



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

#### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is dated as of November 1, 1990 by Spardee's Realty, Inc. ("Borrower"), a Delaware corporation with an address at 203 East Main Street, Spartanburg, South Carolina 29301, to William J. Wade, not individually or personally, but solely as co-issuer trustee for the benefit of Secured Restaurants Trust ("Lender"), a Delaware statutory business trust existing pursuant to an Amended and Restated Trust Agreement dated as of October 15, 1990, between Spartan Holdings, Inc. and Wilmington Trust Company (William J. Wade, in his capacity as co-issuer trustee as aforesaid, is herein referred to as "Assignee").

#### PRELIMINARY STATEMENT

Lender has made a loan to Borrower evidenced by that certain Mortgage Note (the "Mortgage Note"), delivered pursuant to the Loan Agreement, from Borrower to Assignee in the original principal amount of \$530,556 bearing interest and being payable as provided therein. The payment and performance of Borrower's obligations under the Mortgage Note will be secured, in part, by that certain Mortgage and Security Agreement dated as of the date hereof (the "Mortgage") between Borrower and Assignee for the benefit of Lender encumbering the Mortgaged Estate (as defined in the Mortgage), including, without limitation, the land described on Exhibit A hereto (the "Property").

Land Title

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Definitions. Capitalized terms used herein shall have the respective meanings given them in that certain Loan Agreement dated as of November 1, 1990 between Borrower and Lender (the "Loan Agreement"), unless otherwise defined herein.

2. Assignment; Certain Rights of Borrower. To further secure the prompt payment and performance of each obligation secured by the Mortgage, Borrower hereby assigns, transfers, conveys and sets over to Assignee all of Borrower's estate, right, title and interest in, to and under all leases, whether existing on the date hereof or hereafter entered into (including any extensions, modifications or amendments thereto) relating to the Property, including, without limitation, that certain Lease (the "Lease") between Spardee's Realty, Inc., as lessor, and Spardee's Restaurants, Inc., as lessee (collectively, the "Leases"), together with all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the rents, revenues, profits and income from the Mortgaged Estate, including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to take possession and control of the Mortgaged Estate, pursuant to Borrower's rights as lessor under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the rents, revenues, profits and income thereof. It is intended by Borrower and Assignee that this Assignment constitutes an absolute assignment and not merely an assignment for additional security. The consideration received by Borrower to execute and deliver this Assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower.

So long as no Event of Default (as defined below) has occurred, Borrower shall have a revocable license to collect and receive all rents, revenues, profits and income and to retain, use and enjoy the same and to do all acts and perform such obligations under the Leases, provided that Borrower has directed Lessee under the Lease to make payments of Basic

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Rent directly to Collateral Agent. Excess Cash Flow shall be paid to Borrower as provided in Section 2.10 of the Loan Agreement. Upon the occurrence of an Event of Default, such license shall be deemed automatically revoked by Assignee without the necessity of Assignee taking any action whatsoever, and all such rents, revenues, profits and income shall be deemed to be cash collateral for all purposes, including, without limitation, for purposes of Section 363 of Title 11 of the United States Code, as the same may be amended. Upon the curing of any Event of Default by Borrower and the prompt written acknowledgement of such cure by Assignee, Borrower's license shall be automatically reinstated.

Upon the occurrence of any Event of Default, Assignee may, at any time without notice, either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and control of the Mortgaged Estate, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Mortgaged Estate, including, but not limited to, the execution, cancellation or modification of the Leases, the repair of the Mortgaged Estate, the execution or termination of contracts providing for the management or maintenance of the Mortgaged Estate, all on such terms as are deemed best to protect the security of this Assignment, and in Assignee's or Borrower's name, sue for or otherwise collect such rents, revenues, profits and income from the Mortgaged Estate as specified in this Assignment as the same become due and payable, including, but not limited to, rents then due and unpaid. All amounts advanced and expenses incurred by Assignee in connection with any such acts shall be secured hereby and shall be due and payable upon demand by Assignee.

Any rents that may be collected by Borrower shall immediately be held by Borrower as trustee for the benefit of Assignee only. Rents received in excess of the amounts required to be paid by Borrower under the provisions of the Loan Agreement shall be paid to Borrower in accordance with the provisions of the Loan Agreement. Borrower agrees that, commencing upon the occurrence of any Event of Default, each tenant of the Mortgaged Estate shall make its rent payable to and pay such rent to Assignee (or Assignee's agents) on Assignee's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

In the event Assignee elects to seek the appointment of a receiver for all or any part of the Mortgaged Estate upon Borrower's breach of any covenant or agreement of Borrower in this Assignment, Borrower hereby expressly consents to the appointment of such receiver.

Any entering upon and taking possession and control of the Mortgaged Estate by Assignee or the receiver and any application of rents, revenues, profits and income as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Assignee under applicable law or provided herein.

3. Certain Agreements of Borrower. Borrower hereby agrees as follows:

(a) If any of the Leases provide for a security deposit paid by the tenant thereunder to Borrower, this Assignment shall transfer to Assignee all of Borrower's right, title and interest in and to such security deposits; provided that, Borrower shall have the right to retain such security deposits so long as no Event of Default shall have occurred; and provided further that Assignee shall have no obligation to any such tenant with respect to such security deposits unless and until Assignee comes into actual possession and accepts control of such security deposits by notice to such tenant;

(b) Borrower shall not terminate any Lease (except pursuant to the terms of such Lease upon a default by the tenant thereunder), or grant concessions or modify or amend any such Lease in any manner whatsoever, without the prior written consent of Assignee;

(c) Borrower shall not collect any rent more than one (1) month in advance of the date on which it becomes due under the terms of each Lease;

(d) Borrower shall not discount any future accruing rent and, after the occurrence of an Event of Default, Borrower waives any right of setoff against amounts due from any tenant under the Leases;

(e) Except with the prior written consent of Assignee, Borrower shall not request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Mortgaged

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Estate or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(f) All leases or other occupancy agreements with respect to the Mortgaged Estate in effect from time to time shall be deemed included in this Assignment as though originally listed herein, and the respective terms "Lease" and "Leases" as used herein shall include such leases or occupancy agreements and the term "lessee" or "tenant" used herein shall include the lessees or tenants thereunder; and

(g) Nothing herein shall be construed to constitute Assignee as a "mortgagee in possession" in the absence of its taking of actual possession of the Mortgaged Estate pursuant to the powers granted herein, or to impose any liability or obligation on Assignee or Assignee under or with respect to the Leases.

4. Event of Default. Any one or more of the following shall constitute an Event of Default hereunder:

(a) any payment due on any Mortgage Note is not paid when due; or

(b) the occurrence of an Event of Default under any Loan Document.

5. Remedies of Assignee. If an Event of Default occurs, Assignee shall have all rights and remedies provided under this Assignment, the Loan Documents, or any other agreement between Borrower and Assignee, or otherwise available at law or in equity.

6. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted them hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents.

7. Marshalling. Borrower and any party who now or hereafter acquires a security interest in any of the Mortgaged Estate and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshalling of assets in connection

with the exercise of any of the remedies permitted by applicable law or provided herein.

8. Limited Liability. The obligations of Borrower under this Assignment are subject to the provisions regarding limited liability contained in Section 8.22 of the Loan Agreement.

9. Governing Law. The terms and provisions of this Assignment shall be governed by the applicable laws of the state where the Property is located.

10. Severability. In case any one or more of the provisions hereof shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Assignment and the Loan Documents.

12. Successors and Assigns. This Assignment applies to, inures to the benefit of and binds Borrower and Assignee, their successors and assigns.

IN WITNESS WHEREOF, Borrower has executed this Assignment on the date set forth in the acknowledgement attached hereto and effective as of the Closing Date.

[SEAL]

Witnesses:

Name

Name

SPARDEE'S REALTY, INC., a Delaware corporation

By

George E. Moseley  
Vice President

Attest:

By

C. Burt Duren  
Assistant Secretary

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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.

Ellen C Meyer  
Notary Public

My Commission Expires:

[NOTARIAL SEAL]

ELLEN C. MEYER  
Notary Public, State of New York  
No. [REDACTED]  
Qualified in New York County  
Commission Expires Sept. 24, 1992

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

91 JAN -3 PM 2:04

*Thomas A. Shores, Jr.*  
JUDGE OF PROBATE

|                  |   |       |
|------------------|---|-------|
| 1. Dead Tax      | — | 0     |
| 2. Mfr. Tax      | — | 0     |
| 3. Recording Fee | — | 20.00 |
| 4. Indexing Fee  | — | 5.00  |
| 5. No Tax Fee    | — | 0     |
| 6. Certified Fee | — | 7.00  |
| Total            | — | 22.00 |

