

This instrument prepared by  
and after recording return to:

Ray D. Gibbons, Esq.  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

**FIRST AMENDMENT TO ASSIGNMENT OF RENTS AND LEASES**

**THIS FIRST AMENDMENT TO ASSIGNMENT OF RENTS AND LEASES** (this "First Amendment") is made and entered into as of August 11, 2008, by and between **DUNAVANT SQUARE, LLC**, an Alabama limited liability company, whose address is 3570 Grandview Parkway, Suite 100, Birmingham, Alabama 35243, Attention: Mr. William L. Thornton III and Mr. Joe H. Brady III (the "Assignor"), and **SERVISFIRST BANK**, an Alabama banking corporation, whose address is 3300 Cahaba Road, Birmingham, Alabama 35223, Attention: Mr. Ron O. Morrison (the "Bank").

**WHEREAS**, to secure certain indebtedness of Assignor to Bank in the principal amount of \$4,136,000.00 (the "Dunavant Square Loan"), Assignor executed and delivered in favor of Bank that certain Assignment of Rents and Leases dated as of July 17, 2008, and recorded in the office of the Judge of Probate of Shelby County, Alabama on July 24, 2008 as Instrument No. 2008072400299120 (the "Assignment"); and

**WHEREAS**, concurrently herewith, Bank is extending to Dunnavant Commercial, LLC, an Alabama limited liability company ("Dunnavant Commercial"), a line of credit loan in the maximum principal amount of \$500,000.00 (the "Dunnavant Commercial Loan"); and

**WHEREAS**, Assignor and Bank desire to amend the Assignment to provide that the Assignment shall secure both the Dunavant Square Loan and the Dunnavant Commercial Loan, as provided for hereinafter.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Bank hereby agree that the Assignment is amended and restated in its entirety as follows:

**ASSIGNMENT OF RENTS AND LEASES**

**THIS ASSIGNMENT OF RENTS AND LEASES** (the "Assignment"), is made and entered into by **DUNAVANT SQUARE, LLC**, an Alabama limited liability company, whose address is 3570 Grandview Parkway, Suite 100, Birmingham, Alabama 35243, Attention: Mr. William L. Thornton III and Mr. Joe H. Brady III (the "Assignor"), in favor of **SERVISFIRST BANK**, an Alabama banking corporation, whose address is 3300 Cahaba Road, Birmingham, Alabama 35223, Attention: Mr. Ron O. Morrison (the "Bank"). Capitalized terms used herein but not defined shall have the meanings ascribed thereto in the Notes (as hereinafter defined).



**WITNESSETH:**

**WHEREAS**, Assignor is justly indebted to Bank in the maximum principal amount of Four Million One Hundred Thirty-Six Thousand and No/100 Dollars (\$4,136,000.00) (the "Dunavant Square Loan"), as evidenced by that certain Promissory Note dated July 17, 2008, executed and delivered by Assignor in favor of Bank in the principal amount of \$4,136,000.00 (as amended from time to time, the "Dunavant Square Note"); and

**WHEREAS**, Dunnivant Commercial, LLC, an Alabama limited liability company ("Dunnivant Commercial") is justly indebted to Bank in the maximum principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Dunnivant Commercial Loan"), as evidenced by that certain Line of Credit Note dated August 11, 2008, executed and delivered by Dunnivant Commercial in favor of Bank in the principal amount of \$500,000.00 (as amended from time to time, the "Dunnivant Commercial Note") (the Dunavant Square Loan and the Dunnivant Commercial Loan hereinafter referred to collectively as the "Loans" and each singularly as a "Loan"; and the Dunavant Square Note and the Dunnivant Commercial Note hereinafter referred to collectively as the "Notes" and each singularly as a "Note"); and

**WHEREAS**, Assignor desires to secure the Obligations (as defined in the Dunavant Square Note) and the Obligations (as defined in the Dunnivant Commercial Note), including, but not limited to, the obligation to pay the principal of and interest on the Notes in accordance with the terms thereof (including any and all extensions, modifications, and renewals thereof and substitutions therefor), and all Indemnified Losses and Default Costs (both as defined in the Notes) (collectively, the "Secured Obligations").

**NOW THEREFORE, FOR VALUE RECEIVED**, to secure the Secured Obligations, Assignor hereby sells, assigns, transfers and sets over unto Bank, its successors and assigns, all of Assignor's right, title and interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the property described in Exhibit "A" attached hereto, and the improvements located or to be located thereon (collectively, the "Mortgaged Property"), and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due (collectively, the "Rents") under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or replacement provision), including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all



rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief.

## I. ASSIGNOR'S REPRESENTATIONS AND WARRANTIES

Assignor warrants and represents to Bank, in order to induce Bank both to make the Loans and to accept this Assignment, that:

1.1 Assignor is (or, with respect to any Assigned Leases hereafter made, will be) the sole owner and holder of Assignor's interest in each Assigned Lease,

1.2 Each of the Assigned Leases is (or, with respect to any Assigned Leases hereafter made, will be) valid and enforceable and in full force and effect, and has not been (or, with respect to any Assigned Leases hereafter made, will not be) altered, modified or amended in any manner whatsoever except as set forth in this Assignment,

1.3 None of the Rents has been or will be assigned, pledged or in any manner transferred or hypothecated, except pursuant to this Assignment, and

1.4 None of the Rents, for any period subsequent to the date of this Assignment, has been or will be collected in advance of the time when such Rents become due under the terms of the Assigned Leases.

## II. COVENANTS OF ASSIGNOR

Assignor covenants with Bank that Assignor shall (a) observe and perform all the obligations imposed upon Assignor under each Assigned Lease; (b) not do, or permit to be done, anything to impair the security of any Assigned Lease; (c) promptly send to Bank copies of each notice of default which Assignor shall send or receive under the Assigned Leases; (d) enforce the performance and observance of the provisions of each Assigned Lease; (e) not collect any of the Rents except as set forth in this Assignment; (f) not subordinate any Assigned Lease to any mortgage or other lien, or permit, consent, or agree to any such subordination without the prior written consent of Bank; (g) not alter, modify or change the terms of any Assigned Lease, nor give any consent to exercise any option required or permitted by such terms, without the prior written consent of Bank in each such case; (h) not cancel or terminate any Assigned Lease, or accept a surrender of any Assigned Lease; (i) not convey or transfer, and shall not suffer or permit a conveyance or transfer of, the Mortgaged Property, or of any interest in the Mortgaged Property, so as to effect directly or indirectly, approximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any other party to and under any Assigned Lease; (j) not alter, modify or change the terms of any guaranty of any Assigned Lease, and shall not cancel or terminate any such guaranty, without the prior written consent of Bank in each such case; (k) not consent to any assignment of, or subletting under, any Assigned Lease without the prior written consent of Bank; (l) not lease or



otherwise let all or any portion of the Mortgaged Property, without the prior written consent of Bank; (m) at Bank's request, execute any documentation confirming the assignment and transfer to Bank of each Assigned Lease upon all or any part of the Mortgaged Property; and (n) execute and deliver, at the request of Bank, all other further assurances, confirmations and assignments in the Mortgaged Property as Bank shall, from time to time, reasonably require in order to evidence or secure the rights of Bank pursuant to this Assignment.

### III. TERMS AND CONDITIONS OF ASSIGNMENT

3.1 Assignor's Rights Prior to Default. So long as there shall not exist any default by Assignor in the performance of any covenant or agreement of Assignor in any Assigned Lease, nor any Event of Default under and as defined in any Note, any Loan Document (as defined in the Dunavant Square Note), or any Loan Document (as defined in the Dunnivant Commercial Note) (hereinafter referred to collectively as the "Loan Documents"), nor any default by Assignor in the performance of any covenant, agreement or obligation of Assignor contained herein (each of the foregoing herein being called an "Event of Default"), then Assignor shall have the right to continue to exercise all its rights and perform its obligations under the Assigned Leases, including the right to collect each payment of Rent at the time of, but not more than one (1) month prior to, the date provided in the applicable Assigned Lease for such payment, and to retain, use and enjoy such payment (subject to the terms of the Loan Documents), and to lease the Mortgaged Property or any part thereof, all subject to the provisions of this Assignment and the Loan Documents. However, upon any Event of Default, Assignor's rights pursuant to this paragraph to collect, retain, use and enjoy each payment of Rent, and to lease the Mortgaged Property or any part thereof, shall terminate.

3.2 Bank's Remedies Upon Default. Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing Assignor from any obligation under this Assignment, at Bank's option and in its discretion, and irrespective of whether Bank shall have commenced any other remedy under applicable law or any other Loan Document, then Bank may, without notice and with or without bringing any action or proceeding except as required by applicable law, (i) exercise any and all rights available under applicable law, (ii) revoke the rights of Assignor as set forth in Section 3.1, (iii) proceed to perform any and all of the duties and obligations and exercise all the rights and remedies of Assignor contained in the Assigned Leases as fully as Assignor could itself, (iv) lease all or any portion of the Mortgaged Property and collect the Rents, and/or (v) take possession of the Mortgaged Property or the Rents and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Bank may in its discretion deem proper, and, either with or without taking possession of the Mortgaged Property in Bank's own name:



(a) make any payment or perform any act which Assignor has failed to make or perform, in such manner and to such extent as Bank may deem necessary to protect the security provided for in this Assignment, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Assignment, or the rights or powers of Bank;

(b) lease the Mortgaged Property or any portion thereof in such manner and for such Rents as Bank shall determine in its sole and absolute discretion; or

(c) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Mortgaged Property (or any part thereof) as may seem proper to Bank and to apply the Rents to the payment of (in such order of priority as Bank, in its sole discretion, may determine):

(1) all expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Bank may deem necessary or desirable;

(2) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which Bank may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Mortgaged Property;

(3) all or any portion of the Loans; and/or

(4) all costs and Attorneys' Fees incurred in connection therewith.

Assignor hereby specifically authorizes Bank, and hereby constitutes and appoints Bank as Assignor's agent and attorney in fact, in Assignor's name or in Bank's name, to do any of the foregoing. The foregoing power of attorney is coupled with an interest and cannot be revoked by insolvency, bankruptcy, death, dissolution or otherwise. The foregoing remedies are cumulative of and in addition to, and not restrictive of or in lieu of, the rights and remedies provided for or allowed by any one or more of the Loan Documents, or provided for or allowed by law or in equity.

3.3 Bank's Exercise of Rights Not a Waiver. The exercise by Bank of any rights or powers under Section 3.2 of this Assignment, including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Assignment, shall not be considered a waiver by Bank of any default by Assignor under any Loan Document.



3.4 Bank Not Liable Except For Its Willful Tortious Misconduct or Bad Faith. Bank shall not be liable for any loss sustained by Assignor resulting from (1) Bank's failure to let the Mortgaged Property, or (2) any act or omission of Bank in exercising its rights and remedies hereunder, unless and to the extent such loss is caused by the willful tortious misconduct or bad faith of Bank. Nor shall Bank be obligated to perform or discharge, nor does Bank hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Assignment, and Assignor shall, and does hereby agree, to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Bank by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful tortious misconduct or bad faith of Bank. Should Bank incur any such liability under any Assigned Lease, or under or by reason of this Assignment, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and Attorneys' Fees, shall be secured by this Assignment and Assignor shall reimburse Bank for all such liability immediately upon demand by Bank. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Bank, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, nor for any dangerous or defective condition of the Mortgaged Property, nor for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any tenant, employee or others, unless and to the extent resulting from the willful tortious misconduct or bad faith of Bank.

3.5 Termination of Agreement. Upon payment and performance in full of the Secured Obligations, and provided that Bank has no further obligation to Assignor or Dunnivant Commercial or otherwise under the Loan Documents, then this Assignment shall become and be void and of no effect, provided, however, that (1) this Assignment shall continue to secure the obligations of Assignor and Dunnivant Commercial to Bank pursuant to this Assignment as and to the extent that any payment by Assignor or Dunnivant Commercial to Bank is avoided or is required to be disgorged by Bank, and (2) the affidavit, certificate, letter or statement of any officer, agent or attorney of Bank showing any part of any Loan to remain unpaid, or any obligation of Bank to exist (each such affidavit, certificate, letter or statement being called an "Bank's Certification"), shall be and constitute presumptive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may, and is hereby authorized to, rely on such Bank's Certification.

3.6 Assignor's Authorization With Respect to Other Parties. Assignor hereby authorizes and directs each party to any Assigned Lease (other than



Assignor), upon receipt from Bank of written notice to the effect that an Event of Default exists, to perform all of its obligations under the Assigned Lease as directed by Bank (including, if so directed, the payment of all Rents to Bank), and to continue to do as so directed until otherwise notified by Bank.

3.7 Release or Application of Security by Bank. Bank may (1) take or release other security for the payment of any Loan, (2) release any party primarily or secondarily liable for any Loan or any part thereof, and (3) apply any other security held by Bank to the satisfaction of any Loan, without, in each case, prejudice to any of Bank's rights under this Assignment.

3.8 Assignor's Indemnity of Bank. Notwithstanding anything to the contrary in any Loan Document, Assignor shall indemnify and hold Bank harmless from, and defend Bank, at Assignor's sole cost and expense, against all Indemnified Losses arising out of or in connection with this Assignment, and all Indemnified Losses shall be payable by Assignor to Bank, on demand by Bank, and, until reimbursed by Assignor pursuant to the terms of this Assignment, shall be secured by this Assignment and shall bear interest at the Default Rate.

3.9 No Waiver by Bank. Nothing contained in this Assignment, and no act done or omitted by Bank pursuant to the powers and rights granted to it under this Assignment, shall be deemed to be a waiver by Bank of its rights and remedies under the Loan Documents other than this Assignment. This Assignment is made and accepted without prejudice to any right or remedy of Bank under the terms of such other Loan Documents.

3.10 Bank's Rights Cumulative And May Be Exercised Separately. The right of Bank to collect the Loans, and to enforce any of its rights and remedies under any Loan Document, may be exercised by Bank either prior to, simultaneously with, or subsequent to any action taken by Bank under this Assignment.

3.11 Cooperation By Assignor. Assignor will, at the cost of Assignor, and without expense to Bank, do, execute, acknowledge and deliver such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Bank shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Bank the property and rights assigned by this Assignment, or intended now or hereafter to be assigned by this Assignment, or which Assignor may be or may hereafter become bound to convey or assign to Bank, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment. On demand, Assignor will execute and deliver, and hereby authorizes Bank to execute in the name of Assignor to the extent Bank may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Assignment upon the Assigned Leases.



3.12 Notices. All notices given pursuant to this Assignment shall be given (and deemed received) in the manner set forth in the Notes.

3.13 Successors and Assigns. This Assignment, together with the covenants, representations and warranties contained in this Assignment, shall inure to the benefit of Bank and each subsequent holder of the Secured Obligations and shall be binding upon Assignor, and its successors and assigns and any subsequent owner of the Mortgaged Property (or any part thereof or interest therein).

3.14 No Oral Changes. This Assignment may only be modified, amended or changed by an agreement in writing signed by Assignor and Bank, and may only be released, discharged or satisfied of record by an agreement in writing signed by Bank. No waiver of any term, covenant or provision of this Assignment shall be effective unless given in writing by Bank and if so given by Bank shall only be effective in the specific instance in which given.

3.15 Severability. Whenever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be unenforceable or prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Assignment.

3.16 Entire Agreement. Assignor acknowledges that the Loan Documents set forth the entire agreement and understanding of Assignor and Bank with respect to the Loans and that no oral or other agreement, understanding, representation or warranty exists with respect to the Loans other than as set forth in the Loan Documents.

3.17 No Trial By Jury. ASSIGNOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND BANK (BY ITS ACCEPTANCE OF THIS ASSIGNMENT) IRREVOCABLY AND UNCONDITIONALLY WAIVES, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO, ANY OF THE LOAN DOCUMENTS HERETOFORE, NOW OR HEREAFTER EXECUTED OR DELIVERED, OR IN CONNECTION WITH THE LOAN, OR IN ANY WAY RELATED TO THIS TRANSACTION OR OTHERWISE WITH RESPECT TO THE MORTGAGED PROPERTY OR ANY OF THE ASSIGNED LEASES.

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IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first above written.

DUNAVANT SQUARE, LLC

By: [Signature]  
William L. Thornton III, Member

SERVISFIRST BANK

By: [Signature]  
Its: V.P.

STATE OF ALABAMA  
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William L. Thornton III, whose name as Member of Dunavant Square, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of such limited liability company.

Given under my hand and official seal, this the 11 day of August, 2008.

[SEAL]

[Signature]  
Notary Public  
My Commission Expires: 11-15-08

STATE OF ALABAMA  
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ron Morrison, whose name as Vice President of ServisFirst Bank, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of such Alabama banking corporation.

Given under my hand and official seal, this the 11 day of August, 2008.

[SEAL]

[Signature]  
Notary Public  
My Commission Expires: 11-15-08



20080822000338760 10/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
08/22/2008 01:03:29PM FILED/CERT

EXHIBIT A

DESCRIPTION OF LAND

**All 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 No. 41.**

**Less and except:**

**Lots 55, 56, 57, 58, 85, 86, 89, 90, 91, 92, 93, 94, 95 and 96 according to the Map and Survey of  
Dunnavant Square, as recorded in Map Book 39, Page 119 A, B & C, in the Office of the Judge of  
Probate of Shelby County, Alabama.**

**Also Less and except:**

**Lots 65, 66, 67, 68, 87, 88, 109, 110, 111, 112, 113 and 114, according to the Map and Survey of  
Dunnavant Square, as recorded in Map Book 39, Page 119 A, B & C, in the Office of the Judge of  
Probate of Shelby County, Alabama.**

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