

First Amendment to Tenant Estoppel
Subordination, Non-disturbance & Attornment
ASSIGNMENT OF THIS INSTRUMENT RECORDED IN A ^{AS} power of Attorney BOOK.

NO. 82 PAGE 524
THIS THE 8 DAY OF Sept, 19 99
W.E. Davis
CHANCERY CLERK

By: M. Huffer DC

^{& assumption Agreement}
ASSIGNMENT OF THIS INSTRUMENT RECORDED IN power of Attorney BOOK.

NO. 82 PAGE 167
THIS THE 25 DAY OF Aug, 19 99
NO. W.E. Davis
THIS THE By M. Huffer DC
CHANCERY CLERK

BOOK 80 PAGE 167 +2

STATE MS. - DESOTO CO.
FILED

This instrument prepared by:
Watkins Ludlam Winter & Stennis, P.A.
633 North State Street
Jackson, Mississippi 39202
(601) 949-4900

JAN 21 4 10 PM '99

BK 80 PG 167
W.E. DAVIS CH. CLK.

Indexing Instructions:
A part of the SE 1/4 of the NE 1/4,
a part of the SW 1/4 of the NE 1/4,
a part of the NW 1/4 of the NE 1/4
and a part of the NE 1/4 of the
NE 1/4 of Section 25, Township 1
South, Range 6 West,
DeSoto County, MS

**TENANT ESTOPPEL, SUBORDINATION, NON-DISTURBANCE,
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT made and entered into this 1st day of December, 1998, by and among **WILLIAMS-SONOMA, INC.**, a California corporation (the "Lessee"); **HEWSON/DESOTO PHASE I, L.L.C.**, an Arizona limited liability company (the "Borrower"); the **MISSISSIPPI BUSINESS FINANCE CORPORATION** (the "Issuer"); and **UNION PLANTERS BANK, N.A.**, as trustee (the "Trustee").

RECITALS OF FACT

The Issuer has this date issued its \$30,300,000 Taxable Industrial Development Revenue Bonds, Series 1998 (Hewson/DeSoto Phase I, L.L.C. Project) (the "Series 1998 Bonds"), the proceeds of which will be used to acquire and construct a warehouse and distribution facility (the "Project") on real property in DeSoto County, Mississippi, which is more fully described in Exhibit "A" hereto. The proceeds of the Series 1998 Bonds will be provided to the Borrower for the construction and acquisition of the Project pursuant to a Loan Agreement dated as of December 1, 1998 (the "Loan Agreement"), between the Issuer and the Borrower. The Borrower will lease the Project to the Lessee pursuant to a Lease Agreement dated as of December 1, 1998 (the "Lease"), which is recorded in the office of the Chancery Clerk of DeSoto County, Mississippi, in Book 79 at Page 520. The Borrower has assigned its rights under the Lease to the Issuer pursuant to an Assignment of Rents, Leases and Profits dated as of December 1, 1998 (the "Assignment"). The Series 1998 Bonds are also secured by a Deed of Trust and Security Agreement from the Borrower to the Issuer dated as of December 1, 1998 (the "Deed of Trust") which encumbers the Borrower's ownership interest in the Project. The Issuer has assigned its rights under the Assignment and the Deed of Trust to the Trustee as trustee for the holders of the Series 1998 Bonds under a Trust Indenture dated as of December 1, 1998 (the "Indenture"), by and between the Issuer and the Trustee. Capitalized terms used herein and not otherwise defined shall have the meanings given in the Indenture, the Loan Agreement and the Lease.

The Lessee has entered into the Lease with the approval and concurrence of the Issuer, the Trustee and Morgan Keegan & Company, Inc., as underwriter (the "Underwriter") for the Series 1998 Bonds. The Underwriter has requested the Trustee on

behalf of the purchasers of the Series 1998 Bonds to require certain covenants from the Lessee, and the Lessee has conditioned its execution of the Lease on certain promises of the Trustee, all as set forth herein. The Borrower and the Issuer join herein to evidence their agreement with the terms hereof.

NOW, THEREFORE, in consideration of the premises, as set forth in the Recitals of Fact, the sum of Ten Dollars (\$10.00) cash in hand paid to the Lessee, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties as follows:

AGREEMENTS

SECTION 1. The Borrower and the Lessee each hereby certify, represent, and warrant to the Trustee, as of the date hereof, that:

- (a) The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way;
- (b) The Lease represents the entire agreement between the parties as to the leasing of the Project;
- (c) There are no defaults by either the Borrower or the Lessee under the Lease;
- (d) No rent which is not yet due under the terms and provisions of the Lease has been paid;
- (e) There are no existing setoffs, counterclaims or credits against rentals due or to become due under the Lease, nor are there existing defenses against the enforcement of the Lease by the Borrower; and
- (f) The Lessee has no notice or knowledge of any assignment, hypothecation or pledge of the rents due under the Lease other than the Assignment.

SECTION 2. The Lessee and the Trustee mutually covenant and agree that:

- (a) The Lease and any and all rights and privileges created thereunder are and shall be in all respects subject and subordinate to the lien of the Deed of Trust and the Indenture and to all renewals, modifications, consolidations and extensions of either or both thereof, in whole or in part;
- (b) Provided that the Lessee is not in default under the terms of the Lease (beyond the period, if any, given in the Lease for cure of such default) or under the terms of this Agreement, the Lessee's rights and privileges under the Lease, and the Lessee's quiet possession and enjoyment of the Project, shall not be affected or disturbed by the

exercise by the Trustee of any of its rights under the Deed of Trust, the Indenture or the Assignment, nor by any sale or foreclosure of the Project or deed-in-lieu thereof;

(c) So long as the Lessee is permitted quiet enjoyment of the Project (and notwithstanding any foreclosure of the lien of the Deed of Trust or enforcement of remedies under the Indenture or the Assignment), the Lessee agrees to attorn to the following persons upon the terms and conditions of the Lease for the remainder of the term thereof (whether original or renewal), with the same force and effect as if such persons were named as lessor under the Lease, such attornment to be automatic without further action of the parties hereto:

(i) the Trustee when the Trustee is in possession of the Project, whether by foreclosure of the Deed of Trust, deed-in-lieu of foreclosure or pursuant to the Assignment;

(ii) any receiver appointed to take possession of the Project; or

(iii) any party acquiring title to the Project by foreclosure, pursuant to the power of sale contained in the Deed of Trust or by deed-in-lieu of foreclosure, and his or its heirs, successors, and assigns (any party as set forth in this clause (iii) may be hereafter referred to as a "New Owner").

(d) The Trustee or the New Owner shall have no obligation to perform as lessor under the Lease until such time as the Trustee or the New Owner enters into possession of the Project; such obligation shall continue only so long as the Trustee or the New Owner remains in possession of the Project; and the Lessee's recourse against the Trustee or the New Owner for any non-performance of its obligations as lessor under the Lease shall be limited to the Trustee's or the New Owner's interest in the Project.

(e) If events occur that give rise to an attornment by the Lessee under the provisions of subsection (c) above, the Lessee agrees that neither the Trustee, the receiver nor the New Owner: (i) shall be liable for any act or omission of the Lessee or its successors or assigns; (ii) shall be subject to any offsets or defenses which the Lessee might have against the Borrower or its successors or assigns (without limitation of any rights of offset or defenses which the Lessee may have against the New Owner); (iii) shall be bound by any rent which the Lessee might have paid for more than the current installment; (iv) shall be liable for the return of any security deposit unless the Trustee, receiver or New Owner has actually received such deposit; and (v) shall be bound by any amendment or modification of the Lease made without the consent of the Trustee, receiver or New Owner.

SECTION 3. Notwithstanding anything in the Lease or herein to the contrary, if events occur that give rise to an attornment by the Lessee to any entity other than the New Owner under the provisions of subsection (c) of Section 2 above, and if the Series 1998 Bonds have been accelerated pursuant to the Indenture, the Lessee and the Borrower

agree that the various definitions, terms, covenants, obligations and rights in the Lease shall be amended as follows:

(a) All references to the Series 1998 Bonds, debt service, interest, principal, mandatory sinking fund payments, prepayment premium or terms of a similar nature used in the Lease shall mean the amount of Series 1998 Bonds, debt service, interest, principal, mandatory sinking fund payments or prepayment premium that would have been owed had no foreclosure or deed in lieu of foreclosure occurred and the Series 1998 Bonds remained outstanding and not been accelerated.

(b) All references to provisions of the Loan Agreement or the Indenture in the Lease shall continue to reference the particular provision or provisions of the Loan Agreement and the Indenture and shall be incorporated into the Lease regardless of the fact that the Loan Agreement and/or the Indenture may be terminated.

(c) The rental amount paid by the Lessee shall be equal to the amount of interest and mandatory sinking fund payments due on the Series 1998 Bonds had the Series 1998 Bonds remained outstanding and no acceleration occurred ("New Rental Amount"). Such New Rental Amount shall be paid to Trustee in the same manner as set forth in Section 2.1(c) of the Lease. References in the Lease to Basic Rent, Company Payments, Global Basic Rent (consisting of the sum of Basic Rent and Company Payments), Fair Market Value and any other rental terms shall no longer have any effect.

(d) The Lease shall be automatically extended for so long as the Series 1998 Bonds would have been outstanding had no acceleration of such Bonds and no foreclosure or deed in lieu of foreclosure occurred, and the Lessee shall remain obligated under the terms of the Lease, as amended hereby, until the New Rental Amount shall have been paid in full to the Trustee. The Lease shall terminate on the date that all of the New Rental Amount shall have been paid.

(e) The Lease shall become an absolute triple net lease and the Trustee shall not be required to perform any obligations of the Borrower under the Lease, including, without limitation, those certain: (i) indemnity obligations set forth in Section 2.2(a) of the Lease, and (ii) obligations to pay "deficiency" set forth in Section 3.2(c)(i) of the Lease. Any obligations of the Borrower that will not be performed by the Trustee as provided in the preceding sentence must be performed by the Lessee. Further, any references to offset rights of the Lessee against rent or termination rights of the Lessee for a default by the Borrower shall no longer have any effect.

(f) Section 3.2(a) of the Lease shall be deleted from the Lease.

(g) In each instance in the Lease in which the phrase "so long as any Bonds remain outstanding, the Loan Agreement remains in full force and effect or the Indenture remains in full force and effect" or a phrase of a similar nature shall be used, the Lessee shall be obligated under such provision as if the Series 1998 Bonds remained outstanding.

For example, Section 3.2(b) of the Lease states that "at any time that any Bonds remain outstanding, the Loan Agreement has not been terminated or the Indenture has not been released," the Net Proceeds of insurance in excess of \$500,000 shall be deposited with the Trustee and disbursed in accordance with the provisions of Section 7.1(a) of the Loan Agreement. After a foreclosure or deed in lieu of foreclosure, the Lessee is required to deposit the Net Proceeds with the Trustee and the funds shall be disbursed in accordance with Section 7.1(a) of the Loan Agreement regardless of the fact that the Series 1998 Bonds no longer remain outstanding.

(h) At such time as all of the New Rental Amount has been paid to the Trustee's satisfaction, the Lessee shall have the option to purchase the Project from the Trustee for \$100. The option to purchase must be exercised by written notice from the Lessee sixty (60) days prior to the termination of the Lease. The Project shall be conveyed to the Lessee within sixty (60) days after the termination of the Lease. If such option is not exercised by the Lessee as provided above, the option to purchase shall lapse and be of no further force or effect. The Trustee shall convey the Project to the Lessee by special warranty deed subject to any Permitted Encumbrances or security interests, liens or encumbrances created by the Borrower (which would survive a foreclosure) or the Lessee. The Lessee shall pay all of the Trustee's reasonable attorney's fees, all recording fees and transfer taxes.

SECTION 4. So long as any part of the indebtedness of the Borrower under the Loan Agreement remains unpaid, the Borrower and the Lessee agree with the Trustee that:

- (a) The Lessee will not prepay any rent due under the Lease;
- (b) Upon written notice from the Trustee to the Lessee, the Lessee will pay to the Trustee all Basic Rent and Additional Rent thereafter due under the Lease;
- (c) The Lessee will not consent to any reduction of the rent set forth in the Lease (except as set forth expressly therein), to any other amendment or modification of the terms and provisions thereof (except with respect to the Addition as set forth in the Lease), or to any cancellation or surrender of the Lease, without the prior written consent of the Trustee;
- (d) The Borrower will send to the Trustee a copy of any notice or demand given or made by the Borrower as lessor pursuant to or concerning the provisions of the Lease, as well as copies of any notices given by the Lessee under the Lease;
- (e) In the event of any default by the Borrower as lessor under the Lease, the Trustee may at its sole option have the same period of time and opportunity as given to the Borrower as lessor to cure said default. Notwithstanding the foregoing, the Borrower agrees that the Trustee shall have no obligation to remedy any such defaults until such time as the Trustee enters into possession of the Project.

SECTION 5. In the event of a petition in bankruptcy filed by or against the Borrower at any time resulting in a rejection of the Lease in such proceeding, the Lessee covenants to exercise its election to remain in possession of the leasehold as provided in 11 U.S.C. 365(h).

SECTION 6. All notices or demands hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to any party hereto at the address set forth below or at such other address as any party shall subsequently designate in writing:

LESSEE: Williams-Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, California 94109
Attn.: President

BORROWER: Hewson/DeSoto Phase I, L.L.C.
c/o Hewson Properties, Inc.
4636 East University Drive, Suite 265
Phoenix, Arizona 85034
Attn.: Gary Hewson

ISSUER: Mississippi Business Finance Corporation
P. O. Box 849
Jackson, Mississippi 39205-0849
Attn.: Executive Director

TRUSTEE: Union Planters Bank, N.A.
Corporate Trust Department
6200 Poplar Avenue, 3rd Floor
Memphis, Tennessee 38119
Attn.: Ms. Delories Duncan, Vice President

SECTION 7. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective heirs, successors and assigns including, without limitation, any purchaser of the Project at a foreclosure sale or under a deed in lieu of foreclosure, except that Section 3 hereof shall only apply to the Trustee and successor trustees as provided in Section 10.5 of the Indenture and shall not apply to any New Owner.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement (or have caused this Agreement to be executed by their respective officers or partners, duly authorized to do so), on the day and year first above written.

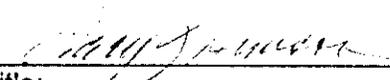
WILLIAMS-SONOMA, INC.,
a California corporation, as Lessee

By: 
Title: EMP

BOOK 80 PAGE 174

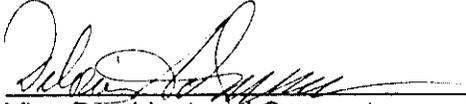
HEWSON/DESOTO PHASE I, L.L.C.,
an Arizona limited liability company,
as Borrower

By: Hewson Properties, Inc.,
Its Manager

By: 
Title: _____

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UNION PLANTERS BANK, N.A.,
as Trustee

By: 
Vice President and Corporate
Trust Officer

[Execution Page of Non-Disturbance Agreement]

BOOK 80 PAGE 176

MISSISSIPPI BUSINESS FINANCE CORPORATION, as Issuer

ATTEST:


Secretary

By: 
Executive Director



ACKNOWLEDGMENT OF LESSEE

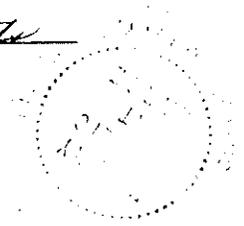
STATE OF Tennessee
COUNTY OF Shelby

On this 10 day of December, 1998, personally appeared before me, a notary public in and for the above jurisdiction, D.A. Cantrell who acknowledged himself to be the Gen. Mgr. of WILLIAMS-SONOMA, INC., a California corporation (the "Lessee"), and that he executed and delivered the foregoing instrument for and on behalf of the Lessee after having been duly authorized by the Lessee so to do.

Diana Robinson Settle
Notary Public

My Commission Expires:

1-16-02
(Affix Official Seal)

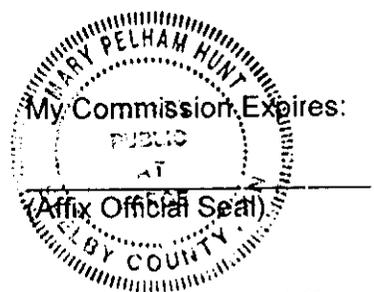


ACKNOWLEDGMENT OF BORROWER

STATE OF Tennessee
COUNTY OF Shelby

On this 16th day of December, 1998, personally appeared before me, a notary public in and for the above jurisdiction, Cary J. Hewson, who acknowledged himself to be the Chief Executive Officer of Hewson Properties, Inc., a California corporation, which corporation is the manager of HEWSON/DESOTO PHASE I, L.L.C., an Arizona limited liability company (the "Borrower"), and that for and on behalf of said corporation and as its act and deed as manager of the Borrower and for and on behalf of the Borrower and as its act and deed, he executed the foregoing instrument, after having been duly authorized so to do.

Mary Pelham Hunt
Notary Public



My Commission Expires June 22, 1999

BOOK

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ACKNOWLEDGMENT OF TRUSTEE

STATE OF TENNESSEE
COUNTY OF SHELBY

On this 10 day of December, 1998, personally appeared before me, a notary public in and for the above jurisdiction, Delories A. Duncan, who acknowledged that she is a Vice President and Corporate Trust Officer of UNION PLANTERS BANK, N.A. (the "Trustee") and that she executed and delivered the above and foregoing instrument for and on behalf of the Trustee after having been duly authorized by the Trustee so to do.

Diana Robinson Bette
Notary Public

My Commission Expires:

1-16-02
(Affix Official Seal)



BOOK 80 PAGE 180

ACKNOWLEDGMENT OF ISSUER

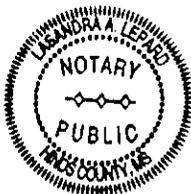
STATE OF MISSISSIPPI
COUNTY OF HINDS

On this 9th day of December, 1998, personally appeared before me, a notary public in and for the above jurisdiction, William T. Barry and James Vernon Smith, Sr., who acknowledged that they are the Executive Director and Secretary of the MISSISSIPPI BUSINESS FINANCE CORPORATION (the "Issuer") and that they executed, sealed and delivered the above and foregoing instrument for and on behalf of the Issuer after having been duly authorized by the Issuer so to do.

Lassandra A. Lepard
Notary Public

My Commission Expires:

(Affix Official Seal)



MY COMMISSION EXPIRES:
October 13, 2002

BOOK 80 PAGE 181
EXHIBIT "A"

TRACT I:

LOCATED IN DESOTO COUNTY, MISSISSIPPI:

BEING A SURVEY OF PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 25, TOWNSHIP 1 SOUTH, RANGE 6 WEST, DESOTO COUNTY MISSISSIPPI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 25; THENCE S89°32'11"W ALONG THE NORTH LINE OF SAID SECTION 25 A DISTANCE OF 80.00 FEET TO A POINT; THENCE S00°31'04"E ALONG A LINE THAT IS 80.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 25 A DISTANCE OF 491.49 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S00°31'04"E ALONG A LINE THAT IS 80.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 25 A DISTANCE OF 1485.00 FEET TO A POINT; THENCE S89°13'30"W A DISTANCE OF 1957.52 FEET TO A POINT; THENCE N00°46'30"W A DISTANCE OF 1484.99 FEET TO A POINT; THENCE N89°13'30"E A DISTANCE OF 1964.19 FEET TO THE POINT OF BEGINNING AND CONTAINING 2,911,841 SQUARE FEET OR 66.847 ACRES.

TRACT II:

The rights benefitting the foregoing Tract I created by (a) that certain Reciprocal Storm Water Drainage Agreement dated as of December 1, 1998, by and between Hewson/DeSoto South, L.L.C. and Hewson/DeSoto Phase I, L.L.C., (b) that certain Reciprocal Storm Water Detention and Drainage Agreement dated as of December 1, 1998, by and between Hewson/DeSoto Phase I, L.L.C. and Williams-Sonoma, Inc., and (c) that a certain Reciprocal Connector Easement Agreement by and between Hewson/DeSoto Phase I, L.L.C. and Williams-Sonoma, Inc. dated as of December 1, 1998 and (d) that certain Parking Easement Agreement by and between Hewson/DeSoto Phase I, L.L.C. and Williams-Sonoma, Inc. dated as of December 1, 1998, each recorded contemporaneously herewith in the Office of the Chancery Clerk of DeSoto County, Mississippi.