

H 76

Property No.: H-104
Unit No.: 0428
City: Hoover
County: Shelby
State: Alabama

Prepared by and when
recorded return to:
Richard K. Bonness, Esq.
Kutak Rock & Campbell
1650 Farnam Street
Omaha, NE 68102

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made as of November 1, 1990 between SPARDEE'S REALTY, INC. ("Lessor"), a Delaware corporation with an address at 203 East Main Street, Spartanburg, South Carolina 29301, and SPARDEE'S RESTAURANTS, INC. ("Lessee"), a Delaware corporation with an address at 600 Shell Lane, Spartanburg, South Carolina 29302.

W I T N E S S E T H :

1. Lessor and Lessee have as of the date hereof entered into a Lease (the "Lease") for, and Lessor hereby leases to Lessee, certain properties located in Alabama, Florida, Georgia, Mississippi, North Carolina, Ohio, South Carolina, Tennessee and Virginia as more fully set forth in the Lease, which Lease includes the land legally described on Exhibit A attached hereto and the improvements and equipment located thereon (the "Leased Property"). Leased Properties may be deleted from or included in the Lease pursuant to the provisions of the Lease.

2. Capitalized terms used but not defined herein shall have the meanings given in the Lease, the provisions of which are incorporated herein by this reference.

3. The term of the Lease (the "Term") shall commence as of the effective date hereof and terminate on November 15, 2015 or on such earlier date upon which the Term may expire or be terminated with respect to any Leased Property pursuant to the Lease or any laws.

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Land Title

4. Rent payable under the Lease shall be absolutely net to Lessor.

5. Upon the occurrence of a Mandatory Casualty Event or Mandatory Condemnation Event, Lessee shall be required to offer to purchase the Leased Property or provide Substitute Property as set forth in the Lease.

6. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter furnishing any labor, services, materials, supplies or equipment to Lessee with respect to any portion of the Leased Properties are hereby charged with notice that they must look exclusively to Lessee to obtain payment for same. NOTICE IS HEREBY GIVEN THAT LESSOR SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS, SUPPLIES OR EQUIPMENT FURNISHED, OR TO BE FURNISHED, TO LESSEE UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR, SERVICES, MATERIALS, SUPPLIES OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE ESTATE OR INTEREST OF LESSOR IN AND TO THE LEASED PROPERTIES.

IN WITNESS WHEREOF, the parties hereto have executed, or caused this Memorandum of Lease to be duly executed on the date set forth in the acknowledgment attached hereto and effective as of the effective date of the Lease, for the purpose of providing an instrument for recording.

[SEAL]

WITNESSES:

By
Name

By
Name

JOHN HUKUJHI

LESSOR:

SPARDEE'S REALTY, INC., a
Delaware corporation

By

George E. Moseley
Vice President

Attest:

By

C. Burt Duren
Assistant Secretary

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[SEAL]

WITNESSES:

By
Name

Kerry McCann
Kerry McCann

By
Name

John Hukushi
JOHN HUKUSHI

LESSEE:

SPARDEE'S RESTAURANTS, INC., a
Delaware corporation

By

George E. Moseley
Vice President

Attest:

By

C. Burt Duren
C. Burt Duren
Assistant Secretary

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STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 8th day of November, 1990, before me, the undersigned officer, personally appeared George E. Moseley (residing at 1245 Farragut Drive, Spartanburg, South Carolina 29302) and C. Burt Duren (residing at 125 Cane Brake Drive, Greer, South Carolina 29650), personally known and acknowledged to me to be the Vice President and Assistant Secretary, respectively, of Spardee's Realty, Inc., and that, as such officers, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers as their free and voluntary act and deed and the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Christina J. [Signature]
Notary Public

My Commission Expires:

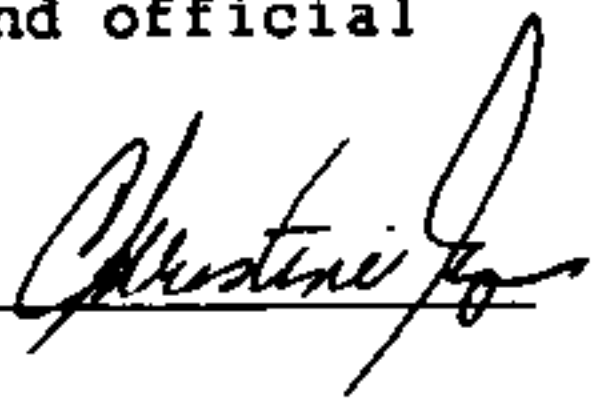
[NOTARIAL SEAL]

CHRISTINA J. LOAN
Notary Public, State of New York
County of []
Commission Expires April 13, 1992

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 8th day of November, 1990, before me, the undersigned officer, personally appeared George E. Moseley (residing at 1245 Farragut Drive, Spartanburg, South Carolina 29302) and C. Burt Duren (residing at 125 Cane Brake Drive, Greer, South Carolina 29650), personally known and acknowledged to me to be the Vice President and Assistant Secretary, respectively, of Spardee's Restaurants, Inc., and that, as such officers, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers as their free and voluntary act and deed and the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.



Notary Public

My Commission Expires:

[NOTARIAL SEAL]

Christine Jones
Notary Public, New York
County of [illegible]
Commission Expires April 13, 1982

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H-104

EXHIBIT A

LEGAL DESCRIPTION

The real property located in the City of Hoover, County of Shelby, State of Alabama, more particularly described as follows:

Lot 2, according to the Survey of Village on Valleydale at SouthLake as recorded in Map Book 11, page 84 in the Probate Office of Shelby County, Alabama.

Together with those rights and easement granted pursuant to that certain Declaration of Restrictions and Grant of Easements as recorded in Real 173 page 355, subject to and upon the terms, conditions and provisions therein

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GEORGE R. REYNOLDS, JUDGE
MICHAEL F. BOLIN, JUDGE

325-5203

325-5428

PROBATE COURT OF JEFFERSON COUNTY

1110 COURTHOUSE

BIRMINGHAM, ALABAMA 35203-0000

CHIEF COURT CLERK
BIRMINGHAM DIVISION
PEGGY A. PROCTOR
PHONE 325-5429

JOHN C. ROCKETT
DEPUTY PROBATE JUDGE
BESSEMER DIVISION
BESSEMER, ALABAMA
PHONE 481-4108

December 27, 1990

To Whom It May Concern:

This letter is to certify that a memorandum of lease was recorded with the office of Judge Of Probate, Jefferson County in vol 3948 page 958. A deed tax of \$64,783.00 was collected and will be distributed as directed by attached revenue order.

George R. Reynolds

George R. Reynolds
Judge of Probate

BOOK 324 PAGE 570

3948 PAGE 958

STATE OF ALA. JEFFERSON CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON

1990 DEC 27 PM 3: 52

RECORDED & INDEXED
DEED TAX HAS BEEN PAID TO THE STATE

George E. Spaulding
JUDGE OF PROBATE

STATE OF ALABAMA \$
MONTGOMERY COUNTY \$

DEED TAX ORDER

BEFORE THE ALABAMA DEPARTMENT OF REVENUE:

In the matter of privilege tax levied under the provisions of Section 40-22-1, Code of Alabama 1975, upon an Amended and Restated Lease dated as of November 1, 1990 from Spardee's Realty, Inc., as Lessor, and Spardee's Restaurant, Inc., as Lessee, and the Memorandum of Lease between said parties, covering property located of said Lease both within and without the State of Alabama is \$571,914,755.00; and

Upon consideration of the facts and evidence, the Alabama Department of Revenue finds as follows:

1. That the total rent for the 25 year term of said Lease both within and without the State of Alabama is \$571,914,755.00.

2. That the total rent for the 25 year term of the Lease within the State of Alabama is \$125,780,626.00 or 22.1671% of the total rent both within and without the State of Alabama.

3. That the present value of the allowable rent per county over the 25 year term of the Lease is as set forth on Exhibit "A" hereto.

4. That the amount of deed tax to be paid upon recordation of the Memorandum of Lease at the rate of \$.50 per each \$500.00, or fraction thereof, is \$64,783.00, to be

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distributed to each county according to the percentage as set forth in the last column of Exhibit "A".

IT IS, THEREFORE, ORDERED by the Alabama Department of Revenue that the Probate Judge of Jefferson County, Alabama, wherein the deed will be recorded first, shall collect deed tax in the amount of \$64,783.00, plus any recording fees which may be due, and after deducting the Judge of Probate's commission, shall make distribution of such tax in the percentages as set out above.

DONE this the 20th day of December, 1990.

ALABAMA DEPARTMENT OF REVENUE

By *D. S. Long*

ATTEST:

[Signature]

Secretary

Ray Norcliffe Edwards

Approved - Legal Division

SENT BY: SKADDER: LRP5

:12- 4-90 9:50AM :

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EXHIBIT "A"

Harder's Units

County	Restaurant Unit #	Property File #	Rental Factor	Allowable Rent Per Property Over 28 Year Term of Lease	Present Value of Allowable Rent Per Property Over 28 Year Term of Lease (Using 11% Discount)	Z
Elmore	106	H-023	0.467964661463%	2,792,813	1,428,158	2.20
Essex	227	H-078	0.323064446240%	1,347,863	844,181	1.46
Etowah	804	H-018	0.521071685871%	2,980,086	1,522,824	
	270	H-070	0.367800487088%	2,044,598	1,044,730	
	Total			5,024,884	2,567,813	3.96
Geneva	404	H-088	0.422294618462%	2,415,165	1,234,148	1.91
Greene	412	H-102	0.422294618462%	2,415,165	1,234,148	1.91
Henry	948	H-083	0.429335301021%	2,407,381	1,230,177	1.90
Houston	283	H-028	0.367821320508%	2,104,200	1,078,246	1.66
Jackson	340	H-090	0.258466622944%	1,632,569	854,243	1.29
Jefferson	236	H-009	0.438448067277%	2,793,507	1,427,482	
	968	H-018	0.521071685871%	2,980,086	1,522,824	
	218	H-047	0.425628878600%	2,441,078	1,247,391	
	201	H-053	0.587408470800%	2,215,829	1,132,186	
	190	H-058	0.438606427758%	2,508,466	1,281,820	
	217	H-074	0.348823847558%	1,982,403	1,013,003	
	220	H-083	0.254848467358%	1,486,356	744,187	
	Total			16,377,516	8,368,910	12.92
Lauderdale	414	H-101	0.422294618462%	2,415,165	1,234,148	1.91
Lawrence	424	H-328	0.422294618462%	2,415,165	1,234,148	1.91
Limestone	39	H-003	0.613605217888%	3,308,727	1,792,869	
	307	H-018	0.523790320784%	2,995,834	1,530,769	
	Total			6,304,561	3,323,638	5.13
Madison	174	H-066	0.344813824302%	1,972,038	1,007,712	1.56
Marion	178	H-084	0.258818980136%	1,640,343	838,219	1.29

SENT BY: SKADDEN APPS

112- 4-90 9:51AM :

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\$225,000,000 10 1/4% Guaranteed Secured BondsHarter's Units

County	Restaurants Unit #	Property File #	Rental Factor	Allocable Rent Per Property Over 25 Year Term of Lease	Present Value of Allocable Rent Per Property Over 25 Year Term of Lease (Using 5.11 Interest)	Z
Marion	330	H-014	0.545066394002%	3,117,429	1,883,008	
	814	H-048	0.421358408338%	2,408,982	1,231,501	
	Total			5,526,411	3,114,509	4.36
Marshall	230	H-038	0.405982809188%	2,321,876	1,186,478	
	278	H-051	0.337563831888%	1,880,877	988,523	
	Total			4,202,753	2,175,002	3.35
Mobile	254	H-058	0.243770837823%	1,384,162	712,417	1.10
Monroe	368	H-016	0.511558463781%	2,825,887	1,486,018	2.31 ¹
Montgomery	311	H-038	0.418889771852%	2,384,434	1,223,556	
	666	H-080	0.384203730103%	2,187,489	1,122,817	
	287	H-068	0.313548223150%	1,783,234	916,343	
	268	H-080	0.326238185837%	1,886,783	983,420	
	382	H-084	0.482294818482%	2,418,168	1,234,149	
	388	H-088	0.482294818482%	2,418,168	1,234,149	
	Total			13,091,281	6,684,536	10.32
Morgan	348	H-011	0.528055849882%	3,008,891	1,537,390	
	208	H-017	0.503883884848%	2,881,813	1,472,504	
	230	H-034	0.405982809188%	2,321,876	1,186,478	
	418	H-103	0.422294818482%	2,418,168	1,234,149	
	Total			10,627,245	5,430,522	8.38
Perry	882	H-088	0.281347038274%	1,889,257	881,487	1.31
Pike	344	H-073	0.387838578613%	2,218,220	1,133,511	1.75
Shelby	882	H-021	0.545162130080%	3,088,824	1,578,440	
	338	H-038	0.433188157983%	2,477,388	1,268,830	
	184	H-068	0.285578098412%	1,832,170	884,898	
	488	H-104	0.482294818482%	2,418,168	1,234,149	
	Total			9,873,818	4,943,218	7.63

SENT BY: SKADDEN ARPS

112- 4-90 9:51AM :

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\$225,000,000 10 1/4% Guaranteed Secured BondsHarden's Units

County	Restaurant Unit #	Property FBI #	Rental Factor	Allocable Rent Per Property Over 25 Year Term of Lease	Present Value of Allocable Rent Per Property Over 25 Year Term of Lease (Using .511 factor)	Z
St. Clair	222	H-022	0.458277654487%	2,409,519	1,333,484	2.06
Burrus	411	H-100	0.452234618462%	2,415,183	1,234,149	1.91
Talladega	178	H-030	0.479699068818%	2,744,270	1,402,322	
	272	H-081	0.284813788280%	1,513,385	773,330	
	Total			4,257,658	2,175,652	3.36
Tuscaloosa	305	H-018	0.502847453319%	2,378,431	1,468,856	
	22	H-084	0.351157005889%	2,008,318	1,028,251	
	271	H-044	0.484107041717%	2,425,531	1,238,446	
	24	H-088	0.228724647687%	1,315,829	671,347	
	Total			6,824,109	4,406,820	6.80
Wilcox	409	H-089	0.452234618462%	2,415,183	1,234,149	1.91
Winston	222	H-008	0.547351823071%	3,130,386	1,598,827	2.46

Alabama Total (Harden's)
Sum of Lease Payments
PV of Sum of Lease Payments

9128,780,826

\$64,782,897 100%

All States Total (Harden's)
Sum of Lease Payments
PV of Sum of Lease Payments

STATE OF ALA. SHELBY CO. 8071.914,786
I CERTIFY THIS
INSTRUMENT WAS FILED

\$282,248,440

91 JAN -3 PM 2:11

Thomas A. Shover, Jr.
JUDGE OF PROBATE

1. Deed Tax -----
2. Mfr. Tax -----
3. Licensing Fee ----- 24.00
4. Indexing Fee ----- 24.00
5. Notary Fee -----
6. Certified Fee ----- 7.00
Total ----- 54.00

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