

This instrument was prepared by  
Terry McElheny  
Dominick, Fletcher, Yeilding,  
Wood & Lloyd, P.A.  
2121 Highland Avenue South  
Birmingham, Alabama 35205  
(205) 939-0033

STATE OF ALABAMA )  
:  
SHELBY COUNTY )

### REAL ESTATE MORTGAGE

**KNOW ALL MEN BY THESE PRESENTS, THAT:**

**WHEREAS**, the undersigned **Dunnivant Commercial, LLC**, an Alabama limited liability company (hereinafter called "Mortgagor"), has become justly indebted to **Dunavant Square, LLC**, an Alabama limited liability company (hereinafter called "Mortgagee"), in the sum of Two Million and No/100 Dollars (\$2,000,000.00) evidenced by that certain promissory note, dated the 9<sup>th</sup> day of July, 2008 (the "Note"), whereby Mortgagor promised to pay to the order of Mortgagee the principal amount of Two Million and No/100 Dollars (\$2,000,000.00) with interest to accrue on the outstanding balance thereon at an annual rate of five percent (5%), due and payable in equal monthly installments, commencing on the first day of September, 2008, and continuing until paid in full, all in accordance with the terms and conditions of the Note.

**NOW THEREFORE**, in consideration of the premises and in order to secure the payment of said indebtedness described in the Note and herein, along with any renewals or extensions thereof and the interest thereon, and all other indebtedness now or hereafter owed by Mortgagor to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure compliance with all of the covenants and stipulations hereinafter contained, Mortgagor does hereby grant, bargain, sell, convey, mortgage, assign and warrant unto Mortgagee the following described real estate (hereinafter called the "Mortgaged Property") situated in Shelby County, Alabama, *to-wit*:

**SEE ATTACHED EXHIBIT "A"**



together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements, and appurtenances thereunto belonging or in any way appertaining, including any after-acquired title and easements and all rights, title, and interest now or hereafter owned by Mortgagor in and to all buildings and improvements and all equipment and fixtures attached or appertaining to the Mortgaged Property, all of which shall be deemed realty and conveyed by this Mortgage.

**TO HAVE AND TO HOLD** the same and every part thereof unto Mortgagee and its successors, assigns, heirs and legal representatives forever.

For the purpose of further securing the payment of said indebtedness, Mortgagor warrants, covenants and agrees with Mortgagee, and Mortgagee's successors and assigns, as follows:

1. Mortgagor is lawfully seized in fee and possessed of the Mortgaged Property and has a good right to convey the Mortgaged Property, and Mortgagor will warrant and forever defend the title against the lawful claims of all persons whomsoever. The Mortgaged Property is free and clear of all encumbrances, easements and restrictions which may hinder title or make the Mortgaged Property unmarketable.
2. Mortgagor will pay all taxes, assessments, or other liens taking priority over this Mortgage when imposed legally upon said Mortgaged Property. Should default be made in the payment of same or any part thereof, Mortgagee may pay the same, but Mortgagee is not obligated to do so.
3. Mortgagor shall promptly pay when due all ad valorem taxes, assessments, and other charges against the property and shall promptly provide evidence of payment of said charges to the Mortgagee each and every tax year. In the event the Mortgagor does not pay when due any ad valorem tax, assessment or other charge against the Mortgaged Property, then the Mortgagee may, but shall not be required to, pay said tax assessment or other charge, and the amount of the Mortgagee's payment shall be treated as an additional secured amount pursuant to this Mortgage and must be promptly repaid to the Mortgagee. The Mortgagor's failure to pay all ad valorem taxes, assessments, and other charges against the Mortgaged Property or the Mortgagor's failure to repay any advances made by Mortgagee for the purpose of paying any such tax, assessment or charge immediately upon demand therefor shall constitute an event of default under this Mortgage.
4. Mortgagor will keep all improvements on said Mortgaged Property continuously insured in such amounts, in such manner, and with such companies



as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind, and such other hazards as Mortgagee may specify with loss, if any, payable to Mortgagee. Mortgagor will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof and will pay premiums therefor as the same become due. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to said Mortgaged Property caused by any casualty. If Mortgagor fails to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind, and other hazards for the benefit of Mortgagor and Mortgagee or Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by the insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies and to demand, receive, and receipt for all sums becoming due thereunder. Said proceeds, if collected, shall be credited on the indebtedness secured by this Mortgage, less costs of collection of same, or shall be used in repairing or reconstructing the Mortgaged Property, as Mortgagee may elect. The Mortgagor shall promptly pay all policy premiums when due, and shall promptly provide evidence of premium payments to the Mortgagee upon request of Mortgagee. In the event the Mortgagor does not pay when due all policy premiums payable in connection with the policy or policies of insurance required by this Mortgage, then the Mortgagee may, but shall not be required to, pay said premiums and the amount of the Mortgagee's payment shall be treated as an additional secured amount pursuant to this Mortgage and must be promptly repaid to the Mortgagee upon the Mortgagee's demand. The Mortgagor's failure to pay all policy premiums due in connection with any policy or policies of insurance required by this Mortgage, or to promptly reimburse the Mortgagee for advances made by the Mortgagee for the purpose of paying said insurance policy premiums shall constitute an event of default under this instrument. Any such policies of insurance required to be maintained by Mortgagor hereunder shall provide written notice to Mortgagee no less than thirty (30) days prior to the cancellation or expiration of such policy.

5. All amounts so expended by Mortgagee for insurance, the payment of taxes or assessments, or to discharge prior liens shall become a debt due by Mortgagor to Mortgagee at once payable without demand upon or notice to any person and shall bear interest at the rate of interest payable on the principal sum of the note described above or, if no such rate of interest is specified or if the rate specified would be unlawful, at the rate of ten percent (10%) per annum from date of payment by Mortgagee. Such debt and the interest thereon shall be secured by the lien of this Mortgage. Upon failure of Mortgagor to reimburse Mortgagee for all amounts so expended as required herein, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness



secured by this Mortgage due and payable and this Mortgage subject to foreclosure, and the same may be foreclosed as hereinafter provided.

6. Mortgagor shall take good care of the Mortgaged Property described above and shall not commit or permit any waste thereon. Mortgagor shall keep the Mortgaged Property repaired at all times and shall maintain the same in as good condition as it now is, reasonable wear and tear alone excepted.

7. No delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of Mortgagor.

8. The procurement of insurance or payment of taxes or other liens or assessments by Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, liens, or assessments, it being agreed that no terms or conditions contained in this Mortgage can be waived, altered, or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

9. Mortgagor will well and truly pay and discharge every indebtedness hereby secured as it shall become due and payable including the note above described, any renewals or extensions thereof, and any other notes or obligations of Mortgagor to Mortgagee, whether now or hereafter incurred.

10. The indebtedness hereby secured shall become due and payable in full upon the sale, assignment, transfer, conveyance, lease or encumbrance in any manner, voluntarily or involuntarily, of all or any portion of the Mortgaged Property or of any beneficial interest of Mortgagor therein unless the prior written consent of Mortgagee is first obtained.

11. If, pursuant to the provisions herein, Mortgagee exercises its option to accelerate the debt and foreclose on the Mortgaged Property, Mortgagee shall provide notice of such foreclosure by publication as provided hereinbelow.

12. After any default on the part of Mortgagor, Mortgagee shall, upon complaint filed or other proper legal proceeding being commenced for the foreclosure of this Mortgage, be entitled as a matter of right to the appointment by any competent court or tribunal, without notice to any party, of a receiver of the rents, issues, and profits of said Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary. A reasonable attorney's fee shall, among other expenses and costs, be



fixed, allowed, and paid out of such rents, issues, and profits or out of the proceeds of the sale of the Mortgaged Property.

13. All the covenants and agreements of Mortgagor herein contained shall extend to and bind Mortgagor's successors, and assigns, and such covenants and agreements and all options, rights, privileges, and powers herein given, granted, or secured to Mortgagee shall inure to the benefit of Mortgagee and its successors and assigns as Mortgagee may assign its interests hereunder.

14. Subject to the provisions herein, the debt hereby secured shall at once become due and payable and this Mortgage subject to foreclosure as herein provided at the option of the Mortgagee when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard to the form and contents of such statement and without regard to the existence or nonexistence of the debt or any part thereof or of the lien on which such statement is based unless duly discharged by Mortgagor hereunder.

15. The provisions of this Mortgage and the Note hereby are severable, and the invalidity or unenforceability of any provision of this Mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this Mortgage or of such note or notes. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively.

16. Any notices required to be given to either Mortgagor or Mortgagee hereunder shall be delivered by certified mail, return receipt requested and shall be deemed given upon the earlier of the date of receipt by the receiving party or three (3) business days from such mailing if properly addressed as provided below:

if to Mortgagor:      Dunnavant Commercial, LLC  
                              Attn: William L. Thornton III  
                              3570 Grandview Parkway  
                              Suite 100  
                              Birmingham, Alabama 35243

if to Mortgagee:      Dunavant Square, LLC.  
                              Attn: Joe H. Brady, III  
                              9 Office Park Circle,  
                              Suite 101  
                              Birmingham, Alabama 35223



**UPON CONDITION, HOWEVER,** that if Mortgagor shall well and truly pay and discharge all the indebtedness hereby secured as the same shall become due and payable and shall in all things do and perform all acts and agreement herein agreed to be done by Mortgagor according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void; but should default be made in the payment of any indebtedness hereby secured or any renewals or extensions thereof or any part thereof, or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by Mortgagee under the authority of any of the provisions of this Mortgage, or should the interest of Mortgagee in said property become endangered by reason of the enforcement of any lien or encumbrance thereon so as to endanger the debt hereby secured, or should a petition to condemn any part of the Mortgaged Property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this Mortgage or the debt hereby secured or permitting or authorizing the deduction of any such tax from the principal or interest secured by this Mortgage or by virtue of which any tax or assessment upon the Mortgaged Property shall be charged against the owner of this Mortgage, or should at any time any of the stipulations contained in this Mortgage be declared invalid or inoperative by any court of competent jurisdiction, or should Mortgagor fail to do and perform any other act or thing herein required or agreed to be done, then, in any of said events, the whole of the indebtedness hereby secured, or any portion or part of same which may not at said date have been paid, with interest thereon, shall at once become due and payable and this Mortgage subject to the commencement of foreclosure proceedings at the option of Mortgagee upon thirty (30) days prior written notice from Mortgagee to Mortgagor. Mortgagee shall have the right to sell the same before the courthouse door of the county (or the division thereof) where said property, or a substantial part of said property, is located, at public outcry for cash, after first giving notice of the time, place, and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said county. Upon the payment of the purchase money, Mortgagee or auctioneer is authorized to execute to the purchaser for and in the name of Mortgagor a good and sufficient deed to the property sold. Mortgagee shall apply the proceeds of said sale: first, to the expense of advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes, and other encumbrances, with interest thereon; third, to the payment in full of the indebtedness hereby secured and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; and fourth, the balance, if any, to be paid over to Mortgagor or to whomsoever then appears of record to be the owner of Mortgagor's interest in said property. Mortgagee may bid and become the purchaser of the Mortgaged Property at any



foreclosure sale hereunder. Mortgagor hereby waives any requirement that the Mortgaged Property be sold in separate tracts and agrees that Mortgagee may, at Mortgagee's option, sell said property en masse regardless of the number of parcels hereby conveyed.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed the 9<sup>TH</sup> day of July, 2008.

**MORTGAGOR:**  
**Dunnavant Commercial, LLC**

By: [Signature]  
Its Manager

And: [Signature]  
Its Manager

STATE OF ALABAMA       )  
Jefferson COUNTY       )

I, the undersigned, a notary public in and for said county in said state, hereby certify that William L. Thornton, III and Joe H. Brady, III, whose names, as Managers of Dunnavant Commercial, LLC are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such Managers and with full authority, executed the same voluntarily, on behalf of Dunnavant Commercial, LLC, on the day the same bears date.

Given under my hand and official seal this the 9<sup>TH</sup> day of July, 2008.

Mary Thornton Taylor  
Notary Public

{SEAL}  
My Commission Expires: 5-25-11

EXHIBIT A



20080808000320290 8/8 \$3032.00  
Shelby Cnty Judge of Probate, AL  
08/08/2008 12:17:29PM FILED/CERT

All that part of the Northeast quarter of the Southwest quarter of Section 3, Township 19 South, Range 1 West, Shelby County Alabama, lying West of Shelby County Highway Number 41 less and except that part known as Dunnavant Square as recorded in Map Book 39 on Page 119 A, B & C in the office of the Judge of Probate of Shelby County Alabama.