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Doc#: 1706147061 Fee: \$72.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/02/2017 10:00 AM Pg: 1 of 13

Prepared by and after recording
return to:
Raymond P. Kolak, Esq.
Eckhart Kolak LLC
55 West Monroe Street
Suite 1925
Chicago, Illinois 60603
File No. 10407.01400

AGREEMENT AND THIRD MODIFICATION OF MORTGAGE

This Agreement and Third Modification of Mortgage ("Agreement") is made as of the 21st day of February, 2017 with an effective date of February 21, 2017 by and among Howe Holdings, LLC, a Delaware limited liability company (the "Borrower"), with its principal place of business at 1650 North Elston Avenue, Chicago, IL 60622, Mary C. Howe, whose address is 1650 North Elston Avenue, Chicago, IL 60622 ("Guarantor"), and MB Financial Bank, N.A., as successor to American Chartered Bank ("Lender"), with its principal office at 6111 North River Road, Rosemont, IL 60018.

RECITALS:

A. On December 29, 2003, Borrower executed a Mortgage Note in the original principal amount of One Million Six Hundred and Ninety-One Thousand and No/100 (\$1,691,000) ("Note"), which is payable to the order of and delivered to Lender.

B. The Note is Secured by a mortgage ("Mortgage") and assignment of rents and leases ("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 improvements legally described on Exhibit A attached hereto and commonly known as 1650 North Elston Avenue, Chicago, IL 60622 ("Real Estate").

C. The Note is further secured by Guarantor's pledge of the security interest in all of her membership interest ("Membership Interest") in Borrower pursuant to that certain Assignment of Membership Interest ("Assignment") to Lender dated December 29, 2003 perfected by that certain UCC-1 Financing Statement ("Financing Statement") filed with the Secretary of State of Illinois on January 23, 2001 as Document Number 4327600, continued under Continuation Statement No. 8796305 filed on January 20,

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2006; Continuation Statement No. 9059711 filed on August 4, 2010; and Continuation Statement No. 9374512 filed on September 16, 2015.

D. The Note is also secured by Environmental Indemnity Agreement (“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 (“Guaranty”) dated December 29, 2003.

F. As of December 31, 2016, the principal balance due and owing under the Note was \$726,414.65.

G. On December 31, 2008 the Note matured and Borrower requested that Lender extend the maturity date of the Note to December 1, 2013 and Lender 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 in that certain Agreement and First Modification of Promissory Note and Related Loan Documents (“First Modification Agreement”) dated January 19, 2009 and recorded on February 6, 2009 as Document No. 0903729059 in the Cook County Recorder’s Office.

H. On November 21, 2013 Borrower requested that Lender extend the maturity date of the Note to December 1, 2018 and Lender agreed to do so subject to the terms and conditions contained in that certain Agreement and Second Modification of Promissory Note and Related Loan Documents (“Second Modification Agreement”) dated November 21, 2013 and recorded on December 19, 2013 as Document No. 1335346037 in the Cook County Recorder’s Office.

I. Borrower has requested that Lender increase the loan amount to \$1,750,000 and Lender has agreed to do so subject to the terms and conditions contained in this Agreement.

J. 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, restatement, extensions and modifications of any of them, are sometimes hereinafter collectively referred to as the “Loan Documents”.

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

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1. **Incorporation.** The recitals to this Agreement are fully incorporated in this Agreement by this reference and shall have the same force and effect as though restated in this Agreement.

2. **Definitions.** All capitalized terms used in this Agreement which are not defined shall have the meaning ascribed to such terms in the Loan Documents.

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

a. The first two paragraphs are amended and restated as follows:

THIS MORTGAGE AND SECURITY AGREEMENT made as of this 29th day of December, 2003, by HOWE HOLDINGS, LLC, a Delaware limited liability company (herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor") whose address is 1650 N. Elston Ave., Chicago, IL 60622 to MB Financial Bank, N.A., as successor to American Chartered Bank (herein together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee") whose address is 6111 North River Road, Rosemont, IL 60018.

WHEREAS, Mortgagor, has concurrently herewith, executed and delivered to the Mortgagee, its Mortgage Note dated the date hereof, payable to the order of Mortgagee, in the principal sum of One Million Seven Hundred Fifty Thousand and 00/100 (\$1,750,000.00) Dollars (herein called the "Note") bearing interest at the rate specified therein, due in the manner as provided therein and in any event on the 5th day of March, 2022, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

b. Section 18A(b) is amended and restated as follows:

(b) The name and address of the Secured Party is:

MB Financial Bank, N.A., as successor to American
Chartered Bank
6111 North River Road
Rosemont, IL 60018

c. The notice provisions to Mortgagee set forth in Section 37 are amended and restated as follows:

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If to Mortgagee: MB Financial Bank, N.A., as successor to
American Chartered Bank
6111 North River Road
Rosemont, IL 60018
ATTN: Joyce Whaley
Fax No. _____

with a copy to: Raymond P. Kolak
Eckhart Kolak LLC
55 West Monroe Street, Suite 1925
Chicago, Illinois 60603
Fax No. 312.236.0105

d. In all other respects, the Mortgage, except as modified by the First Modification Agreement, Second Modification Agreement, and this Agreement, shall remain in full force and effect, as amended.

4. **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.

5. **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.

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

7. **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, attorney's fees). All of such costs 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.

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8. **Further Assurances.** Borrower and Guarantor will, on the 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.

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

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

11. **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 and in entering into this Agreement.

12. **Gender.** All words in this Agreement 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.

13. **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 with this Agreement, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender.

14. **Successors and Assigns.** Except as provided in this Agreement, 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.

15. **Ratification.** Except for Lender's security interest in the Pledged Collateral and the Premises, Borrower and Guarantor represent to Lender that there are no other ownership interests, liens, or other interest in outstanding against the Pledged Collateral or the Premises and that the liens of Lender have been, are, and remain the superior, paramount, and first lien in the Pledged Collateral and the Premises.

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16. **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 in this Agreement 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 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 to this Agreement, and that the consideration received by Borrower and Guarantor hereunder has been actual and adequate.

17. **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 had against Lender, as of the date of this Agreement, 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 documents related to either, 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.

18. **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 may not execute the same counterpart of this Agreement.

19. **Notices.** Any notice that Lender and 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 at its address set forth in this 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.

20. **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 Mortgage as aforesaid and made a

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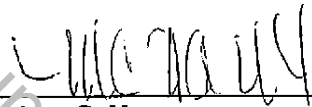
part of it. If there are any discrepancies between the Mortgage in its original form and in the terms of this Agreement, the terms of this Agreement shall control.

21. **No Impairment.** Nothing contained in this Agreement 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 granted to or held by the Lender in connection with the Loan Documents. Except as otherwise expressly provided in this Agreement, the execution of this Agreement 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 Lender hereby expressly reserves, nor shall the same constitute a waiver of any default which may have heretofore occurred or which may have hereafter occur with respect to the Loan Documents.


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

BORROWER:

HOWE HOLDINGS, LLC, a Delaware limited liability company

By: 
Mary C. Howe
Its: Manager

GUARANTOR:


Mary C. Howe, individually

LENDER:

MB FINANCIAL BANK, N.A., as
successor to American Chartered Bank

By: _____
Its: _____

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part of it. If there are any discrepancies between the Mortgage in its original form and in the terms of this Agreement, the terms of this Agreement shall control.

21. **No Impairment.** Nothing contained in this Agreement 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 granted to or held by the Lender in connection with the Loan Documents. Except as otherwise expressly provided in this Agreement, the execution of this Agreement 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 Lender hereby expressly reserves, nor shall the same constitute a waiver of any default which may have heretofore occurred or which may have hereafter occur with respect to the Loan Documents.

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

BORROWER:

HOWE HOLDINGS, LLC, a Delaware limited liability company

By: _____
Mary C. Howe
Its: Manager

GUARANTOR:

Mary C. Howe, individually

LENDER:

MB FINANCIAL BANK, N.A., as
successor to American Chartered Bank

By: _____
Dean Stark
Its: Commercial Group 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 ("Bank") and hereby expressly: (a) consents to the execution by Borrower and MB Financial, N.A, as successor to the Bank, of the Agreement and Third Modification of Mortgage 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 _____, of MB Financial Bank, N.A., as successor to 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/she signed, sealed and delivered the said instrument in his/her capacity as _____ of MB Financial Bank, N.A., as successor to American Chartered Bank as his/her free and voluntary act, and as the free and voluntary act of MB Financial Bank, N.A., as successor to American Chartered Bank, for the uses and purposes there set forth.

Given under my hand and official seal this ____ day of February, 2017.

(SEAL)

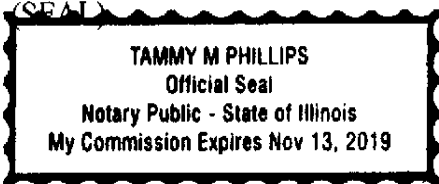
Notary Public
Commission expires: _____

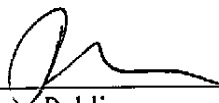
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mary C. Howe, 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 How Holdings, LLC, for the uses and purposes there set forth.

Given under my hand and official seal this 22 day of February, 2017.

(SEAL)





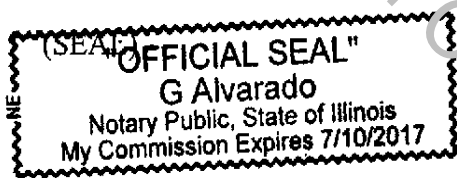
Notary Public
Commission expires: 11-13-2019

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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 Stork, of MB Financial Bank, N.A., as successor to 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/she signed, sealed and delivered the said instrument in his/her capacity as CGP of MB Financial Bank, N.A., as successor to American Chartered Bank as his/her free and voluntary act, and as the free and voluntary act of MB Financial Bank, N.A., as successor to American Chartered Bank, for the uses and purposes there set forth.

Given under my hand and official seal this 22nd day of February, 2017.



G Alvarado
Notary Public
Commission expires: 07-10-17

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 How Holdings, LLC, for the uses and purposes there set forth.

Given under my hand and official seal this ____ day of February, 2017.

(SEAL)

Notary Public
Commission expires: _____

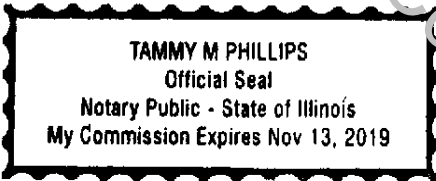
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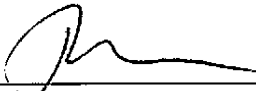
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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 How Corporation, Inc., for the uses and purposes there set forth.

Given under my hand and official seal this 22 day of February, 2017.

(SEAL)





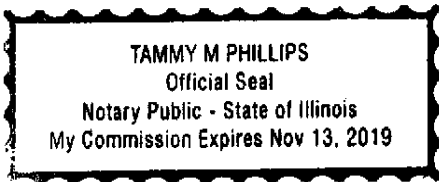
Notary Public
Commission expires: 11-13-2019

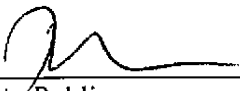
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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 there set forth.

Given under my hand and official seal this 22 day of February, 2017.

(SEAL)





Notary Public
Commission expires: 11-13-2019

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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); THEN 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 60642