

2501

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**SPECIAL PURPOSE LEASE**

This lease, made and entered into this 1st day of September 1991, by and between Burnie Higginbotham hereinafter referred to as "Lessor" and Sunny Stores, Inc.

WITNESSETH:

**1. PROPERTY LEASE AND TERM:**

Lessor hereby leases to Lessee for the special purpose and limited uses described herein that portion outlined in red on the plat attached hereto and marked Exhibit "A" of the following described property in Shelby County, Alabama.

(ATTACHED PLOT PLAN)

BOOK 377 PAGE 483 together with such additional area of said property as shall be necessary for installation, maintenance, repair and operation of the underground gasoline storage tanks, said property being situated at Hwy 119 & I-65 for a primary term beginning on the 1st day of September 1991, and terminating on the 31st day of August, 2006. Lessor further agrees that upon expiration of the primary terms of this lease, Lessee shall have the option to renew this lease for an additional 5 year period. Upon the expiration of said five year term, Lessee shall have the option to renew this lease for a second 5 year period.

**2. SPECIAL USE:**

Lessee shall have the exclusive right during the term of this lease to use the leased property for the purpose of selling gasoline and the installation, operation, and maintenance of equipment and facilities in connection therewith and shall use the leased property for no other purpose.

**3. IMPROVEMENTS:**

Lessee agrees to install gasoline dispensing equipment upon the leased property. Such equipment shall be installed in accordance with bills of material plans and specifications prepared by or on behalf of Lessee, copies of which shall be furnished to Lessor. Lessee agrees to commence said installation within ninety (90) days after all legal requirements of all Federal, State, City, County and any other governing bodies have been satisfied and all necessary licenses and permits have been issued.

**4. RENTAL:**

Lessee shall pay Lessor as a rental a sum of \$3,000.00 per month, said sum payable in advance. Upon failure of Lessee to pay rentals or any part thereof when due, Lessor may, after

thirty (30) days notice in writing to Lessee, if said rentals are not then paid, declare this lease at an end and void, and may re-enter and take possession of said property, and may recover rent due in any appropriate action at law or may recover the possession of said property, and damages for the detention thereof, by any appropriate remedy at law or in equity, provided, however, that the foregoing right of termination by Lessor because of non-payment of rentals shall not be effective where the non-payment arises out of the application of rentals to an indebtedness allegedly owed by Lessor to Lessee until said rent remains unpaid for a period of thirty (30) days after final determination, by agreement or litigation, that the application of the rental was improper.

5. LESSEE'S EQUIPMENT:

All pumps, tanks, machinery, apparatus, and equipment furnished by Lessee to the leased property shall be and remain the property of Lessee and shall be considered personal property. Lessee shall have the right, at its option, at any time before the expiration or termination of this lease and for a reasonable time thereafter, to remove same at its expense. If the leased property, or any of Lessor's property thereon has been pledged as security by Lessor for any debt owed by Lessor, Lessor agrees to obtain any subordination agreement, exclusion statement, or other instrument required by Lessee to protect its interest in the equipment installed on the leased property by Lessee.

6. TAXES:

Lessor shall pay all taxes and assessments, general and special upon the leased property and Lessee shall pay all taxes and assessments upon machinery, apparatus, equipment and inventory owned by Lessee and located on said property.. Upon Lessee's written request, Lessor will furnish Lessee annually, official tax receipts or true copies thereof showing payment before delinquency of all taxes and assessments levied on the leased property.

7. WARRANTY:

Except as hereafter provided, Lessor hereby fully warrants the title to the leased property and will defend the same against all claims of all persons, and agrees that Lessee shall have the right at any time to redeem for Lessor by payment, any mortgage debt, taxes or other liens thereon in the event of default by Lessor and be subrogated to the rights of the holder thereof and may deduct any such payments from subsequent rentals, commissions, or other sums due Lessor from Lessee, in addition to all other rights and remedies afforded by law. If the property leased by Lessor hereunder is not owned by Lessor in fee simple, but instead is leased or held under some other agreement, then this lease shall be subject to and limited by the terms and conditions in such lease or agreement.

8. USE OF PREMISES:

If the use of said property for the sale of gasoline, oil or oil products said property shall be prohibited or enjoined by lawful authority, or if all or any part of said property is taken in condemnation, or if other circumstances beyond Lessee's control render the property unsuitable for the purpose of the Lessee, Lessee may, at its option, by giving to Lessor thirty (30) days notice of its intention so to do, terminate this lease upon payment of all rentals due up to the expiration of said thirty(30) day period.

Lessee shall negotiate settlement with the condemning authority for that portion of the installation and equipment owned by Lessee which is taken in condemnation, and where the lease continues in effect, Lessee shall relocate its equipment and improvements on the leased property and otherwise restore that portion of the premises to a condition equal to its prior condition and satisfactory for the purpose of selling gasoline.

9. PERMITS AND LICENSES:

Lessor shall fully cooperate in procuring in the name of the Lessor or Lessee or Lessee's nominee, all permits, authorizations, and licenses required or, in Lessee's opinion, deemed reasonably necessary or desirable for the conduct on said premises of the business of selling gasoline.

10. NUISANCE:

Lessee covenants and agrees that it will not permit any nuisance to be created, maintained, or carried on upon said property..

11. INSURANCE:

All increases in liability, fire, or hazard premiums of Lessor caused by the use of the leased property for the dispensing of gasoline and oil shall be paid by Lessor. Lessee will insure and keep continuously insured to their full insurable value, all apparatus and equipment owned by lessee.

12. RIGHT TO ASSIGN OR SUBLET:

Lessee shall have the right to assign this lease or to sublet the premises hereby leased, in whole or in part, at any time during the term of this lease or any extension or renewal thereof. The subletting of said premises shall not release Lessee from its obligation to pay rentals as hereinabove provided.

13. PROHIBITION OF OPERATION:

The parties agree that if the operation of remote controlled gasoline dispensing equipment shall, by any governmental regulation or authority, be prohibited or if necessary permits for such operations be refused, this lease shall be void and of no force or effect, and the parties hereto shall be discharged from any and all obligations or liabilities hereunder. Lessee shall, within ten (10) days of receipt of such notice of prohibition or refusal, notify Lessor thereof in writing, and Lessee shall thereafter remove all of its equipment previously installed on said premises within ninety (90) days of receipt by Lessor of said written notice from Lessee. Lessee may, at its sole option, elect to contest such prohibition or refusal, in which event said notice shall be given by Lessee within ten (10) days of the date upon which said prohibition or refusal is made final or the date upon which any right of appeal or rehearing expires.

14. NOTICES:

All notices, payments, and demands shall be made by mail addressed to the appropriate party at the following respective addresses:

Lessor: Bureau Higginbotham Sr  
2945 Mt Olive Rd  
Mt Olive AL 35040

LESSEE: Sunny Stanes Inc  
P.O. Box 100  
CLERA, AL 35040

or at such other address as one party shall give to the other by registered mail..

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15. ENTIRETY OF AGREEMENT:

This instrument incorporates all of the obligations of the parties hereunder and there are no oral agreements or understandings between the parties concerning the property covered by this lease agreement.

16. SUCCESSORS AND ASSIGNS:

The covenants and provisions hereto shall extend to and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns. No change in ownership of the leased property or any assignment of rentals shall be binding upon Lessee until after Lessee has been furnished with an acceptable written transfer or assignment or a true copy thereof.

IN WITNESS WHEREOF, this lease is executed in duplicate originals as of the date first above written.

WITNESSES:

Amos M. Davis

Viola Higgins (Lessor)  
Bernie Higgins (Lessor)

Sunny Stages Inc. Lessee

ATTEST:

James L. Davis

[Signature]

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A parcel of land situated in the Southeast Quarter of Section 31, Township 19 South, Range 2 West, Huntsville Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southwest corner of the Southeast Quarter of said Section 31; thence in an Easterly direction, along and with the South line of Section 31, 1826.71 feet to a point; thence with a deflection of 122 degrees 59' 55" left (a right interior angle of 57 degrees 00' 05") a distance of 399.97 feet to a point on the Northerly right of way margin of Oak Mountain Park Road; thence continue last described course a distance of 846.69 feet to the point of beginning; thence continue along last course 349.11 feet to a point; thence with a deflection of 91 degrees 18' 39" right, 160.0 feet to a point; thence with a deflection of 90 degrees 00' 00" right 349.02 feet to a point; thence with a deflection of 90 degrees 00' 00" right, 152.01 feet to the point of beginning, forming a closing interior angle of 91 degrees 18' 39". Situated in Shelby County, Alabama.

Together with full rights of ingress and egress in, on, over, through and across the most Northerly 25 foot strip of land parallel to the right of way line of Alabama Highway 119 bounded by the North property line of the property described above and by the Southerly right of way of Alabama Highway 119, as described in Real Record 154, Page 727, in the Probate Office.

SUBJECT TO:

1. Limitation of access and abutters rights as conveyed to State of Alabama in Deed Book 302, Page 370, and Deed Book 302, Page 13, in Probate Office.
2. Transmission line permit to Alabama Power Company recorded in Deed Book 145, Page 378, in Probate Office.
3. Right of way to Shelby County as recorded in Deed Book 135, Page 2, in Probate Office.
4. Title to minerals underlying caption lands with mining rights and privileges belonging thereto, as excepted in Real Record 154, Page 727, in Probate Office.
5. Rights of other parties in and to the use of the easement described in Real Record 154, page 727, in Probate Office.
6. Mortgage from William Louis Doss, an unmarried man, and Mallory Maurice Nuby, an unmarried man, to Union State Bank, dated October 11, 1989, and recorded in Real Record 264, page 400, in Probate Office.

1. Deed Tax	25.00
2. Mtg. Tax	5.00
3. Recording Fee	5.00
4. Indexing Fee	5.00
5. In. Con. Fee	1.00
6. Courtland Fee	1.00
Total	54.00

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
90 AUG 22 PM 2:31

*James A. Shanderson, Jr.*  
JUDGE OF PROBATE

EXHIBIT A





ER POLE

AREA LIGHTS (TYP 4)

CARWASH  
18x36

VENTS

6" CURB

CONCRETE TANK  
SLAB

UNLEADED  
SUPER UNLEADED  
REGULAR

CONCRETE SLAB  
W/ CANOPY  
OVERHEAD

CONVIENCE  
STORE  
35 x 60

CONCRETE  
PAVING

STATE OF ALA. SHELBY CO.  
CERTIFY THIS  
INSTRUMENT WAS FILED

9 DEC 12 PM 1:49

JUDGE OF PROBATE

SECURITY LIGHT  
POLE

LANDSCAPE

LOWER MANHOLE

PRI

18" R.C.P.

STATE "C"  
TYPE CURB

STATE "C"  
TYPE CURB

NEW EDGE OF PAVEMENT

NEW 4" WHITE

EXISTING PAVEMENT @ 064

NEW 24' W

1. Good Title	249.50
2. Mfg. Tax	17.50
3. Recording Fee	3.00
4. Indexing Fee	1.00
5. No Tax Fee	1.00
6. Certified Fee	1.00
<b>Total</b>	<b>377.00</b>

CAPTAIN D'S

9 DEC 12 PM 1:49

JUDGE OF PROBATE

SECURITY LIGHT  
POLE

LANDSCAPE

LOWER MANHOLE

PRI

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STATE "C"  
TYPE CURB

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TYPE CURB

NEW EDGE OF PAVEMENT

NEW 4" WHITE

EXISTING PAVEMENT @ 064

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