

UNOFFICIAL COPY

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1224/0035 55 001 Page 1 of 8
2002-08-22 10:35:21
Cook County Recorder 35.00

THIS INSTRUMENT PREPARED BY:
Bruce A. Salk
Cohen, Salk & Huvar, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:
American Chartered Bank
1199 E. Higgins Road
Schaumburg, IL 60173
Attention: James Olson



2079022103
of me

JSK

ASSUMPTION AND MODIFICATION AGREEMENT

THIS ASSUMPTION AND MODIFICATION AGREEMENT (hereinafter referred to as this "Modification Agreement") made as of this 24th day of December, 2001, by and among HOWE HOLDINGS, LLC, a Delaware limited liability company ("LLC"), MARY C. HOWE ("Howe") (LLC and Howe are hereinafter collectively referred to as the "Obligors") and AMERICAN CHARTERED BANK ("Lender").

WITNESSETH:

WHEREAS, Howe has previously executed and delivered to Lender that certain mortgage note dated as of January 17, 2001 in the original principal sum of One Million Eighty Thousand and 00/100 (\$1,080,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated of even date therewith made by LLC in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010050180 (the "Mortgage") on property commonly known as 1650 North Elston, Chicago, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents dated of even date with the Note made by LLC in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0010050181 (the "Assignment");
- (iii) assignment of membership interest dated of even date with the Note made by Howe in favor of Lender granting Lender a security interest in all of the Class A membership interests in the LLC (the "Assignment of Interest");
- (iv) environmental indemnity agreement dated of even date with the Note made by Howe in favor of Lender (the "Indemnity"); and
- (v) UCC-1 financing statement made by Howe in favor of Lender.

BOX 333-CT

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WHEREAS, the Obligors have requested that Lender consent to the assumption of the Note by LLC; and

WHEREAS, Lender has consented to such request, provided (i) Obligors execute and deliver this Modification Agreement to Lender, (ii) LLC executes and delivers to Lender an environmental indemnity agreement; and (iii) Howe executes and delivers to Lender a guaranty.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises (as defined in the Mortgage) and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. The Note is hereby modified as follows:
 - a. The following is hereby added as an additional Event of Default:

"E. In the event of the dissolution or bankruptcy of Borrower;"
 - b. The following is hereby added as the last sentence of the first paragraph on page 3 immediately after the words "...the Default Rate":

"Notwithstanding anything to the contrary contained in the Note or the Loan Documents, upon an Event of Default, Lender shall only be entitled to pursue its remedies against Guarantor, against the Borrower to the extent of Guarantor's membership, distributive rights and percentage interest in the Borrower, and against the Premises by enforcement of the Mortgage, the assignment and/or the Assignment of Interest."

- c. The notice address for the borrower is changed to be: "Howe Holdings, LLC, 1650 North Elston Avenue, Chicago, Illinois 60622, Attention: Mary C. Howe, Fax No. 773.384.1310".

3. LLC hereby assumes all of the indebtedness, liabilities, and obligations of Howe under the Note, as modified, as if LLC was an original maker or grantor of such document, and covenants and agrees to pay, perform and observe all of the indebtedness, liabilities, and obligations (including, without limitation, all covenants, agreements and undertakings) of Howe under the Note.

4. The Indemnity is hereby modified by adding the following new paragraph to section VI thereof:

" D. Notwithstanding anything to the contrary contained in the Note or the Loan Documents, upon an Event of Default (as defined in the Note), Lender shall only be entitled to pursue its remedies against Mary C. Howe, against the Borrower to the extent of Mary C. Howe's membership, distributive rights and percentage interest in the

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Borrower, and against the Premises by enforcement of the Mortgage, the assignment and/or the Assignment of Interest.”

5. Concurrent with the execution of this Modification Agreement, LLC shall execute and deliver to Lender an environmental indemnity agreement in favor of Lender.

6. Concurrent with the execution of this Modification Agreement, Howe shall execute and deliver to Lender a guaranty, in such form as Lender shall reasonably require.

7. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

8. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Note).

9. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

10. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

11. Obligors hereby irrevocably consent to the aforesaid assumption by LLC, and irrevocably agree that their liability under the Note and any other loan documents executed in connection with the Note, shall not in any way be affected, modified, or discharged in any fashion by the assumption and modification of the Note and the Loan Documents contained in this Modification Agreement.

12. The Obligors hereby ratify and confirm their respective obligations and liabilities under the Note and the Loan Documents, as hereby assumed and modified, and the liens and security interest

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created thereby, and acknowledge that they have no defenses, claims or set-offs against the enforcement by Lender of the respective obligations and liabilities of the Obligors under such documents, as so assumed and modified.

13. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

14. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.


15. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

16. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, the undersigned have caused this Modification Agreement to be executed as of the date first above written.

HOWE HOLDINGS, LLC, a Delaware limited liability company

By: 
Mary C. Howe, a manager

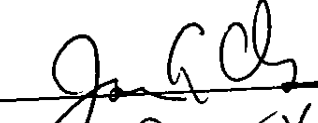
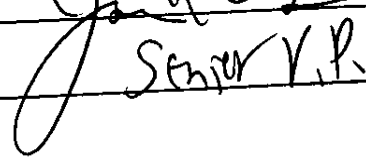
[SIGNATURES CONTINUED ON NEXT PAGE]

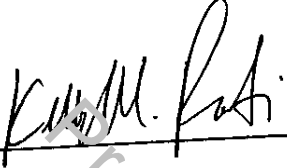
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MARY C. HOWE, individually

AMERICAN CHARTERED BANK

By: 
Its:  Senior V.P.

Attest: 
Its: COMMERCIAL LENDING ASST.

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STATE OF ILLINOIS)
) SS
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARY C. HOWE personally known to me as the manager of HOWE HOLDINGS, LLC, a Delaware limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as such manager of said limited liability company, pursuant to authority, given by the members of said limited liability company, as her own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of December, 2001.

Theresa L Merrill
Notary Public

My Commission Expires: 4/4/02



STATE OF ILLINOIS)
) SS
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT MARY C. HOWE personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 24th day of December, 2001.

Theresa L Merrill
Notary Public

My Commission Expires: 4/4/02



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COOK COUNTY CLERK'S OFFICE
JAN 10 2011 10:30 AM
CLERK'S OFFICE
JAN 10 2011 10:30 AM

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that JAMES E. DIZON of AMERICAN CHARTERED BANK, a national banking association, and Senior Vice President of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes therein set forth; and the said _____ did also then and there acknowledge that (s)he, as custodian for the corporate seal of said banking association did affix the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes set forth.

Given under my hand and notarial seal this _____ day of _____, 2001.

Rebecca L. Ambrosion

Notary Public

My Commission Expires: 4/30/06



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EXHIBIT "A"

PIN NO. 14-32-315-006-0000
14-32-315-007-0000
14-32-315-016-0000

ADDRESS: 1650 North Elston Avenue, Chicago, Illinois

LOTS 10 THROUGH 23 BOTH INCLUSIVE (EXCEPT THE SOUTHEASTERLY 16.0 FEET OF SAID LOT 23) TOGETHER WITH THE NORTHWESTERLY 125.0 FEET OF THE FOLLOWING DESCRIBED PROPERTY: THE SOUTHEASTERLY 16.0 FEET OF LOT 23 AND LOTS 24, 25, 26, 27 AND 28 (AS MEASURED ON THE NORTHEASTERLY LINE OF SAID LOTS) ALL TAKEN AS A SINGLE TRACT OF LAND, EXCEPTING FROM SAID TRACT THAT PART BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID TRACT; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF SAID TRACT, A DISTANCE OF 203.27 FEET TO A JOINT BETWEEN EXISTING 2 STORY CONCRETE BUILDING AND AN EXISTING 1 STORY BRICK BUILDING (THE NORTHEASTERLY LINE OF SAID TRACT ALSO BEING THE SOUTHWESTERLY LINE OF NORTH ELSTON AVENUE); THENCE SOUTHWESTERLY ALONG SAID JOINT BETWEEN SAID BUILDINGS AND SAID JOINT EXTENDED TO A POINT ON THE SOUTHWESTERLY LINE OF SAID TRACT (SAID POINT BEING 204.20 FEET NORTHWESTERLY OF THE SOUTHWESTERLY CORNER OF SAID TRACT); THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 204.20 FEET TO THE SOUTHWESTERLY CORNER OF SAID TRACT (THE SOUTHWESTERLY LINE OF SAID TRACT ALSO BEING THE NORTHEASTERLY LINE OF NORTH BESLY COURT); THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID TRACT TO THE PLACE OF BEGINNING, ALL IN BLOCK 7 IN CHICAGO DISTILLERY COMPANY'S SUBDIVISION OF BLOCK 19 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Clerk's Office

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