

THIS DOCUMENT PREPARED BY,  
RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

Winston & Strawn LLP  
200 Park Avenue  
New York, New York 10166  
Attention: John DiBari

**MORTGAGE AND SECURITY AGREEMENT**

made by

**O'CHARLEY'S INC., a Tennessee corporation,  
Mortgagor,**

to

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and Mortgagee,**

**Dated as of October 17, 2011**

**Property Address:**  
101 Southgate Drive  
Pelham, Alabama 35124

**THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED  
BY THIS MORTGAGE IS \$1,839,090.00.**

**THIS MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING SERVES  
AS A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO  
SECTION 7-9A- 502, CODE OF ALABAMA 1975, AS AMENDED.**

## **MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage") is made and entered into as of the 17<sup>th</sup> day of October, 2011 by

**O'CHARLEY'S INC.**, a Tennessee corporation ("Mortgagor" or "Borrower"), whose address is 3038 Sidco Drive, Nashville, Tennessee 37204, to

**WELLS FARGO BANK, NATIONAL ASSOCIATION** (as successor by merger to Wachovia Bank, National Association), a national banking association, as Administrative Agent and mortgagee for the benefit of the Secured Parties (as defined in the Loan Documents), whose address is 1808 Aston Avenue, Suite 250, Carlsbad CA 92008 ("Mortgagee").

### **STATEMENT OF PURPOSE**

Pursuant to the terms of that certain Fourth Amended and Restated Credit Agreement dated as of the date hereof (as amended, restated or otherwise modified, the "Credit Agreement") among Mortgagor, as Borrower, the lenders who are or may become a party to the Credit Agreement (as therein defined, the "Lenders"), and Mortgagee, as Administrative Agent for the Lenders, the Lenders have agreed to extend certain credit facilities to Borrower of up to Thirty Million Dollars (\$30,000,000). All of the promises, terms, conditions, agreements and obligations imposed on Borrower under the Credit Agreement, the Notes, the Letters of Credit and the other Loan Documents (as such terms are defined in the Credit Agreement) are to be secured by this Mortgage, provided that NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS MORTGAGE, MORTGAGEE HAS AGREED TO LIMIT ITS RECOVERY AGAINST THE PROPERTY (AS HEREINAFTER DEFINED) IN ANY FORECLOSURE OF THIS MORTGAGE TO A MAXIMUM PRINCIPAL SUM OF \$1,839,090.00, PLUS INTEREST, FEES, EXPENSES, AND ANY PROTECTIVE ADVANCES MADE HEREAFTER FOR TAXES, ASSESSMENTS, INSURANCE AND SECURITY REGARDING THE PROPERTY. Defined terms used herein, as indicated by the initial capitalization thereof, shall have the meanings ascribed to such terms in the Credit Agreement, unless otherwise provided herein.

NOW, THEREFORE, in order to secure (i) the Obligations and the repayment of the indebtedness evidenced by the Credit Agreement and the Notes, with interest thereon, and all renewals, extensions and modifications thereof; (ii) the repayment of any future advances, with interest thereon, made by Lenders to Borrower pursuant to Section 1.3 (herein "Future Advances"); (iii) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this instrument; and (iv) the performance of the covenants and agreements of Mortgagor herein contained, and in consideration of Lenders' agreement under the Credit Agreement to make the Extensions of Credit to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor by these presents does hereby (a) give, grant, bargain, sell, alienate, remise, warrant, convey, mortgage, release, confirm, assign, transfer and set over unto Mortgagee, its successors and assigns, for the ratable benefit of itself and Secured Parties, all of Mortgagor's right, title and interest in and to the "Land" and the "Improvements" (collectively, the "Premises"), as described below and any real or mixed property referred to below, and (b) convey and grant a security



interest unto Mortgagee, for the ratable benefit of itself and Secured Parties, and its successors and assigns in all of Mortgagor's right, title and interest in and to the "Fixtures", the "Proceeds" and any other personal property referred to below. THIS MORTGAGE SHALL SECURE A MAXIMUM PRINCIPAL AMOUNT OF UP TO \$1,839,090.00 AT ANY ONE TIME. The property and rights subject to this Mortgage (collectively, the "Property") are as follows:

A. All of the right, title and interest of Mortgagor in and to the real estate, as more specifically described in Exhibit A attached hereto, together with all of Mortgagor's rights, title and interest under all easements, rights of way, restrictive covenants, parking agreements, encroachment agreements, licenses, streets, alleys, passages, walkways, strips of land, sewer rights, waters, water courses, water privileges, tenements, hereditaments and other appurtenances and rights, including, but not limited to, air rights, surface rights and subsurface rights relating or appertaining to such real estate (collectively, the "Land");

B. All of the right, title and interest of Mortgagor in and to all facilities, buildings, structures, fixtures, improvements and parking areas now or hereafter located on the Land and all replacements thereof and additions thereto (collectively, the "Improvements"); without limiting the foregoing, the term "Improvements" shall include: all buildings, components of buildings, roads, streets, curbs, gutters, sidewalks and pedestrian ways; all storm drainage, water systems, sewer systems, electrical systems, gas systems and other utilities equipment; and all improvements relating to easements appurtenant to the Land and landscaping, whether or not located on the Land, which are necessary or appropriate to fully benefit and serve the Improvements located on the Land;

C. All fixtures and appurtenances of every kind and nature now or hereafter acquired by Mortgagor and used or intended to be used in connection with the Land or Improvements or operation thereof, including, without limitation, apparatus, machinery, equipment and other items of personalty, attached to, incorporated into or affixed to the Land or Improvements so as to constitute "fixtures" under the Code (as hereinafter defined) or other Applicable Law, together with any and all replacements, extensions, additions, improvements, betterments, renewals and substitutions thereof (collectively, the "Fixtures");

D. Any unearned insurance premiums and any insurance proceeds realized from or as a result of Mortgagor's ownership or operation of any Property and any and all awards, including interest thereon, heretofore and hereafter made to Mortgagor for any taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including any awards for changes of grade of streets, which awards are hereby assigned to Mortgagee, for the ratable benefit of itself and Secured Parties, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor and to apply the same to the Obligations, to the extent hereinafter provided (all of the foregoing being referred to herein as the "Proceeds");

E. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions, renewals and modifications thereof, whether written or oral and whether for a definite term or month to month, including without limitation (i) any and all cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, (ii) the right to receive and collect all





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rents thereunder and (iii) any and all guarantees of the lessee's obligations thereunder (collectively, the "Leases");

F. All earnings, revenues, rents, issues, profits, avails, general intangibles, choses in action, proceeds and other income of and from the Property or any portion thereof including, without limitation, all rents and receipts from, or proceeds payable under or related to, the Leases (collectively, the "Rents");

G. All architectural, engineering and similar plans, specifications, drawings, renderings, profiles, studies, shop drawings, reports, plats, permits, surveys and similar documents relating to the Property; all sewer taps, permits and allocations; and all agreements for utilities, bonds, sureties and the like, relating to the Property or appurtenant facilities erected or to be erected upon or about the Property;

H. All warranties and guarantees of contractors or subcontractors or of suppliers or manufacturers of equipment or other property incorporated into the Improvements or used with or otherwise constituting part of the fixtures therein; and

I. All the property of every kind and description, whether real, personal or mixed, which at any time hereafter, by indenture or indentures supplemental hereto, and by other instruments of transfer, may be expressly conveyed, mortgaged or pledged, delivered, assigned or transferred to Mortgagee, for the ratable benefit of itself and Secured Parties, by or on behalf of Mortgagor, as and for additional or substitute security for the Obligations.

PROVIDED, HOWEVER, if the Obligations shall be paid and performed when due and if Mortgagor shall keep, perform and observe each of the covenants, agreements and provisions in this Mortgage to be kept, performed and observed by Mortgagor, then this Mortgage and the estate and rights hereby granted shall terminate and be of no further force and effect and the lien created by this Mortgage shall be released, any and all costs associated with such release to be borne by Mortgagor.

## ARTICLE I

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

Mortgagor represents, warrants, and covenants with Mortgagee and Secured Parties as follows

SECTION 1.1. Payment and Performance of Obligations. Mortgagor will pay and perform, or cause to be paid and performed, when due the Obligations.

SECTION 1.2. Priority of Lien. This Mortgage is and, prior to the performance and payment of the Obligations in full, shall remain a first Lien on all of the Property, subject only to those matters set forth on Exhibit B attached hereto (the "Permitted Exceptions") or otherwise approved by Mortgagee in advance. Mortgagor shall pay or cause to be discharged within thirty (30) days after they shall be payable, or shall make adequate provisions for the satisfaction or discharge of, all lawful claims and demands of mechanics, laborers and materialmen which, if



unpaid, might be a lien or charge on the Property (or any part thereof) or the income therefrom; provided, that the Mortgagor or Borrower may contest any such claims or demands in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP.

Pursuant to the terms of the Credit Agreement, Lenders may be required to make Extensions of Credit from time to time. This Mortgage secures the payment of all present and future disbursements, including, without limitation, any loans, advances or readvances on a revolving basis which may be made by Lenders pursuant to the Credit Agreement, and all of which disbursements shall be equally secured with and of the same priority as any amounts advanced on the date hereof. Although the amount of the Extensions of Credit, including present and future obligations, which Lenders may make to Borrower may decrease or increase from time to time, the maximum amount which may be outstanding at any time is Thirty Million Dollars (\$30,000,000) plus interest thereon and any other charges, in addition to any disbursements made for the payment of taxes, levies, assessments, costs incurred for the protection of the Property, insurance on the Property, and for other purposes as permitted by the terms of the Loan Documents, together with interest on such disbursements as may be provided herein or therein. The period within which such future advances may be made does not extend more than ten (10) years beyond the date of this Mortgage.

SECTION 1.3. Future Advances. Upon request of Borrower in accordance with the terms of the Credit Agreement, Lenders, at Lenders' option, so long as this instrument secures indebtedness held by Lenders, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this instrument. Notwithstanding anything contained in this Mortgage or the other Loan Documents to the contrary, this Mortgage shall secure: (i) a maximum principal amount of One Million Eight Hundred Thirty-Nine Thousand Ninety Dollars and 00/100 (\$1,839,090.00), which maximum principal amount shall include any additional advances made from time to time after the date hereof pursuant to the Loan Documents whether made as part of the Obligations secured hereby, made at the option of the Mortgagee and/or the Lenders, made after a reduction to a zero (0) or other balance, or made otherwise, plus (ii) all other amounts payable by Mortgagor, or advanced by Mortgagee or the Lenders for the account, or on behalf, of Mortgagor, pursuant to the Loan Documents, including amounts advanced with respect to the Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Property to the same extent as if the future obligations and advances were made on the date of execution of the Mortgage.

SECTION 1.4. Adequate Access. The Improvements have adequate rights of access to public ways.

SECTION 1.5. Parking. Parking sufficient to satisfy zoning requirements for the utilization of the Improvements as intended is available to the Premises by permanent easement or otherwise and is encumbered by this Mortgage.

SECTION 1.6. Expenses. If any action or proceeding is commenced to which Mortgagee or Secured Parties (or any of them) become or are made a party arising out of or in connection with any of the Loan Documents or the Extensions of Credit, or in which it becomes necessary to enforce, defend or uphold the lien of this Mortgage, all court costs and litigation costs (including, without limitation, reasonable attorneys' fees and expenses) incurred by



Mortgagee and Secured Parties shall be paid by Mortgagor or Borrower, and any such sum shall be a lien on the Property, prior to any right, or title to, interest in, or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage.

SECTION 1.7. Insurance.

(a) Mortgagor will maintain, or cause to be maintained, in full force and effect all insurance coverage and policies required to be maintained under the terms of the Credit Agreement or any other Loan Document and as set forth herein. Insurance coverage shall include:

- (i) insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss or damage by such other, further and additional risks as may be now or hereafter embraced by a so-called "all risk" or "special causes of loss" form insurance policy with Extended Coverage Endorsement and replacement cost broad form fire and collapse insurance on the Property with a company or companies rated by A.M. Best as A-V or better and with coverages and in form, content and amount reasonably acceptable to Mortgagee. Such policy shall also include extended coverage for acts of vandalism and malicious mischief, without co-insurance, in an amount sufficient to completely repair or replace the damaged property (subject to reasonable and customary deductibles). For buildings equipped with automatic sprinkler systems designed to discharge an extinguishing agent, including, but not limited to, water, chemicals or gas, such policy shall include sprinkler leakage as a covered cause of loss;
- (ii) for buildings equipped with boilers, heating and ventilating systems, refrigeration equipment, air conditioning units, pumps, compressors, motors, blowers, generators, transformers and other types of heavy equipment, Mortgagee shall require Boiler and Machinery Insurance to cover the sudden and accidental breakdown of such equipment;
- (iii) if any Improvements (now or hereafter existing) on the Land are or will be located in an area identified by the U.S. Department of Housing and Urban Development or Federal Emergency Management Agency as an area having "special flood hazards", Mortgagor shall also furnish flood insurance in the amount which is the lesser of (A) the outstanding balance of the Extensions of Credit or (B) the maximum limit of coverage available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, and the Housing and Community Development Acts of 1974 and 1977, all as amended;
- (iv) such worker's compensation insurance as is required by Applicable Law;
- (v) single limit comprehensive general public liability insurance against claims for bodily injury, death or property damage affording protection in



respect of injury or death to any person or damage to property of any one owner, and in respect of injury or death to more than one person or damage to property of more than one owner arising from any one accident or occurrence, each to the limit reasonably required by Mortgagee; and

- (vi) such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Mortgagee against such risks and in such amounts as are customarily maintained by similar businesses on similar properties.

(b) During the term of the Credit Agreement, the premium payments on each insurance policy described above shall be kept current and the policy term renewed annually in the same form and with at least the same coverage as the preceding year (subject to changes commonly being made with respect to similar properties and otherwise as reasonably acceptable to the Mortgagee), with Mortgagee to receive notice of renewal at least thirty (30) days prior to expiration. Further, no such policy shall be subject to cancellation, nonrenewal or reduction of coverage unless the insurer has given Mortgagee at least thirty (30) days' prior written notice of such action. All policies described herein must be issued by insurance companies and agencies licensed by the Insurance Commission of the State in which the Property is located to conduct business in said State and approved by Mortgagee, which approval shall not be unreasonably withheld. Mortgagee shall have the right to approve each and every insurance carrier and policy, which approval shall not be unreasonably withheld.

(c) All policies shall include a standard, non-contributory mortgagee clause naming Mortgagee and/or Secured Parties (as may be required) as additional insured under all liability insurance policies, and as first mortgagee on all property insurance policies. All policies shall be in form and content as approved by Mortgagee, which approval shall not be unreasonably withheld.

(d) All Insurance Proceeds under any insurance policies which are payable by reason of damage, loss or destruction to any portion of the Improvements during the term of the Credit Agreement will be paid directly to Mortgagee and applied in accordance with Section 1.12 hereof.

SECTION 1.8. Removal of Improvements. No Improvements shall be removed, demolished or materially altered without Mortgagee's prior written consent, which consent shall not be unreasonably withheld; provided, however, if such activities are being undertaken by the Mortgagor in accordance with sound business practices, no such consent shall be required.

SECTION 1.9. Security Interest. Notwithstanding anything to the contrary contained herein:

(a) This Mortgage constitutes a "security agreement" as such term is used in the Uniform Commercial Code in the State of Alabama (the "Code") with respect to any part of the Property which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (including all replacements thereof, additions thereto and substitutions therefor) (collectively, the "Personal Property Collateral"). All of Mortgagor's



right, title and interest in the Personal Property Collateral is hereby assigned to Mortgagee to secure the payment of the Obligations.

(b) At any time after an Event of Default has occurred and shall be continuing, Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Personal Property Collateral or any part thereof. The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein, under Applicable Law or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Personal Property Collateral deemed part of the realty upon any foreclosure so long as any part of the Obligations remains unsatisfied.

(c) Mortgagor hereby authorizes Mortgagee to record or cause to be recorded in the County in which the Property is located, as well as with the applicable offices of the State, such financing statements and fixture filings as shall be necessary in order to perfect and preserve the priority of Mortgagee's lien upon the Personal Property Collateral.

SECTION 1.10. Sale; Liens; Subdivision. Except as permitted under the Credit Agreement, any other Loan Document or in this Section 1.10, Mortgagor shall not, directly or indirectly, sell, transfer, convey, lease or further encumber or mortgage, whether voluntary, involuntary or by operation of law, or suffer or permit the same, all or any part of the Property or any interest therein or in Mortgagor. A taking of a portion of the Property by eminent domain (or a conveyance in lieu thereof) will not be considered a violation of this Section 1.10 so long as (a) no portion of any Improvements are taken (or so conveyed); (b) after such taking (or such conveyance) the Property still complies with all Applicable Law (including all zoning and parking requirements); and (c) Mortgagee, in the exercise of its reasonable judgment, determines that such taking (or such conveyance) will not have a material adverse effect on the operation of the Property.

Except as otherwise provided in the Credit Agreement or any other Loan Document, Mortgagor may not sell, transfer, convey or otherwise dispose of any Fixtures.

Mortgagor shall not subdivide the Property, submit the Property, or any portion thereof, to multiple form of ownership, or dedicate any material portion of the Property to public ownership, without the prior written consent of Mortgagee.

SECTION 1.11. Eminent Domain. After an Event of Default and during the continuance thereof, Mortgagee is hereby authorized and empowered to settle, adjust or compromise any and all claims and rights arising from any eminent domain or condemnation action relating to part or all of the Property (or any interest therein) and to collect and receive the proceeds relating to or arising therefrom (collectively, the "Condemnation Proceeds"). Each entity which may hereafter exercise a power of eminent domain or condemnation with respect to part or all of the Property is hereby authorized and directed to pay after an Event of Default and during the continuance thereof, Condemnation Proceeds directly to Mortgagee, for the ratable benefit of itself and Secured Parties, instead of to Mortgagor and Mortgagee jointly. In the event any entity which may hereafter exercise a power of eminent domain or condemnation with respect to part or all of the Property fails to so disburse Condemnation Proceeds directly and solely to Mortgagee but



disburses such Condemnation Proceeds instead either solely to Mortgagor or to Mortgagor and Mortgagee jointly, Mortgagor agrees to immediately transfer such Condemnation Proceeds to Mortgagee. Upon the failure of Mortgagor to immediately transfer such Condemnation Proceeds as aforesaid, Mortgagee may execute such endorsements or transfers for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact (such appointment being coupled with an interest) so to do. The Condemnation Proceeds received by Mortgagee as set forth above shall be applied to the Obligations in the manner set forth in Section 5.5 of the Credit Agreement. If such taking by exercise of a power of eminent domain or condemnation is not a violation of Section 1.10, then Mortgagee will disburse from that portion of the Condemnation Proceeds received by Mortgagee as set forth above, if any, remaining after the application of such proceeds pursuant to the preceding sentence, an amount which it determines in its reasonable discretion shall be necessary to allow Mortgagor to repair or restore the Improvements to the condition (as near as possible) it was in prior to such taking or conveyance, and Mortgagor shall promptly do so. In the event the Condemnation Proceeds remaining after the application of such proceeds to the restoration are not sufficient to fully restore the Improvements to such condition, Mortgagor shall immediately upon demand by Mortgagee promptly deposit any such deficiency with Mortgagee to be disbursed in connection with such restoration. Such proceeds and additional funds as supplied by Mortgagor will be disbursed in accordance with procedures substantially similar to those set forth in the Credit Agreement for the disbursement of the original proceeds of the Extensions of Credit. The repair or restoration will be in accordance with plans and specifications subject to Mortgagee's reasonable approval and in compliance with all Applicable Law and in accordance with the timetable reasonably approved by Mortgagee.

#### SECTION 1.12. Insurance Proceeds.

(a) Mortgagee is hereby authorized and empowered to settle, adjust or compromise any claims or rights under any insurance policies maintained pursuant to this Mortgage and to collect and receive the proceeds from any such policy or policies (collectively, the "Insurance Proceeds"). Each insurance company is hereby authorized and directed to pay all Insurance Proceeds after the occurrence of an Event of Default and throughout the continuance thereof directly to Mortgagee, for the ratable benefit of itself and Secured Parties, instead of to Mortgagor and Mortgagee jointly. In the event any insurance company fails to so disburse Insurance Proceeds directly and solely to Mortgagee but disburses such Insurance Proceeds instead either solely to Mortgagor or to Mortgagor and Mortgagee jointly, Mortgagor agrees to immediately transfer such Insurance Proceeds to Mortgagee. Upon the failure of Mortgagor to transfer such Insurance Proceeds as aforesaid, Mortgagee may execute such endorsements or transfers for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact (such appointment being coupled with an interest) so to do. The Insurance Proceeds shall be applied to the Obligations in the manner set forth in Section 5.5 of the Credit Agreement. If Mortgagee elects, in its sole discretion, to make the proceeds received by Mortgagee as set forth above available to Mortgagor in order to restore the Improvements, the disbursement of such proceeds will be subject to such reasonable restrictions and requirements as Mortgagee shall impose.

(b) Notwithstanding the provisions of Section 1.12(a) above, so long as Mortgagee determines in the exercise of its reasonable discretion that Mortgagor is financially able to bear



any costs of such rebuilding which are not covered by the insurance proceeds or condemnation awards, then if:

- (i) no Default or Event of Default has occurred and is continuing beyond any applicable grace period under the Loan Documents; and
- (ii) the Property can, in Mortgagee's judgment, with diligent restoration and repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or taking causing the loss or damage from the earlier to occur of (A) six (6) months after receipt of insurance proceeds or condemnation awards by either Mortgagor or Mortgagee, and (B) the Revolving Credit Maturity Date; and
- (iii) all necessary Governmental Approvals can be obtained to allow the rebuilding and the re-occupancy of the Property as described in Subsection (b)(ii) above; and
- (iv) there are sufficient sums available through insurance proceeds or condemnation awards and contributions by Mortgagor or Borrower, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee, for such restoration and repair (including, without limitation, for any costs and expenses incurred by Mortgagee in administering said restoration or repair); and
- (v) Mortgagor so elects by written notice delivered to Mortgagee within ten (10) days after notice from the Administrative Agent to the Mortgagor of such settlement of the aforesaid insurance or condemnation claim,

then, Mortgagee shall, solely for the purposes of such restoration and repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Mortgagor or Borrower therefor, to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Mortgagee of plans and specifications, contractors and form of construction contracts and the furnishing to Mortgagee of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Mortgagee in its discretion, with any remainder being distributed to Mortgagor. In addition, to the extent that Mortgagee receives any rental loss or loss of business income insurance proceeds in excess of amounts required to ensure no Default occurs with respect to any payment becoming due and payable under the Extensions of Credit for any period of time in which the Mortgagor is not required to pay rent due to the casualty or condemnation, and provided further that all operating expenses of the Property have been paid in full, then any such excess shall be distributed by Mortgagee to Mortgagor.



## ARTICLE II

### POSSESSION AND ADMINISTRATION OF THE PROPERTY

#### SECTION 2.1. Impositions.

(a) Mortgagor will pay or cause to be paid in a timely manner all taxes, assessments and other charges now or hereafter levied against the Property, or any part thereof, and also any and all license fees or similar charges which may be imposed by the municipality in which the Premises are situated for the use of walks, areas, air space, parking areas and other space or facilities beyond the lot line and on or abutting the public sidewalks in front of or adjoining the Premises, together with any penalties or interest on any of the foregoing; and in the case of failure in the payment thereof (unless such impositions are being contested as may be permitted by the Credit Agreement), Mortgagee may (but shall not be obligated to) pay the same and Mortgagor will repay or cause to be repaid such sum with interest at the Default rate under Section 5.1(d) of the Credit Agreement, and such sum shall be added to the indebtedness secured by this Mortgage.

(b) Mortgagor will not claim any credit on or make any deduction from the interest or principal of the Obligations by reason of the payment of any taxes levied or to be levied on the Property, or any part thereof, during the continuance of the lien of this Mortgage.

SECTION 2.2. Warranty of Title. Mortgagor warrants that Mortgagor is indefeasibly seized of the Property in fee simple absolute, free and clear from all encumbrances (subject only to the Permitted Exceptions), and that Mortgagor has full power and lawful authority to convey and encumber the same; that Mortgagor shall and will make, execute, acknowledge and deliver all such further or other deeds, instruments or assurances as may at any time hereafter be reasonably desired or required by Mortgagee to more fully and effectually convey the Property for the purposes aforesaid; and that Mortgagor will warrant and defend the Property against all persons whomsoever, except for claims arising pursuant to the Permitted Exceptions.

SECTION 2.3. Waste. Mortgagor will cause the Improvements now or hereafter constructed on, and constituting part of, the Property to be protected and to be kept in good order and repair in accordance with sound business practices and will not commit or suffer any waste, deterioration or impairment of the Property whereby the value of the Property might be materially impaired. In the event that such waste, deterioration or impairment of the Property shall occur, which such waste, deterioration or impairment is not promptly cured by Mortgagor, Mortgagee may (but shall not be obligated to), after giving Mortgagor notice that is reasonable under the circumstances, take such action as may be necessary to remedy such condition and Mortgagor shall repay or cause to be repaid all costs and expenses associated with such remedy with interest at the Default rate as set forth in Section 5.1(d) of the Credit Agreement, and such sum shall be added to the indebtedness secured by this Mortgage.

SECTION 2.4. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Property at all reasonable times and, prior to the occurrence and the continuance of an Event of Default, upon reasonable prior notice to Mortgagor.



SECTION 2.5. Compliance with Governmental Authorities. Mortgagor will comply with or cause to be complied with, in all material respects, all statutes, ordinances and requirements of any governmental authority relating to the Property as well as any private restrictive covenant affecting the Property. Mortgagor will not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions, which could materially and adversely affect the uses which may be made of the Premises, or any part thereof.

### ARTICLE III

#### ASSIGNMENT OF RENTS AND LEASES

SECTION 3.1. Assignment. Mortgagor hereby assigns to Mortgagee all Rents and all of Mortgagor's rights in and under all Leases. So long as no Event of Default has occurred, Mortgagor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Mortgagee and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Event of Default has occurred, Mortgagor may retain such Rents as were collected that month and held in trust for Mortgagee. Upon the revocation of such license, all Rents shall be paid directly to Mortgagee and not through Mortgagor, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation of such tenants to determine whether an Event of Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payments to Mortgagee shall constitute payments to Mortgagor under the Leases, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to do all things, after an Event of Default, which Mortgagor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Mortgagee, all in such manner as may be determined by Mortgagee, or at the option of Mortgagee, holding the same as security for the payment of the Obligations, (ii) leasing, in the name of Mortgagor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Event of Default, unless other Events of Default also then exist, shall entitle Mortgagor to recover its aforesaid license to do any such things which Mortgagor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any of said remedies. Nothing in this Mortgage shall be construed to impose any obligation upon Mortgagee to exercise any power or right granted in this Section 3.1 or to assume any liability under any Lease of any part of the Property



and no liability shall attach to Mortgagee for failure or inability to collect any Rents under any such Lease.

SECTION 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Mortgagor covenants, represents and warrants that: (a) Mortgagor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Mortgagor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Exception, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Mortgagor will not execute any Lease except in accordance with this Mortgage and the other Loan Documents and for actual occupancy by the tenant thereunder; (i) Mortgagor shall as often as requested by Mortgagee, within ten (10) days of each request, deliver to Mortgagee a complete rent roll of the Property in such detail as Mortgagee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Mortgagor, and deliver to such of the tenants and others obligated under the Leases specified by Mortgagee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Mortgagee; (j) promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee executed originals of all Leases and copies of all records relating thereto; and (k) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Mortgagee.

SECTION 3.3. Estoppel Certificates. All future Leases and extensions or renewals of existing Leases shall require the tenant to execute and deliver to Mortgagee an estoppel certificate in form and substance acceptable to Mortgagee within ten (10) days after notice from the Mortgagee.

SECTION 3.4. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the



same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article III shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

## ARTICLE IV

### REMEDIES

SECTION 4.1. Remedies. Upon the occurrence of an Event of Default, and at any time thereafter during the continuance of such Event of Default, to the extent permitted by Applicable Law, Mortgagee may, and upon the request of the Secured Parties shall, exercise any or all of the following remedies:

(a) Mortgagee may enter into and upon all or any part of the Property and may exclude Mortgagor and its agents and servants wholly therefrom, and having and holding the same may use, operate, develop, manage and control the Property, or any part thereof, and conduct the business of Mortgagor (including, without limitation, exercising any and all rights of Mortgagor under the Leases and any other applicable lease with respect to the Property), either personally, or by Mortgagee's agents, attorneys, receivers or trustees, in such manner as Mortgagee may deem to be to Mortgagee's best advantage. To the extent permitted by Applicable Law, Mortgagee, shall be entitled to collect and receive all Rents, for the ratable benefit of itself and Secured Parties, or to otherwise exercise all of Mortgagor's rights with respect to the Rents after deducting all associated expenses, and all necessary repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and other charges creating liens on the Property, or any part thereof, as well as reasonable compensation for their own services and for the services of their counsel, agents, clerks, servants and other employees by them properly engaged and employed. Mortgagee shall apply the balance of the money derived from the operation and management of the Property and business towards payment in full of the balance due on the Obligations in the manner set forth in Section 5.5 of the Credit Agreement. The surplus, if any, shall be paid to Mortgagor, its successors or assigns, or to whomsoever as shall be lawfully entitled to receive same, or as a court of competent jurisdiction may direct.

(b) Mortgagee may bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of the Loan Documents, as they become due, without regard to whether or not the principal indebtedness or any other sums evidenced by the Notes and secured by this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or to foreclose this Mortgage under power of sale, or any other action, for any Event of Default by Mortgagor existing at the time the earlier action was commenced.



(c) Mortgagee may declare the Obligations to be immediately due and payable, and unless same are paid or performed on demand, Mortgagee may resort to any and all remedies provided in any Loan Document or by law and in equity.

(d) Mortgagee may declare the Obligations to be immediately due and payable and this Mortgage shall be subject to foreclosure and may be foreclosed as provided by law in case of past-due mortgages and Mortgagee shall be authorized to take possession of the Property and, after giving at least twenty-one days' notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Property is located, to sell the Property at the front or main door of the courthouse of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: firstly, to the expense of advertising, selling and conveying the Property and foreclosing this Mortgage, including a reasonable attorneys' fee; secondly, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, liens or other encumbrances with respect to the Property, or any part thereof, with interest thereon; thirdly, to the payment of the balance of the Obligations in full; and, fourthly, the balance, if any, to be paid to Mortgagor, its successors or assigns, or to whomsoever shall be lawfully entitled to receive same, or as a court of competent jurisdiction may direct, after deducting the cost of ascertaining who is entitled to such balance. Mortgagor agrees that Mortgagee may bid at any sale had under the terms of the Mortgage and may purchase the Property if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or it may be offered for sale and sold in any other manner Mortgagee may elect.

Mortgagor agrees to pay all costs, including reasonable attorneys fees, incurred by Mortgagee in collecting or securing, or in attempting to collect or secure, the Obligations, or any part thereof, or in defending, or attempting to defend, the priority of this Mortgage against any other lien or encumbrance on the Property, unless this Mortgage is herein expressly made subject to any such lien or encumbrance; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by Mortgagee shall be a part of the Obligations and shall be secured by this Mortgage. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, Mortgagee, or the owner of the Obligations and this Mortgage, or auctioneer, shall execute to the purchaser, for and in the name of Mortgagor, a statutory warranty deed to the Property.

(e) In the event the Property, or any portion thereof, is sold pursuant to any writ of execution on a judgment obtained by virtue of any Loan Document or pursuant to any other judicial proceedings under any Loan Document, the Property may be sold as a whole or as separate parcels and in such manner or order as Mortgagee in its reasonable discretion may elect.

(f) To the extent permitted by Applicable Law, any judicial sale or sales made under or by virtue of this Mortgage shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Mortgagor in and with respect to the Property sold and shall be a perpetual bar, both at law and in equity, against Mortgagor, its successors and assigns,



and against any and all persons claiming the Property, or any part thereof, through or under Mortgagor.

(g) Mortgagee may exercise any or all of the remedies available to a secured party under the Code, including, but not limited to, selling, leasing or otherwise disposing of any fixtures and personal property which is encumbered hereby at public sale, with or without having such fixtures or personal property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee and Secured Parties, or any of them, may be a purchaser at any such public sale of such fixtures or personal property.

(h) Mortgagee may proceed to protect and enforce Mortgagee's and Secured Parties' rights under this Mortgage and any other Loan Document by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement, assistance in connection with the execution of any power granted herein or other appropriate legal or equitable remedy.

(i) Mortgagee may apply to an appropriate court for the appointment of a receiver of the Rents of the Property, and Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without consideration of the value of the Property as security for the amounts due Mortgagee and the Secured Parties or the solvency of any person or entity liable for the payment of such amounts.

SECTION 4.2. Remedies Not Exclusive. Mortgagee and Secured Parties, and each of them, shall be entitled to enforce payment and performance of the Obligations secured hereby and to exercise all rights and powers under this Mortgage or any other Loan Document or any laws now or hereafter enforced, notwithstanding that some of the Obligations may now or hereafter be otherwise secured. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Mortgagee's or Secured Parties' right to realize upon or enforce any other security now or hereafter held by Mortgagee or by Secured Parties, it being agreed that, Mortgagee and Secured Parties, and each of them, shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee, and Secured Parties in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee or Secured Parties is intended to be exclusive of any other remedy herein or by Applicable Law provided or to preclude any other remedy herein or by Applicable Law provided or permitted, but each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee or Secured Parties, or to which either of them may be otherwise entitled, may be exercised concurrently or independently from time to time and as often as may be deemed expedient by Mortgagee or Secured Parties.

SECTION 4.3. Powers and Rights Not Waived. Any failure by Mortgagee or Secured Parties to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee and Secured Parties, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured



by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee or Secured Parties to comply with any request of Mortgagor, or of any other person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee extending the time of payment or modifying the terms of the Obligations (provided that such modifications shall not increase the principal amount of the Obligations or the interest rate, except with respect to Default interest rate provisions) or of this Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly discharged in writing by Mortgagee. Regardless of consideration, Mortgagee may, or at the request of the Secured Parties shall, release the obligation of any party at any time liable for any of the Obligations without in any way impairing or affecting the lien hereof, and Mortgagee and Lenders may resort for the payment of the Obligations to any other security therefor held by Mortgagee and Secured Parties in such order and manner as it may elect.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.1. Notices. Any notice, demand or other communication which, by any provision of this Mortgage, is required or permitted to be given or served by or to Mortgagee, Secured Parties or Mortgagor, except as may otherwise be required by Applicable Law in connection with the exercise of any power of sale, shall be conclusively deemed to have been properly given or served by the sending party and to be effective if made in compliance with Section 14.1 of the Credit Agreement and, in the case of the Mortgagor, at the address set forth in the preamble to this Mortgage.

SECTION 5.2. Severability. To the extent any provision of this Mortgage may be deemed invalid or unenforceable under any Applicable Law, such provision shall be deemed void and inoperative and shall not form part of this Mortgage, but the remainder of this Mortgage shall remain in full force and effect. The parties hereto specifically declare that they would have entered into this Mortgage if any such void provisions had been omitted herefrom.

SECTION 5.3. Governing Law. This Mortgage shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed by, construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), without reference to the conflicts of law principles thereof; provided, however, that with respect to the creation, perfection, priority and enforcement of the lien or interest of this Mortgage, the laws of the State where the Property is located shall apply.

SECTION 5.4. Stamp Tax Indemnity. Except as may be prohibited by Applicable Law, if at any time the United States of America, any state thereof or any governmental subdivision of such state having jurisdiction, shall require revenue, excise or documentary stamps to be affixed



to this Mortgage, or other tax to be paid on or in connection therewith, Mortgagor will pay the same with any interest or penalties imposed in connection therewith.

SECTION 5.5. Credit Agreement. The terms and provisions of the Credit Agreement are incorporated in this Mortgage by reference.

SECTION 5.6. Redemption. To the extent permitted by applicable law, Mortgagor, for itself and all persons receiving title from Mortgagor, waives all rights of redemption to which Mortgagor and those persons would otherwise be entitled if this Mortgage is at any time foreclosed.

SECTION 5.7. Intentionally Deleted.


**SECTION 5.8. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). MORTGAGOR HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE MORTGAGEE AND OTHER SECURED PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

SECTION 5.9. Fixture Filing. This Mortgage is intended to be a "fixture filing" for purposes of the Code with respect to the items of Property which are or may become fixtures relating to the Premises upon recording of this Mortgage in the real estate records of the proper office. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in the preamble of this Mortgage.

SECTION 5.10. Release of Mortgage. If any of the Property shall be sold, transferred or otherwise disposed of by Mortgagor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of Mortgagor, shall execute and deliver to Mortgagor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Property; provided that the Borrower shall have delivered to the Administrative Agent, at least ten (10) Business Days prior to the date of the proposed release, a written request for release identifying the relevant Mortgagor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower demonstrating to the satisfaction of the Administrative Agent that such transaction is in compliance with the Credit Agreement and the other Loan Documents.



[Signature Page Follows]

  
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Shelby Cnty Judge of Probate, AL  
10/24/2011 01:50:22 PM FILED/CERT

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed, sealed and delivered by its duly authorized representative all as of the day and year first above written.

MORTGAGOR:

**O'CHARLEY'S INC.,**  
a Tennessee corporation

By: R. Jeffrey Williams  
Name: R. Jeffrey Williams  
Title: Chief Financial Officer and Treasurer

[CORPORATE SEAL]

STATE OF Tennessee )

COUNTY OF Davidson )

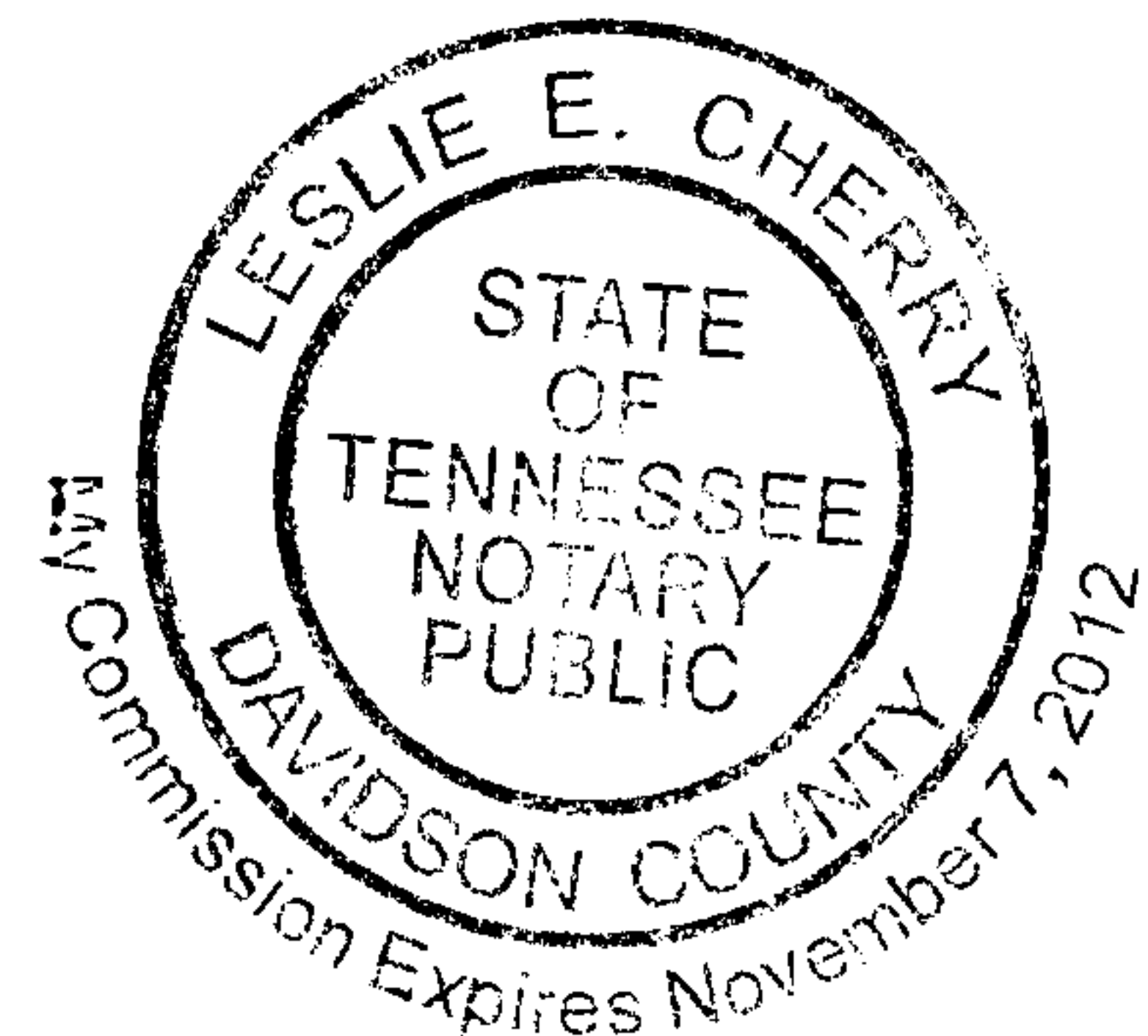
I, Leslie E. Cherry, a Notary Public in and for said county in said state, hereby certify that R. Jeffrey Williams whose name as Chief Financial Officer and Treasurer of O'Charley's Inc., a Tennessee corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, in the capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date.

Given under my hand this 12 day of October, 2011.

My commission expires: \_\_\_\_\_

Leslie E. Cherry  
Notary Public

[NOTARY SEAL]





## EXHIBIT A

### LEGAL DESCRIPTION

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the northeast corner of the Southwest one-quarter of Section 31, Township 19 South, Range 2 West, thence run in a Westerly direction along the northern line of said quarter section for a distance of 301.28 feet; thence turn an angle to the left of 51 degrees 49' 38" and run in a southwesterly direction for a distance of 524.90 feet; thence turn an angle to the right of 15 degrees 42' 53" and run in a southwesterly direction for a distance of 15.00 feet; thence turn an angle to the left of 102 degrees 10' 58" run in a southeasterly direction for a distance of 195.60 feet; thence turn an angle to the right of 13 degrees 53' 06" and run in a southeasterly direction for a distance of 185.50 feet; thence turn an angle to the right of 03 degrees 06' 00" and run in a southeasterly direction for a distance of 201.40 feet; thence run an angle to the right of 03 degrees 14' 59" and run in a southeasterly direction for a distance of 894.19 feet to the northwesterly right of way line of Alabama Highway No. 119; thence turn an angle to the left of 93 degrees 41 minutes 50" and run in a northeasterly direction and along said right of way for a distance of 175.97 feet to the point of beginning; thence continue along the previous course and along said right of way line for a distance of 42.10 feet; thence turn an angle to the left of 30 degrees 20' 28" and run in a northeasterly direction and along said right of way line for a distance of 115.40 feet; thence turn an angle to the right of 30 degrees 28' 26" and run in a northeasterly direction and along said right of way line for a distance of 99.38 feet; thence turn an angle to the left of 88 degrees 06' 12" and, leaving said right of way line, run northwesterly for a distance of 250.00 feet, thence turn an angle to the left of 91 degrees 53' 48" and run southwesterly for a distance of 239.00 feet; thence turn an angle to the left of 88 degrees 06' 12" and run southeasterly for a distance of 308.66 feet to the point of beginning, being situated in Shelby County, Alabama.

SITUATED IN SHELBY COUNTY, ALABAMA.

Being the same premises as conveyed by virtue of Statutory Warranty Deed made by Charles E. Morgan, Daniel G. Morgan and Nathaniel C. Morgan to O'Charley's Inc. recorded as Instrument No. 1996-11185 in the Probate Office of Shelby County, Alabama.

Property Address: 101 Southgate Drive  
Pelham, AL 35124

Parcel No. 10-9-31-4-001-004.006

A-1



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## **EXHIBIT B**

### **PERMITTED EXCEPTIONS**

Those matters specifically set forth in Schedule B, Part I of that certain Lender's policy of title insurance issued by Fidelity National Title Insurance Company under File Number C-5416.