

STATE OF ALABAMA)

SHELBY COUNTY)

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the 1st day of August, 2008 by **DUNNAVANT COMMERCIAL, LLC**, an Alabama limited liability company ("Developer").

R E C I T A L S:

WHEREAS, Developer is the owner and developer of that certain real property legally described in EXHIBIT A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer intends to develop and subdivide the Property into five commercial and/or mixed-use lots (the "Lots") and sell the Lots to purchasers thereof (the "Owners"); and

WHEREAS, Developer desires to own, develop and sell the Property subject to certain covenants, conditions, restrictions, requirements and obligations as set forth herein.

NOW THEREFORE, Developer does hereby declare as follows:

1. **General Declaration.** Developer hereby declares that the Property is and shall be subject to the covenants, conditions, restrictions, and regulations of this Declaration and the Property, any part thereof and any improvements thereon, shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which covenants, conditions, restrictions, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and all persons or entities owning, acquiring or having any right, title or interest in the Property and their respective successors and assigns.

2. **Architectural Control.** The term "Improvement" shall mean any building, structure, improvement, outbuilding, sidewalk, driveway, parking lot, patio, wall, fence, landscaping, signage or exterior lighting. In order to protect the appearance and value of the Property, Developer hereby declares that no Improvement shall be commenced, erected, installed, placed, altered, replaced, relocated, permitted to remain, or maintained within the Property by an Owner unless plans and specifications therefor have been submitted to and approved by Developer in writing. Without limiting the foregoing, the construction of any Improvements shall not be undertaken on any portion

of the Property, nor shall any exterior addition to or change or alteration be made to any Improvement (including, without limitation, painting or staining of any exterior surface) unless plans and specifications for the same have been submitted to and approved by Developer in writing. If any such Improvements are initiated, constructed, maintained, altered or replaced within the Property without such prior approval by Developer, or if Developer shall determine that any such Improvements are not being made or constructed in accordance with approved plans and specifications, the Owner of the Lot upon which such Improvement is located shall be deemed to have violated this covenant and Developer shall have the right, at its option, to require cessation of any further construction until the non-conforming Improvements are removed or corrected and to bring an action against said Owner in a court of competent jurisdiction to enforce the rights herein provided to Developer as well as any other remedies available at law or in equity. Upon completion of any Improvements in accordance with previously approved plans and specifications, Developer shall, upon the request of an Owner, execute a certificate in form suitable for recordation identifying the Lot and stating that such Improvements as constructed are in compliance with this covenant and such certificate shall be conclusive evidence as to compliance with this covenant as of the date of its execution.

3. **Use Restrictions.** (a) The Property may be used and developed for any use permitted under applicable zoning ordinances affecting the Property; provided, however, that in each case, such use must be approved in writing by Developer.

(b) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any Lot nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Improvement thereon which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lot. Noxious or offensive activities shall not be carried on in or from any Lot and each Owner within the Property shall refrain from any act or use of any Lot which could cause disorderly, unsightly or unkempt conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any governmental authority. Any Owner who dumps, places or allows trash or debris to accumulate on its Lot shall be liable to the Developer for all costs incurred by Developer to remove the same.

(c) All outdoor refuse collection areas within a Lot shall be located, to the greatest extent practicable, at the rear of the building, shall be visually screened so as not to be visible from or any street or roadway or any adjacent Lot and shall be maintained in such a manner as to prevent unsightly, unsanitary or offensive odors or accumulations of trash, garbage, debris, rubbish or refuse.

4. **Responsibilities of Owners.** All maintenance of a Lot and the Improvements situated thereon shall be the sole responsibility of the Owner thereof and each Owner shall keep his Lot and Improvements in good order and repair and with such frequency as is consistent with good property management practices. Each Owner shall be responsible for maintaining its Lot in a reasonably neat, clean and sanitary condition, both inside and outside of any Improvements thereto.

5. **Term and Amendment.** (a) The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind the Property, Developer and each Owner, and their respective heirs, executors, personal representatives, administrators, lessees, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, a declaration executed by the current Owners of the Property terminating or modifying this Declaration has been approved in writing by a majority of said Owners and recorded in the Probate Offices of Shelby County.

(b) For so long as Developer owns any Lot within the Property, Developer may modify and amend this Declaration by a written instrument filed and recorded in the Probate Office of Shelby County, Alabama without obtaining the approval of any Owner.

6. **Enforcement.** The covenants and restrictions set forth herein are for the benefit of and enforceable by the Owners and the Developer. In the event an Owner violates any of the provisions of this Declaration, then the other Owners and Developer shall each have the power and right to enjoin such violation or noncompliance. All costs and expenses incurred by another Owner and/or Developer in enforcing any of the provisions of this Declaration, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred in extinguishing or correcting such violation or breach, shall be paid by such Owner who has violated or breached any of the provisions of this Declaration. Notwithstanding anything provided herein to the contrary, the rights and remedies of the other Owners and Developer set forth herein shall not be deemed to be exclusive of any other rights or remedies which may be exercised by the other Owners and the Developer at law or in equity in the event of any violation or breach by an Owner of any of the terms and provisions of this Declaration.

7. **Termination of Developer's Rights.** Developer's rights as set forth herein including, but not limited to, the right to architecturally approve all plans and specifications for all Improvements, the right to approve all uses of the Property and the right to amend this Declaration shall terminate at such time as Developer is no longer the Owner of any Lot within the Property, in which event Developer's rights shall be assigned to and assumed by the Owners of the Lots within the Property and exercised by a majority vote of such Owners.

8. **Miscellaneous.**

(a) **GOVERNING LAW.** This Declaration shall be governed by and interpreted in accordance with the laws of the State of Alabama.

(b) **BINDING EFFECT.** This Declaration shall be binding upon Developer and the Owners and their respective successors and assigns. This Declaration shall further be binding upon each Owner's guests, tenants, lessees, agents, employees, invitees, licensees and any other

person who occupies or uses any Lot or building within the Property (singularly, an "Occupant"). All actions or omissions of any Occupant within the Property is and shall be deemed the action or omission of the Owner of such Lot.

(c) SEVERABILITY. Each of the covenants and agreements contained herein shall be deemed separate, severable and independent, and in the event any part or provision of this Declaration should be declared invalid by any court of competent jurisdiction, such declaration shall not in any manner affect or impair the validity or enforceability of any other part or provision hereof.


(d) HEADINGS. Section headings are inserted for convenience of reference only and shall be disregarded in the interpretation of this Declaration.

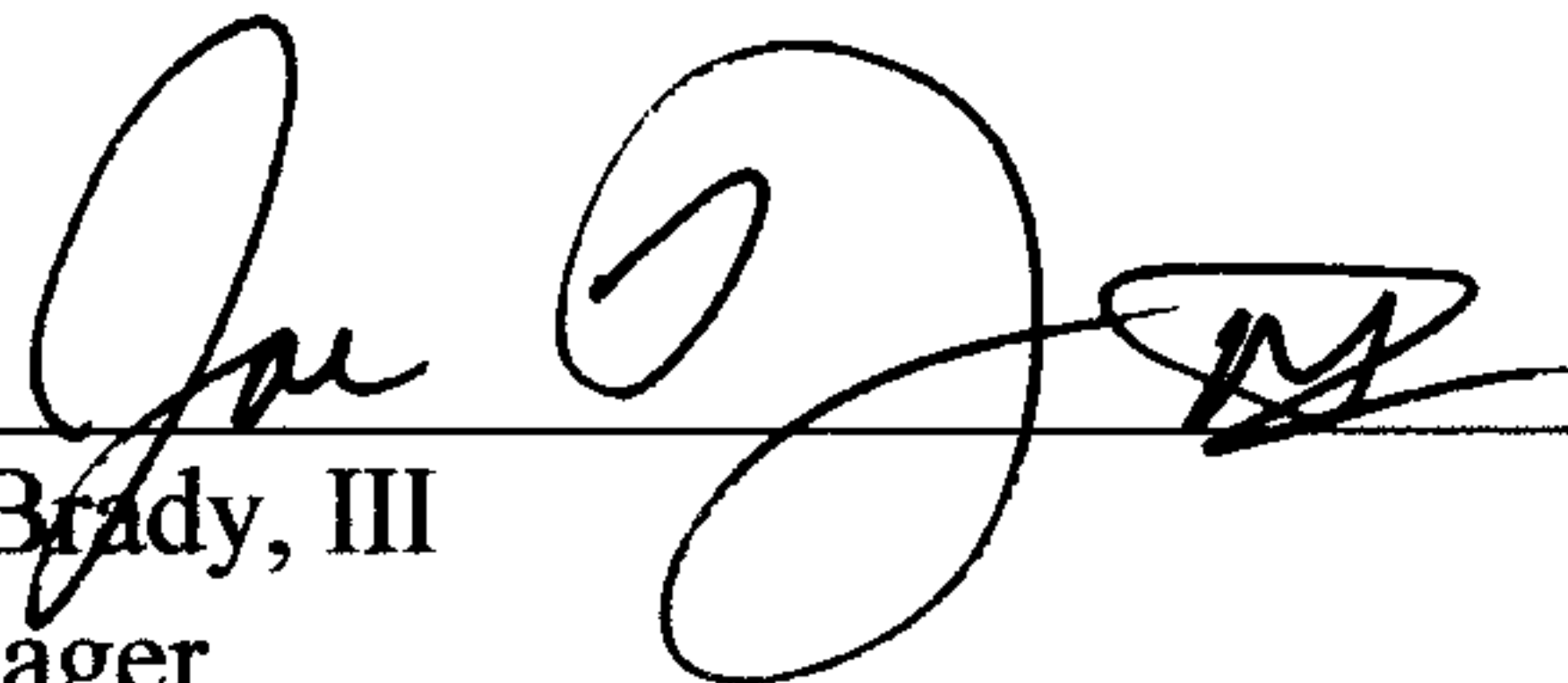
(e) PERPETUITIES. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, President of the United States.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed
as of the date first above written.

DUNNAVANT COMMERCIAL, LLC, an Alabama limited
liability company

By: 
William L. Thornton, III
Its Manager

By: 
Joe H. Brady, III
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**, an Alabama limited liability company, 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 said instrument, they, as such Managers and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 5 ST day of August, 2008.

(SEAL)

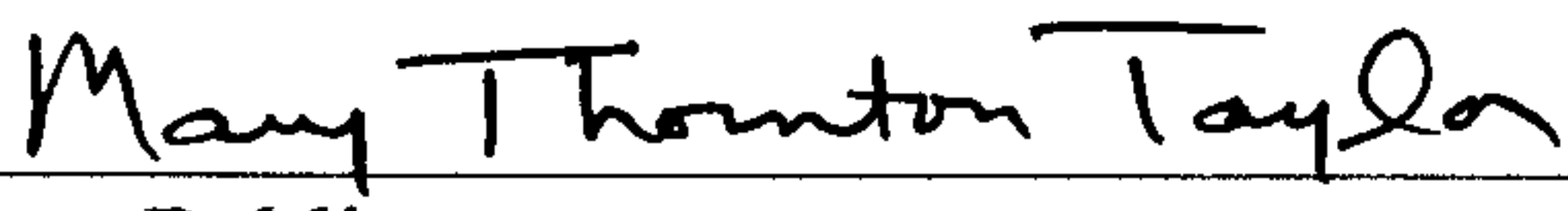


Notary Public
My Commission Expires: 5/25/11

EXHIBIT A


20080822000338780 6/7 \$29.00
Shelby Cnty Judge of Probate, AL
08/22/2008 01:16:17PM FILED/CERT

THE PROPERTY

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** the residential subdivision known as Dunnivant Square as set forth on the subdivision plat for Dunnivant Square recorded in Map Book 39, Page 119 A, B & C in the Office of the Judge of Probate of Shelby County, Alabama. The Property made the subject of this Declaration is designated as "Future Development" on said Map Book 39, Page 119 A, B & C.

CONSENT OF MORTGAGEE

Dunnavant Square, LLC, an Alabama limited liability company ("Mortgagee"), as the holder of that certain Mortgage granted by Dunnavant Commercial, LLC, as recorded in Instrument # 20080808000320290 in the Office of the Judge of Probate of Shelby County, Alabama, as may be amended or modified from time to time (the "Mortgage"), which Mortgage secures the Property made subject to the foregoing Declaration of Covenants, Conditions and Restrictions (the "Declaration"), does hereby consent to the filing of the Declaration and does hereby agree that said Property shall remain subject to the terms and conditions of the Declaration if the Mortgagee should succeed to the interest of the mortgagor by foreclosure of the Mortgage or by accepting a deed in lieu of foreclosure.

Dated as of the 1ST day of August, 2008.

DUNNAVANT SQUARE, LLC, an Alabama limited liability company

By: _____

William L. Thornton, III
Its Manager

By: _____

Joe H. Brady, III
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**, an Alabama limited liability company, 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 said instrument, they, as such Managers and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 1ST day of August, 2008.

(SEAL)

Mary Thornton Taylor

Notary Public

My Commission Expires: 5/25/11