

MEMORANDUM OF LEASE

20081028000419690 1/5 \$834.50
Shelby Cnty Judge of Probate, AL
10/28/2008 12:55:04PM FILED/CERT

THIS MEMORANDUM OF LEASE (this "MOL") is dated OCTOBER 24, 2008 between **HIGHWAY 11/31 LLC**, a Delaware limited liability company, as successor in interest to prior landlord ("Landlord") whose address is c/o Colonial Properties Services, Inc., 2101 Sixth Avenue North, Suite 750, Birmingham, Alabama 35203, and **O'CHARLEY'S INC.**, a Tennessee corporation ("Tenant") whose principal place of business is located at 3038 Sidco Drive, Nashville, Tennessee 37204.

1. LEASE: Landlord and Tenant entered into a Lease Agreement dated November 8, 2007 (the "Lease") whereby Landlord leased to Tenant the Premises known as Outparcel 3 at the shopping center known as Colonial Promenade Alabaster II in Alabaster, Shelby County, Alabama (as described in Exhibit "A"), which premises contains approximately forty-six thousand six hundred nine (46,609) square feet of land as described on Exhibit "B" attached hereto (the "Premises").

2. TERM: Primary Term of ten (10) years.

3. OPTION TO EXTEND: Four (4) successive periods of five (5) years each.

4. COMMON AREA EASEMENT: Landlord grants to Tenant and Tenant's invitees, licensees, assigns, subtenants and patrons, during the term of the Lease and any extensions, a non-exclusive ingress/egress and parking easement to use all of those portions of the property designated from time to time as common areas, parking areas and driveways. Landlord grants to Tenant a non-exclusive right to park in the "Parking Area," as depicted on Exhibit "C" attached hereto, which Parking Area cannot be materially and adversely altered without Tenant's consent, which must be reasonable. Landlord also agrees that it will not materially alter or vary the Access Drive as depicted on Exhibit "C" attached hereto without Tenant's consent, which must be reasonable

5. RIGHT OF FIRST REFUSAL. Tenant has a right of first refusal to purchase the Premises, which right is detailed in the Lease.

6. MEMORANDUM: The rentals to be paid by Tenant and all of the obligations and rights of Landlord and Tenant are set forth in the Lease. This instrument is merely a memorandum of the Lease and is subject to all of its terms, conditions and provisions. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail. This instrument is binding upon and shall inure to the benefit of the heirs, successors, assigns, executors and administrators of the parties.

(Signatures appear on the following page)

To indicate their consent to this agreement, the parties, or their authorized representatives or employees have signed this document.

LANDLORD:

HIGHWAY 11/31 LLC,
a Delaware limited liability company

By: Colonial Properties Services, Inc.,
an Alabama corporation

Its: Agent

By: 

Name: John L. Moss

Its: Senior Vice President – Retail Division

Date: October 22, 2008

TENANT:

O'CHARLEY'S INC.,
a Tennessee corporation

By: 

Name: Michael K. Ellis

Its: Chief Development Officer

Date: 10/24/08

EXHIBIT "A"

LEGAL DESCRIPTION OF SHOPPING CENTER

Lots 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 19 according to the survey of Colonial Promenade South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of South 24 degrees 09 minutes 33 seconds East for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 25 minutes 44 seconds West for a chord distance of 38.53 feet to the POINT OF BEGINNING; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 211.93 feet to the point of commencement of a curve to the right, said curve having a radius of 287.00 feet, a central angle of 09 degrees 52 minutes 11 seconds, a chord bearing of South 25 degrees 09 minutes 41 seconds East for a chord distance of 49.38 feet; thence run along arc of said curve for a distance of 49.44 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 136.04 feet to the point of commencement of a curve to the right, said curve having a radius of 30.00 feet, a central angle of 90 degrees 01 minutes 02 seconds, a chord bearing of North 24 degrees 46 minutes 56 seconds East for a chord distance of 42.43 feet; thence run along arc of said curve for a distance of 47.13 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 189.54 feet to a point on said Westernmost right of way and a point on a spiral curve; thence run North 19 degrees 19 minutes 48 seconds West for a chord distance of 215.27 feet to the POINT OF BEGINNING. Said parcel contains 46,444 square feet or 1.07 acres more or less.



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EXHIBIT "C"

PARKING AREA

