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Cook County Recorder 35.50



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**MEMORANDUM OF AGREEMENT TO LEASE**

THIS MEMORANDUM OF AGREEMENT TO LEASE ("Memorandum") is made and entered into this day of June 11, 1999, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01 ("Landlord") and PENINSULA CHICAGO LLC, a Delaware limited liability company ("Tenant"). All initially capitalized terms used in this Memorandum and not defined herein shall have the meanings respectively ascribed to them in the Lease.

**Memorandum of Lease Provisions**

1. Under the terms of that certain Agreement to Lease dated January 1, 1996 (the "Ground Lease") between American National Bank and Trust Company of Chicago, not personally but solely as Trustee under Trust Agreement dated as of December 19, 1979 and known as Trust No. 48662-08 ("Ground Landlord") and Landlord, as ground lessee, Ground Landlord leased to Landlord the land and other property as more particularly described in the Ground Lease (the "Ground Leased Premises").

2. Landlord and Tenant have each executed that certain Agreement to Lease dated as of June 29 1999 (the "Lease"), pursuant to which Landlord has leased to Tenant the portion of the Ground Leased Premises as described on Exhibit A attached hereto ("Leased Premises") together with all and singular the appurtenances, rights, interests, easements, and privileges now or hereafter in anyway belonging or appertaining to the Leased Premises for a term commencing on June 29, 1999 and terminating on May 1, 2093.

3. Concurrently with the execution of the Lease, Landlord and Tenant (in their capacities both as the holders of the Landlord's and Tenant's interests respectively in the Leased Premises and as owners of certain adjacent property), entered into a certain Easement and Operating Agreement between Landlord and Tenant (the "EOA") governing the relationship

between certain existing land and improvements that are owned or leased by Landlord (collectively, the "Landlord's Property") and the Leased Premises, the property owned by Tenant adjoining the Leased Premises, and the improvements to be constructed by Tenant in the Leased Premises and said adjoining property (collectively the "Tenant's Improvements"). The EOA is incorporated by reference into the Lease and shall be deemed as an integral part of the Lease.

4. Pursuant to Section 18 of the Lease, Landlord has granted to Tenant an option to direct Landlord, at Tenant's sole cost and expense, to exercise Landlord's option to purchase the Fee Estate (as defined in the Ground Lease) from Ground Landlord under Section 22 of the Ground Lease, and if Landlord fails or refuses to exercise such option, Landlord has granted to Tenant the right to exercise such option on behalf of Landlord as Landlord's true and lawful attorney-in-fact, which appointment is coupled with an interest in the Premises and is irrevocable.

5. Pursuant to the Lease, Landlord has agreed that Tenant may, at Tenant's own expense, construct one or more buildings, improvements, or signs, or demolish any existing or to be constructed buildings, improvements, or signs on any portion or portions of the Leased Premises, and may make such improvements, alterations and changes, structural or otherwise, to the Leased Premises and the Tenant's Improvements, as Tenant, in Tenant's sole discretion, may find necessary or convenient for Tenant's purposes.

6. Tenant has the absolute right (subject to applicable provisions in the Lease) to enter into and grant any Leasehold Mortgage on such terms, conditions and maturity as Tenant shall determine so long as no Leasehold Mortgagee requires Landlord to execute or join in such Leasehold Mortgage or otherwise subordinate its interest in the Leased Premises to the lien of such Leasehold Mortgage. In addition, Tenant has the absolute right, from time to time and at any time, to grant to any Leasehold Mortgagee a security interest in the personal property owned by Tenant and located at the Leased Premises and/or a collateral assignment of subleases by Tenant of all or any portion of the Leased Premises and the rents, issues and profits therefrom, and Landlord agrees that any interest Landlord may have in such personal property or subleases, whether granted pursuant to the Lease or by statute, shall be subordinate to the interest of any such Leasehold Mortgagee.

7. Landlord has the absolute right (subject to the applicable provisions in the Lease) to enter into and grant any Landlord's Property Mortgages, if and so long as:

i. The Lease remains superior to the lien of such Landlord's Property Mortgage; provided, that Tenant shall agree to subordinate this Lease to such Landlord's Property Mortgage if such Landlord Mortgagee shall enter into a subordination, non-disturbance and attornment agreement in recordable form reasonably acceptable to Tenant;

ii. Each Landlord Mortgagee unconditionally and irrevocably agrees (A) to release the lien of its mortgage from the Leasehold Estate including, Landlord's interest in the Leasehold Estate and fee simple title in and to the Leased Premises, without payment of any fee, penalty, or premium, at such time as Tenant obtains title thereto through the exercise of any options described in Paragraph 4 above, and (B) if such Landlord Mortgagee or such Transferee shall have obtained the fee simple title in and to

the Leased Premises or Ground Leased Premises, to convey title to the Leased Premises to Tenant in accordance with Section 18(b) of the Lease;

iii. If the Lease is not subordinated to a Landlord's Property Mortgage in accordance with subparagraph (i) above, each Landlord Mortgagee shall nevertheless expressly agree in its mortgage, on behalf of itself, its successors and assigns, including any purchaser at foreclosure or conveyance *in lieu* of foreclosure ("Transferee"), that, in the event of (1) foreclosure of the Landlord's Property Mortgage, (2) conveyance *in lieu* of foreclosure, or (3) entry by the Landlord Mortgagee for the purpose of foreclosing by entry and possession, which foreclosure, conveyance, or entry occurs prior to the end of the Term, and provided that the Lease has not been terminated, (A) Tenant shall not be named as a party in any foreclosure proceedings, (B) Tenant shall have the right to remain in possession of the Leased Premises subject to the terms of the Lease, and (C) no such foreclosure of the lien or conveyance *in lieu* of foreclosure or any other proceeding in respect thereof shall divest, impair, modify, abrogate or otherwise adversely affect any interests or rights whatsoever of Tenant under the Lease; and

iv. No real or personal property owned or removable by Tenant in accordance with the terms of the Lease shall be subject to the lien of any Landlord's Property Mortgage.

8. If a default by Landlord under the Ground Lease has not been cured within the time periods specified in the Ground Lease, Landlord agrees to allow Tenant to cure such default, if accepted by the Ground Landlord.

Other terms and conditions of the agreements between Landlord and Tenant are contained in the Lease. In the event of any inconsistency between the terms hereof and the terms of the Lease, the terms of the Lease shall control.

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LANDLORD:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated April 20, 1994 and known as Trust No. 118199-01.

Name: GENEVA S. ROSENBERG  
Its: VP

TENANT:

PENINSULA CHICAGO LLC, a Delaware limited liability company.

By: SHH Chicago, Inc., its member

Name: KIDNEY L. SMYTH

Its: EXECUTIVE VP

Prepared By: Eric Schiller  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

Mail To: Ray Werner  
Alustier + Lebe



170 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly agreed and covenanted that all the warranties, indemnities, covenants and agreements on the part of the Trustee and agreements hereon in its capacity as Trustee under and not personally, shall be in any time be asserted or enforced against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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## ACKNOWLEDGEMENT FOR LANDLORD

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK     )

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On 6/11, 1999, before me, the undersigned, a Notary Public, in and for and residing in the County and State aforesaid, duly commissioned and sworn, personally appeared Gregory Kasprzyk, known to me to be the VP of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Trustee under AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO Trust No. 118199-01, acknowledged that he signed and delivered the foregoing instrument on behalf of said Trustee for the purpose set forth therein.

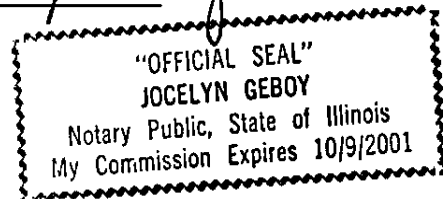
GIVEN under my hand and notarial seal this 11 day of June, 1999.

Notary Public

Joelyn Geboy

My Commission Expires:

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## ACKNOWLEDGMENT FOR TENANT

STATE OF ILLINOIS                    )  
  )        SS  
  )  
COUNTY OF ~~COOK~~ <sup>DUPAGE</sup>        )

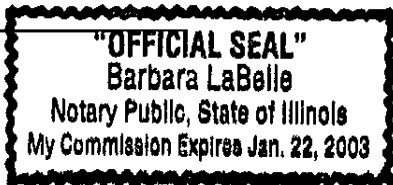
On June 15, 1999, before me, the undersigned, a Notary Public, in and for and residing in the County and State aforesaid, duly commissioned and sworn, personally appeared RODNEY L. SMITH, known to me to be the EXECUTIVE VP of HSH Chicago, Inc., the sole member of PENINSULA CHICAGO LLC, a Delaware limited liability company, the company that executed the foregoing instrument and known to me to be the person who executed said instrument on behalf of said entity, and acknowledged to me that such entity executed the same pursuant to its proper authority.

GIVEN under my hand and notarial seal this 15<sup>TH</sup> day of June, 1999.

Notary Public

Barbara LaBelle

My Commission Expires:



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CHICAGO AVENUE

## EXHIBIT A

### LEGAL DESCRIPTION

99632463

LOT 7 IN 730 N. MICHIGAN AVENUE SUBDIVISION BEING A SUBDIVISION IN THE NORTH FRACTIONAL 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK, COUNTY, ILLINOIS RECORDED June 30 1979 AS DOCUMENT NUMBER 99631468.

#### TAX NUMBERS:

17-10-102-002  
17-10-102-004  
17-10-102-005  
17-10-102-006  
17-10-102-007  
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17-10-102-028  
17-10-102-029  
17-10-102-030  
17-10-102-031  
17-10-102-032

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730 N. Michigan Ave  
Chicago, Illinois  
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