


STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

  
20160824000305190 1/15 \$357.00  
Shelby Cnty Judge of Probate, AL  
08/24/2016 08:28:32 AM FILED/CERT

## MORTGAGE

THIS MORTGAGE is made on this the 19<sup>th</sup> day of August 2016, by IRA HOLDINGS, INC., an Alabama corporation, whose address is 2772 Montauk Road, Hoover, Alabama 35226 (hereinafter referred to as "Mortgagor" or "Borrower"), in favor of American Commerce Bank, N.A., whose address is 400 U.S. Highway 27 Bypass, Bremen, Georgia 30110 (hereinafter referred to as "Lender" or "Mortgagee").

### W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Lender in the principal sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) as evidenced by that certain Promissory Note of even date herewith payable to Lender with interest thereon (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note").

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements and fixtures (which, together with any additional property hereafter acquired by the Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All that tract or parcel of land particularly described on Exhibit "A" attached hereto and made a part hereof (the "Land").

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land and all fixtures, located therein or thereon, now or hereafter owned by the Mortgagor and located in, on, or used or intended to be used in connection with or with the operation of said Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All materials, fixtures, and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of being used or useful in connection with the improvements located or to be located on the Land, whether such materials, fixtures and fittings are actually located on or adjacent to said Land or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing



material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment, electrical and gas equipment, pipes and piping, ornamental and decorative fixtures, and in general all building materials and fixtures of every kind and character used or useful in connection with said improvements.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer and utility rights, waters, water courses, water rights and powers, any and all riparian and littoral rights as legally accrue by reason of ownership in fee simple of the property as well as land acquired by accretion, and all estates, rights, titles, interests, privileges, warranties, licenses, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to:

(a) All rents, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and

(b) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Lender is hereby authorized on behalf and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns, forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform and observe all and singular the covenants and promises in the Note, and in this Mortgage and any other Loan Document (as defined in the Note) expressed to be kept, performed, and observed by and on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall

{1195936.1}



(except as provided in Section 1.13 hereof) cease, determine and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Lender as follows:

## ARTICLE I

1.01. **Performance of Note and Mortgage.** The Mortgagor will perform, observe and comply with all provisions hereof and of the Note secured hereby and will duly and punctually pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

1.02. **Warranty of Title.** The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the Land hereby Mortgaged and has good and absolute title to all existing property and improvements hereby Mortgaged and has good right, full power and lawful authority to sell, convey and Mortgage the Mortgaged Property in the manner and form aforesaid; that, the Mortgaged Property is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

### 1.03. **Taxes, Utilities and Liens.**

(a) The Mortgagor will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Mortgagor will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer, telephone or other utilities.

(c) The Mortgagor shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this



Mortgage to be created or to remain outstanding upon any of the Mortgaged Property and will immediately discharge any such lien.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of Mortgages or debts secured by Mortgages or the manner of collecting taxes so as to affect adversely the Lender, and in the event that Mortgagor fails to pay, or is prevented by law from paying, any additional taxes so imposed, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, upon thirty (30) days' written notice from the Lender to the Mortgagor, become due and payable forthwith.

1.04. **Insurance.** The Mortgagor will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, noncontributory Mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Mortgagor and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the Mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Mortgagor to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.05. **Condemnation.** If all or any material part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the

{1195936.1}



option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as the Lender may require.

**1.06. Care of the Property.**

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, fixtures that are subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Mortgagor, in its ownership, use and operation of the Mortgaged Property, will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender.

**1.07. Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Lender, the Mortgagor will make, execute and deliver or cause to be



made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further Mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligations of the Mortgagor under the Note, this Mortgage, or any other Loan Document, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Lender may make, execute, and record any and all such Mortgages, instruments, certificates, and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after acquired property consisting of improvements and fixtures which are attached to and/or used in the operation of the Mortgaged Property or any part thereof.

**1.08. Leases Affecting Mortgaged Property.** The Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof, if any. If requested by Lender, Mortgagor will furnish Lender with executed copies of all leases now or hereafter created on said premises; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. Mortgagor assigns to the Lender as additional security all such leases, whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the premises from time to time accruing, and will not cancel, surrender or modify any lease so assigned without the written consent of the Lender.

**1.09. Expenses.** The Mortgagor will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this Mortgage, any other Loan Document, Mortgagor or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof.

**1.10. Performance by Lender of Defaults by Mortgagor.** If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender with interest thereon at default rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof.

{1195936.1}



The Lender is hereby empowered to enter and to authorize others to enter upon the improvements located upon the Land or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

1.11. **Books and Records.** The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. The Mortgagor will furnish to the Lender within ninety (90) days after the end of the Mortgagor's tax year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by Mortgagor.

1.12. **Estoppel Affidavits.** The Mortgagor, within ten (10) days after written request from the Lender, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

1.13. **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law, case law, local ordinance or regulation now or hereafter applicable to the Mortgaged Property and pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. § 6901 et seq.; the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. § 9671, et seq.; and the Hazardous Wastes Management and Minimization Act as codified at Ala. Code 1975 § 22-30-1 et seq., as amended; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and shall include petroleum, petroleum by-products and hydrocarbons; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. The Mortgagor represents and warrants to the Lender that the Mortgaged Property and the Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty shall continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that the Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that the Mortgagor has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which the Mortgagor has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of



any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. The Mortgagor hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities and response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save the Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, and/or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property or the Lender with respect to the Mortgaged Property; and this indemnity shall survive any foreclosure of this Mortgage or the taking by the Lender of a deed in lieu of foreclosure. The Mortgagor agrees to notify the Lender in the event that any governmental agency or other entity notifies the Mortgagor that it may not be in compliance with any Applicable Environmental Laws. The Mortgagor agrees to permit the Lender to have access to the Mortgaged Property at all reasonable times in order to conduct, at the Mortgagor's expense, any tests which the Lender reasonably deems are necessary to ensure that the Mortgagor and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

## ARTICLE II

2.01. **Event of Default.** The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Mortgagor to pay as and when due and payable under the Note or this Mortgage any installments of principal, interest or escrow deposits; or

(b) Failure by the Mortgagor or any guarantor to duly observe any other covenant, condition or agreement of, and perform any of Mortgagor's obligations under the Note, this Mortgage, the Loan Documents or any other document or instrument evidencing or securing the indebtedness secured hereby or the occurrence of an Event of Default under any such document or instrument; or

(c) The filing by the Mortgagor or guarantor hereof of a voluntary petition in bankruptcy or the Mortgagor's or guarantor's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor or any guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Mortgagor's seeking or consent to or acquiescence in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Mortgagor or any guarantor seeking any

{1195936.1}



reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(e) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein, without the prior written consent of the Lender (except as provided in Section 1.06(b) hereinabove), which consent may be granted or refused by the Lender in its sole discretion; or

(f) The creation or suffering to exist by the Mortgagor of any lien or encumbrance on the Mortgaged Property, other than the lien of this Mortgage, and the lien for ad valorem taxes not then delinquent, without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion; or

(g) The sale or other transfer of any majority ownership interest in the Mortgagor without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion.

**2.02. Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**2.03. Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession of all of the Mortgaged Property, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; (iv)





enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rent, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required hereunder, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

#### **2.04. Receiver.**

(a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for it to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Mortgagor will pay to the Lender upon demand all expenses, including reasonable receivers' fees, attorneys' fees, costs and agents' compensation incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this Mortgage.

**2.05. Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, at law or in equity, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.



2.06. **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash at the front or main door to the courthouse of the county where said Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the property so purchased. Lender or its agent may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at the default rate set forth in the Note, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the property at the time of the sale after deducting any expense of ascertaining who is such owner.

2.08. **Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Lender to collect any sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Upon foreclosure of the Mortgaged Property, Mortgagor shall surrender possession of the Mortgaged Property, and in the event Mortgagor should fail to so surrender possession, then Mortgagor shall be deemed a holdover tenant of the Property, with rent to accrue at fair market value, and any purchaser of the Mortgaged Property shall have the right to initiate an unlawful detainer action to remove



Mortgagor from possession of the Mortgaged Property, and Mortgagor shall be responsible for the payment of all attorneys' fees, costs and expenses related thereto.

2.09. **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

2.10. **Suits to Protect the Mortgaged Property.** The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

2.11. **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.12. **No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person, firm entity or

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corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

**2.13. Discontinuance of Proceedings - Position of Parties Restored.** In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

**2.14. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.


### ARTICLE III

**3.01 Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not. This Agreement shall be governed by and the provisions hereof shall be construed under the laws of the State of Alabama.

**3.02. Headings, etc.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

**3.03. Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note or other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein and in the Note and other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

*[signature pages to follow]*

  
20160824000305190 13/15 \$357.00  
Shelby Cnty Judge of Probate, AL  
08/24/2016 08:28:32 AM FILED/CERT



IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage, or has caused this Mortgage to be executed, by its duly authorized representative, on the day and year first above written.

**IRA HOLDINGS, INC.**

By: \_\_\_\_\_

  
Hussein Mawani  
As its President

STATE OF ALABAMA     )  
COUNTY OF Shelby     )

I, the undersigned, a Notary Public in and for said State, in said County, hereby certify that Hussein Mawani, whose name as President of IRA Holdings, Inc., an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this the 19<sup>th</sup> day of August, 2016.



Notary Public, State of Alabama at Large  
My Commission Expires: ~~MY COMMISSION EXPIRES:~~ June 2, 2019

**MORTGAGOR:**

IRA Holdings, Inc.  
2772 Montauk Road  
Hoover, AL 35226

**MORTGAGEE:**

American Commerce Bank, N.A.  
400 U.S. Highway 27 Bypass  
Bremen, Georgia 30110

This instrument was prepared by Spencer H. Larche, Attorney, One St. Louis Centre, 1 St. Louis Street, Suite 4000, Mobile, Alabama 36602.



20160824000305190 14/15 \$357.00  
Shelby Cnty Judge of Probate, AL  
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### **EXHIBIT A**

That certain real property located at 1850 South Park Drive, Hoover, Alabama 35244, situated in Shelby County, Alabama, and more particularly described as follows:

Lot 8-A, according to the SouthPark Resurvey of Lot 8A, according to the plat thereof recorded in Map Book 35, Page 50, of the records in the Office of the Judge of Probate of Shelby County, Alabama.

