

6

THIS INSTRUMENT PREPARED BY (Name) Ben L. Zarzaur, Attorney  
(Address) 2125 Morris Avenue, Birmingham, AL 35203

## REAL ESTATE ACCOMMODATION MORTGAGE

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, Sunny Stores, Inc.

(hereinafter "Borrowers", whether one or more) are, contemporaneously with the execution hereof, becoming indebted to Central Bank of the South (hereinafter "Bank"), on a loan in the sum of Five Hundred Fifty Thousand and 00/100----- Dollars (\$ 550,000.00) principal, as evidenced by a promissory note dated October 31, 1991 payable to Bank with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

WHEREAS, said Borrowers or the Mortgagors (as hereinafter defined) may hereafter become indebted to Bank or a subsequent holder of this Accommodation Mortgage on loans or otherwise (said Bank and any subsequent holder of this Accommodation Mortgage being referred to herein as "Mortgagee"); and

WHEREAS, in order to induce Mortgagee to make the above loan or loans to Borrowers, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the undersigned Burnie Arnold Higginbotham and his wife, Viola E. Higginbotham

(hereinafter "Mortgagors", whether one or more) agree to make this Accommodation Mortgage to secure said principal amount with interest, and all renewals, extensions or modifications thereof, and any and all other additional indebtedness of said Borrowers or Mortgagors to said Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and whether incurred or given as maker, endorser, guarantor or otherwise, all of which are hereinafter referred to as "Other Indebtedness".

NOW THEREFORE, the undersigned Mortgagors and all others executing this Accommodation Mortgage, in consideration of the premises, and to secure the prompt payment of the loan or loans above mentioned with the interest thereon, and any extensions, renewals or modifications of same; and any and all Other Indebtedness of Borrowers or Mortgagors to Mortgagee as set forth above and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and as may be set forth in instruments evidencing or securing Other Indebtedness of Borrowers to Mortgagee, and further to secure any and all charges incurred by Mortgagee on account of Mortgagors, including but not limited to attorney's fees, have bargained and sold and do hereby grant, bargain, sell and convey unto said Mortgagee, its successors and assigns, that certain real property situated in the County of Shelby State of Alabama (hereinafter "Property"), described on Exhibit A attached hereto, or described as follows, to wit:

SEE "EXHIBIT A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

REFERENCE IS HEREBY MADE TO THE ADJUSTABLE RATE MORTGAGE RIDER WHICH IS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

Together with all and singular the rights, privileges, tenements, hereditaments, improvements, fixtures and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the above granted Property unto the said Mortgagee, its successors and assigns, forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers or Mortgagors shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers or Mortgagors, and shall pay all charges incurred by Mortgagee on account of Borrowers or Mortgagors, including but not limited to attorney's fees, and shall pay any and all Other Indebtedness of Borrowers or Mortgagors to Mortgagee, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the Note and in this Accommodation Mortgage, and in any other instruments evidencing or securing Other Indebtedness of Borrowers or Mortgagors to Mortgagee, expressed to be kept, performed, and observed by or on the part of the Borrowers or Mortgagors, all without fraud or delay, then this Accommodation Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of said Note, or of any installment thereof, principal or interest, when due, or upon the happening of a default in the payment of any Other Indebtedness, obligation or liability hereby secured, or any renewals, extensions or modifications thereof when due, or upon default in the performance of any of the covenants, conditions and agreements in the Note, or in this Accommodation Mortgage, or in any other instruments evidencing or securing the Note or Other Indebtedness of Borrowers to Mortgagee, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the

BOOK 377 PAGE 495

Borrowers or Mortgagors, or any endorser, surety or guarantor of the Note or Other Indebtedness of Borrowers to Mortgagee, file or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law for relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be immediately due and payable, and the Mortgagors hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of said county. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in said county and state. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale, including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Accommodation Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagors, and all recitals made in any deed executed under this Accommodation Mortgage shall be evidence of the facts therein recited.

The Mortgagors, their heirs, successors, assigns, executors and administrators, hereby covenant with the Mortgagee, its successors and assigns, that they are seized of an indefeasible estate in fee simple in and to said Property, that said Property is free from all liens and encumbrances except as set forth herein, and that they will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, its successors or assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

The Mortgagors further expressly agree and covenant as follows:

1. Mortgagors shall keep any buildings now or hereafter erected on said Property in good repair, and insured against fire and windstorm, and such other risks as Mortgagee may designate, by policies made payable to the Mortgagee by a New York Standard Loss Payee Endorsement, and deposited with the Mortgagee. Such policies shall be in an amount as may be required by the Mortgagee, but Mortgagee shall not require insurance exceeding the value of said buildings and other improvements.
2. Mortgagors shall keep the improvements situated on the Property in a reasonable state of repair and shall not commit or permit waste of the Property, or remove any fixtures.
3. Mortgagors shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.
4. If Mortgagee shall employ an attorney to collect the debt or any of the debts hereby secured, or any portion thereof, or to foreclose this Accommodation Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceeding, then the said Mortgagors shall pay and allow a reasonable attorney's fee.
5. Mortgagors shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.
6. If the said Mortgagors fail to perform any of the duties herein specified, the Mortgagee may perform the same.
7. The Mortgagee may advance to said Mortgagors such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property, or to pay for any work done upon said Property, or for materials furnished to said Property.
8. The Mortgagee shall have an additional lien upon said Property, secured by this Accommodation Mortgage, for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 4 through 7 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate set forth in the Note or at 9.75 %, whichever is greater, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.
9. Mortgagors shall not sell or otherwise transfer or dispose of the Property without the prior written consent of the Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be immediately due and payable.
10. Mortgagee is authorized, without notice or demand and without affecting this Accommodation Mortgage, from time to time to (a) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrowers or Mortgagors, or any part thereof, including increase or decrease of the rate of interest thereof; (b) take and hold security for the payment of the Note or any Other Indebtedness of Borrowers or Mortgagors, and exchange, enforce, waive and release any such security; and (c) apply such security and direct the order or manner of sale thereof as Mortgagee in its discretion may determine. Mortgagee may without notice assign this Accommodation Mortgage in whole or in part.
11. Mortgagors waive any right to require Mortgagee to (a) proceed against Borrowers; (b) proceed against or exhaust any security held from Borrowers; or (c) pursue any other remedy in Mortgagee's power whatsoever. Mortgagors waive any defense arising by reason of any disability or other defense of Borrowers or by reason of

the cessation from any cause whatsoever of the liability of Borrowers. Until the Note and all Other Indebtedness of Borrowers to Mortgagee shall have been paid in full, Mortgagors shall have no right of subrogation, and waive any right to enforce any remedy which Mortgagee now has or may hereafter have against Borrowers, and waive any benefit of, and any right to participate in any security now or hereafter held by Mortgagee. Mortgagors waive all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

12. It is the intent hereof that this Accommodation Mortgage shall be and remain unaffected, (a) by the existence or nonexistence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrowers or Mortgagors; or (b) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Borrowers, or any part thereof; or (c) by resort on the part of the Mortgagee to any other security or remedy for the collection of any indebtedness of Borrowers or Mortgagors; or (d) by the death or bankruptcy of any one or more of the Borrowers, if more than one, and in case of any such death or bankruptcy, by failure of the Mortgagee to file claim against the deceased Borrower's estate or against such bankrupt's estate, as the case may be, for the amount of such decedent's or such bankrupt's liability to Mortgagee.
13. This Accommodation Mortgage is independent of the obligations of Borrowers, and Mortgagee may exercise its rights under this Accommodation Mortgage whether or not action is brought against Borrowers; and Mortgagors waive the benefit of any statute of limitations or other defenses affecting this Accommodation Mortgage or the enforcement thereof.
14. The provisions of this Accommodation Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.
15. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Accommodation Mortgage, the Note, or other instrument securing the Note or Other Indebtedness of Borrowers or Mortgagors, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.
16. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Accommodation Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.
17. This Accommodation Mortgage is given under the seal of all parties hereto, and it is intended that this Accommodation Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

IN WITNESS WHEREOF, said Mortgagors have hereunto set their hands and seals on this the 31st day of October, 1991.

MORTGAGORS:

Burnie Arnold Higginbotham (SEAL) \_\_\_\_\_ (SEAL)  
Viola E. Higginbotham (SEAL) BY: \_\_\_\_\_  
Viola E. Higginbotham Its: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, \_\_\_\_\_ the undersigned, a Notary Public in and for said County, in said State, hereby certify that Burnie Arnold Higginbotham and his wife, Viola E. Higginbotham whose name(s) are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 31st day of October, 1991.

My commission expires: 12-26-94 Omnia M. Hall  
Notary Public

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ of \_\_\_\_\_ whose name as \_\_\_\_\_ a \_\_\_\_\_, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of such conveyance, \_\_\_\_\_, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said \_\_\_\_\_.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

My commission expires: \_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

Part of Lot 20, Block 849, Birmingham Survey (1326 21st Way South), more particularly described as follows: Commence at the point of intersection of the South line of Highland Avenue and West line of Beech Street; thence southward along the West line of Beech Street 311.25 feet to the point of beginning; thence southward along the West line of Beech Street 50 feet; thence 95 degrees 11 minutes to the right 150.62 feet to a 15 foot alley; thence 84 degrees 49 minutes to the right along said alley to a point on the East line of said alley, where a line drawn through the point of beginning parallel with the North line of Lot 21 would intersect the East line of said alley; thence in an easterly direction to the point of beginning; forming a quadrilateral fronting 50 feet on the West side of Beech Street and extending back 150 feet, more or less, to an alley.



THIS INSTRUMENT PREPARED BY: (Name) Ben L. Zarzaur, Attorney  
(Address) 2125 Morris Avenue, Birmingham, AL 35203

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

**ADJUSTABLE RATE  
MORTGAGE RIDER  
(Commercial Real Estate)**

This Adjustable Rate Mortgage Rider, dated October 31, 1991, amends and supplements the Mortgage and Security Agreement ("Mortgage") dated October 31, 1991, which the undersigned (the "Borrower") gave to Central Bank of the South (the "Holder" or "Mortgagee"); (X) to which this Rider is attached. (X) which is recorded in the office of the Judge of Probate of Shelby County, Alabama, in Real Page. This Rider covers the Property described in the Mortgage.

The word "Note" used in the Mortgage and this Rider shall include an "Adjustable Rate Note." An Adjustable Rate Note is a note containing provisions allowing Holder to change the interest rate and the monthly payment amounts.

**ADJUSTABLE RATE MORTGAGE AMENDMENT**

In addition to the promises and agreements made in the Mortgage, Borrower promises and agrees with Mortgagee as follows:

**(A) ADJUSTABLE RATE NOTE**

The Note provides for an adjustable interest rate and for negative amortization, and it is intended that the Mortgage secure all principal, negative amortization, interest and late charges under the Note as well as all indebtedness, obligations and liabilities set forth in the Mortgage. The provisions of the Note pertaining to interest rate adjustments and negative amortization are as follows:

**2. INTEREST**

Interest shall be charged commencing on the date hereof on all unpaid principal. Any principal amounts outstanding hereunder after maturity shall continue to bear interest at the rate, and calculated in the manner, set forth herein.

All interest hereunder shall be calculated by multiplying the product of the principal amount and the applicable rate set forth herein by the number of days elapsed, and dividing by 360. In no event shall the rate of interest calculated hereunder exceed the maximum rate allowed by law.

**Adjustable Interest Rate**

The applicable rate hereunder is adjustable and will be subject to change every six (6) months on May 1 and November 1 of each year (the "Interest Adjustment Dates"), while any amount of principal is unpaid. On each Interest Adjustment Date, the applicable rate will be raised or lowered to reflect changes in the Index Rate.

The Index Rate will be the auction rate for United States Treasury Bills with maturities of 26 weeks set forth below and as established immediately prior to each subsequent Interest Adjustment Date (herein the "Index Rate"). If the Index Rate is no longer available, Bank will choose a new Index Rate which is based upon comparable information. The beginning Index Rate for this Note shall be \*\* percent. The applicable rate under this Note is 3 percentage points above the Index Rate. However, the applicable rate shall not exceed 99.0 percent nor go below 8.0 percent. **\*\*deteremined on November 1, 1996.**

**3. PAYMENTS; LATE CHARGES; ADDITIONS TO PRINCIPAL**

Borrower promises to pay principal and interest monthly, on or before the 1st day of each month, the first such payment to be due and payable on December 1, 1991. Borrower shall pay to Holder a late charge on any payment not received by Holder by the end of ten (10) calendar days after the date the payment is due, such late charge to be equal to five percent (5%) of that portion of the payment which is overdue. The late charge shall be charged only once for any late payment. In the event Holder receives a payment amount which is not sufficient to pay all interest which has been earned since the last payment, Holder may, at its option, advance an amount equal to the interest earned but unpaid after application of the payment (the "Advance"). In such event, the Advance will be added to the principal of this Note, and will bear interest as provided for in Section 2 commencing on the date of the Advance. Holder is not required to make any such Advance, and in any event, unless otherwise elected by Holder, no such Advance will be made if the balance unpaid under this Note exceeds 105% of the original principal sum set forth in Section 1 above. The failure of Borrower to pay each payment in full when due shall constitute an event of default as set forth in Section 8 irrespective of whether Holder elects to advance any part or all of the insufficient amount under this Section 3.

**Adjustable Payments**

The principal and interest hereunder shall be due and payable in monthly installments, which will adjust each six-month period during the term of this Note based on an amortization schedule for the remaining term of this Note. The first six (6) monthly installments will be ~~be~~ determined on November 1, 1996. Semiannually, after Holder has received Borrower's six (6) previously scheduled payments, Holder will use the balance due under this Note (including the Advances added to the principal) and the interest rate applicable at that time to calculate the adjusted monthly payment for the next six (6) months. There will be no limitation on decreases or increases in the monthly payment amount. Payments will be calculated by the Holder so that the balance due under this Note will be paid by November 1, 2006, which is the maturity date of this Note.

Holder will mail or deliver to Borrower at the address shown below or otherwise in the records of Holder, or to such other address as Borrower has designated in writing to Holder, a notice containing the amount of the adjusted monthly payment.

**(B) CONFLICT IN LOAN DOCUMENTS**

In the event of conflict between any of the terms of the Mortgage and this Rider, the terms of this Rider shall apply. In the event of conflict between any of the terms of this Rider and the Note, the terms of the Note shall apply.

By signing this Rider I agree to all of the above.

ATTEST:

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

WITNESS: •

Charles M. Hall

Burnie Arnold Higginbotham (SEAL)  
Burnie Arnold Higginbotham

Theresa L. Hall

Violet C. Higgins

BOOK 377 PAGE 499

Borrower's address:

2945 Mt. Olive Road

Mt. Olive, Alabama 35117

Lender's address:

701 South 20th Street

Birmingham, Alabama 35233

CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF  
COUNTY OF

I, \_\_\_\_\_, a Notary Public in and for said County in said State,  
hereby certify that \_\_\_\_\_  
whose name as \_\_\_\_\_ of \_\_\_\_\_  
a \_\_\_\_\_, is signed to the foregoing Mortgage and Security Agreement, and who is known to me and known to be such  
\_\_\_\_\_, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement,  
\_\_\_\_\_, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said  
\_\_\_\_\_.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENTS

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, \_\_\_\_\_ the undersigned \_\_\_\_\_, a Notary Public in and for said County in said State,  
hereby certify that Burnie Arnold Higginbotham \_\_\_\_\_, whose name  
is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day  
that, being informed of the contents of the Mortgage and Security Agreement, he executed the same voluntarily on the day the same  
bears date.

Given under my hand and official seal this the 31st day of October, 1991

Chas M. Hall  
Notary Public

My commission expires: 12-26-94

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, \_\_\_\_\_ the undersigned \_\_\_\_\_, a Notary Public in and for said County in said State,  
hereby certify that Viola E. Higginbotham \_\_\_\_\_, whose name  
is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day  
that, being informed of the contents of the Mortgage and Security Agreement, she executed the same voluntarily on the day the same  
bears date.

Given under my hand and official seal this the 31st day of October, 1991

Notary Public

My commission expires: \_\_\_\_\_

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

91 DEC 12 PM 1:51

JUDGE OF PROBATE

1. Deed Tax	_____
2. Mig. Tax	_____
3. Recording Fee	_____
4. Indexing Fee	_____
5. No Tax Fee	_____
6. Certified Fee	_____
Total	_____