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1999-05-28 10:37:44  
Cook County Recorder 75.50



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**LEHMAN BROTHERS HOLDINGS INC.**  
doing business as **Lehman Capital,**  
a division of **Lehman Brothers Holdings Inc.,**  
(Lender)

by

**SUNGLASS HUT TRADING CORPORATION,**  
(Tenant)

10p  
m

**SUBORDINATION, NONDISTURBANCE  
AND ATTORNMENT AGREEMENT**

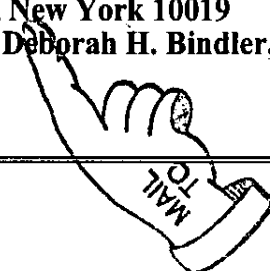
**Dated:** January 12, 1999

**Location:** 255 Alhambra Circle, 11<sup>th</sup> Floor  
Coral Gables, FL 33134

**Section:**  
**Block:**  
**Lot:**  
**County:**

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

**Windels, Marx, Davies & Ives**  
156 West 56th Street  
New York, New York 10019  
Attention: **Deborah H. Bindler, Esq.**



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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT dated as of the 12<sup>th</sup> day of January, 1998, by and between **LEHMAN BROTHERS HOLDINGS INC.** doing business as **Lehman Capital**, a division of **Lehman Brothers Holdings Inc.**, a Delaware corporation, having an office at 3 World Financial Center, New York, New York 10285 (the "Mortgagee") and **Sunglass Hut Trading Corporation**, a Florida corporation having an office at 255 Alhambra Circle, 11<sup>th</sup> Floor, Coral Gables, Florida 33134, Attn: Deborah Parker-Leasing Specialist Real Estate Division (hereinafter called the "Tenant").

### WITNESSETH

WHEREAS, the Mortgagee is the owner and holder of the mortgage instruments (collectively, the "Mortgage"), together with the notes secured thereby, as more particularly described on Exhibit A attached hereto; covering the premises (the "Mortgaged Premises") described in Schedule A attached hereto; and

WHEREAS, Tenant entered into that certain lease agreement with Bradley Financing Partnership, as Landlord, dated April 5, 1995 (the "Lease") covering premises (the "Demised Premises") located at the Mortgaged Premises, as more particularly described in the Lease; and

WHEREAS, Mortgagee requires that all leases for space at the Mortgaged Premises be and continue to be subordinate in every respect to the Mortgage; and

WHEREAS, the parties hereto desire to confirm and effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and intending to be legally bound thereby, Mortgagee and Tenant hereby covenant and agree as follows:

1. Tenant covenants and agrees that the Lease and all of Tenant's rights, interests and remedies thereunder (including, without limitation, any right to the receipt or use of insurance proceeds and/or condemnation proceeds) now are and shall at all times continue to be subject and subordinate, in lien and in all other respects, to the Mortgage and to all rights of the Mortgagee thereunder (including, without limitation, the rights of the Mortgagee to insurance proceeds and condemnation proceeds) and to all renewals, modifications, consolidations, replacements, severances, substitutions and extensions thereof. Tenant, upon request, shall execute and deliver any certificate or other instrument which the Mortgagee may reasonably request to confirm said subordination by Tenant.

2. Tenant certifies that the Lease is presently in full force and effect and unmodified and no rental payable thereunder has been paid more than one (1) month in advance of its due date, and that no event has occurred which constitutes a default under the Lease by the Landlord or Tenant or which, with the giving of notice, the passage of time or both, would constitute a default by the Landlord or Tenant under the Lease.

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3. Tenant agrees that in the event of any default on the part of the Landlord arising out of or accruing under the Lease, whereby the validity or the continued existence of the Lease might be impaired or which would give Tenant the right to cancel or terminate the Lease, or whereby Tenant might have a claim for partial or total eviction or statement of rent by reason of any such default or defaults, Tenant will give written notice thereof, with sufficient particularity, to Mortgagee at the address set forth herein not later than the time that Tenant notifies the Landlord of such default, and Tenant will grant to Mortgagee a reasonable time (which shall be not less than the period of time granted to the Landlord by the terms of the Lease) after: (i) the giving of such notice by Tenant to Mortgagee, (ii) the expiration of the time within which Landlord is required to cure such defaults under the Lease, (iii) the time when Mortgagee shall become entitled under the Mortgage to cure, remedy or undertake the elimination of such defaults, and (iv) the holder of all mortgages, if any, superior to the Mortgage shall elect not to cure or remedy the defaults or, if such holder has elected to cure or remedy same, after such holder's time to cure or remedy same has expired, to cure, remedy or to undertake the elimination of such defaults. Notwithstanding anything contained in this ¶ 3 to the contrary, Mortgagee may, at any time, cease to remedy such default, or any act or omission which results in such default and may discontinue the completion of such remedy without incurring any liability to Tenant as a result of failing or refusing to continue the completion of such remedy, in which event Tenant shall have all of its rights and remedies available to Tenant at law or in equity, as well as its rights and remedies under the Lease. It is expressly understood and agreed that any right on the part of Mortgagee to cure or remedy any such default or defaults, or any act or omission underlying same, shall not be deemed to create any obligation on Mortgagee's part to cure, remedy or to undertake the elimination of any such default or defaults, or any such acts or omissions.

4. As long as Tenant is in compliance with the terms of this Agreement and no default exists under the Lease which is continuing beyond the expiration of any applicable grace period, and as long as no event has occurred which with the giving of notice or the passage of time or both would entitle the Landlord to terminate the Lease or would cause, without any further action by the Landlord, the termination of the Lease or would entitle the Landlord to dispossess Tenant thereunder, Mortgagee shall not name Tenant as a party defendant to any action for foreclosure or other enforcement thereof (unless required by law), nor shall the Lease be terminated by Mortgagee in connection with or by reason of foreclosures or other proceedings for the enforcement of the Mortgage or by reason of a transfer of the Landlord's interest under the Lease pursuant to the taking of a deed in lieu of foreclosure (or similar device), nor shall Tenant's use or possession of the Demised Premises be interfered with by Mortgagee, unless the Landlord would have had such right if the Mortgage had not been made, except that the person acquiring, or succeeding to, the interests of the Landlord as a result of any such action or proceeding, and such person's successors and assigns (any of the foregoing being hereinafter referred to as the "Successor"), shall not be:

(a) subject to any credits, offsets, defenses or claims which Tenant might have against any prior landlord; nor

(b) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, unless such modification or prepayment shall have been made with Mortgagee's prior written consent; nor

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- (c) liable for any act or omission of any prior landlord; nor
- (d) bound by any covenant to undertake or complete any improvement to the Demised Premises or the Mortgaged Premises, or any portion thereof; nor
- (e) be required to account for any security deposit other than that security deposit actually delivered to the Successor; nor
- (f) liable for any payment to Tenant of any sums, or the granting to Tenant of any credit, in the nature of a contribution towards the cost of preparing, furnishing or moving into the Demised Premises or any portion thereof; nor
- (g) bound by any amendment or modification of the Lease made without Mortgagee's prior written consent.

5. If the interest of the Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of the Mortgage or pursuant to a taking of a deed in lieu of foreclosure (or similar device), Tenant shall be bound to the Successor, and, except as provided in this Agreement, the Successor shall be bound to Tenant, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, with the same force and effect as if the Successor were the Landlord, and Tenant does hereby (i) agree to attorn to the Successor, including Mortgagee if it be the Successor, as its landlord, (ii) affirm its obligations under the Lease, and (iii) agree to make payments of all sums due under the Lease to the Successor, said attornment, affirmation and agreement to be effective and self-operative, without the execution of any further instruments, upon Tenant and the Successor succeeding to the interest of the Landlord under the Lease. Tenant waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or election to terminate or otherwise adversely affect the lease or the obligations of Tenant thereunder by reason of any foreclosure or similar proceeding.

6. This Agreement may not be modified except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of any be binding upon the parties hereto, their respective heirs, representatives, successors and assigns.

7. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage except as specifically set forth herein.

8. The Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement. Tenant further agrees that in the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with non-disturbance by Mortgagee, the terms and provisions hereof shall be controlling.

9. All notices, demands or requests made pursuant to, under, or by virtue of this

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Agreement must be in writing and mailed to the party to whom the notice, demand or request is being made by certified or registered mail, return receipt requested, at its address set forth above. Any party may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement.

10. This Agreement shall be governed by the laws of the State of New York. If any terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

Mortgagee:


**LEHMAN BROTHERS HOLDINGS INC.**

By:

  
Name: Yan Cho  
Title: Authorized Signatory

Tenant:

By:

  
Name: LARRY PETERSEN  
Title: SR. VICE PRESIDENT  
FINANCE & CFO

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STATE OF NEW YORK )  
  )  
COUNTY OF NEW YORK )

ss.:

On the 22<sup>nd</sup> day of March, 1998, before me personally came Yon Cho to me known, who, being by me duly sworn, did depose and say that he has an address at 3 World Financial Center, New York, New York; that he is the Authorized Signatory of Lehman Brothers Holdings Inc., the corporate described in and which executed the foregoing instrument; and that by order of the board of directors of said corporation he signed his name thereto.

DORA M. ENRIQUEZ  
Notary Public, State of New York  
No. 31-5026289  
Qualified in New York County  
Commission Expires June 17, 2000

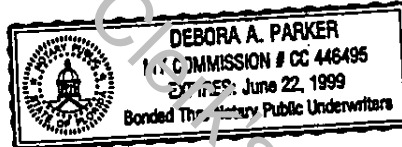
Dora M. Enriquez  
Notary Public

STATE OF Florida )  
  )  
COUNTY OF Dade )

ss.:

On the 12 day of January, 1999, before me personally came Larry Petersen to me known, who, being by me duly sworn, did depose and say that he is the Sr. V.P. & CFO of Sunglass Hut Trading, the corporation described in and which executed the foregoing instrument; and that by order of the board of directors of said corporation he signed his name thereto.

Debra A. Parker  
Notary Public



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## EXHIBIT A

1. Secured Note A in the amount of \$69,289,728.80 dated as of July 31, 1998 from W9/ONS Real Estate Limited Partnership, a Delaware limited partnership ("Borrower" and "Successor Landlord") to Lehman Brothers Holdings Inc., a Delaware corporation ("Mortgagee"), secured by that certain First Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Borrower to Mortgagee dated as of July 31, 1998.
2. Secured Note B in the amount of \$4,655,410.00 dated as of July 31, 1998 from Borrower to Mortgagee, secured by that certain Second Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Borrower to Mortgagee dated as of July 31, 1998.

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## SCHEDULE A

[Annex Metes and Bounds Description of Premises]

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EXHIBIT A

## Legal Description

PARCEL 1:

LOTS 5, 6, 7, 8, 9 AND 10 IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE VACATED AIR-RIGHTS OVER ROADWAY, LYING ABOVE A HORIZONTAL PLANE 29.22 FEET ABOVE CHICAGO CITY DATUM, LYING EAST OF AND ADJOINING LOTS 8, 9, 10 AND LYING WEST OF AND ADJOINING LOTS 5, 6, 7, IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOTS 8, 9, 10, A DISTANCE OF 146.64 FEET TO THE NORTHEAST CORNER OF SAID LOT 10; THENCE EASTERLY ALONG THE EASTERLY ELONGATION OF SAID LOT 10, A DISTANCE OF 40.0 FEET TO THE NORTHWEST CORNER OF SAID LOT 8; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOTS 5, 6, 7, A DISTANCE OF 145.88 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7; THENCE WESTERLY ALONG THE WESTERLY ELONGATION OF SAID LOT 7, A DISTANCE OF 40.0 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

SAID VACATED AIR-RIGHTS ALSO BEING DESCRIBED AS FOLLOWS:

ALL THE AIR RIGHTS LYING ABOVE AN ELEVATION OF 14.3 FEET ABOVE EXISTING GRADE OVER AND ACROSS THAT PART OF NORTH HOLDEN COURT LYING WEST OF THE WEST LINE OF LOTS 5, 6 AND 7; LYING EAST OF THE EAST LINE OF LOTS 8, 9, AND 10; LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHEAST CORNER OF LOT 10; THENCE EAST ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 10 TO THE INTERSECTION OF THE CENTERLINE OF NORTH HOLDEN COURT; THENCE SOUTH ALONG THE CENTERLINE OF NORTH HOLDEN COURT TO THE INTERSECTION OF THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 5; THENCE EAST ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 5 AND TERMINATING AT THE NORTHWEST CORNER OF SAID LOT 5; LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 7 TO THE SOUTHEAST CORNER OF LOT 10, ALL IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; SAID VACATED PART OF PUBLIC STREET BEING FURTHER DESCRIBED AS THE AIR RIGHTS LYING ABOVE AN ELEVATION OF 14.3 FEET ABOVE EXISTING GRADE OVER AND ACROSS THE SOUTH 149.2 FEET, MORE OR LESS, OF NORTH HOLDEN COURT LYING BETWEEN EAST WASHINGTON STREET AND EAST MADISON STREET.

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PARCEL 3:

RIGHT TO CONSTRUCT, MAINTAIN AND USE SUBSURFACE SPACE (VAULTS) UNDER STATE STREET, WABASH AVENUE, MADISON STREET AND HOLDEN COURT PURSUANT TO PERMIT NUMBER 42498 ISSUED BY THE CITY OF CHICAGO, AND ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON OCTOBER 1, 1997 AND PRINTED UPON PAGES 53404 THROUGH 53412 OF THE JOURNAL OF PROCEEDINGS OF THE CITY COUNCIL OF THAT DATE, AND OF ANY SUBSEQUENT ORDINANCE PASSED OR PERMIT ISSUED RELATIVE THERETO.

PARCEL 4:

RIGHT TO USE SUBSURFACE SUBWAY CONNECTION TO WASHINGTON, MADISON AND STATE STREETS SUBWAY STATION PURSUANT TO PERMIT NUMBER 42498 ISSUED BY THE CITY OF CHICAGO AND ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON OCTOBER 1, 1997 AND PRINTED UPON PAGES 53404 THROUGH 53412 OF THE JOURNAL OF PROCEEDINGS OF THE CITY COUNCIL OF THAT DATE, AND OF ANY SUBSEQUENT ORDINANCE PASSED OR PERMIT ISSUED RELATIVE THERETO.

PARCEL 5:

RIGHT TO MAINTAIN AND USE LOADING DOCK LOCATED ON HOLDEN COURT PURSUANT TO PERMIT NUMBER 42498 ISSUED BY THE CITY OF CHICAGO AND ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON OCTOBER 1, 1997 AND PRINTED UPON PAGES 53404 THROUGH 53412 OF THE JOURNAL OF PROCEEDINGS OF THE CITY COUNCIL OF THAT DATE, AND OF ANY SUBSEQUENT ORDINANCE PASSED OR PERMIT ISSUED RELATIVE THERETO.

PARCEL 6:

RIGHT TO MAINTAIN AND OPERATE CANOPY(IES) OVER THE SIDEWALK ADJOINING THE PREMISES LOCATED AT 5-9 NORTH STATE STREET/8-10 EAST MADISON PURSUANT TO PERMIT ISSUED BY THE CITY OF CHICAGO AND PRINTED UPON PAGES 71541 AND 71542 OF THE JOURNAL OF PROCEEDINGS OF THE CITY COUNCIL PURSUANT TO VARIOUS ORDINANCES PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO, AND OF ANY SUBSEQUENT ORDINANCE PASSED OR PERMIT ISSUED RELATIVE THERETO.

Tax Nos.: 17-10-311-006  
17-10-311-007  
17-10-311-008  
17-10-311-011  
17-10-311-012

Address: 1 North State St., Chicago, Illinois

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