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Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/06/2009 02:52 PM Pg: 1 of 10

Prepared by and after
recording return to:
Scott H. Kenig, Esq.
c/o Randall & Kenig LLP
455 N. Cityfront Plaza, Suite 2510
Chicago, Illinois 60611
File No. 10407.01400

AGREEMENT AND FIRST MODIFICATION OF PROMISSORY NOTE AND RELATED LOAN DOCUMENTS

This Agreement and First Modification of Promissory Note and Related Loan Documents (this "**Agreement**") is made as of the 19th day of January, 2009 with an effective date of December 31, 2008 by and among **HOWE HOLDINGS LLC**, a Delaware limited liability company (the "**Borrower**"), with its principal place of business at 1650 N. Elston Avenue, Chicago, Illinois 60622, **MARY C. HOWE** whose address is 1650 N. Elston Avenue, Chicago, Illinois 60622 ("**Guarantor**") and **AMERICAN CHARTERED BANK** (the "**Lender**"), with its principal office at 1199 E. Higgins Road, Schaumburg, Illinois 60173.

RECITALS:

A. On December 29, 2003, Borrower executed a Mortgage Note in the original principal amount of One Million Six Hundred Ninety-One Thousand and No/100 Dollars (\$1,691,000.00) (the "**Note**"), which is payable to the order of and delivered to Lender.

B. The Note is secured by a mortgage (the "**Mortgage**") and assignment of rents and leases (the "**Assignment of Rents**") of even date with the Note executed by Borrower in favor of Lender and recorded on January 8, 2004 as Document Nos. 0400842248 and 0400842249, respectively in the Cook County Recorder's Office which encumber the real property and improvements legally described on Exhibit A attached hereto and commonly known as 1650 North Elston Avenue, Chicago, Illinois 60622 (the "**Real Estate**").

C. The Note is further secured by Guarantor's pledge of a security interest in all of her membership interest (the "**Membership Interest**") in Borrower pursuant to that certain Assignment of Membership Interest (the "**Assignment**") to Lender dated December 29, 2003 and perfected by

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that certain UCC-1 Financing Statement (the “**Financing Statement**”) filed with the Secretary of State of Illinois on January 23, 2001 as Document No. 4327600.

D. The Note is also secured by an Environmental Indemnity Agreement (the “**Indemnity Agreement**”) of even date with the Note executed by Borrower to Lender.

E. The Note is also guaranteed by Guarantor pursuant to that certain Guaranty agreement (the “**Guaranty**”) dated December 29, 2003.

F. As of December 1, 2008, the following amounts were due and owing under the Note:

Principal:	\$1,472,065.29
Interest:	<u>5,173.95</u>
Total:	\$1,477,239.24

G. On December 31, 2008, the Note matured and Borrower has requested that Lender extend the maturity date of the Note to December 1, 2013 and Lender has agreed to do so in consideration of Borrower’s agreement to revise the Note to add a minimum interest rate factor and new interest rate margin all in accordance with the terms and conditions contained herein.

H. The Note, Mortgage, Assignment of Rents, Assignment, Financing Statement, Indemnity Agreement, Guaranty, this Agreement and any other document executed in connection with the Note, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions and modifications thereof and thereto, are sometimes hereinafter collectively referred to as the “**Loan Documents**”.

NOW THEREFORE, in consideration of the premises, terms, conditions and promises contained herein and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Incorporation**. The recitals to this Agreement are fully incorporated herein by this reference and shall have the same force and effect as though restated herein.
2. **Definitions**. All Capitalized terms used in this Amendment and not defined herein shall have the meaning ascribed to such terms in the Loan Documents.
3. **Modification of the Note**. The Note is hereby modified as follows:
 - a. The interest rate margin contained in the first paragraph of the Note of “one-quarter percent (.25%)” is stricken and replaced with “three-eighths percent (.375%)”.

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b. At the end of the first paragraph on page one of the Note, the following new sentence shall be added: “**NOTICE:** Under no circumstances will the interest rate under this Note be less than 4.750% per annum or more than the maximum rate allowed by applicable law.”

c. The Maturity Date in paragraph two of the Note of “December 31, 2008” is stricken and replaced with “December 1, 2013”.

d. In all other respects, the Note, except as modified herein, shall remain in full force and effect as amended.

4. **Modification of the Mortgage.** The Mortgage is hereby modified as follows:

a. The maturity date of the Note defined in the first **WHEREAS** clause on page of the Mortgage of “31st day of December, 2008” is stricken and replaced with “1st day of December, 2013”.

b. In all other respects, the Mortgage shall remain in full force and effect, as amended.

5. **Payments.** The parties hereto acknowledge Borrower’s payment and Lender’s receipt of the loan payment due and owing under the Note for January 1, 2009 and the next payment due date under the Note of February 1, 2009 and on the first day of each month thereafter through the Maturity Date pursuant to the terms and conditions of the Note.

6. **General Representations and Warranties.** Borrower and Guarantor hereby represent and warrant that: (i) the Loan Documents are fully enforceable in accordance with their terms; (ii) the Loan Documents constitute legal, valid and binding obligations of Borrower and Guarantor, as the case may be; and (iii) the liens and security interests granted under the Loan Documents are duly perfected in accordance with applicable law.

7. **Reaffirmation and Ratification of Guaranty.** Guarantor hereby consents to this Agreement and to the execution and delivery by Borrower to Lender of this Agreement. Guarantor hereby ratifies and confirms her respective liabilities and obligations under the Guaranty, Note and any other Loan Documents, all as amended by this Agreement.

8. **Reaffirmation and Ratification by Borrower.** Borrower hereby ratifies, confirms and adopt its liabilities and obligations under the Note, Mortgage and any other Loan Documents, all as amended by this Agreement, and the liens and security interests created thereby.

9. **Fees.** Borrower and Guarantor agree to pay or reimburse Lender for all reasonable costs and expenses of seeking advice in regard to negotiating, documenting, enforcing or preserving Lender’s rights under the Loan Documents, this Agreement or any document or instrument executed in connection herewith or therewith (including, without limitation, attorneys’ fees). All of such costs

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and expenses shall be included in the Note as additional principal due and owing Lender and shall be secured by the Loan Documents and Guaranty until paid.

10. **Further Assurances.** Borrower and Guarantor will, on request of Lender, from time to time, execute and deliver such documents as may be reasonably necessary and reasonably acceptable to Borrower and Guarantor to perfect and maintain perfected as a valid first lien in the Membership Interest pursuant to the Assignment and maintain perfected as a valid first lien on the Real Estate the lien granted to Lender pursuant to the Mortgage, and to fully consummate the transactions and to effect the purposes contemplated by this Agreement.

11. **Time is of the Essence.** Time is of the essence of the payment of all amounts due pursuant to the terms of this Agreement and performance and observation by Borrower and Guarantor of each covenant, agreement, provision and term of this Agreement.

12. **Governias Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

13. **Construction.** This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by any of the other parties hereto in entering into this Agreement.

14. **Gender.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine, and neuter genders, and any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

15. **Entire Agreement.** Borrower, Guarantor and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement and the documents executed in connection herewith, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender.

16. **Successors and Assigns.** Except as provided herein, this Agreement shall be binding upon and shall inure to the benefit of Borrower, Guarantor and Lender and their respective successors, assigns, grantees, heirs, executors, personal representatives, and administrators.

17. **Ratification.** Except for Lender's security interest in the Membership Interest and the Real Estate, Borrower and Guarantor represent to Lender that there are no other ownership interests, liens, or other interests now outstanding against the Membership Interest and or the Real Estate and that the liens of Lender have been, are, and remain the superior, paramount and first lien in the Membership Interest and the Real Estate.

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18. **Consent.** Borrower and Guarantor acknowledge that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood and have been fully and unconditionally consented to by them, and that Borrower and Guarantor have had full benefit and advice of counsel of their or its own selection, or the opportunity to obtain the benefit and advice of counsel of their or its own selection, in regard to understanding the terms, meaning, and effect of this Agreement, and that Borrower and Guarantor have full power and authority to enter into this Agreement and this Agreement has been entered into by Borrower and Guarantor freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, Borrower and Guarantor are relying on no other representations, either written or oral, express or implied, made to Borrower and Guarantor by any other party hereto, and that the consideration received by Borrower and Guarantor hereunder has been actual and adequate.

20. **Release.** As additional consideration for Lender's agreement to enter into this Agreement, Borrower and Guarantor hereby release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions, and causes of action whatsoever which Borrower and Guarantor may now have or claim to have against Lender, as of the date hereof, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of, or founded upon the Loan Documents, this Agreement, and any document related thereto, including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the date of this Agreement.

21. **Counterparts.** It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement.

22. **Notices.** Any notice that Lender or Borrower and Guarantor may desire or be required to give to the other shall be in writing and shall be mailed to the intended recipient thereof at its address set forth in the Loan Agreement and shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested.

23. **Enforceability.** If any provision of this Agreement is held invalid or unenforceable as to any party, the remainder of this Agreement shall not be affected thereby, the provisions of this Agreement being severable in any such instance. This Agreement shall be deemed to specifically amend the Note and Mortgage as aforesaid and made a part thereof. If there are any discrepancies between the Note and Mortgage in their original form and the terms of this Agreement, the terms of this Agreement shall control.

24. **No Impairment.** Nothing contained herein shall be deemed to or shall in any manner prejudice or impair, or act as a release or relinquishment of, any lien, security interest or assignment

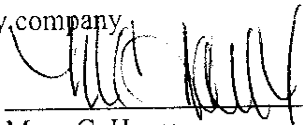
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granted to and/or held by the Lender in connection with the Loan Documents. Except as otherwise expressly provided herein, the execution hereof by the Lender does not, and shall not be deemed to, constitute a waiver, limitation or modification of any of the Lender's rights or remedies under the Loan Documents, or applicable law, all of which the Lender hereby expressly reserves, nor shall the same constitute a waiver of any default which may have heretofore occurred or which may hereafter occur with respect to the Loan Documents.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.


BORROWER:

HOWE HOLDINGS, LLC, a Delaware limited liability company

By:  _____
Mary C. Howe

Its: Manager

GUARANTOR:

 _____
Mary C. Howe, individually

LENDER:

AMERICAN CHARTERED BANK

By:  _____
Dean M. Stork

Its: Senior Vice President

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CONSENT AND REAFFIRMATION

The undersigned, Howe Corporation, an Illinois corporation ("**Howe**"), is a party to that certain Subordination and Attornment Agreement (the "**Subordination Agreement**") dated December 29, 2003 by and among Howe, Howe Holdings, LLC and American Chartered Bank and hereby expressly: (a) consents to the execution by Borrower and Bank of the Agreement and First Modification of Promissory Note and Related Loan Documents to which this Consent and Reaffirmation is attached (the "**Agreement**"); (b) acknowledges that Howe does not have any set-off, defense or counterclaim to the performance of any of the obligations of Howe under the Subordination Agreement; (c) reaffirms, assumes and binds itself in all respects to all of the obligations, liabilities, duties, covenants, terms and conditions that are contained in the Subordination Agreement; (d) agrees that all such obligations and liabilities under the Subordination Agreement shall continue in full force and effect and shall not be discharged, limited, impaired or affected in any manner whatsoever by the Agreement; and (e) represents and warrants that each of the representations and warranties made by Howe in the Subordination Agreement remain true and correct as of the date hereof.

HOWE CORPORATION, INC., an Illinois corporation

By:  _____

Mary C. Howe

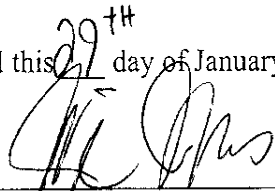
Its: President

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Dean M. Stork, senior vice president of American Chartered Bank, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument in his capacity as senior vice president of American Chartered Bank, as his free and voluntary act, and as the free and voluntary act of American Chartered Bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 29th day of January, 2009.



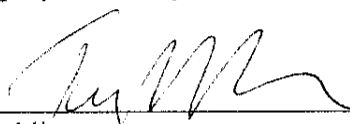
Notary Public
Commission expires 10/08/12



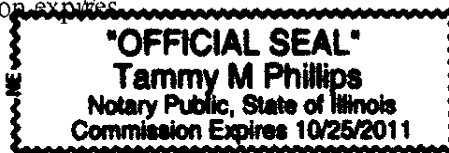
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mary C. Howe, as manager of Howe Holdings, LLC, personally known to me to be the 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 in her capacity as manager of Howe Holdings, LLC, as her free and voluntary act, and as the free and voluntary act of Howe Holdings, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 29 day of January, 2009.



Notary Public
Commission expires

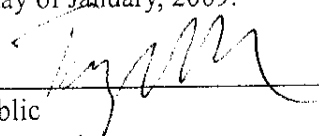


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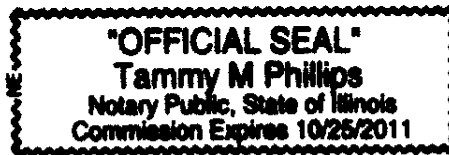
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mary C. Howe, as president of Howe Corporation, Inc., personally known to me to be the 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 in her capacity as president of Howe Corporation, Inc., as her free and voluntary act, and as the free and voluntary act of Howe Corporation, Inc., for the uses and purposes therein set forth.

Given under my hand and official seal this 29 day of January, 2009.



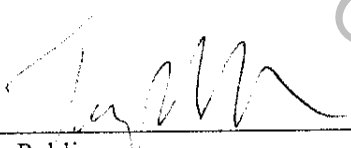
Notary Public
Commission expires



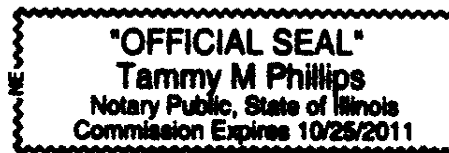
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mary C. Howe, personally known to me to be the 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 her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 29 day of January, 2009.



Notary Public
Commission expires



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EXHIBIT A

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 1 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.

Pin Nos. 14-32-315-006-0000, 14-32-315-007-0000, 14-32-315-016-0000

Common Address: 1650 North Elston Avenue, Chicago, Illinois 60622