employees as outlined in accordance with Schedule A below. In no event shall SEDCO be required to convey any grant money prior to any designated performance date according to the following schedule, and in no event shall SEDCO's performance date be accelerated by any act of 903. In no event shall SEDCO be required to make any partial grant payment for any partial performance by 903.

Failure by SEDCO to timely and fully comply with any performance requirement shall be an act of default by SEDCO giving 903, as its sole remedy, the right to the contracted amount to be conveyed and further being limited to the terms and conditions contained in Article VII, paragraph 7.1, herein.

SCHEDULE A		
903's Conditions Precedent	SEDCO's Time of Performance	SEDCO's Performance Requirements
When 903 has provided documentation of the company's investment of \$201,000.00 in facility improvement and/or equipment at the facility located at 1718 S Elm St, Sherman, Texas 75090.	Not earlier than August 1, 2014	\$11,370.00
When 903 has provided documentation of the company's investment of \$113,000.00 in facility improvement and/or equipment above the previously invested \$201,000.00 at the facility located at 1718 S Elm St, Sherman, Texas 75090.	Upon proof that conditions have been met, but not earlier than December 1, 2014.	\$6,390.00
When 903 has provided documentation of the company's investment of \$75,000.00 in facility improvement and/or equipment above the previously invested \$314,000.00 and the addition of ten (10) full-time employees at the facility located at 1718 S Elm St, Sherman, Texas 75090.	Upon proof that the conditions have been met, but not earlier than April 1, 2015.	\$4,240.00

2.2 BY 903 BREWERS

903 agrees that it will invest \$389,000.00 in facility improvement and new equipment at its facility at 1718 S Elm Street, Sherman, Texas. Over the term of this agreement, 903 will add an additional ten (10) full-time employment positions at the Sherman, Texas facility.

Failure by 903 to timely and fully comply with any performance requirement shall be an act of default.

III.

COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES

3.1 903 makes the following covenants and warranties to SEDCO, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this agreement shall be an act of default by 903. Failure to comply with any one covenant, obligation or warranty shall constitute an act of default by 903 authorizing SEDCO, without any liability to 903 whatsoever, to suspend or terminate this agreement, cease any payment to 903 under this agreement.

- A. 903 is authorized to do business and is in good standing in the State of Texas, and shall remain in good standing in the State of Texas during the term of this agreement. 903 shall immediately report to SEDCO in writing any change in this status, as it becomes known to 903.
- B. The execution of this agreement has been duly authorized by 903, and the individual signing this agreement is empowered to execute such agreement and bind the corporation, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of 903's corporation agreement.
- C. No litigation or governmental proceeding is pending or, to the knowledge of 903 or 903's officers, threatened against or affecting 903 that may result in any material adverse change in 903's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this agreement or the transactions contemplated hereby. 903 shall immediately report to SEDCO in writing, any change in the status as soon as it becomes known to 903.
- D. No certificate or statement delivered by 903 to SEDCO in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

- E. There is no bankruptcy proceeding or other proceedings currently pending or contemplated, and 903 has not been informed of any potential involuntary bankruptcy proceedings. 903 shall immediately report to SEDCO in writing, the occurrence of such an event(s) as it becomes known to 903.
- F. To the best of its knowledge, 903 has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- G. 903 shall continue its full-time business activities at its facility in Sherman, Texas at all times throughout the term of this agreement. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- H. 903 shall timely pay all ad valorem taxes due and owing by it to all taxing authorities having jurisdiction. All equipment shall be assessed on the Grayson County tax rolls. In addition, 903 shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities. All such taxes shall be paid before they become past due, unless they are being lawfully contested. 903 shall immediately report to SEDCO in writing any past due or delinquent taxes owed by 903.
- I. 903 shall complete the project required by this agreement and shall provide and staff the required employment positions, investment, and other economic development considerations described in this agreement and fully maintain the same during the term of this agreement. 903 shall immediately report to SEDCO in writing any changes in the status as soon as it becomes known to 903. Nothing in this agreement shall prevent 903 from requesting an amendment to this agreement for additional grant monies from SEDCO in the event additional capital investment is projected during the term of this agreement. However, any request for additional grant monies shall be submitted to the SEDCO Board of Directors. Nothing in this agreement entitles 903 to future grant monies unless approved by SEDCO Board of Directors.
- J. 903 shall timely and fully comply with all of the terms and conditions of this agreement.
- K. 903 may not sell stock, assets or any ownership interest in 903 that would be more than twenty percent (20%) of the Company's total authorized and

issued stock, assets or ownership interest, without prior written notice to SEDCO.

- L. 903 shall notify SEDCO in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, C.E.O., or Area/Plant Manager.
- M. At the time 903 makes a grant payment request or request any changes, amendments or addendums to or extensions of this agreement, the authorized representative shall submit an affidavit on behalf of 903 stating that all the covenants, warranties, obligations, terms and conditions of this agreement have been and are now in full and complete compliance by 903.

IV.

SUSPENSIONS/TERMINATION

- 4.1 SEDCO, under the following circumstances, and at its sole discretion, may suspend its obligations under this agreement or terminate this agreement and recover from 903 any of the money grants or consideration paid by SEDCO to 903, without any liability whatsoever to 903, upon any one of the following events, which are an act of default.
- A. The insolvency of 903. "Insolvent" is defined to mean 903 has ceased to pay its debts in ordinary course of business when due and payable or cannot pay its debts as they become due, or insolvent within the meaning of the federal bankruptcy law.
 - B. The appointment of a receiver for 903 or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.
 - C. The adjudication of 903 as a bankrupt. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.
 - D. The filing by 903 of a petition in bankruptcy or an answer to a petition seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.

V.

REPORTING AND MONITORING

5.1 Reports and Monitoring: 903 agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement shall constitute an act of default:

- A. 903 shall provide SEDCO an annual report certifying the status of compliance through the life of the agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, TWC Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled and such other reports as may reasonably be required.
- B. 903, during normal business hours, at its Sherman, Texas office, shall allow SEDCO reasonable access to its employment records and books, to verify employment and all other relevant records related to each of the other economic development considerations and incentives, as stated in this agreement, but the confidentiality of such records and information shall be maintained by SEDCO unless disclosure of such records and information shall be required by a court order, lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

**VI.
903's LIABILITY**

- 6.1 Should 903 fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this agreement shall be an act of default by 903 and, if not fully and completely cured and corrected within thirty (30) days after written notice to do so, SEDCO may terminate this agreement and pursue all legal remedies as provided by law, provided however that 903's liability under this agreement shall be limited to the immediate return by 903 to SEDCO of all money grants and consideration previously paid to it by SEDCO, all direct costs and expenses including, but not limited to, reasonable attorney fees and cost of court to collect such money and the termination of all further obligations on behalf of SEDCO under this agreement. 903 shall not be liable to SEDCO for any alleged consequential damages.
- 6.2 In the event of unforeseeable third party delays in the installation of the equipment contemplated herein or force majeure and upon a reasonable showing by 903 that it has immediately and in good faith commenced and diligently and continuously pursued the correction, removal or abatement of such delays by using its best efforts, SEDCO may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld. Failure by 903 to use its best efforts as required in this paragraph shall be an act of default.

- 6.3 Any delay for any amount of time by **SEDCO** in providing notice of default to **903** shall in no event be deemed or constitute a waiver of such default by **SEDCO** of any of its rights and remedies available in law or in equity.
- 6.4 Any waiver granted by **SEDCO** to **903** of an act of default shall not be deemed or constitute a waiver of any other existing or future act of default by **903** or of a subsequent act of default of the same act or event by **903**.
- 6.5 In the event that this agreement is terminated by **SEDCO** or **903** commits an act of default that is not timely corrected and cured, **903** shall immediately return to **SEDCO** all money grants and consideration previously paid to it by **SEDCO**, and **SEDCO** shall be relieved of any further obligations under this agreement.

VII.

SEDCO'S LIABILITY LIMITATIONS

- 7.1 **Payments:** **903** specifically agrees that **SEDCO** shall only be liable to **903** for the actual amount of the grants to be conveyed and shall not be liable to **903** for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by **SEDCO** under the terms of this agreement. It is further specifically agreed that **SEDCO** shall only be required to pay the grant amounts solely out of its sales tax revenue currently collected, allocated and budgeted and to be allocated, budgeted and collected for **903**. Payment by **SEDCO** is strictly limited to those funds so allocated, budgeted and collected solely during the grant term of this agreement, being **July 8, 2014 through October 15, 2015**. **SEDCO** shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one year be less than the total amount of grants to be paid to all contracting parties with **SEDCO** for that year, then, in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less **SEDCO's** customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year, and the amount of the shortage for that year to **903**, if any, shall not be offset or charged against any other funds budgeted by **SEDCO** during the grant term of this agreement or acquired by **SEDCO** after this agreement terminates. In this event, **SEDCO** will provide all supporting documentation, as requested. Payments to be made to **903** shall also require a written request from **903** to be accompanied by all necessary supporting documentation. **SEDCO** shall have forty five (45) days to make payment after receipt of such payment request. The payment request should be directed to Sherman Economic Development Corporation, 307 West Washington Street, Ste. 102, Sherman, Texas 75090. Payment to **903** shall be made to **903 Brewers, 1718 S. Elm Street, Sherman, Texas 75090**.

VIII.
NOTICE OF DEFAULT

- 8.1 SEDCO shall give 903 written notice of any act of default by 903, and 903 shall have thirty (30) days after receipt of the notice to cure the default. Failure by 903 to timely and fully cure the act of default shall permit SEDCO to pursue all legal remedies provided by law and not specifically prohibited herein.
- 8.2 903 shall give SEDCO written notice of any act of default by SEDCO, and SEDCO shall have thirty (30) days after receipt of the notice to cure the default. Failure by SEDCO to timely and fully cure the act of default shall permit 903 to pursue its legal remedies as provided in this agreement.

IX.
DEFINITIONS

As used in this agreement, the following words or phrases shall have the following meanings.

- 9.1 **Compliance:** Shall mean timely, fully and completely performing or meeting each and every requirement, obligation, duty, condition, or warranty as stated in this agreement. Compliance shall mean complete compliance and shall not mean substantial compliance. "Act of Default" shall mean failure to timely and fully comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this agreement. SEDCO may, in its sole discretion, accept substantial compliance in lieu of full compliance by waiving such act of default solely by an instrument in writing.
- 9.2 **Full-Time Operations:** Shall mean the operation of company headquarters and the facility in Sherman, Texas not less than eight (8) hours per day, five (5) days a week, for fifty-two (52) weeks every fiscal year.
- 9.3 **Full-Time Job, or Full-Time Equivalent Job (FTE):** Shall mean a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work over a twelve (12) month term [forty (40) hours work per week], including allowance for vacation and sick leave, with full company benefits and employed exclusively and on-site in the City of Sherman, Texas. Use of a staffing agency is permitted provided all of the conditions herein are met.
- 9.4 **Insolvent:** Shall mean failure to timely pay all debts and obligations when first due in the ordinary course of business or inability to pay debts and obligations as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- 9.5 **Force Majeure:** Shall mean severe weather such as tornadoes or flooding, wars, riots and the unavailability of construction material from all sources.

X.
GENERAL TERMS

- 10.1 **Entire Agreement:** This agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and except as otherwise provided herein, this agreement cannot be modified or amended without a written agreement of the parties.
- 10.2 **Legal Relationships:** No term or provision of this agreement or act of 903 in the performance of this agreement shall be construed as making 903, or its employees, the agent, servant, employee or contractor of SEDCO or shall create a partnership or a joint enterprise with SEDCO. The City of Sherman is a third-party beneficiary, and not a direct party to this agreement.
- 10.3 **Termination:** This agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of SEDCO and 903 under this agreement, except all rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination. Should litigation result over the interpretation or enforcement of any provision of this agreement, the prevailing party shall recover its costs of court and full attorney's fees.
- 10.4 **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 10.5 **Forum Selection:** This agreement and the relationship between SEDCO and 903 shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between SEDCO and 903 shall be the appropriate court in Grayson County, Texas. 903 consents to, and waives any objections to, in personam jurisdiction in Grayson County, Texas.
- 10.6 **Legal Construction:** In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 10.7 **Law:** This agreement is subject to all legal requirements in the City Charter and Code of Ordinances of the City of Sherman and all other applicable county, state and federal laws, and 903 agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other such

governmental agencies. This agreement shall be governed by and construed in accordance with the laws and applicable court decisions of the State of Texas.

- 10.8 **Assignment:** This agreement shall be binding upon the parties hereto and their successors and assigns. This agreement may not be assigned by either party. However, in the event that 903 merges into or transfers substantially all of its assets into its parent company, if any, SEDCO hereby consents to such merger or transfer and consents to any assignment of 903's rights and obligations under this agreement as a result of such merger or transfer.
- 10.9 **Representation:** 903 represents that no SEDCO board member or employee, City of Sherman officer or employee, has been or will be compensated in any manner with respect to directly or indirectly bringing the parties hereto together, agreement negotiations, or the entering into of this agreement. In no event will 903 pay a fee to or in any other manner compensate any SEDCO board member or employee, City of Sherman officer or employee, in connection with the acceptance of this agreement. A breach of this provision (10.9) shall result in automatic and immediate termination of this agreement, and shall be an act of default by 903.
- 10.10 **Notices:** All notices from one party to the other, required under this agreement, shall be delivered personally or sent by certified mail, postage prepaid, addressed to such party at the addresses shown on the signature page. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change its address for notice by sending written notice of such change to the other in the manner provided herein.
- 10.11 **Other Contracts:** It is understood by 903 that SEDCO has heretofore entered, and may hereafter enter, into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this agreement, and 903 has no standing to object whatsoever to any such contracts or require any modifications or changes to its agreement due to such other agreements.
- 10.12 **City of Sherman:** The words "City" or "City of Sherman" shall mean both the area that is within the City limits of the City of Sherman and the area that is within Grayson County, Texas, and its extraterritorial and the municipal corporation entity that is the City of Sherman, Texas., and any area that SEDCO would determine is beneficial to the City on a project by project basis.
- 10.13 SEDCO, its officers and employees, and its agents or contractors retained to perform economic development services for SEDCO, shall treat as confidential the financial statements of 903 and shall not release such information to the public, unless required by law or court order. SEDCO shall immediately notify 903 of requests or court orders to release such information.

- 10.14 Term:** This agreement becomes effective on **July 8, 2014**, hereinafter described as the "effective date", and shall terminate on **October 15, 2015**, when the requirements set forth in this agreement are completed, when terminated by mutual agreement of the parties, or when terminated as hereinabove provided.
- 10.15** Any representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties pertaining to the transaction contemplated hereby and not included herein, shall not survive the execution date of this agreement.

EXECUTED on the date shown opposite the signature of each party.

Date 7/8/14

(CORPORATE SEAL)

**SHERMAN ECONOMIC DEVELOPMENT
CORPORATION**

By: 

Name: CHRIS PENDERGRASS

Title: Chairman of the Board

Address: 307 West Washington, Ste.102
Sherman, Texas 75090

Date 7/18/14
(CORPORATE SEAL)

903 BREWERS

By: 

Name: Jeremy Roberts

Title: President

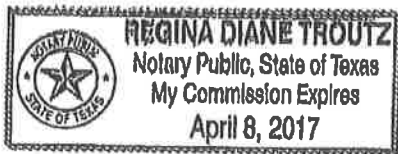
Address: 1718 South Elm Street
Sherman, Texas 75090

THE STATE OF TEXAS §

COUNTY OF GRAYSON §

BEFORE ME, on this day personally appeared **CHRIS PENDERGRASS**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 8th day of July, A.D., 2014.



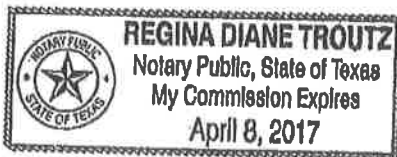
Regina Diane Troutz
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

THE STATE OF Texas §

COUNTY OF Grayson §

BEFORE ME, on this day personally appeared **JEREMY ROBERTS**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **903 BREWERS**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of July, A.D., 2014.



Regina Diane Troutz
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

SHERMAN ECONOMIC DEVELOPMENT CORPORATION
SMALL BUSINESS DEVELOPMENT GRANT AGREEMENT

TERM OF AGREEMENT – OCTOBER 30, 2014 THROUGH APRIL 30, 2016

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS AGREEMENT is entered into between the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION ("SEDCO")**, a Texas Non-Profit Corporation whose address is 307 West Washington Street, Ste. 102, Sherman, Texas 75090, and **903 BREWERS ("903")**, whose address is 1718 South Elm Street, Sherman, Texas 75090.

I.
BACKGROUND

1.1 Purpose: **SEDCO** is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Sherman and dedicated exclusively to economic development. This sales tax supporting **SEDCO** is authorized as a local option under V.A.C.S. Art. 5190.6, Sec. 4A. **SEDCO** exists for the primary purpose of developing, stabilizing, diversifying, and expanding the Sherman economy through the retention, expansion, and recruitment of employment opportunities in order to benefit citizens of Sherman and the surrounding areas.

1.2 Project: Subject to the terms and conditions hereof, the project to be implemented by means of this Agreement is generally described as follows:

903 will invest \$100,000.00 in new equipment at its facility at 1718 S Elm Street, Sherman, Texas over the term of this agreement. In addition to the installation of new equipment, 903 will provide quarterly reports to **SEDCO** to demonstrate progress in sales growth, employment, outside financing and/or fixed assets.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, warranties, and agreements of the parties, it is agreed as follows:

II.
ECONOMIC BENEFITS AND INCENTIVES

2.1 BY THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION

A. Money Grant: SEDCO will convey by grant to 903 a total of up to \$50,000.00 subject to the conditions of future performance by 903 as outlined in Schedule A below:

SCHEDULE A		
SEDCO's Performance Requirements	SEDCO's Time of Performance	903's Performance Requirements
\$38,630.00, said amount being the difference between \$50,000.00 and the \$11,370.00 previously paid to 903 under a separate agreement.	Not earlier than October 31, 2014 and not later than November 30, 2014.	903 will purchase and install \$100,000.00 in new equipment at its facility located at 1718 S. Elm St., Sherman, TX 75090. Required amount of equipment purchased may be offset by any new equipment purchased after April, 2014. The new equipment must be purchased and installed no later than October 29, 2015.

2.2 BY 903 BREWERS

903 agrees to invest \$100,000.00 in new equipment at its facility at 1718 S Elm Street, Sherman, Texas over the term of this agreement. In addition to the installation of new equipment, 903 will provide reports to SEDCO to demonstrate progress in sales growth, employment, outside financing and/or fixed assets.

Failure by 903 to timely and fully comply with any performance requirement shall be an act of default.

III.

COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES

- 3.1 903 makes the following covenants and warranties to SEDCO, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this agreement shall be an act of default by 903. Failure to comply with any one covenant, obligation or warranty shall constitute an act of default by 903 authorizing SEDCO, without any liability to 903 whatsoever, to suspend or terminate this agreement, cease any payment to 903 under this agreement.
- A. 903 is authorized to do business and is in good standing in the State of Texas, and shall remain in good standing in the State of Texas during the term of this agreement. 903 shall immediately report to SEDCO in writing any change in this status, as it becomes known to 903.
 - B. The execution of this agreement has been duly authorized by 903, and the individual signing this agreement is empowered to execute such agreement and bind the corporation, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of 903's corporation agreement.
 - C. No litigation or governmental proceeding is pending or, to the knowledge of 903 or 903's officers, threatened against or affecting 903 that may result in any material adverse change in 903's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this agreement or the transactions contemplated hereby. 903 shall immediately report to SEDCO in writing, any change in the status as soon as it becomes known to 903.
 - D. No certificate or statement delivered by 903 to SEDCO in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

- E. There is no bankruptcy proceeding or other proceedings currently pending or contemplated, and 903 has not been informed of any potential involuntary bankruptcy proceedings. 903 shall immediately report to SEDCO in writing, the occurrence of such an event(s) as it becomes known to 903.
- F. To the best of its knowledge, 903 has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- G. 903 shall continue its full-time business activities at its facility in Sherman, Texas at all times throughout the term of this agreement. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- H. 903 shall timely pay all ad valorem taxes due and owing by it to all taxing authorities having jurisdiction. All equipment shall be assessed on the Grayson County tax rolls. In addition, 903 shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities. All such taxes shall be paid before they become past due, unless they are being lawfully contested. 903 shall immediately report to SEDCO in writing any past due or delinquent taxes owed by 903.
- I. 903 shall complete the project required by this agreement and shall provide and staff the required employment positions, investment, and other economic development considerations described in this agreement and fully maintain the same during the term of this agreement. 903 shall immediately report to SEDCO in writing any changes in the status as soon as it becomes known to 903. Nothing in this agreement shall prevent 903 from requesting an amendment to this agreement for additional grant monies from SEDCO in the event additional capital investment is projected during the term of this agreement. However, any request for additional grant monies shall be submitted to the SEDCO Board of Directors. Nothing in this agreement entitles 903 to future grant monies unless approved by SEDCO Board of Directors.
- J. 903 shall timely and fully comply with all of the terms and conditions of this agreement.
- K. 903 may not sell stock, assets or any ownership interest in 903 that would be more than twenty percent (20%) of the Company's total authorized and

issued stock, assets or ownership interest, without prior written notice to SEDCO.

- L. 903 shall notify SEDCO in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, C.E.O., or Area/Plant Manager.
- M. At the time 903 makes a grant payment request or request any changes, amendments or addendums to or extensions of this agreement, the authorized representative shall submit an affidavit on behalf of 903 stating that all the covenants, warranties, obligations, terms and conditions of this agreement have been and are now in full and complete compliance by 903.

IV. SUSPENSIONS/TERMINATION

- 4.1 SEDCO, under the following circumstances, and at its sole discretion, may suspend its obligations under this agreement or terminate this agreement and recover from 903 any of the money grants or consideration paid by SEDCO to 903, without any liability whatsoever to 903, upon any one of the following events, which are an act of default.
- A. The insolvency of 903. "Insolvent" is defined to mean 903 has ceased to pay its debts in ordinary course of business when due and payable or cannot pay its debts as they become due, or insolvent within the meaning of the federal bankruptcy law.
 - B. The appointment of a receiver for 903 or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.
 - C. The adjudication of 903 as a bankrupt. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.
 - D. The filing by 903 of a petition in bankruptcy or an answer to a petition seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.

V. REPORTING AND MONITORING

5.1 **Reports and Monitoring:** 903 agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement shall constitute an act of default:

- A. 903 shall provide SEDCO an annual report certifying the status of compliance through the life of the agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, TWC Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled and such other reports as may reasonably be required.
- B. 903, during normal business hours, at its Sherman, Texas office, shall allow SEDCO reasonable access to its employment records and books, to verify employment and all other relevant records related to each of the other economic development considerations and incentives, as stated in this agreement, but the confidentiality of such records and information shall be maintained by SEDCO unless disclosure of such records and information shall be required by a court order, lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.
- C. 903 shall make quarterly reports to SEDCO detailing demonstrated progress in sales growth, employment, outside financing and/or fixed assets. Said quarterly reports shall be due on January 15, April 15, July 15, and October 15 of each year of during the term of this agreement.

VI.
903's LIABILITY

- 6.1 Should 903 fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this agreement shall be an act of default by 903 and, if not fully and completely cured and corrected within thirty (30) days after written notice to do so, SEDCO may terminate this agreement and pursue all legal remedies as provided by law, provided however that 903's liability under this agreement shall be limited to the immediate return by 903 to SEDCO of all money grants and consideration previously paid to it by SEDCO, all direct costs and expenses including, but not limited to, reasonable attorney fees and cost of court to collect such money and the termination of all further obligations on behalf of SEDCO under this agreement. 903 shall not be liable to SEDCO for any alleged consequential damages.
- 6.2 In the event of unforeseeable third party delays in the installation of the equipment contemplated herein or force majeure and upon a reasonable showing by 903 that it has immediately and in good faith commenced and diligently and continuously pursued the correction, removal or abatement of such delays by using its best efforts, SEDCO may consent to and excuse any such delays, which

consent and excuse shall not be unreasonably withheld. Failure by 903 to use its best efforts as required in this paragraph shall be an act of default.

- 6.3 Any delay for any amount of time by SEDCO in providing notice of default to 903 shall in no event be deemed or constitute a waiver of such default by SEDCO of any of its rights and remedies available in law or in equity.
- 6.4 Any waiver granted by SEDCO to 903 of an act of default shall not be deemed or constitute a waiver of any other existing or future act of default by 903 or of a subsequent act of default of the same act or event by 903.
- 6.5 In the event that this agreement is terminated by SEDCO or 903 commits an act of default that is not timely corrected and cured, 903 shall immediately return to SEDCO all money grants and consideration previously paid to it by SEDCO, and SEDCO shall be relieved of any further obligations under this agreement.

VII.

SEDCO'S LIABILITY LIMITATIONS

- 7.1 **Payments:** 903 specifically agrees that SEDCO shall only be liable to 903 for the actual amount of the grants to be conveyed and shall not be liable to 903 for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by SEDCO under the terms of this agreement. It is further specifically agreed that SEDCO shall only be required to pay the grant amounts solely out of its sales tax revenue currently collected, allocated and budgeted and to be allocated, budgeted and collected for 903. Payment by SEDCO is strictly limited to those funds so allocated, budgeted and collected solely during the grant term of this agreement, being October 30, 2014 through October 30, 2016. SEDCO shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one year be less than the total amount of grants to be paid to all contracting parties with SEDCO for that year, then, in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less SEDCO's customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year, and the amount of the shortage for that year to 903, if any, shall not be offset or charged against any other funds budgeted by SEDCO during the grant term of this agreement or acquired by SEDCO after this agreement terminates. In this event, SEDCO will provide all supporting documentation, as requested. Payments to be made to 903 shall also require a written request from 903 to be accompanied by all necessary supporting documentation. SEDCO shall have forty five (45) days to make payment after receipt of such payment request. The payment request should be directed to Sherman Economic Development Corporation, 307 West Washington Street, Ste.

102, Sherman, Texas 75090. Payment to 903 shall be made to 903 Brewers, 1718 S Elm Street, Sherman, TX 75090.

VIII. NOTICE OF DEFAULT

- 8.1 SEDCO shall give 903 written notice of any act of default by 903, and 903 shall have thirty (30) days after receipt of the notice to cure the default. Failure by 903 to timely and fully cure the act of default shall permit SEDCO to pursue all legal remedies provided by law and not specifically prohibited herein.
- 8.2 903 shall give SEDCO written notice of any act of default by SEDCO, and SEDCO shall have thirty (30) days after receipt of the notice to cure the default. Failure by SEDCO to timely and fully cure the act of default shall permit 903 to pursue its legal remedies as provided in this agreement.

IX. DEFINITIONS

As used in this agreement, the following words or phrases shall have the following meanings.

- 9.1 **Compliance:** Shall mean timely, fully and completely performing or meeting each and every requirement, obligation, duty, condition, or warranty as stated in this agreement. Compliance shall mean complete compliance and shall not mean substantial compliance. "Act of Default" shall mean failure to timely and fully comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this agreement. SEDCO may, in its sole discretion, accept substantial compliance in lieu of full compliance by waiving such act of default solely by an instrument in writing.
- 9.2 **Full-Time Operations:** Shall mean the operation of company headquarters and the facility in Sherman, Texas not less than eight (8) hours per day, five (5) days a week, for fifty-two (52) weeks every fiscal year.
- 9.3 **Full-Time Job, or Full-Time Equivalent Job (FTE):** Shall mean a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work over a twelve (12) month term [forty (40) hours work per week], including allowance for vacation and sick leave, with full company benefits and employed exclusively and on-site in the City of Sherman, Texas. Use of a staffing agency is permitted provided all of the conditions herein are met.
- 9.4 **Insolvent:** Shall mean failure to timely pay all debts and obligations when first due in the ordinary course of business or inability to pay debts and obligations as they become due, or is insolvent within the meaning of the federal bankruptcy law.

- 9.5 **Force Majeure:** Shall mean severe weather such as tornadoes or flooding, wars, riots and the unavailability of construction material from all sources.

X.
GENERAL TERMS

- 10.1 **Entire Agreement:** This agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and except as otherwise provided herein, this agreement cannot be modified or amended without a written agreement of the parties. **This agreement specifically supersedes and replaces the agreement signed by SEDCO on July 8, 2014 and by 903 on July 18, 2014.**
- 10.2 **Legal Relationships:** No term or provision of this agreement or act of 903 in the performance of this agreement shall be construed as making 903, or its employees, the agent, servant, employee or contractor of SEDCO or shall create a partnership or a joint enterprise with SEDCO. The City of Sherman is a third-party beneficiary, and not a direct party to this agreement.
- 10.3 **Termination:** This agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of SEDCO and 903 under this agreement, except all rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination. Should litigation result over the interpretation or enforcement of any provision of this agreement, the prevailing party shall recover its costs of court and full attorney's fees.
- 10.4 **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 10.5 **Forum Selection:** This agreement and the relationship between SEDCO and 903 shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between SEDCO and 903 shall be the appropriate court in Grayson County, Texas. 903 consents to, and waives any objections to, in personam jurisdiction in Grayson County, Texas.
- 10.6 **Legal Construction:** In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- 10.7 **Law:** This agreement is subject to all legal requirements in the City Charter and Code of Ordinances of the City of Sherman and all other applicable county, state and federal laws, and 903 agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other such governmental agencies. This agreement shall be governed by and construed in accordance with the laws and applicable court decisions of the State of Texas.
- 10.8 **Assignment:** This agreement shall be binding upon the parties hereto and their successors and assigns. This agreement may not be assigned by either party. However, in the event that 903 merges into or transfers substantially all of its assets into its parent company, if any, SEDCO hereby consents to such merger or transfer and consents to any assignment of 903's rights and obligations under this agreement as a result of such merger or transfer.
- 10.9 **Representation:** 903 represents that no SEDCO board member or employee, City of Sherman officer or employee, has been or will be compensated in any manner with respect to directly or indirectly bringing the parties hereto together, agreement negotiations, or the entering into of this agreement. In no event will 903 pay a fee to or in any other manner compensate any SEDCO board member or employee, City of Sherman officer or employee, in connection with the acceptance of this agreement. A breach of this provision (10.9) shall result in automatic and immediate termination of this agreement, and shall be an act of default by 903.
- 10.10 **Notices:** All notices from one party to the other, required under this agreement, shall be delivered personally or sent by certified mail, postage prepaid, addressed to such party at the addresses shown on the signature page. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change its address for notice by sending written notice of such change to the other in the manner provided herein.
- 10.11 **Other Contracts:** It is understood by 903 that SEDCO has heretofore entered, and may hereafter enter, into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this agreement, and 903 has no standing to object whatsoever to any such contracts or require any modifications or changes to its agreement due to such other agreements.
- 10.12 **City of Sherman:** The words "City" or "City of Sherman" shall mean both the area that is within the City limits of the City of Sherman and the area that is within Grayson County, Texas, and its extraterritorial and the municipal corporation entity that is the City of Sherman, Texas., and any area that SEDCO would determine is beneficial to the City on a project by project basis.


- 10.13 SEDCO, its officers and employees, and its agents or contractors retained to perform economic development services for SEDCO, shall treat as confidential the financial statements of 903 and shall not release such information to the public, unless required by law or court order. SEDCO shall immediately notify 903 of requests or court orders to release such information.
- 10.14 Term: This agreement becomes effective on October 30, 2014, hereinafter described as the "effective date", and shall terminate on April 30, 2016, when the requirements set forth in this agreement are completed, when terminated by mutual agreement of the parties, or when terminated as hereinabove provided.
- 10.15 Any representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties pertaining to the transaction contemplated hereby and not included herein, shall not survive the execution date of this agreement.

EXECUTED on the date shown opposite the signature of each party.

Date _____

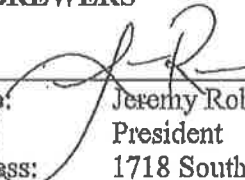
(CORPORATE SEAL)

**SHERMAN ECONOMIC DEVELOPMENT
CORPORATION**

By: 
Name: Brooks Hull
Title: Chairman of the Board
Address: 307 West Washington, Ste.102
Sherman, Texas 75090

Date _____
(CORPORATE SEAL)

903 BREWERS

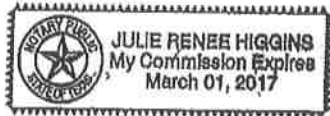
By: 
Name: Jeremy Roberts
Title: President
Address: 1718 South Elm Street
Sherman, Texas 75090

THE STATE OF TEXAS §

COUNTY OF GRAYSON §

BEFORE ME, on this day personally appeared **BROOKS HULL**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 31st day of October, A.D., 2014.



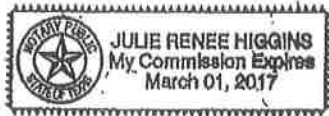
Julie Renee Higgins
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

THE STATE OF Texas §

COUNTY OF Grayson §

BEFORE ME, on this day personally appeared **JEREMY ROBERTS**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **903 BREWERS**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 31st day of October, A.D., 2014.



Julie Renee Higgins
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

SHERMAN ECONOMIC DEVELOPMENT CORPORATION
SMALL BUSINESS GRANT AGREEMENT

TERM OF AGREEMENT – DECEMBER 8, 2015 THROUGH DECEMBER 8, 2018

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS AGREEMENT is entered into between the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION ("SEDCO")**, a Texas Non-Profit Corporation whose address is 307 West Washington Street, Ste. 102, Sherman, Texas 75090, and **903 BREWERS ("903")**, whose address is 1718 South Elm Street, Sherman, Texas 75090.

I.
BACKGROUND

1.1 Purpose: **SEDCO** is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Sherman and dedicated exclusively to economic development. This sales tax supporting **SEDCO** is authorized as a local option under V.A.C.S. Art. 5190.6, Sec. 4A. **SEDCO** exists for the primary purpose of developing, stabilizing, diversifying, and expanding the Sherman economy through the retention, expansion, and recruitment of employment opportunities in order to benefit citizens of Sherman and the surrounding areas.

1.2 Project: Subject to the terms and conditions hereof, the project to be implemented by means of this Agreement is generally described as follows:

903 will invest \$215,000.00 in new equipment (canning line and 30 barrel brew system) at its facility at 1718 S Elm Street, Sherman, Texas. In addition to the installation of new equipment, 903 will provide quarterly reports to **SEDCO** to demonstrate progress in sales growth, employment, outside financing and/or fixed assets.

1.3 Small Business Cash Grant: Subject to the terms and conditions of this Agreement and **SEDCO's** small business grant program, **SEDCO** will provide a one-time cash grant of up to Forty Three Thousand Dollars (\$43,000.00), constituting twenty percent (20%) of the investment of 903.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, warranties, and agreements of the parties, it is agreed as follows:

II.
ECONOMIC BENEFITS AND INCENTIVES

2.1 BY THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION

A. **Money Grant:** SEDCO will convey by grant to 903 a total of up to \$43,000.00 subject to the conditions of future performance by 903 as outlined in Schedule A below:

SCHEDULE A		
903's Performance Requirements	903's Time of Performance	Cash Grant from SEDCO
903 will purchase and install \$215,000.00 in new equipment as described herein at its facility located at 1718 S. Elm St., Sherman, TX 75090. 903 shall provide to SEDCO proof of purchase of equipment consisting of a new canning line and a 30 barrel brew system.	Not later than December 8, 2016.	SEDCO shall provide a cash grant of up to \$43,000.00 (20% of total investment by 903) upon proof that performance requirements have been met by 903.

2.2 BY 903 BREWERS

A. 903 agrees to invest \$215,000.00 in new equipment at its facility at 1718 S Elm Street, Sherman, Texas on or before December 8, 2016. In addition to the installation of new equipment, 903 will provide reports to SEDCO to demonstrate progress in sales growth, employment, outside financing and/or fixed assets.

B. 903 agrees to continue its full-time business activities at its facility in Sherman, Texas at all times throughout the term of this agreement or a minimum of twenty-four (24) months from the date of payment of the lump sum payment from SEDCO.

Failure by 903 to timely and fully comply with any performance requirement shall be an act of default subject to the remedies set forth herein or under the laws of the State of Texas.

III.

COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES

3.1 903 makes the following covenants and warranties to SEDCO, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this agreement shall be an act of default by 903. Failure to comply with any one covenant, obligation or warranty shall constitute an act of default by 903 authorizing SEDCO, without any liability to 903 whatsoever, to suspend or terminate this agreement, cease any payment to 903 under this agreement.

A. 903 is authorized to do business and is in good standing in the State of Texas, and shall remain in good standing in the State of Texas during the term of this agreement. 903 shall immediately report to SEDCO in writing any change in this status, as it becomes known to 903.

B. The execution of this agreement has been duly authorized by 903, and the individual signing this agreement is empowered to execute such agreement and bind the corporation, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of 903's corporation agreement.

C. No litigation or governmental proceeding is pending or, to the knowledge of 903 or 903's officers, threatened against or affecting 903 that may result in any material adverse change in 903's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this agreement or the transactions contemplated hereby. 903

shall immediately report to SEDCO in writing, any change in the status as soon as it becomes known to 903.

- D. No certificate or statement delivered by 903 to SEDCO in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.
- E. There is no bankruptcy proceeding or other proceedings currently pending or contemplated, and 903 has not been informed of any potential involuntary bankruptcy proceedings. 903 shall immediately report to SEDCO in writing, the occurrence of such an event(s) as it becomes known to 903.
- F. To the best of its knowledge, 903 has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- G. 903 shall continue its full-time business activities at its facility in Sherman, Texas at all times throughout the term of this agreement or a minimum of twenty-four (24) months from the date of payment of the lump sum payment from SEDCO. 903 shall immediately report to SEDCO in writing any change in the status as soon as it becomes known to 903.
- H. 903 shall timely pay all ad valorem taxes due and owing by it to all taxing authorities having jurisdiction. All equipment shall be assessed on the Grayson County tax rolls. In addition, 903 shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities. All such taxes shall be paid before they become past due, unless they are being lawfully contested. 903 shall immediately report to SEDCO in writing any past due or delinquent taxes owed by 903.
- I. 903 shall complete the project required by this agreement and shall provide and staff the required employment positions, investment, and other economic development considerations described in this agreement and fully maintain the same during the term of this agreement. 903 shall immediately report to SEDCO in writing any changes in the status as soon as it becomes known to 903. Nothing in this agreement shall prevent 903 from requesting an amendment to this agreement for additional grant monies from SEDCO in the event additional capital investment is projected during the term of this agreement. However, any request for additional grant monies shall be submitted to the SEDCO Board of

Directors. Nothing in this agreement entitles 903 to future grant monies unless approved by SEDCO Board of Directors.

- J. 903 shall timely and fully comply with all of the terms and conditions of this agreement.
- K. 903 may not sell stock, assets or any ownership interest in 903 that would be more than twenty percent (20%) of the Company's total authorized and issued stock, assets or ownership interest, without prior written notice to SEDCO.
- L. 903 shall notify SEDCO in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, C.E.O., or Area/Plant Manager.
- M. At the time 903 makes a grant payment request or request any changes, amendments or addendums to or extensions of this agreement, the authorized representative shall submit an affidavit on behalf of 903 stating that all the covenants, warranties, obligations, terms and conditions of this agreement have been and are now in full and complete compliance by 903.

IV.

SUSPENSIONS/TERMINATION

- 4.1 SEDCO, under the following circumstances, and at its sole discretion, may suspend its obligations under this agreement or terminate this agreement and recover from 903 any of the money grants or consideration paid by SEDCO to 903, without any liability whatsoever to 903, upon any one of the following events, which are an act of default.
 - A. The insolvency of 903. "Insolvent" is defined to mean 903 has ceased to pay its debts in ordinary course of business when due and payable or cannot pay its debts as they become due, or insolvent within the meaning of the federal bankruptcy law.
 - B. The appointment of a receiver for 903 or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.
 - C. The adjudication of 903 as a bankrupt. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.

- D. The filing by 903 of a petition in bankruptcy or an answer to a petition seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding. 903 shall immediately report to SEDCO in writing the occurrence of such event(s) as soon as it becomes known to 903.

V.

REPORTING AND MONITORING

- 5.1 **Reports and Monitoring:** 903 agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement shall constitute an act of default:
- A. 903 shall provide SEDCO an annual report certifying the status of compliance through the life of the agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, TWC Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled and such other reports as may reasonably be required.
 - B. 903, during normal business hours, at its Sherman, Texas office, shall allow SEDCO reasonable access to its employment records and books, to verify employment and all other relevant records related to each of the other economic development considerations and incentives, as stated in this agreement, but the confidentiality of such records and information shall be maintained by SEDCO unless disclosure of such records and information shall be required by a court order, lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.
 - C. 903 shall make quarterly reports to SEDCO detailing demonstrated progress in sales growth, employment, outside financing and/or fixed assets. Said quarterly reports shall be due on January 15, April 15, July 15, and October 15 of each year of during the term of this agreement.

VI.

903's LIABILITY

- 6.1 Should 903 fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this agreement shall be an act of default by 903 and, if not fully and completely cured and corrected within thirty (30) days after written notice to do so, SEDCO may

terminate this agreement and pursue all legal remedies as provided by law, provided however that 903's liability under this agreement shall be limited to the immediate return by 903 to SEDCO of all money grants and consideration previously paid to it by SEDCO, all direct costs and expenses including, but not limited to, reasonable attorney fees and cost of court to collect such money and the termination of all further obligations on behalf of SEDCO under this agreement. 903 shall not be liable to SEDCO for any alleged consequential damages.

- 6.2 In the event of unforeseeable third party delays in the installation of the equipment contemplated herein or force majeure and upon a reasonable showing by 903 that it has immediately and in good faith commenced and diligently and continuously pursued the correction, removal or abatement of such delays by using its best efforts, SEDCO may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld. Failure by 903 to use its best efforts as required in this paragraph shall be an act of default.
- 6.3 Any delay for any amount of time by SEDCO in providing notice of default to 903 shall in no event be deemed or constitute a waiver of such default by SEDCO of any of its rights and remedies available in law or in equity.
- 6.4 Any waiver granted by SEDCO to 903 of an act of default shall not be deemed or constitute a waiver of any other existing or future act of default by 903 or of a subsequent act of default of the same act or event by 903.
- 6.5 In the event that this agreement is terminated by SEDCO or 903 commits an act of default that is not timely corrected and cured, 903 shall immediately return to SEDCO all money grants and consideration previously paid to it by SEDCO, and SEDCO shall be relieved of any further obligations under this agreement.

VII.

SEDCO'S LIABILITY LIMITATIONS

- 7.1 **Payments:** 903 specifically agrees that SEDCO shall only be liable to 903 for the actual amount of the grants to be conveyed and shall not be liable to 903 for any other actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by SEDCO under the terms of this agreement. It is further specifically agreed that SEDCO shall only be required to pay the grant amounts solely out of its sales tax revenue currently collected, allocated and budgeted and to be allocated, budgeted and collected for 903. Payment by SEDCO is strictly limited to those funds so allocated, budgeted and collected solely during the grant term of this agreement, being **December 8, 2015 through December 8, 2018**. SEDCO shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for

any one year be less than the total amount of grants to be paid to all contracting parties with **SEDCO** for that year, then, in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less **SEDCO's** customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year, and the amount of the shortage for that year to **903**, if any, shall not be offset or charged against any other funds budgeted by **SEDCO** during the grant term of this agreement or acquired by **SEDCO** after this agreement terminates. In this event, **SEDCO** will provide all supporting documentation, as requested. Payments to be made to **903** shall also require a written request from **903** to be accompanied by all necessary supporting documentation. **SEDCO** shall have forty five (45) days to make payment after receipt of such payment request. The payment request should be directed to Sherman Economic Development Corporation, 307 West Washington Street, Ste. 102, Sherman, Texas 75090. Payment to **903** shall be made to 903 Brewers, 1718 S Elm Street, Sherman, TX 75090.

VIII. **NOTICE OF DEFAULT**

- 8.1 **SEDCO** shall give **903** written notice of any act of default by **903**, and **903** shall have thirty (30) days after receipt of the notice to cure the default. Failure by **903** to timely and fully cure the act of default shall permit **SEDCO** to pursue all legal remedies provided by law and not specifically prohibited herein.
- 8.2 **903** shall give **SEDCO** written notice of any act of default by **SEDCO**, and **SEDCO** shall have thirty (30) days after receipt of the notice to cure the default. Failure by **SEDCO** to timely and fully cure the act of default shall permit **903** to pursue its legal remedies as provided in this agreement.

IX. **DEFINITIONS**

As used in this agreement, the following words or phrases shall have the following meanings.

- 9.1 **Compliance:** Shall mean timely, fully and completely performing or meeting each and every requirement, obligation, duty, condition, or warranty as stated in this agreement. Compliance shall mean complete compliance and shall not mean substantial compliance. "Act of Default" shall mean failure to timely and fully comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this agreement. **SEDCO** may, in its sole discretion, accept substantial compliance in lieu of full compliance by waiving such act of default solely by an instrument in writing.

- 9.2 **Full-Time Operations:** Shall mean the operation of company headquarters and the facility in Sherman, Texas not less than eight (8) hours per day, five (5) days a week, for fifty-two (52) weeks every fiscal year.
- 9.3 **Full-Time Job, or Full-Time Equivalent Job (FTE):** Shall mean a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work over a twelve (12) month term [forty (40) hours work per week], including allowance for vacation and sick leave, with full company benefits and employed exclusively and on-site in the City of Sherman, Texas. Use of a staffing agency is permitted provided all of the conditions herein are met.
- 9.4 **Insolvent:** Shall mean failure to timely pay all debts and obligations when first due in the ordinary course of business or inability to pay debts and obligations as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- 9.5 **Force Majeure:** Shall mean severe weather such as tornadoes or flooding, wars, riots and the unavailability of construction material from all sources.

X. GENERAL TERMS

- 10.1 **Entire Agreement:** This agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and except as otherwise provided herein, this agreement cannot be modified or amended without a written agreement of the parties.
- 10.2 **Legal Relationships:** No term or provision of this agreement or act of 903 in the performance of this agreement shall be construed as making 903, or its employees, the agent, servant, employee or contractor of SEDCO or shall create a partnership or a joint enterprise with SEDCO. The City of Sherman is a third-party beneficiary, and not a direct party to this agreement.
- 10.3 **Termination:** This agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of SEDCO and 903 under this agreement, except all rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination. Should litigation result over the interpretation or enforcement of any provision of this agreement, the prevailing party shall recover its costs of court and full attorney's fees.
- 10.4 **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

- 10.5 **Forum Selection:** This agreement and the relationship between SEDCO and 903 shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between SEDCO and 903 shall be the appropriate court in Grayson County, Texas. 903 consents to, and waives any objections to, in personam jurisdiction in Grayson County, Texas.
- 10.6 **Legal Construction:** In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 10.7 **Law:** This agreement is subject to all legal requirements in the City Charter and Code of Ordinances of the City of Sherman and all other applicable county, state and federal laws, and 903 agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other such governmental agencies. This agreement shall be governed by and construed in accordance with the laws and applicable court decisions of the State of Texas.
- 10.8 **Assignment:** This agreement shall be binding upon the parties hereto and their successors and assigns. This agreement may not be assigned by either party. However, in the event that 903 merges into or transfers substantially all of its assets into its parent company, if any, SEDCO hereby consents to such merger or transfer and consents to any assignment of 903's rights and obligations under this agreement as a result of such merger or transfer.
- 10.9 **Representation:** 903 represents that no SEDCO board member or employee, City of Sherman officer or employee, has been or will be compensated in any manner with respect to directly or indirectly bringing the parties hereto together, agreement negotiations, or the entering into of this agreement. In no event will 903 pay a fee to or in any other manner compensate any SEDCO board member or employee, City of Sherman officer or employee, in connection with the acceptance of this agreement. A breach of this provision (10.9) shall result in automatic and immediate termination of this agreement, and shall be an act of default by 903.
- 10.10 **Notices:** All notices from one party to the other, required under this agreement, shall be delivered personally or sent by certified mail, postage prepaid, addressed to such party at the addresses shown on the signature page. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change its address for notice by sending written notice of such change to the other in the manner provided herein.


- 10.11 **Other Contracts:** It is understood by 903 that SEDCO has heretofore entered, and may hereafter enter, into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this agreement, and 903 has no standing to object whatsoever to any such contracts or require any modifications or changes to its agreement due to such other agreements.
- 10.12 **City of Sherman:** The words "City" or "City of Sherman" shall mean both the area that is within the City limits of the City of Sherman and the area that is within Grayson County, Texas, and its extraterritorial and the municipal corporation entity that is the City of Sherman, Texas., and any area that SEDCO would determine is beneficial to the City on a project by project basis.
- 10.13 **SEDCO,** its officers and employees, and its agents or contractors retained to perform economic development services for SEDCO, shall treat as confidential the financial statements of 903 and shall not release such information to the public, unless required by law or court order. SEDCO shall immediately notify 903 of requests or court orders to release such information.
- 10.14 **Term:** This agreement becomes effective on **December 8, 2016**, hereinafter described as the "effective date", and shall terminate on **December 8, 2018**, when the requirements set forth in this agreement are completed, when terminated by mutual agreement of the parties, or when terminated as hereinabove provided.
- 10.15 Any representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties pertaining to the transaction contemplated hereby and not included herein, shall not survive the execution date of this agreement.

EXECUTED on the date shown opposite the signature of each party.

Date 12-8-15

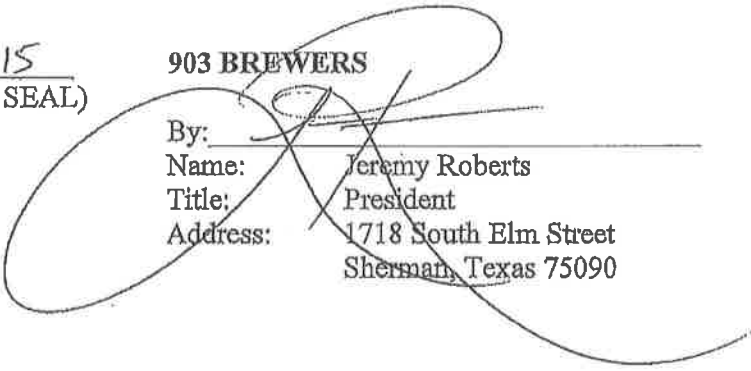
(CORPORATE SEAL)

**SHERMAN ECONOMIC DEVELOPMENT
CORPORATION**

By: 
Name: Willie Steele
Title: Chairman of the Board
Address: 307 West Washington, Ste.102
Sherman, Texas 75090

Date 12-17-15
(CORPORATE SEAL)

903 BREWERS

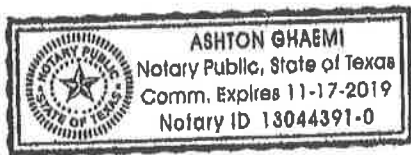
By: 
Name: Jeremy Roberts
Title: President
Address: 1718 South Elm Street
Sherman, Texas 75090

THE STATE OF TEXAS §

COUNTY OF GRAYSON §

BEFORE ME, on this day personally appeared **WILLIE STEELE**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **SHERMAN ECONOMIC DEVELOPMENT CORPORATION**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9th day of December, A.D., 2015.



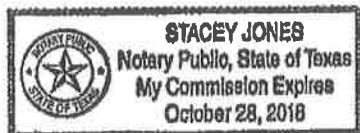
Ashton Ghaemi
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

THE STATE OF Texas §

COUNTY OF Grayson §

BEFORE ME, on this day personally appeared **JEREMY ROBERTS**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated as the act of the **903 BREWERS**, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 17th day of December, A.D., 2015.



Stacey Jones
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

ORDINANCE NO. 6095

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A BREWERY AND RETAIL/EVENT CENTER IN A C-1 (RETAIL BUSINESS) DISTRICT AT 1002 NORTH WALNUT STREET, BEING THE WEST 38' OF LOT 1 AND LOTS 2, 3, 4 AND 6, BLOCK 1, J. F. EVANS ADDITION AND A PART OF THE J. B. MCANAIR SURVEY, ABSTRACT NO. 763 FOR A TOTAL OF 2.184 ACRES (1002 N WALNUT, LLC, OWNERS; 903 BREWERS, TENANTS; AND DAVID BACA STUDIO, LLC, ARCHITECT); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS;

SECTION 1. That, from and after the passage of this ordinance, 1002 N Walnut, LLC (Owners) 903 Brewers (Tenants) and David Baca Studio, LLC (Architect) are granted a Specific Use Permit to allow a brewery and retail/event center in a C-1 (Retail Business) District at 1002 North Walnut Street, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the City of Sherman, County of Grayson, State of Texas, and being a part of the J. B. McAnair Survey, Abstract No. 763, and being all of the 98,115.48 sq. ft. tract of land conveyed to 1002 N. Walnut, LLC by Ipenema Investments, Ltd. by Warranty Deed dated July 27, 2016 and recorded in Volume 5846, Page 501, Official Public Records, Grayson County, Texas, said 98,115.48 sq. ft. tract also including all of Lots 2, 3, 4 and 6 and the West 38 ft. of Lot 1, J. F. Evans Addition

to the City of Sherman, Texas, as per plat of record in Volume 166, Page 112, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch rebar found in the South line of Hill Street, a public street, at the Northeast corner of the 0.49 ac. tract of land conveyed to W. Douglass Distributing, Ltd. in Volume 3995, Page 19, said Official Public Records, at the Northwest corner of both said Lot 5 and said 98,115.48 sq. ft. tract;

THENCE North 76 deg. 44 min. 54 sec. East, with the South line of said Hill Street and the North line of both said Lots 5, 4, 3, 2 and 1 and said 98,115.48 sq. ft. tract, a distance of 265.82 ft. to a 1/2 inch square tube found at the Northeast corner of said 98,115.48 sq. ft. tract;

THENCE South 10 deg. 59 min. 37 sec. East, over and across said Lot 1, with the West line of Walnut Street, a public street and the East line of said 98,115.48 sq. ft. tract, a distance of 296.98 ft. to a 1/2 inch capped rebar set stamped "RPLS 6578" at an angle point;

THENCE South 15 deg. 07 min. 16 sec. West, continuing with the West line of said Walnut Street and the East line of said 98,115.48 sq. ft. tract, a distance of 100.00 ft. to a 1/2 inch square tube found at the Southeast corner of said 98,115.48 sq. ft. tract;

THENCE South 76 deg. 03 min. 49 sec. West, with the North line of Piner Evans Street, a public street at the South line of said 98,115.48 sq. ft. tract, a distance of 193.17 ft. to a 1/2 inch capped rebar set stamped "RPLS 6578" in the East line of the 0.58 ac. tract commonly known as Lot 1, Debbie's Addition to the City of Sherman, Texas, as per plat of record in Volume 24, Pages 88 & 89, said Plat Records, at the Southwest corner of said 98,115.48 sq. ft. tract, being North 15 deg. 21 min. 16 sec. West, 4.07 ft. from a 1/2 inch capped rebar found stamped "RPLS 3694" at the Southeast corner of said 0.58 ac.;

THENCE North 15 deg. 21 min. 16 sec. West, with the East line of said 0.58 ac. and the West line of said 98,115.48 sq. ft. tract, a distance of 161.99 ft. to a 1/2 inch rebar found at the Southeast corner of the 0.31 ac. tract of land conveyed to Keith A. Burgos in Volume 5421, Page 310, said Official Public Records, at the Northeast corner of said 0.58 ac.;

THENCE North 15 deg. 09 min. 31 sec. West, with the East line of said Burgos 0.31 ac. and the West line of said 98,115.48 sq. ft. tract, passing the Southwest corner of said Lot 5 and continuing now with the West line of said Lot 5, passing the Northeast corner of said Burgos 0.31 ac. and the Southeast corner of said W. Douglass Distributing 0.49 ac. and continuing now with the East line of said W. Douglass Distributing 0.49 ac. for a total distance of 225.29 ft. to the **PLACE OF BEGINNING and containing 2.184 ACRES of land.....**

SECTION 2. That this specific use permit is granted on the following conditions:

Zoning:

1. All aspects of the C-1 (Retail Business) District, the sign ordinance, the screening ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
3. Parking ratios will be dependent on use; if the ratio cannot be met, an exception will need to be approved. Restaurants are required to have 1 parking space per 4 seats.
4. A parking space is considered to be 9'x20'.
5. All parking shall be on private property and shall not encroach onto Hill, Walnut or Piner Evans Streets.
6. The building/buildings shall not exceed 45' in height.
7. Shall comply with all EPA, City, Federal and State regulations for this use.
8. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
9. Review the zoning and development ordinance for additional requirements.
10. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

11. Platting of the property is required.
12. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
13. The location of the trash receptors must be approved by the Public Works Department.
14. Privately owned and maintained detention in accordance with City criteria is required.
15. Final site plans, utility, drainage and grading plan shall be provided and approved by the City Engineering Department.
16. All requirements of the Floodplain Ordinance should be followed.

SECTION 3. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 8, Subsection (5)(a), Ordinance No. 2280.

SECTION 4. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.00.

SECTION 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the 15th day of January, 2018.

ADOPTED on this the 15th day of January, 2018.

EFFECTIVE DATE on this the 15th day of January, 2018.

CITY OF SHERMAN, TEXAS

BY: 
DAVID PLYLER, MAYOR

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: 
BRANDON S. SHELBY,
CITY ATTORNEY



Sherman
CLASSIC TOWN. BROAD HORIZON.

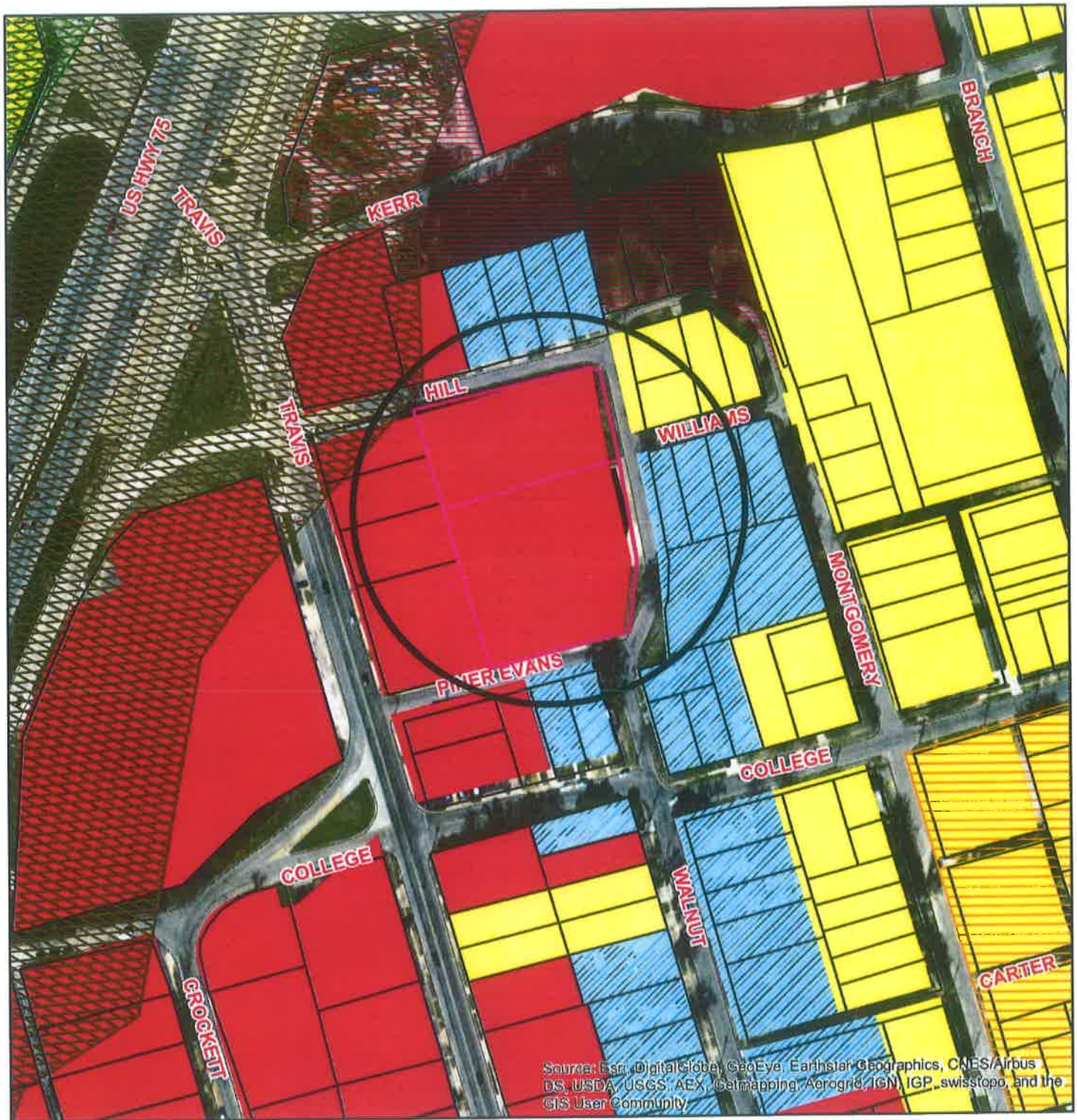
1002 N. Walnut Street



NOT TO SCALE

1 in = 400 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 1002 N. Walnut

Legend

Special Districts Overlay

DISTRICT_NAME

- Arts and Cultural District
- Black Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District
- Transportation Corridor

Representation: ShermGIS.DBO.TransportationCorridor_Rep

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- BH 289
- FM 691

Zoning Districts

Representation: ShermGIS.DBO.ZoningDistrict_Rep

- BIP Black Industrial Park
- C-1 Retail Business District

C-2 General Commercial District

- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District

1 in = 200 ft

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

1002 N. Walnut





22 November 2017

Scott Shadden, Director of Development Services
City of Sherman Building & Zoning
220 West Mulberry Street
Sherman, Texas 75090

RE: Request for a Special Use Permit

Dear Mr. Shadden,

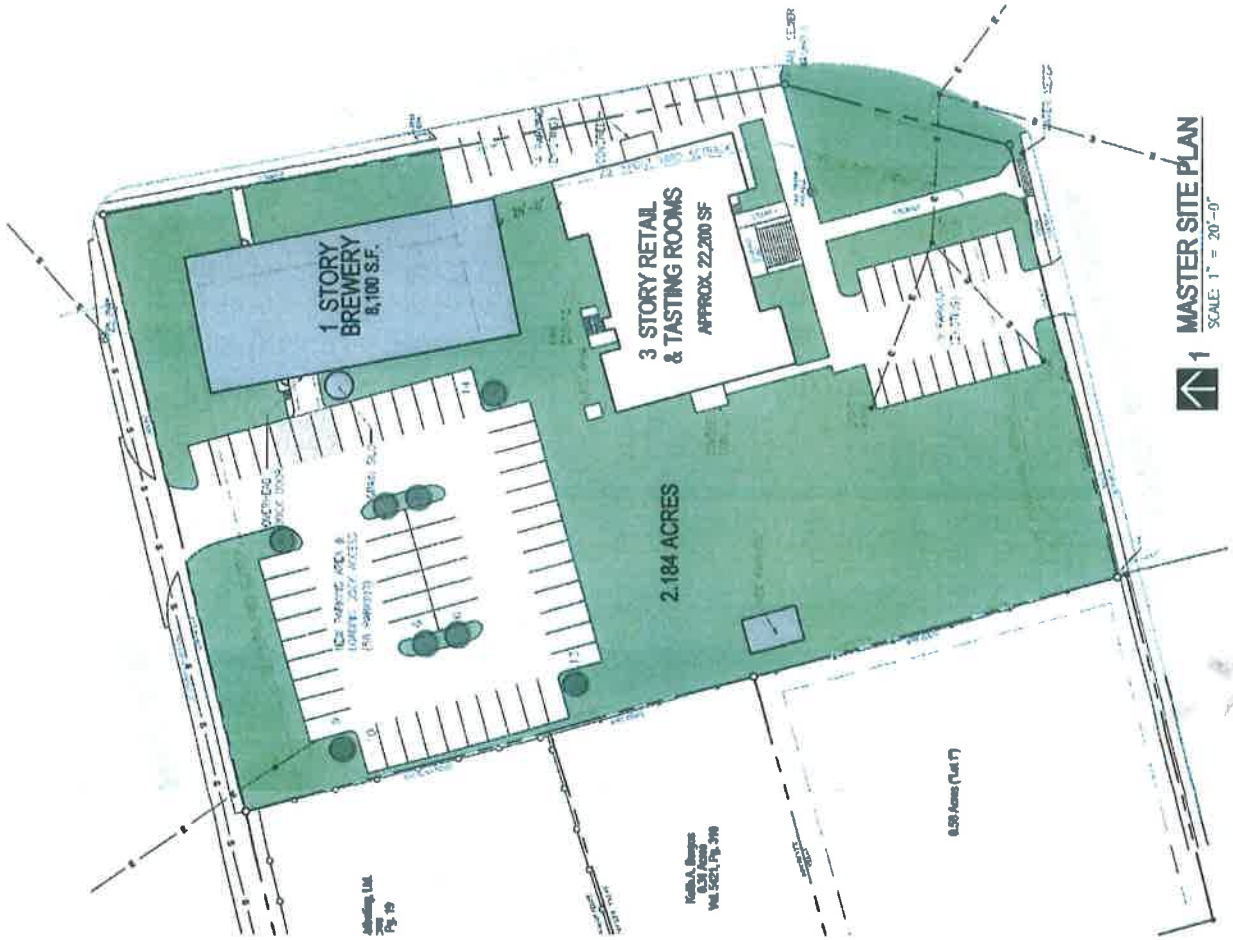
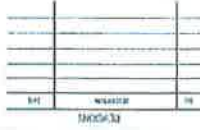
It is my pleasure to submit to you this request for a Special Use Permit, on behalf of 903 Brewers, for the property shown in the attached drawing and listed on the attached Zoning Application.

The Owner of the property, located at 1002 North Walnut, is requesting a Special Use Permit from the City of Sherman to build and operate a brewery (alcoholic beverage manufacturing) on this Lot. We believe this addition to the property, along with the renovation and adaptive re-use of the former Lee Elementary School, will be a positive boost to Sherman's tourism industry.

Please do not hesitate to contact me with any questions or clarifications, or to request adjustments to this submittal.

Sincerely,

David Baca AIA, Architect + Principal



1 MASTER SITE PLAN
SCALE: 1" = 20'-0"

**LOTS 1-6 of JF EVANS ADDITION
JB McANAIR SURVEY**

SITE PLAN STATISTICS:	
ZONING:	C-1, RETAIL BUSINESS
GROSS AREA:	2.184 AC. (95,175 S.F.)
BUILDING AREA, EXISTING	22,206 S.F.
LANDSCAPED AREA, EXISTING	30,000 S.F.
LANDSCAPED AREA, TOTAL	30,000 S.F.
IMPERVIOUS AREA:	49,310 S.F.
LANDSCAPED AREA:	N/A
PARKING REQUIRED:	111 SPACES
RETAINMENT AREA, EXISTING	2 SPACES
RETAINMENT AREA, TOTAL	2 SPACES
NET AREA = 1,100,000 S.F.	121 SPACES (9 H.C. SPACES)
TOTAL	91 SPACES (4 H.C. SPACES)
PARKING PROVIDED:	630 SPACES
SWATH:	

WHEN EVENTS WARRANT THE NEED FOR PARKING BEYOND THE CAPACITY OF THIS SITE, THE OWNER SHALL PROVIDE VALET PARKING FOR ITS GUESTS. VALETED VEHICLES WILL BE PARKED IN THE DESIGNATED VALET PARKING LOT. ALL PARKING SHALL BE IN THE RESERVED CITY-OWNED PARKING LOTS DURING NIGHTS AND WEEKENDS.

ZONED SITE PLAN NOTES:

1. SITE SURVEY PREPARED BY HELVEY-WHIGGAM SURVEYING, INC., 222 WEST MAIN STREET, DUNSON, TEXAS 75020 (940.463.0191).
2. PROVIDE FIRE LANE STRIPING IN ACCORDANCE WITH THE CITY OF SHERMAN'S REGULATIONS. FIRE LANE STRIPING SHALL BE 3'-0" TYPICAL.
3. LANDSCAPING SHALL BE INSTALLED IN COMPLIANCE WITH THE CITY OF SHERMAN LANDSCAPING STANDARDS.
4. ALL PLOTS NOT DIMENSIONED ARE 3'-0" TYPICAL.
5. LANDSCAPING WITHIN THE PROPOSED NEW PARKING AREA SHALL COMPLY WITH THE CITY OF SHERMAN LANDSCAPE ORDINANCE.



903 Brewery & Event Center

STAFF REVIEW LETTER

December 8, 2017

1002 N Walnut LLC
PO Box 1662
Pottsboro, TX 75076

David Baca Studio, LLC
100 N. Travis, Ste. 500A
Sherman, TX 75090

903 Brewers
1718 S. Elm St.
Sherman, TX 75090

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow a brewery and retail/event center in a C-1 (Retail Business) District for the property located at 1002 North Walnut Street has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, December 19, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. All aspects of the C-1 (Retail Business) District, the sign ordinance, the screening ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
3. Parking ratios will be dependent on use; if the ratio cannot be met, an exception will need to be approved. Restaurants are required to have 1 parking space per 4 seats.
4. A parking space is considered to be 9'x20'.
5. All parking shall be on private property and shall not encroach onto Hill, Walnut or Piner Evans Streets.
6. The building/buildings shall not exceed 45' in height.
7. Shall comply with all EPA, City, Federal and State regulations for this use.
8. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
9. Review the zoning and development ordinance for additional requirements.
10. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

11. Platting of the property is required.
12. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
13. The location of the trash receptors must be approved by the Public Works Department.
14. Privately owned and maintained detention in accordance with City criteria is required.
15. Final site plans, utility, drainage and grading plan shall be provided and approved by the City Engineering Department.
16. All requirements of the Floodplain Ordinance should be followed.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Scott Shadden at 903-892-7229 prior to the meeting.

Respectfully,

A handwritten signature in black ink, reading "Scott Shadden". The signature is fluid and cursive, with the first name "Scott" being more prominent than the last name "Shadden".

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 13.

Meeting Date: 12/19/2017

Prepared by: Patsy Reeves, Developmental Services Admin Secretary
Scott Shadden, Director of Development Services

Clay Mahone, Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

1002 N. WALNUT STREET

The request of 1002 N Walnut, LLC (Owners) 903 Brewers (Tenants) and David Baca Studio, LLC (Architect) concerning the property located at 1002 North Walnut Street, being the west 38' of Lot 1 and Lots 2, 3, 4 and 6, Block 1, JF Evans Addition and a part of the JB McAnair Survey, Abstract No. 763 for a total of 2.184 acres, as follows:

Planning and Zoning Board

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow a brewery and retail/event center in a C-1 (Retail Business) District.

Background:

The property is located at 1002 North Walnut Street, bound by Piner Evans, Hill and Walnut Streets and was the former Lee Elementary School. 903 Brewers would like to build and operate a brewery (alcoholic beverage manufacturing) on this property. The one-story metal brewery will be approximately 8,100 square foot. A grain silo will be built next to the brewery and a pavilion. The existing three-story, 22,206 square foot building will be renovated for retail and an event center; parking will be provided for ninety-one spaces.

Adjacent Zoning:

R-1 (One Family Residential) District
R-2 (Multi-Family Residential) District
C-1 (Retail Business) District

Origination:

1002 N Walnut, LLC (Owners)
903 Brewers (Tenants)
David Baca Studio, LLC (Architect)

Master Plan Designation:

Urban/Downtown – Buildings are two to five stories and are built right up to the sidewalk, creating a sense of enclosure. Sidewalks provide pedestrian access and streetscape amenities. Parking is available along the street or in small parking lots in the rear of the buildings.

Number of notices mailed:

21

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Narrative

Site Plan

Elevations

Staff Review Letter

Letter from Number One RWM LTD
