

H 49

Property No.: H-68
Unit No.: 0194
City: Alabaster
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 :

BOOK 324 PAGE 607
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

Maxine Kelley
MAXINE KELLEY

By

George E. Moseley
Vice President

By
Name

Clare Tander
Clare Tander

Attest:

By

C. Burt Duren
Assistant Secretary

BOOK 324 PAGE 608

[SEAL]

WITNESSES:

By *Clare Land*
Name Clare Land

By *Henry McCann*
Name Henry McCann

LESSEE:

SPARDEE'S RESTAURANTS, INC., a
Delaware corporation

By *George E. Moseley*
George E. Moseley
Vice President

Attest:

By *C. Burt Duren*
C. Burt Duren
Assistant Secretary

BOOK 324 PAGE 609

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

On this 6th 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:
Notary Public, State of New York
No. 31-955092
Qualified in New York County
Commission Expires Sept. 11, 1991

[NOTARIAL SEAL]

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

On this 6th 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.

BOOK 324 PAGE 610

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


Notary Public

[NOTARIAL SEAL]

My Commission Expires:
RACHEL M. RUSSO
Notary Public State of New York
No. [REDACTED]
Qualified in New York County
Commission Expires Sept. 11, 1991

BOOK 324 PAGE 611

H-68

EXHIBIT A

LEGAL DESCRIPTION

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

A part of the Southwest quarter of the Southwest quarter of Section 25, Township 20 South, Range 3 West and the Southeast quarter of the Southeast quarter of Section 26, Township 20 South, Range 3 West more particularly described as follows: Begin at the Southwest corner of Section 25 and run East along the South line of said Section 25 a distance of 130.60 feet to a point on the Westerly right-of-way line of U.S. Highway 31; thence turn an angle to the left of 75° 29' and run Northerly along said Westerly right-of-way line a distance of 34.0 feet to the point of beginning of the tract herein described; thence continue along said Westerly right-of-way line a distance of 166.0 feet to a point; thence turn an angle to the left of 90° 00' and run Westerly a distance of 269.93 feet to a point on the Easterly right-of-way line of the Louisville and Nashville Railroad; thence turn an angle to the left of 97° 38' 30" and run Southerly along said Easterly right-of-way line a distance of 167.49 feet to a point; thence turn an angle to the left of 82° 21' 30" and run Easterly a distance of 247.66 feet to the point of beginning.

-BOOK 324 PAGE 612

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

325-5203

325-5420

PROBATE COURT OF JEFFERSON COUNTY

110 COURTHOUSE

BIRMINGHAM, ALABAMA 35203-0000

CHIEF COURT CLERK
BIRMINGHAM DIVISION
PEGGY A. PROCTOR
PHONE 325-5428

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

BOOK 324 PAGE 613

3948 PAGE 958

STATE OF ALA. REVENUE CO.
I CERTIFY THIS DOCUMENT
WAS FILED ON

1990 DEC 27 PM 3: 52

RECORDED & INDEXED
DEED TAX HAS BEEN PAID BY THE INSTRUMENT

George C. Fitzgerald
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

BOOK 324 PAGE 614

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 Benzilay

ATTEST:

[Signature]

Secretary

Ray-Norcliffe Edwards

Approved - Legal Division

SENT BY: SKADEN LRP

12- 4-20 9:50AM :

2127352-459-

8343171: # 2

EXHIBIT "A"

Harden's Units

County	Restaurant Unit #	Property File #	Rental Factor	Allocable Rent Per Property Over 28 Year Term of Lease	Present Value of Allocable Rent Per Property Over 28 Year Term of Lease (Using 11% Factor)	Z
Elmore	188	H-023	0.467984861483%	2,780,913	1,428,188	2.20
Decatur	227	H-078	0.323064448240%	1,847,863	844,181	1.46
Etowah	804	H-018	0.521071888871%	2,980,088	1,522,824	
	870	H-070	0.387800487088%	2,044,588	1,044,790	
	Total			3,024,884	2,887,813	3.96
Geneva	404	H-088	0.422284818482%	2,418,168	1,234,148	1.91
Greene	412	H-102	0.422284818482%	2,418,168	1,234,148	1.91
Henry	848	H-083	0.425335301021%	2,407,381	1,230,177	1.90
Houston	883	H-028	0.387821820808%	2,104,200	1,078,248	1.66
Jackson	348	H-080	0.288488882284%	1,832,588	834,243	1.29
Jefferson	238	H-008	0.438448087277%	2,783,807	1,427,482	
	388	H-013	0.521071888871%	2,980,088	1,522,824	
	218	H-047	0.425625878800%	2,441,078	1,247,381	
	201	H-053	0.387408470800%	2,218,828	1,132,188	
	180	H-088	0.438808427788%	2,508,488	1,281,820	
	217	H-074	0.348828847838%	1,982,403	1,013,009	
	820	H-085	0.254848487358%	1,488,358	744,187	
	Total			18,377,818	8,388,810	12.92
Lauderdale	414	H-101	0.422284818482%	2,418,168	1,234,148	1.91
Lawrence	424	H-328	0.422284818482%	2,418,168	1,234,148	1.91
Limestone	38	H-003	0.813805217888%	3,508,727	1,782,988	
	307	H-018	0.523780320784%	2,995,834	1,530,789	
	Total			6,504,561	3,313,778	5.13
Madison	174	H-089	0.344813824302%	1,872,038	1,007,712	1.56
Marion	178	H-084	0.258818880138%	1,840,343	838,215	1.29

SENT BY: SKADDEN APPS

112- 4-90 9:51AM :

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\$225,000,000 10 1/4% Guaranteed Secured BondsHarden'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 factor)	<u>X</u>
Marion	330	H-014	0.545068284002%	3,117,428	1,683,006	
	814	H-048	0.421398408838%	2,408,862	1,231,501	
	Total			5,527,411	2,924,507	4.36
Marshall	230	H-038	0.405982808188%	2,321,878	1,188,478	
	278	H-081	0.337583831888%	1,800,877	908,528	
	Total			4,268,463	2,178,006	3.35
Mobile	254	H-088	0.843770887883%	1,384,168	712,617	1.10
Monroe	382	H-018	0.511558463781%	2,828,887	1,488,018	2.31
Montgomery	311	H-032	0.418888771882%	2,384,434	1,223,558	
	348	H-080	0.384203730103%	2,187,489	1,122,817	
	287	H-086	0.313548223150%	1,783,234	918,343	
	288	H-088	0.328238185837%	1,868,783	963,420	
	388	H-084	0.482284818482%	2,418,188	1,234,149	
	388	H-088	0.482284818482%	2,418,188	1,234,149	
	Total			13,081,281	6,884,538	10.32
Morgan	348	H-011	0.528058848823%	3,008,881	1,537,330	
	208	H-017	0.508883884848%	2,881,813	1,472,804	
	230	H-034	0.408888808188%	2,321,878	1,188,478	
	418	H-108	0.482284818482%	2,418,188	1,234,149	
	Total			10,627,245	5,430,922	8.38
Perry	882	H-088	0.281347038274%	1,888,257	881,487	1.31
Pike	344	H-073	0.387858578813%	2,218,220	1,133,311	1.75
Shelby	882	H-021	0.548108130088%	3,088,824	1,578,440	
	338	H-038	0.433188187883%	2,477,388	1,288,830	
	184	H-088	0.288878088412%	1,882,170	884,888	
	488	H-184	0.482284818482%	2,418,188	1,234,149	
	Total			9,873,818	4,843,218	7.63

SENT BY: SKADDEN ARPS

:12- 4-90 9:51AM :

21273524394

,0343172: # 4

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

Harden'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 .511 factor)	Z
St. Clair	282	H-028	0.458277854487%	2,809,519	1,333,464	2.06
Burner	411	H-188	0.422294818482%	2,418,183	1,234,149	1.91
Talladega	178	H-030	0.479889068818%	2,744,370	1,408,322	
	872	H-091	0.384813795280%	1,815,385	773,330	
	Total			4,257,838	2,175,852	3.36
Tuscaloosa	305	H-010	0.502847433319%	2,878,431	1,488,888	
	82	H-084	0.381187005888%	2,008,319	1,028,251	
	271	H-044	0.484107041717%	2,428,531	1,238,448	
	38	H-088	0.329724647887%	1,513,829	871,367	
	Total			8,824,109	4,408,820	6.80
Wilcox	409	H-088	0.422294818482%	2,418,183	1,234,149	1.91
Winston	288	H-008	0.847351823071%	3,150,386	1,598,627	2.46

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

8128,780,828

\$64,782,897 100%

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

\$571,914,788

\$282,248,440

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

91 JAN -3 PM 2:24

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Deed Tax ----- \$
2. Mfr. Tax ----- \$
3. Recording Fee ----- \$ 30.00
4. Indexing Fee ----- \$ 3.00
5. No Tax Fee ----- \$
6. Certified Fee ----- \$ 1.00
Total ----- \$ 34.00