

H15

Property No.: H-21
Unit No.: 0383
City: Columbiana
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.

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]

LESSOR:

SPARDEE'S REALTY, INC., a
Delaware corporation

WITNESSES:

By

Name

By

Name

By

George E. Moseley
Vice President

Attest:

By

C. Burt Duren
Assistant Secretary

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[SEAL]

WITNESSES:

By
Name

Kenny McCann
Kenny 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

BOOK 324 PAGE 523

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

On this 9th 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.

Notary Public

My Commission Expires:

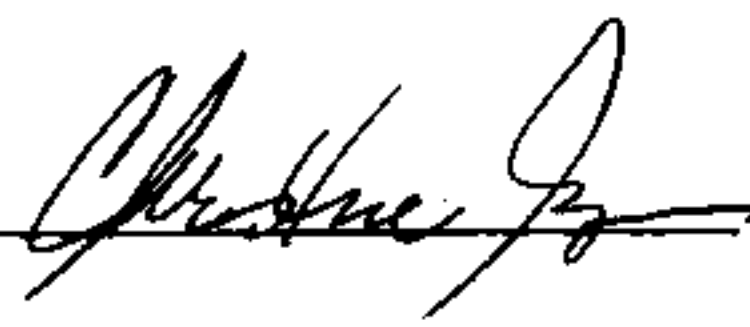
[NOTARIAL SEAL]

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

On this 9th 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 EGAN
Notary Public, State of New York
County of []
Commission Expires April 13, 1992

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H-21

EXHIBIT A

LEGAL DESCRIPTION

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

A parcel of land in the N.W.1/4 of the N.E.1/4 of Section 26, Township 21 South, Range 1 West, Shelby County, Alabama; described as follows:

Commence at the Southeast corner of said 1/4-1/4 section,
Thence run West along the South 1/4-1/4 line 105.47 feet to the centerline of an Alabama Gas Corporation 100 foot right-of-way,
Thence turn right 69 deg. 48 deg. 36 sec. and run Northwest along said right-of-way 36.39 feet,
Thence turn left 47 deg. 51 min. 30.5 sec. and run Northwest 275.47 feet to a point on the North right-of-way of Alabama Highway #70,
Thence turn right 83 deg. 00 min. 09.6 sec. and run Northeast 68.47 feet,
Thence turn left 91 deg. 31 min. 00 sec. and run Northwest 50.00 feet,
Thence turn left 88 deg. 29 min. 00 sec. and run Southwest 61.01 feet to a point on the North right-of-way of Highway #70, said point being on a counter-clockwise curve having a delta angle of 11 deg. 40 min. 27 sec. and a radius of 2011.32 feet,
Thence turn right 96 deg. 33 min. 26.3 sec. and run Northwesterly along the arc of said curve 409.81 feet to THE POINT OF BEGINNING,
Thence turn right 119 deg. 07 min. 35 sec. from tangent and run Northeast 246.95 feet,
Thence turn left 90 deg. 00 min. 00 sec. and run Northwest 260.60 feet,
Thence turn left 90 deg. 00 min. 00 sec. and run Southwest 420.00 feet to a point on the North right-of-way of said Highway #70; said point being on a clockwise curve having a delta angle of 08 deg. 35 min. 13 sec. and a radius of 2011.32 feet,
Thence turn left 128 deg. 02 min. 48.5 sec. to tangent and run East along said right-of-way 313.14 feet to THE POINT OF BEGINNING.
Containing 1.97 acres, more or less.

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

325-5203

325-5426-11

PROBATE COURT OF JEFFERSON COUNTY

1110 COURTHOUSE

BIRMINGHAM, ALABAMA 35203-0088

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

JOHN C. ROCKETT
DEPUTY PROBATE JUDGE
BESSEMER DIVISION
BESSEMER, ALABAMA
PHONE 481-4100

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

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3948 PAGE 958

STATE OF ALA. DEPT. OF REVENUE
I CERTIFY THIS INSTRUMENT
WAS FILED ON

1990 DEC 27 PM 3: 52

RECORDED & INDEXED
DEED TAX HAS BEEN PAID TO THE STATE

George C. Spaulder
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 B. Norcliffe Edwards

ATTEST:

[Signature]

Secretary

B. Norcliffe Edwards

Approved - Legal Division

BOOK 324 PAGE 529

SENT BY: SKADDER CRPS

112- 4-90 9:50AM :

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EXHIBIT "A"

Harding's Units

County	Restaurant 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 7.11 factor)	Z
Elmore	186	H-023	0.467964861463%	2,790,815	1,428,188	2.20
Eschambia	227	H-078	0.323064446240%	1,847,863	844,181	1.46
Etowah	304	H-018	0.521071685871%	2,880,086	1,522,824	
	270	H-070	0.357800487068%	2,044,888	1,044,730	
	Total			8,084,684	2,807,613	3.96
Geneva	404	H-088	0.422284618462%	2,418,168	1,234,148	1.91
Greene	418	H-102	0.422284618462%	2,418,168	1,234,148	1.91
Henry	948	H-082	0.426335301021%	2,407,391	1,230,177	1.90
Houston	283	H-028	0.367921320806%	2,104,200	1,078,246	1.66
Jackson	946	H-090	0.258486862894%	1,632,569	834,249	1.29
Jefferson	338	H-009	0.438448087277%	2,793,807	1,427,462	
	368	H-010	0.521071685871%	2,880,086	1,522,824	
	216	H-047	0.425625876800%	2,441,078	1,247,391	
	201	H-063	0.387408470800%	2,218,828	1,132,188	
	180	H-058	0.438808427769%	2,508,496	1,281,820	
	217	H-074	0.348628847658%	1,982,403	1,013,003	
	220	H-089	0.254848467358%	1,486,356	744,187	
	Total			16,377,518	8,368,910	12.92
Lauderdale	414	H-101	0.422284618462%	2,418,168	1,234,148	1.91
Lawrence	434	H-328	0.422284618462%	2,418,168	1,234,148	1.91
Limestone	39	H-003	0.813505217886%	3,508,727	1,782,889	
	307	H-018	0.523780320784%	2,995,834	1,530,769	
	Total			6,504,561	3,313,658	5.13
Madison	174	H-086	0.344613824302%	1,873,038	1,007,712	1.56
Marango	178	H-084	0.258615980138%	1,640,343	836,213	1.29

SENT BYISKADEN APPS

12-4-90 9:51AM

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8343173: 3

\$228,000,000 10 1/4% Guaranteed Secured BondsHester's Units

County	Restaurants Unit #	Property File #	Rental Factor	Allocable Rent Per Property Over 99 Year Term of Lease	Present Value of Allocable Rent Per Property Over 99 Year Term of Lease (Using 8 1/2% Interest)	X
Marion	330	H-014	0.845088394002%	3,117,428	1,883,008	
	814	H-048	0.421388408838%	2,408,982	1,231,501	
	Total			5,526,411	3,114,509	4.36
Marshall	230	H-038	0.405982808188%	2,321,878	1,188,478	
	278	H-081	0.337883831888%	1,860,677	988,529	
	Total			4,182,555	2,177,007	3.35
Mobile	284	H-088	0.243770827823%	1,384,182	712,417	1.10
Monroe	368	H-018	0.511858483781%	2,928,887	1,488,018	2.31
Montgomery	311	H-038	0.418888771882%	2,384,434	1,223,858	
	888	H-080	0.584233730103%	2,187,488	1,122,817	
	287	H-088	0.313848223150%	1,783,234	818,343	
	288	H-080	0.328238188837%	1,888,783	888,420	
	388	H-084	0.422284818482%	2,418,188	1,234,148	
	388	H-088	0.422284818482%	2,418,188	1,234,148	
	Total			13,081,281	6,884,538	10.32
Morgan	348	H-011	0.528055818883%	3,008,581	1,537,380	
	208	H-017	0.508883884848%	2,881,813	1,472,804	
	230	H-034	0.405982808188%	2,321,878	1,188,478	
	418	H-103	0.422284818482%	2,418,188	1,234,148	
	Total			10,628,245	5,430,522	8.38
Perry	888	H-088	0.281347038274%	1,888,257	881,487	1.31
Pike	344	H-073	0.387888578813%	2,218,228	1,133,811	1.75
Shelby	883	H-081	0.548108130080%	3,088,824	1,578,440	
	338	H-038	0.433188187983%	2,477,388	1,288,830	
	184	H-088	0.288878098412%	1,882,170	884,888	
	488	H-104	0.482284818482%	2,418,188	1,234,148	
	Total			9,873,818	5,043,218	7.63

SENT BY: SKADDEN ARPS

12-4-90 9:51AM

21273524594

6343172: 4

\$225,000,000 10 1/4% Guaranteed Secured Bonds

Hardie's Units

County	Restaurant Unit #	Property File #	Mental 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)	X
St. Clair	222	H-028	0.458277554487%	2,809,519	1,333,464	2.06
Bumter	411	H-100	0.422294818482%	2,415,183	1,234,149	1.91
Talladega	178	H-030	0.479659088818%	2,744,270	1,402,322	
	272	H-091	0.264813795260%	1,813,365	773,330	
	Total			4,227,838	2,175,652	3.36
Tuscaloosa	305	H-010	0.502947433319%	2,576,431	1,468,888	
	82	H-084	0.351157008688%	2,008,318	1,026,251	
	371	H-044	0.484107041717%	2,428,531	1,238,448	
	38	H-092	0.229724647887%	1,313,829	671,367	
	Total			8,324,109	4,404,920	6.80
Wilcox	409	H-099	0.422294818482%	2,415,183	1,234,149	1.91
Winston	285	H-008	0.547351823071%	3,130,386	1,598,627	2.46

Alabama Total (Hardie's)

Sum of Lease Payments

\$128,780,626

PV of Sum of Lease Payments

\$64,782,897 100%

All States Total (Hardie's)

Sum of Lease Payments

\$571,914,758

PV of Sum of Lease Payments

\$293,248,440

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

91 JAN -3 PM 1:58

Thomas A. Shewell, Jr.
JUDGE OF PROBATE

1. Deed Tax ----- \$
2. Mfr. Tax ----- \$
3. Recording Fee ----- \$ 30.00
4. Indexing Fee ----- \$ 2.00
5. No Tax Fee ----- \$
6. Certified Fee ----- \$ 1.00

Total ----- \$ 34.00

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