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**MORTGAGE AND SECURITY AGREEMENT**

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**RETFORD INVESTMENTS LLC**

and

**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

to

**LANGLEY HOLDINGS PLC**

Dated as of August 30, 2016

Premises commonly known as  
45 Wes Warren Drive, Middletown, NY 10941  
SBL No.: 41-1-103.52

**Record and Return to:**  
Richard A. Mitchell, Esq.  
Iseman, Cunningham, Riester & Hyde, LLC  
2649 South Road, Suite 100  
Poughkeepsie, New York 12601

**Recorded by:**  
Sneeringer Monahan Provost  
Redgrave Title Agency, Inc.  
800 724-7856 Title No.: m057983

## **MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), dated as of August 30, 2016, by and among RETFORD INVESTMENTS LLC, a South Carolina limited liability company having an address of 3050 South Cross Boulevard, Rockhill, South Carolina 29730 (the "Company" or "Borrower"), ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly existing under the laws of the State of New York, with offices at Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency"), and LANGLEY HOLDINGS PLC, a British public limited company, having an address of Enterprise Way Retford Nottinghamshire DN22 7HH England ("Lender"), evidences:

### **RECITALS**

WHEREAS, the Company and the Agency have entered into a lease agreement dated as of June 1, 2015 (the "Lease Agreement"), together with a leaseback agreement dated as of June 1, 2015 (the "Leaseback Agreement"), pursuant to which the Agency provided assistance with respect to a certain project (the "Project") consisting of (i) the acquisition of by the Agency of the leasehold interest in an approximately 2.3 acre parcel of vacant land located on Wes Warren Drive in the Town of Wallkill, Orange County, New York (the "Land"), being more particularly described as TMID No. 41-1-103.52), (ii) the construction on the Land of an approximately 24,000 square-foot building to be used as office and light manufacturing/assembly space (the "Improvements"); and (iii) the acquisition and installation in, on and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"), leased to the Company and subleased to Piller USA, Inc.; and

WHEREAS, Section 6.2 of the Leaseback Agreement permits the granting of a mortgage interest and security interests to a lender, provided certain terms and conditions are satisfied;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows.

### **ARTICLE I. DEFINITIONS**

The following terms shall have the following respective meanings when used herein:

1.1. Act: Title I of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, together with Chapter 390 of the Laws of 1972 of the State of New York

1.2. Awards: Any and all awards heretofore or hereafter made by any federal, state, county, municipal or other governmental authority, or by whosoever made in any condemnation, eminent domain, or equivalent proceeding, to the present or subsequent owners of any interest encumbered by this Mortgage for the acquisition for public purposes of said interest, or any portion thereof, and for severance and consequential damages on account thereof, including any award for any change of grade of any street affecting said interest, and also any award for any damage to said interest; and all proceeds of insurance on or in connection with the Real Property, the Personal Property, and the Improvements.

1.3. Environmental Laws: All federal, state and local environmental, land use, development, environmental quality, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of human health or the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

1.4. Facility: Shall mean the Equipment and, together with the Land and the Improvements.

1.5. Hazardous Substance: Without limitation, any flammable explosives, radon, radioactive materials, asbestos, asbestos containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in or subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (42 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Act, if applicable, or the equivalent provisions, if any of the laws or regulations of the state in which the Property is located if other than New York, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

1.6. Improvements: An existing building and related site improvements, together with all other buildings and other improvements now or hereafter on the Land.

1.7. Indebtedness, Principal Amount Plus Interest: All amounts due to Lender from Borrower from time to time pursuant to the terms of the Note, this Mortgage; the principal amount secured by this Mortgage, plus interest.

1.8. Indemnitees: Lender, its participants, all subsequent holders of the Mortgage securing the Indebtedness, their respective successors and assigns and their respective officers, directors, employees, agents, representatives, contractors and subcontractors and any subsequent owner of the Property who acquires title thereto from or through Lender.

1.9. Land: The land described on **Schedule A** attached hereto; all appurtenances thereto; all the right, title and interest of Borrower in and to all streets, alleys, highways, public

ways, and waterways adjacent thereto; all public and private easements and rights of way now or hereafter benefiting, existing, or used in connection therewith; and all land hereafter acquired by Borrower in connection with the Project.

1.10. Lease Agreement: That certain lease agreement dated as of June 1, 2015, by and between the Company and the Agency.

1.11. Leaseback Agreement: That certain leaseback agreement dated as of June 1, 2015, by and between the Agency and the Company.

1.12. Note: Borrower's promise, dated April 21, 2016, to pay to the order of Lender the maximum principal sum of **TWO MILLION EIGHT HUNDRED SEVENTY NINE THOUSAND NINE HUNDRED EIGHTY DOLLARS** (\$2,879,980.00), plus interest, and other sums as provided therein ("Indebtedness"), and all extensions, modifications, renewals and replacements thereof.

1.13. Personal Property: All fixtures, chattels and articles of personal property now or hereafter used or installed on, in, or in connection with the Land or the Improvements, and which are owned by the Company or subject to the Lease Agreement and Leaseback Agreement with the Agency and the Company, including without limitation heating, ventilation, air conditioning, plumbing, gas and electric fixtures and equipment; engines, motors, incinerators, pumps, fire prevention equipment, floor coverings, and all renewals and replacements thereof and articles in substitution therefor.

1.14. Premises: Consisting of the Company's fee interest in the Land and the Company's and Agency's respective leasehold interests in the Facility pursuant to the Lease Agreement and the Leaseback Agreement.

1.15. Project: Consisting of (i) the acquisition of by the Agency of the leasehold interest in the Land, (ii) the construction on the Land of the Improvements; and (iii) the acquisition and installation in, on and around the Improvements of certain items of Equipment, leased to the Company and Subleased to Piller USA, Inc.; and

1.16. Sublease: That certain sublease agreement by and between the Company and Piller USA.

## **ARTICLE II. GRANT OF MORTGAGE AND SECURITY INTEREST**

To secure the payment of the Indebtedness to Lender, Company and Agency hereby mortgage, sell, convey and grant a security interest to Lender in all of their respective interests of the Company and Agency in the Premises.

This Mortgage shall be considered a financing statement pursuant to the provisions of the Uniform Commercial Code covering fixtures which are or will be in the future affixed to the Land, including goods that are or are to become fixtures.

### ARTICLE III. COVENANTS AND REPRESENTATIONS OF BORROWER

Borrower covenants and agrees with, and represents to, Lender as set forth below:

- 3.1. Payment of Indebtedness: Borrower will pay the Indebtedness when and as due.
- 3.2. Performance of Obligations/Undertaking of Liabilities: Borrower shall perform the promises, agreements and covenants and undertake the liabilities of the Borrower pursuant to the Note.
- 3.3. Payment of Taxes and Assessments: Borrower will pay, prior to the addition of any penalty or interest thereon, all taxes, assessments, charges, and water rates, levied against the Premises and provide Lender with copies of receipts for the payment thereof upon reasonable request.
- 3.4. Insurance: Borrower will keep the Premises insured for the benefit of Lender, as an additional insured, and by insurers, and against such hazards and in such amount which meets or exceeds the amount of the Note. Borrower shall notify Lender of any change in the status of such insurance within five (5) days of Borrower's receipt of notice of any such change and to apply for and use its best efforts to collect all proceeds thereof. The proceeds of any casualty insurance shall be applied toward the repair or restoration of the Improvements or to the payment of the Indebtedness, at Borrower's option.
- 3.5. Statement of Amount Due: Borrower will within ten (10) days of receipt of Lender's request, furnish a written statement duly acknowledged of the amount due on this Mortgage and subject to any offsets or defenses that may exist against the Indebtedness.
- 3.6. Notice of Casualty: Borrower will give immediate notice to Lender of any damage by fire or other casualty to the Premises.
- 3.7. Demolition or Alteration: Borrower will not remove, demolish or structurally alter any of the Improvements which shall substantially diminish the value of the Premises, without the prior written consent of the Lender, which consent shall not be unreasonably withheld, delayed or conditioned.
- 3.8. Tenancies: Borrower will not cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases of the Premises nor accept prepayments of installments of rent, and reference is hereby made to Section 291(f) of the Real Property Law of the State of New York.
- 3.9. Consent: Borrower represents that the execution and delivery of this Mortgage has been duly authorized by its member.
- 3.10. Partial Payments: Borrower agrees that any payment or part payment of principal or interest or of any other sum or sums due or to become due hereunder or the doing of any act or acts under the terms hereof by any then owner of the Premises or person liable upon the

Indebtedness shall for the purpose of the Statute of Limitations be deemed to be a payment by or act of every person included in the term Borrower.

3.11. Change of Law: Borrower agrees that in the event of the passage of any law changing in any way the laws for the taxation of mortgages or debts secured by mortgages, for state or local purposes, or the manner of collection of any such taxes, so as to affect this Mortgage, Lender shall have the right to give thirty (30) days written notice to Borrower requiring the payment of the Indebtedness or payment by Borrower of any such additional taxes imposed, at Borrower's option. If such notice is given, the Indebtedness or such additional taxes shall become immediately due and payable at the expiration of said thirty (30) days.

3.12. Reimbursement of Expenses: Borrower agrees to reimburse Lender for each of the following expenses within thirty (30) days of receipt of Lender's demand therefor:

(a) Payment of taxes, assessments, water charges, utilities, and insurance premiums not paid when due by Borrower.

(b) Reasonable expenses of preserving, protecting or securing the Premises.

(c) Reasonable expenses of curing material defaults after the expiration of all applicable notice and cure periods under this Mortgage.

(d) Reasonable expenses of enforcing this Mortgage and defending the security thereof, including without limitation, the reasonable fees and disbursements of accountants, appraisers, consultants, and attorneys.

(e) In any action or proceeding to foreclosure this Mortgage, or to recover or collect the debt secured by it, the Lender shall be entitled to recover, in addition to statutory costs and disbursements, all reasonable costs Lender incurs including, but not limited to, reasonable architect's, engineer's, and attorney's fees and all other disbursements and expenses incurred by Lender in connection with said foreclosure action or proceeding. All sums paid by the Lender for the expenses of such a foreclosure action or proceeding, shall be paid by the Borrower, together with interest at the interest rate set forth in the Note, and any such sum and the interest on it shall be a lien on the Premises, prior to any right, title to, interest in or claim upon the Premises attaching or occurring subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage.

3.13. Transfer of property; Due on sale. Except as set forth herein, Borrower agrees and covenants not to convey, transfer or vest title to all or any portion of the property covered by this Mortgage without the prior consent of the Lender in its reasonable discretion. For purposes of this paragraph, a transfer or disposition of the Premises or any interest therein shall include, without limitation, the execution of a contract of sale or option to purchase all or any portion of the Premises, any direct or indirect sale, assignment, conveyance, transfer (including a transfer as a result of or in lieu of condemnation), or other alienation of all or any portion of the Premises or any interest therein, and any transfer of the outstanding voting stock (if any) or partnership interest (if any) in the Borrower (if the Borrower is a corporation or partnership). In the event of

such a conveyance, transfer or vesting of title, the Lender, at its option, may declare the indebtedness secured hereby immediately due and payable, foreclose this Mortgage and sell the Premises.

3.14. Maintain Premises: Borrower will maintain the Premises in good repair and condition and cause or permit no waste thereof.

3.15. Comply with Covenants: Borrower will not use the Premises in any manner which will violate an enforceable restrictive covenant affecting the same.

#### **ARTICLE IV. COVENANTS AND REPRESENTATIONS OF AGENCY**

4.1. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Mortgage and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Mortgage and the mortgage tax affidavit.

(c) The Agency took a leasehold interest in the Facility pursuant to the Lease Agreement, leased the Facility to the Company pursuant to the Leaseback Agreement and designated the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and Orange County and improving their standard of living.

(d) Neither the execution and delivery of this Mortgage, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Mortgage will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Mortgage by the undertaking of the Company to acquire, construct, equip, repair and maintain the Facility and related jobs in Orange County, New York.

#### **ARTICLE V. SPECIAL COVENANTS**

5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY

OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

5.2. Hold Harmless Provisions.

The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

5.3. Right to Inspect the Facility.

The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility.

5.4. Agreement to Provide Information.

The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

5.5. Books of Record and Account; Financial Statements.

The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

5.6. Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the term of this Mortgage, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and



requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of the Mortgage or the Leaseback Agreement.

5.7. Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) of the Leaseback Agreement.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing a lien to be removed.

5.8. Depreciation Deductions and Investment Tax Credit.

The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property."

**ARTICLE VI. EVENTS OF DEFAULT**

The existence of any of the following conditions or the occurrence of any of the following events of default hereunder, after the expiration of all applicable notice and cure periods ("Events of Default"):

6.1. Failure to Pay Indebtedness: Failure by Borrower to pay the Indebtedness within fifteen (15) days of when due.

6.2. Default Under Note and Mortgage: The non-compliance with any covenant, representation, warranty or agreement set forth in the herein and/or the occurrence of any Event of Default as defined in the Note or this Mortgage and not otherwise specifically set forth herein.

6.3. Other Liens: The existence of any mortgage, encumbrance, or lien to secure debt (other than in favor of Lender) affecting all or any of the Premises except any lien subordinate to the Lender's lien position.

6.4. Failure to Perform Other Covenants: Failure by or on behalf of Borrower to perform any other covenant or agreement herein, which failure continues for ninety (90) days after receipt by Borrower of Lender's demand for cure of the same.

6.5. Voluntary Insolvency Proceedings: The filing by Borrower of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; the consent by Borrower to the filing of any such petition against Borrower; the making by Borrower of a general assignment for the benefit of its creditors or the institution by Borrower of, or consent by Borrower to, any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against, or winding up of affairs of, Borrower; or the cessation by Borrower as a going business concern.

6.6. Involuntary Insolvency Proceedings: The filing against Borrower of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution against Borrower of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower; and the failure by Borrower within one hundred twenty (120) days to terminate, discharge or otherwise remove such proceeding.

6.7. Receiver: The appointment of or authorization for a custodian, trustee or receiver of Borrower, or for a trustee, custodian, receiver or agent to take charge of any property of Borrower; provided, such custodian, trustee, receiver or agent shall not have been removed or otherwise discharged within one hundred twenty (120) days of the date of qualification.

6.8. Insolvency: The failure of Borrower to generally pay Borrower's debts as such debts become due.

6.9. Foreclosures or Liens: The institution of a foreclosure action against the Premises or any part thereof, or the filing of a lien against the Premises or any part thereof, which is not removed of record, bonded off, or dismissed within one hundred twenty (120) days after Borrower is notified by Lender or otherwise of such filing.

6.10. Misrepresentation: If any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Borrower pursuant to or in connection with this Mortgage or otherwise (including, without limitation, representations and warranties

contained herein) or as an inducement to Lender to extend any credit to or to enter into this or any other agreement with Borrower proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or to have omitted any substantial contingent or unliquidated liability or claim against Borrower or if on the date of execution of this Mortgage there shall have been any materially adverse changes in any of the facts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Lender at or prior to the time of such execution.

## ARTICLE VII. REMEDIES

Upon the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods, Lender shall have the right, at its option and election and in its sole and reasonable discretion, to exercise alternatively or cumulatively any or all of the following remedies:

7.1. Accelerate Indebtedness: Declare the Indebtedness immediately due and payable with interest, advances, reasonable costs and attorney's fees.

7.2. Foreclose Mortgage: Institute judicial or non-judicial proceedings to foreclose the lien of this Mortgage or other appropriate action.

7.3. Take Possession of Premises: Enter into and take possession of all or any of the Premises (and Borrower agrees to peaceably surrender the same immediately upon receipt of Lender's reasonable demand therefor); lease and re-lease all or any of the Premises; collect the rents, income and profits therefrom and apply the same against the Indebtedness; collect reasonable rent from Borrower if Borrower remains in possession after Lender's demand to surrender; dispossess by summary proceeding any tenant (including Borrower) defaulting in the payment of rent; provided, however, that no such acts by or on behalf of Lender shall constitute Lender a "mortgagee in possession." The rights enumerated herein shall inure to the benefit of any receiver appointed respecting the Premises;

7.4. Receiver: Obtain the appointment of a receiver of rents and profits without notice and without regard to the solvency of Borrower or the adequacy of any collateral, for the purpose of preserving the Premises, preventing waste and to protect all rights accruing to Lender by virtue of this Mortgage and whether or not in connection with an action to foreclose this Mortgage. All reasonable expenses incurred in connection with the appointment of such receiver, or in protecting, preserving, improving or operating the Premises, shall be charged against Borrower.

7.5. Sell in One or More Parcels: In the event of a foreclosure hereof, cause the Premises to be sold in one or more parcels, any provision of law to the contrary notwithstanding.

7.6. Other: Exercise any other remedy and obtain any other relief as may be available to Lender in law or equity.

7.7. Power of Sale: Lender may, either with or without taking possession of the Premises, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the Premises and all estate, right, title and interest therein, and right of redemption thereof, pursuant to any applicable law, including, without limitation, Article 14 of the New York Real Property Actions and Proceedings Law, and any amendments or substitute statutes in regard thereto, at one or more sales and in one or more parcels.

## ARTICLE VIII. MISCELLANEOUS

8.1. Notices: All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency:

Orange County Industrial Development Agency  
Orange County Business Accelerator  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attn: Executive Director

With Copy To:

Kevin T. Dowd, Esq.  
Attorney - Orange County IDA  
46 Daisy Lane  
Montgomery, New York 12549

And To:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Russell E. Gaenzle, Esq.

To the Company:

Retford Investments, LLC  
3050 Southcross Blvd.  
Rock Hill, South Carolina 29730  
Attn: Steven Irwin, Vice President

With Copy To:

Iseman, Cunningham, Riester & Hyde, LLP  
2649 South Road, Suite 230  
Poughkeepsie, New York 12601  
Attn: Richard A. Mitchell, Esq.

To the Lender:

Langley Holdings PLC  
Enterprise Way Retford  
Nottinghamshire DN22 7HH England

With a Copy To:

Haynsworth, Sinkler & Boyd, P.A.  
1201 Main Street, 22nd Floor  
Columbia, South Carolina 29205  
Attn: Edward Kluiters, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.2. Releases: Lender may, with the consent of Borrower or any other person liable for the payment of the Indebtedness, release any portion or portions of or interest or interests in the Premises from the lien of this Mortgage, either with or without consideration, and may release or discharge in whole or in part any other property which it may at any time hold as security for payment of the Indebtedness or any part thereof and may take any other bond, note

or obligation as evidence of the Indebtedness, payable at such time and on such terms as Lender may reasonably approve.

8.3. Application of Payments: If Lender receives from or on behalf of Borrower any sum less than the full amount then due and payable, Lender may, but shall not be obligated to, accept the same and if it elects to accept any such payment, it may hold the same or any part thereof, without liability for interest, in a special account and may from time to time apply the same or any part thereof to the Indebtedness or to the payment of any taxes, assessments, sewer or water charges or insurance premiums which Lender deems desirable to maintain the lien of this Mortgage, or to any reasonable expenses, including costs and attorneys' fees and disbursements, incurred by Lender in attempting to collect any amount owing on the Indebtedness and in bringing foreclosure proceedings with respect to this Mortgage.

8.4. Parties: Relative words herein shall be read as if written in the plural when appropriate. Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to Borrower shall be deemed to include and apply to every subsequent owner of the Premises and any reference herein to Borrower shall be deemed to include every person liable upon the Indebtedness, unless the language or circumstances clearly requires the contrary. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

8.5. Waiver: No course of dealing and no delay or omission by Lender in exercising any right or remedy hereunder or with respect to any indebtedness of Borrower to Lender shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any default by Borrower to Lender or any other person, firm or corporation in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Borrower and shall be reimbursed for any and all of its expenses in so remedying such default. All rights and remedies of Lender hereunder are cumulative.

8.6. Heading: All descriptive headings of articles and sections in this Mortgage are inserted for convenience only, and shall not affect the construction or interpretation hereof.

8.7. Severability: In applicability or unenforceability of any provisions of the Mortgage shall not limit or impair the operation or validity of any other provision of this Mortgage.

8.8. Trust Fund Provisions: This Mortgage is subject to the trust fund provisions of Section 13 of the Lien Law of the State of New York.

8.9. Governing Law: This Mortgage and the rights and obligations of the parties hereto, shall be construed and interpreted in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws.

8.10. Jurisdiction: BORROWER AGREES THAT ANY ACTION OR PROCEEDING TO ENFORCE OR ARISING OUT OF THIS MORTGAGE MAY BE COMMENCED IN THE SUPREME COURT OF NEW YORK IN ANY COUNTY, OR IN THE DISTRICT COURT OF THE UNITED STATES IN THE DISTRICT IN WHICH THE LAND IS LOCATED, AND BORROWER WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT A SUMMONS AND COMPLAINT COMMENCING AN ACTION OR PROCEEDING IN ANY SUCH COURT SHALL BE PROPERLY SERVED AND SHALL CONFER PERSONAL JURISDICTION IF SERVED AS PROVIDED BY THE LAWS OF THE STATE OF NEW YORK OR THE UNITED STATES.

8.11. Waiver of Jury Trial: BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY BORROWER AND LENDER MAY HAVE IN ANY ACTION OR PROCEEDING IN LAW OR IN EQUITY, IN CONNECTION WITH THIS MORTGAGE OR THE TRANSACTIONS RELATED HERETO. BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS MORTGAGE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

8.12. Terms: Capitalized terms not defined herein shall have the meaning given to them in the Leaseback Agreement.

8.13. Tax Law Section 253 Statement: This Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

8.14. Satisfaction of Mortgage: Upon the receipt of written confirmation of payment in full of all of the amounts due under the Note, if there is no Event of Default under the Mortgage and the Borrower has paid or caused to be paid to the Lender all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the Note, by acceptance of this Mortgage, Lender agrees to execute and deliver, any and all instruments necessary and/or appropriate to discharge the lien of this Mortgage of record and to terminate any UCC-1 Financing Statements filed in connection with this Mortgage.

8.15. Amendments, Changes and Modifications. This Mortgage may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

8.16. Execution of Counterparts. This Mortgage may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

8.17. No Broker. The parties represent and warrant to each other that the Company, Agency nor Lender has dealt with any broker or finder entitled to any commission, fee, or other

compensation by reason of the execution of this Mortgage, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

8.18. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of Orange County, New York, and neither the State nor Orange County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights as defined in the Leaseback Agreement).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

8.19. No Joint Venture Created. The Agency and the Company mutually agree that by entering into this Mortgage the parties hereto are not entering into a joint venture.

*Signature page follows*



IN WITNESS WHEREOF, the Company has executed this Mortgage as of the day and year first above written.

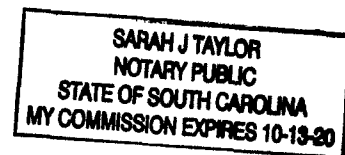
RETFORD INVESTMENTS LLC

By: [Signature]  
Name: STEVE IRWIN  
Title: VICE - PRESIDENT

SOUTH CAROLINA  
STATE OF ~~NEW YORK~~ )  
COUNTY OF York ) ss.:

On the 30<sup>th</sup> day of August, in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Steve Irwin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

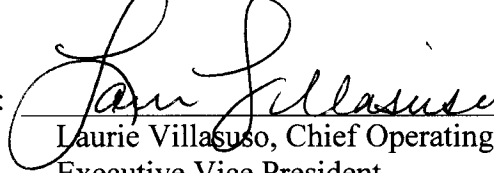
[Signature]  
Notary Public



IN WITNESS WHEREOF, the Agency has executed this Mortgage as of the day and year first above written.

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:

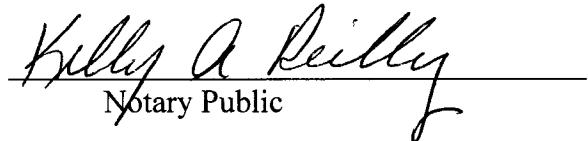


Laurie Villasuso, Chief Operating Officer and  
Executive Vice President

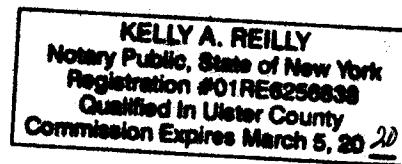
STATE OF NEW YORK     )  
COUNTY OF ORANGE    )

SS.:

On the 25<sup>th</sup> day of August in the year 2016, before me, the undersigned, personally appeared **Laurie Villasuso**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



## **SCHEDULE A**

### **Description of Land**

Town of Wallkill, County of Orange, State of New York.

Recorded on tax maps of the Town of Wallkill as Section 41, Block 1, Lot 103.52 consisting of approximately 2.3 acres more or less.

Commonly Known as 45 Wes Warren Drive, Middletown, NY 10941.

**Stewart Title Insurance Company**  
*Issued by*  
**SNEERINGER MONAHAN PROVOST REDGRAVE**  
**TITLE AGENCY, INC.**

**SCHEDULE A DESCRIPTION**



ALL that certain plot, piece or parcel of land situate in the Town of Walkill, County of Orange, State of New York, said lands being more particularly bounded and described as follows:

BEGINNING at a point lying on the northerly line of Wes Warren Drive, said point being the southwesterly corner of lands herein described and the southeasterly corner of lands now or formerly SDB Walkill, LLC;

THENCE running along easterly and southeasterly lines of lands of said SDB Walkill, LLC being the westerly and northwesterly lines of lands herein described on the following two (2) courses and distances:

- (1) North 00 degrees 54' 36" East, as per Filed Map No. 10004, a distance of 142.00 feet; and
- (2) North 46 degrees 24' 08" East, a distance of 219.70 feet, to an iron rod being the easterly corner of lands of said SDB Walkill, LLC., the northerly corner of lands herein described and lying on the southwesterly line of lands now or formerly Astoria 5 Holdings, LLC;

THENCE running along a portion of the southwesterly line of lands of said Astoria 5 Holdings, LLC. And continuing along a portion of the southwesterly line of lands now or formerly Citrinliti being the northeasterly line of lands herein described, (3) South 43 degrees 35' 52" East, a distance of 355.00 feet, to a point being the easterly corner of lands herein described and the northerly corner of lands now or formerly Walkill 5 Associates;

THENCE running along the northwesterly line of lands of said Walkill 5 Associates being the southeasterly line of lands herein described, (4) South 48 degrees 11' 35" West, a distance of 295.28 feet, to a point being the westerly corner of lands of said Walkill 5 Associates, the southerly corner of lands herein described and lying on the northeasterly line of Wes Warren Drive;

THENCE running along the northeasterly line of said Wes Warren Drive being the southwesterly line of lands herein described on the following two (2) courses and distances:

- (5) North 42 degrees 08' 22" West, a distance of 172.07 feet, to a concrete monument at a point of curvature; and
- (6) On a curve to the left having a radius of 100.00 feet, an arc length of 80.00 feet, as defined by the chord North 65 degrees 03' 26" West, 77.88 feet, to the point or place of BEGINNING;

ALL as shown on a map entitled "Survey Prepared For Retford Investment LLC., Town of Walkill, Orange County, New York", dated January 28, 2015, prepared by Lanc & Tully Engineering and Surveying, P.C.

FOR CLOSING INSTRUMENTS ONLY-NOT FOR POLICY: (Containing 2.313 +/- acres.)

## MORTGAGE RECORDING TAX EXEMPTION AFFIDAVIT

Russell E. Gaenzle, being duly sworn, deposes and says:

1. That he resides in Rochester, New York, and is a member of Harris Beach PLLC, the law firm serving as transaction counsel to the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency" or "Mortgagee").

2. That the Agency is a public benefit corporation duly organized and existing under the laws of the State of New York, having its offices at The Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553.

3. That the Agency entered into a certain Lease Agreement, dated as of June 1, 2015, with **RETFORD INVESTMENTS, LLC** (the "Company"), pursuant to which the Agency has received a leasehold interest in the property described in **Schedule A** attached hereto, and the Agency and the Company thereafter entered into a certain Leaseback Agreement, dated as of June 1, 2015, pursuant to which the Agency leased its interest in said property back to the Company.

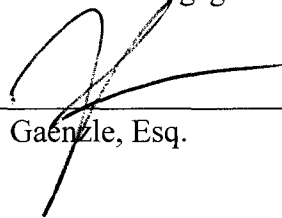
4. That the Company and the Agency have executed a certain Mortgage and Security Agreement, dated August 30, 2016 (the "Mortgage") in favor of **LANGLEY HOLDINGS PLC** (the "Mortgagee") in the principal sum of **TWO MILLION EIGHT HUNDRED SEVENTY NINE THOUSAND NINE HUNDRED EIGHTY AND 00/100 DOLLARS (\$2,879,980.00)**. By resolution duly adopted on February 12, 2015, the Agency approved the execution and delivery of the Lease Agreement, the Leaseback Agreement and the Mortgage.

5. The Agency has covenanted that it will cause the Mortgage to be recorded in all offices where recordation thereof is necessary.

6. That, in the opinion of your deponent, while the Agency would ordinarily pay the mortgage recording tax with respect to the Mortgages, the recording of the Mortgages is exempt from the payment of the mortgage recording tax for the following reasons: (A) Section 874(2) of the General Municipal Law states that "any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency shall be exempt from taxation, except for transfer and estate taxes"; (B) General Municipal Law Section 874(1) states that an industrial development agency "shall be required to pay *no* taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities"; to wit, the properties referenced on **Schedule A** attached hereto and encumbered by the Mortgage to which the Agency is party and co-mortgagor; and (C) an Opinion of the New York State Comptroller No. 82-188 issued June 2, 1982, determining that an industrial development agency is exempt from payment of the mortgage recording tax.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, your deponent respectfully requests that the Mortgage be recorded as exempt from mortgage recording tax.

  
\_\_\_\_\_  
Russell E. Gaenzle, Esq.

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of August, 2016.

  
\_\_\_\_\_  
Notary Public

Lori A. Palmer  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires May 31, 2019

**Stewart Title Insurance Company**  
*Issued by*  
**SNEERINGER MONAHAN PROVOST REDGRAVE**  
**TITLE AGENCY, INC.**

**SCHEDULE A DESCRIPTION**

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