

---

---

**MOMENTIVE PERFORMANCE MATERIALS USA LLC**

and

**COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**

---

**HEAD LEASE AGREEMENT**

---

Dated as of May 18, 2022

Premises: Building 180, 401 N Middletown Road, Pearl River, New York 10965

---

---

## **HEAD LEASE AGREEMENT**

**THIS HEAD LEASE AGREEMENT**, made as of the 19<sup>th</sup> day of May 2022 (this “Head Lease”), by and between **MOMENTIVE PERFORMANCE MATERIALS USA LLC**, a Delaware limited liability company duly registered and authorized to transact business in the State of New York (the “Company”), having its principal office at 260 Hudson River Road, Waterford, New York 12188, as lessor, and **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York (the “Agency”) having its principal office at 254 South Main Street, Suite 401, New City, New York 10956, as lessee (capitalized terms used in this Head Lease and not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

### **WITNESSETH:**

**WHEREAS**, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 564 of the 1980 Laws of New York, as amended (together with the Enabling Act, the “Act”), for the benefit of the County of Rockland (the “County”) and the inhabitants thereof; and

**WHEREAS**, Momentive Performance Materials USA LLC, the Company submitted an Application for Financial Assistance to the Agency for financial assistance with respect to the leasing and renovation of a portion of an underutilized property located in Building 180 at 401 N Middletown Road, Pearl River, New York and the acquisition of machinery and equipment related thereto, all to be used as a research and development facility and administrative offices and laboratories, as more fully described in the application and supplemental materials, at Building 180 at 401 N Middletown Road, Pearl River, Town of Orangetown, New York (the “Leased Premises”) for a total cost of \$8,000,000.00 (the “Project”); and

**WHEREAS**, to facilitate the Project, the Agency and the Company have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to which the

Company, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Company as agent for the Agency for purposes of developing the Project, and the Agency, as lessor, will sublease the Premises back to the Company, as lessee, and in furtherance of such purposes, on October 21, 2021, the Agency adopted a resolution (the "Inducement Resolution") authorizing the Company to proceed with the Project; and

**WHEREAS**, on November 8, 2021, the Agency published a notice of public hearing for the Project in The Journal News, and held such public hearing on November 16, 2021 at the Town Hall, Town of Orangetown, 26 W. Orangeburg Road, Orangeburg New York 10962.

**WHEREAS**, for purposes of compliance with Article 8 (the State Environmental Quality Review Act) ("SEQRA") of the New York Environmental Conservation Law with respect to the Project, the Town Board of the Town of Orangetown acted as the Lead Agency and issued, by negative declaration, a Notice of Determination of Non-Significance in accordance with SEQRA; and

**WHEREAS**, on November 22, 2021, the Agency adopted a resolution (the "Authorizing Resolution") authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Premises by the Agency and the lease of the Premises by the Agency to the Company; and

**WHEREAS**, the Company is the tenant or Lessee of the Premises, which shall be leased by the Company to the Agency on the terms and conditions set forth in this Head Lease; and

**WHEREAS**, the Agency's interests in the Premises shall simultaneously be subleased by the Agency to the Company pursuant to a Lease Agreement; and

**WHEREAS**, the provision by the Agency of financial assistance to the Company through a straight-lease transaction has been determined to be necessary to induce the Company to locate and develop the Project within the County and make the Project more affordable; and the Company has represented that if the Agency does not provide such financial assistance, the Company could not feasibly proceed with the Project.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the Company and the Agency hereby agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable by the Agency solely out of the lease rentals, revenues and receipts payable by the Company under the Lease Agreement):

## **ARTICLE I**

The Company does hereby lease to the Agency, and the Agency hereby leases from the Company, the land and property described in Exhibit A hereto, including all improvements thereto, (the "Leased Premises"), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that leasehold title to all improvements hereafter constructed by the Company and all machinery, fixtures, equipment and furnishings purchased by the Company shall vest in the Agency as and when the same are

constructed. Accordingly, the Company and the Agency agree that the Agency shall hold leasehold title pursuant to this Head Lease to all improvements hereafter constructed by the Company constituting the Leased Premises.

## **ARTICLE II**

The term of this Head Lease shall commence on May 18, 2022 and expire on the termination of the term of the Lease Agreement. At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided herein or in the Lease Agreement, the leasehold interest of the Agency under this Head Lease shall automatically expire without any further action by the parties hereto. Upon termination or expiration of the term of this Head Lease, the Company shall prepare a Notice of Termination, for execution by the Agency and record such instrument at the Company's expense in the office of the Rockland County Clerk.

## **ARTICLE III**

The sole rental hereunder shall be the single sum of ten dollars (\$10.00), the receipt of which is hereby acknowledged by the Company.

## **ARTICLE IV**

Section 4.1. The Company hereby delivers possession to the Agency of the Leased Premises.

Section 4.2. (a) So long as neither the Lease Agreement nor the Company's right of possession thereunder have been terminated by the Agency pursuant to the terms thereof, the Agency shall (1) hold and use the Premises only for purposes of subleasing its interest to the Company under the Lease Agreement and (2) shall not sell or assign its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement or as otherwise consented to by the Company.

(b) Contemporaneously with the execution and delivery of this Head Lease, the Agency is entering into the Lease Agreement, pursuant to which the Company, as agent of the Agency, agrees to undertake and complete the Project and the Agency agrees to lease the Agency's interest in the project and any improvements thereto to the Company. Pursuant to the Lease Agreement, the Company, as lessee of the Agency's interest in the Project, is required to perform all of the Agency's obligations under this Head Lease. Accordingly, and notwithstanding anything to the contrary contained in this Head Lease, the Company shall not be entitled to declare a default hereunder, or exercise any rights or remedies hereunder, if any asserted default by the Agency hereunder relates to a failure by the Company, as lessee of the Agency's interests under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(c) It is the intention of the Company and the Agency that, notwithstanding the demise of the Premises to the Company under the Lease Agreement, there shall be no merger of this Head Lease, the Lease Agreement or of the respective leasehold estates created thereunder with each other or with the fee estate in the Premises, and no such merger shall occur unless and until all persons and entities, including any mortgagee having any interest in the fee or leasehold estates in

the Premises (not including any subtenants of the Company as tenant under the Lease Agreement) shall join in a written instrument effecting such merger and shall duly record the same.

Section 4.3. Subject to the provisions of the Lease Agreement, the Company, as agent of the Agency pursuant to the Lease Agreement, shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Improvements as the Company shall deem necessary or desirable.

Section 4.4. Except as otherwise provided in the Project Documents, neither the Agency nor the Company shall assign or transfer this Head Lease, nor sublease the whole or any part of the Premises leased hereby. The Agency may enter into the Lease Agreement on the terms provided therein. The Company may enter into such subleases as may be permitted by the Lease Agreement, and the Company and the Agency may mortgage their respective interests in the Premises by mutual agreement and as set forth in the Lease Agreement

Section 4.5. The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Head Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Term, subject to the terms of the Lease Agreement.

Section 4.6. Except as otherwise provided in the Project Documents, the Agency shall not create any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances), without the Company's prior written consent; provided that upon the Company's written request, the Agency will subject its interest in the Premises to the lien and security interest of one or more mortgages financing or refinancing the Project, provided that such mortgages (a) are to Institutional Lenders that are not Prohibited Persons, and (b) expressly disclaim any recourse to the Agency and the imposition of any obligation or liability on the Agency.

Section 4.7. The participation of the Agency in this Head Lease and the Lease Agreement shall not create, by itself, any grounds for removing the Premises from the tax rolls by characterizing the Premises an exempt property, except as set forth below. The Company shall be responsible for all taxes, payments in lieu of taxes, assessments, charges, whether general or specific, insurance, and other costs relating to the Premises, and indemnifies and holds the Agency harmless against any claims for payment of any nature relating to the Agency's leasehold interest in the Premises. The Company and the Agency may, at a future date, and by mutual agreement, remove the Premises from the tax rolls and enter into a Payment In Lieu of Taxes Agreement, which, if approved by the respective taxing jurisdictions and entered into by the Agency and such taxing jurisdictions shall govern such actions as may be taken with respect to whether the Agency requests that the Project be removed from the tax rolls and the Company's obligations in respect to payments made pursuant to the Payment In Lieu of Taxes Agreement.

Section 4.8. Pursuant to the Lease Agreement, during the term of this Head Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained, the Project (including the Premises and all improvements now or hereafter located thereon) in good order and condition and make or cause to be made all repairs thereto,

interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

Section 4.9. Subject to the provisions of the Lease Agreement and the Project Documents, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi-public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Project (including any unpaid amounts due pursuant to the Project Documents and the costs of participation in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

Section 4.10. Except for the sublease created by the Lease Agreement, the Agency shall not sublet the Premises, or any portion thereof, without the prior written consent of the Company, which consent may be granted or withheld at the sole discretion of the Company.

Section 4.11. During the entire term of this Head Lease, as between the Company and the Agency, the Agency shall not claim or be entitled to depreciation, amortization or tax credits for federal and state tax purposes.

## **ARTICLE V**

The Company represents and warrants that the execution and delivery by the Company of this Head Lease and the performance by the Company of its obligations under this Head Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate (i) any provision of law, or any order of any court or agency of government, (ii) articles of organization or operating agreement of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or would result in the imposition of any lien, charge or encumbrance of any nature whatsoever on the Leased Premises other than Permitted Encumbrances (as defined in the Lease Agreement). The Company represents and warrants that it has full right and lawful authority to enter into this Head Lease for the full term hereof. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid leasehold estate in the Leased Premises during the term hereof, and the Company shall from time to time take all necessary action to that end. Further, this Head Lease will automatically terminate if the Lease Agreement should terminate.

## **ARTICLE VI**

Neither the Agency nor the Company shall assign or transfer this Head Lease, nor sublease the whole or any part of the Leased Premises, nor subject this Head Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances), in any manner, nor sell, assign, convey or otherwise dispose of the Leased Premises or any part thereof, during the term of this Head Lease, in any manner, to any Person, except that (i) the Agency will sublease the Leased Premises to the Company pursuant to the Lease Agreement, (ii) the Agency may grant a mortgage and security interest herein to a lender at the Company's request, and (iii) the Company may effect releases of

portions of the Leased Property or Premises pursuant to Sections 4.2 and 6.4 of the Lease Agreement.

## ARTICLE VII

Except for the Lease Agreement, this Head Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Head Lease. This Head Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Head Lease or any obligations under this Head Lease, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

## ARTICLE VIII

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

If to the Company, to

Momentive Performance Materials USA LLC  
260 Hudson River Road  
Waterford, New York 12188  
Attention:  
Tel:

with a copy to

Robert J. Ryan, Esq.  
Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Tel: 518-701-2715

If to the Agency, to

County of Rockland Industrial Development Agency  
254 South Main Street, Suite 401  
New City, New York 10956  
Attention: Executive Director  
Tel: 845-977-3900

with a copy to:

Bleakley Platt & Schmidt, LLP  
1 Blue Hill Plaza, 3<sup>rd</sup> Floor  
Pearl River, New York 10965  
Attention: Rudolph O. Zodda, III, Esq.  
Tel: 845-881-2700

The Agency and Company may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

Any notice by the Agency or the Company may be given on behalf of such party by its attorney.

#### **ARTICLE IX**

This Head Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

The terms of this Head Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Head Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Head Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

#### **ARTICLE X**

This Head Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

#### **ARTICLE XI**

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Head Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in their individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, employee or agent of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation it may incur shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred.

#### **ARTICLE XII**

The Agency and the Company agree that this Head Lease or a memorandum hereof shall be recorded by the Agency in the appropriate office of the County Clerk of the County of Rockland.



### ARTICLE XIII

The use of the Leased Premises, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and including the construction, equipping and furnishing of the Project, and the use, operation, leasing and financing of the Project, not fixed in this Head Lease, shall be as set forth in the Lease Agreement.

### ARTICLE XIV

Section 14.1. Default. Any one or more of the following events shall constitute an “Event of Default” under this Head Lease:

(a) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Head Lease within fifteen (15) days after written notice to the Agency specifying the nature of such default;

(b) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any other covenant, condition or agreement on its part to be performed and the continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency) to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence;

(c) The Agency should seek, or consent to the filing or entry of, an order for relief in any bankruptcy proceeding, or be adjudicated a bankrupt, or make a general assignment for the benefit of such proceeding;

(d) An involuntary bankruptcy proceeding shall be commenced against the Agency and such proceeding shall not be terminated within 120 days from the date of the commencement of such proceeding;

(e) A receiver, liquidator, trustee or custodian shall be appointed for the Agency or any of the Agency’s property or businesses; or

(f) Any action or proceeding is commenced for the dissolution or liquidation of the Agency, whether instituted by or against the Agency.

Section 14.2. Remedies on Default. The Company shall have no rights to terminate this Head Lease as long as the Lease Agreement remains in effect. But, if any Event of Default shall occur under this Head Lease, the Company may exercise any other right or remedy which may be available to it at law or in equity, provided that in no event shall it be entitled to recover any special indirect or consequential damages.

Section 14.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Company is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Head Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing

upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Company to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 14.4. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE XV**

Section 15.1 Intentionally Deleted.

Section 15.2 Waiver of Jury Trial. The Agency and the Company do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement and venue in any such action shall be the Supreme Court of the State of New York, Rockland County. The provision of this Agreement relating to waiver of a jury trial and the venue in any such action shall survive the termination or expiration of this Agreement.

(SIGNATURE PAGE TO FOLLOW)

**IN WITNESS WHEREOF**, the Company has caused its name to be subscribed hereto by its managing member, and the Agency has caused its corporate name to be hereunto subscribed by its authorized representative, all being done as of the year and day first above written.

**Momentive Performance Materials USA LLC**

**By: Momentive Performance Materials Inc.,**

**Sole Member**

By:

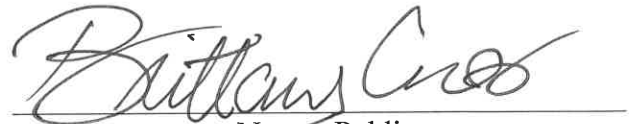


Name: Cris Barros

Title: SVP & CFO

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF SARATOGA )

On the 8 day of April, in the year 2022 before me, the undersigned, personally appeared **CRIS BARROS**, 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 on behalf of whom the individual acted, executed the instrument.

  
Notary Public

**Brittany N. Cross**  
Notary Public, State of New York  
Reg. No. 02CR6376870  
Qualified in Rennselaer County  
Commission Expires June 25, 2022

*[Signature page – Head Lease]*

**IN WITNESS WHEREOF**, the Company has caused its name to be subscribed hereto by its managing member, and the Agency has caused its corporate name to be hereunto subscribed by its authorized representative, all being done as of the year and day first above written.

**COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY**

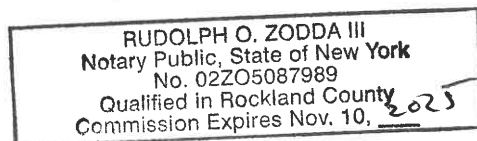
By: \_\_\_\_\_

Name: Steven H. Porath  
Title: Executive Director

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF ROCKLAND )

On the 18<sup>th</sup> day of May, in the year 2022, before me, the undersigned, personally appeared **STEVEN H. PORATH**, 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 on behalf of whom the individual acted, executed the instrument.

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



**EXHIBIT A**

**DESCRIPTION OF LEASED PREMISES**

See Attached

**LEASE AGREEMENT**

**by and between**

**PEARL RIVER CAMPUS, LLC,  
a Delaware limited liability company**

**and**

**MOMENTIVE PERFORMANCE MATERIALS USA LLC,  
a Delaware limited liability company**

## TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
<b>LEASE SUMMARY</b> .....	<b>i</b>
1. PREMISES .....	1
2. TERM .....	1
3. RENT .....	2
4. SECURITY DEPOSIT .....	9
5. ADDITIONAL RENT .....	13
6. PARKING .....	13
7. PERMITTED USES .....	13
8. ENVIRONMENTAL COMPLIANCE/HAZARDOUS MATERIALS .....	13
9. UTILITIES .....	16
10. REPAIRS BY LANDLORD .....	17
11. REPAIRS BY TENANT .....	17
12. TENANT'S TAXES AND ASSESSMENTS .....	18
13. ALTERATION OF PREMISES .....	18
14. INSURANCE .....	18
15. WAIVER, EXCULPATION AND INDEMNITY .....	21
16. CONSTRUCTION LIENS .....	22
17. QUIET ENJOYMENT .....	22
18. LANDLORD'S RIGHT OF ENTRY .....	22
19. DESTRUCTION OF BUILDINGS .....	23
20. EMINENT DOMAIN .....	24
21. BANKRUPTCY .....	24
22. DEFAULT .....	24
23. SURRENDER OF PREMISES .....	26
24. HOLDING OVER .....	26
25. SURRENDER OF LEASE .....	26
26. IDA FINANCING .....	26
27. RULES AND REGULATIONS .....	26
28. NOTICE .....	27
29. ASSIGNMENT AND SUBLETTING .....	27
30. ATTORNEY'S FEES .....	28
31. JUDGMENT COSTS .....	28
32. BROKERS .....	29
33. SUBORDINATION OF LEASE .....	29
34. OPTIONS TO EXTEND/RIGHT OF FIRST OFFER .....	29
35. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS .....	30
36. SHORT FORM OF LEASE .....	31
37. SIGNS .....	31
38. GUARANTY OF LEASE .....	24
39. FORCE MAJEURE .....	31
40. GENERAL PROVISIONS .....	31

Exhibits

Exhibit "A"	Premises and Storage Space
Exhibit "B"	Improvements
Exhibit "B-1"	Work to be Completed
Exhibit "B-2"	Tenant Improvements
Exhibit "C"	Tenant's Signage
Exhibit "D"	Guaranty of Lease
Exhibit "E"	Common Expense Exclusions
Exhibit "F"	Form of Landlord Subordination Agreement



## LEASE SUMMARY

Set forth below is a summary of certain terms and conditions of the Lease Agreement between PEARL RIVER CAMPUS, LLC, a Delaware limited liability company, as Landlord, and MOMENTIVE PERFORMANCE MATERIALS USA LLC, a Delaware limited liability company, as Tenant, solely for the convenience of the parties. In the event there is a conflict between this Lease Summary and the terms and conditions of the Lease Agreement, the terms and conditions of the Lease Agreement shall prevail.

- A. **Property** means the Hudson Valley iCampus consisting of multiple buildings containing approximately 1,937,641 square feet and located on approximately 207 acres of land located in Orangetown, NY. See Paragraph 1.
- B. **Building** means that certain Building B180 in which the Premises is located containing approximately 174,669 rentable square feet and having the street address of 401 North Middleton Road, Pearl River, NY. See Paragraph 1.
- C. **Premises** means approximately 64,057 rentable square feet consisting of (i) approximately 57,346 rentable square feet on the second floor of the Building and (ii) approximately 6,711 rentable square feet on the first floor of the Building, as outlined on the site plan attached as Exhibit "A". See Paragraph 1.
- D. **Storage Space** means approximately 2,373 rentable square feet on the first floor of the Building, as outlined on the site plan attached as Exhibit "A".
- E. **Term** means fifteen (15) years from the Commencement Date, unless extended or terminated earlier by law or any provision of the Lease. See Paragraph 2.1.
- F. **Commencement Date** means January 1, 2023. See Paragraph 2.2.
- G. **Base Rent** initially means \$101,423.58 per month for the Premises and \$3,361.75 for the Storage Space beginning on the Commencement Date. All rent is due on the first day of each month and shall be paid to Landlord at 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286. See Paragraph 3.
- H. **Security Deposit** means \$1,435,517.37, based on nine (9) months' of the average Rent for the Premises. See Paragraph 4.
- I. **Additional Rent** means Tenant's Share of the Property Expenses and Building Expenses, payable monthly in advance together with Base Rent. See Paragraph 5.1.A.
- J. **Building Expenses** means those Common Expenses related specifically to the Building and not to the Property generally. See Paragraph 5.1.B.
- K. **Property Expenses** means the sum of Taxes, Insurance Expenses, and those Common Expenses related to the Property as a whole, but not including Building Expenses. See Paragraph 5.1.G.
- L. **Tenant's Share of the Building Expenses** means 36.673%, determined by dividing the rentable square feet of the Premises by the rentable square feet of the Building. See Paragraph 5.1.M.
- M. **Tenant's Share of the Property Expenses** initially means 3.306%, determined by dividing the rentable square feet of the Premises by the rentable square feet of the Property. See Paragraph 5.1.N.
- N. **Permitted Use** means research and development, office and uses customarily associated therewith. See Paragraph 7.
- O. **Options To Extend**. Tenant shall have two (2) options to extend the Term for ten (10) additional years and five (5) additional years respectively. See Paragraph 34.1.

- P. Option to Expand.** Tenant shall have an option to expand for the Expansion Space. See Paragraph 34.2.
- Q. Right of First Offer.** Upon termination of the Option to Expand, Tenant shall have a right of first offer for the Expansion Space. See Paragraph 34.3.
- R. Guarantor** means MPM Intermediate Holdings Inc., a Delaware corporation. See Paragraph 38.
- S. Taxpayer Identification Number** for Tenant is 20-5748388.

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), dated as of February 2, 2022 ("Effective Date"), is made by and between PEARL RIVER CAMPUS, LLC, a Delaware limited liability company ("Landlord"), and MOMENTIVE PERFORMANCE MATERIALS USA LLC, a Delaware limited liability company ("Tenant").

### WITNESSETH

#### 1. PREMISES

**1.1. Property.** Landlord owns the campus containing multiple buildings and other improvements containing approximately 1,937,641 square feet (collectively, the "Improvements") all situated on approximately 232 acres of land located in Pearl River, New York ("Land"). The Improvements and the Land are collectively referred to as the "Property".

**1.2. Premises.** Landlord, for and in consideration of the rents, covenants, agreements, and stipulations contained herein, to be paid, kept and performed by Tenant, leases and rents to Tenant, and Tenant hereby leases and takes from Landlord upon the terms and conditions contained herein, approximately 64,057 square feet of office/warehouse/industrial space, consisting of approximately 57,346 rentable square feet on the second floor of Building B180 and approximately 6,711 rentable square feet on the first floor of Building B180 within the Property, as outlined in the site plan attached as Exhibit "A" ("Premises").

**1.3. Common Areas.** In addition to the Premises, Tenant shall have the use of those certain common areas to be designated by Landlord from time to time on the Property; such areas shall include, but not be limited to, parking areas, access roads and facilities, interior corridors, sidewalks, driveways, loading docks, dock levelers, bumpers, seals and enclosures, cranes, rail systems (if any), food service area, and landscaped and open areas (collectively, "Common Areas"). The use of the Common Areas shall be for the non-exclusive use of Tenant and Tenant's employees, agents, suppliers, customers and patrons, in common with Landlord and all other tenants of the Property and all such other persons to whom Landlord has previously granted, or may hereinafter grant, rights of usage; provided that such nonexclusive use shall be expressly subject to the Rules and Regulations (as defined in Paragraph 27). Tenant shall not be entitled to use the Common Areas for storage of goods, vehicles, refuse or any other items. Landlord reserves the right to (i) alter, modify, enlarge, diminish, reduce or eliminate the Common Areas from time to time in its sole discretion; and, (ii) modify the Common Areas, and if necessary, parts of the Premises, in order to implement new, necessary security measures; *provided, however*, the foregoing does not unreasonably or materially interfere with Tenant's use and occupancy of the Premises. If Tenant shall use any of the Common Areas for storage of any items, Tenant shall pay all fines imposed upon either Landlord or Tenant by any fire, building or other regulatory body, and Tenant shall pay all costs incurred by Landlord to clear and clean the Common Areas and dispose of such items, including but not limited to, a disposal fee of twenty-five dollars (\$25.00) for each pallet or other container and fifty dollars (\$50.00) for each drum, together with any additional costs for testing and special disposal, if required.

**1.4 Storage Space.** In addition to the Premises, Tenant shall be entitled to that certain space containing approximately 2,373 square feet of space to be used for storage only, as depicted on Exhibit "A" attached hereto and incorporated herein ("Storage Space"). The base rent for the Storage Space ("Storage Rent") shall be as set forth in Paragraph 3.1. Tenant shall not be required to pay Additional Rent for the Storage Space, but shall be required to pay for electricity as set forth in Paragraph 9.4. Tenant shall also have the right to the Options to Extend set forth in Paragraph 34.1 for the Storage Space. Notwithstanding the foregoing, in the event that Tenant uses the Storage Space for anything other than storage, then Tenant shall be required to pay Additional Rent on the Storage Space and Tenant's Share as set forth in Paragraphs 5.1M and 5.1N shall be adjusted to reflect the square footage of the Storage Space.

#### 2. TERM

**2.1. Term.** The term of the Lease shall be for fifteen (15) years beginning on the Commencement Date ("Term"), unless extended or sooner terminated pursuant to the terms of this Lease. The term "Lease Year" as used

herein shall mean any 365-consecutive-day period beginning on the Commencement Date, or any anniversary thereafter.

**2.2. Commencement Date.** The term “Commencement Date” as used herein shall mean January 1, 2023, unless extended pursuant to the terms and conditions of Exhibit B hereof.

**2.3. Occupancy Date.** The term “Occupancy Date” as used herein shall mean the earlier of: (i) the Commencement Date, and (ii) the date Tenant is granted access to all or any portion of the Premises including, but not limited to, pursuant to Paragraph 2.4.

**2.4 Early Access.** Landlord shall grant Tenant access to the Premises prior to the Commencement Date solely for the purposes of allowing Tenant to construct the Tenant Improvements and to install cabling, furniture, fixtures and equipment and prepare the Premises for Tenant’s occupancy and Tenant shall (i) take out and keep in force an insurance policy that complies with Paragraph 14.2, (ii) cause any Contractor to take out and keep in force insurance policies that comply with Paragraph 14.4, (iii) comply with all provisions of the Lease, except the obligation of Tenant to pay to Landlord the Base Rent and Additional Rent; provided that Tenant shall be obligated to pay for Utilities, and (iv) not unreasonably interfere with or delay the Work to be Completed described on Exhibit “B-1” attached hereto.

### 3. RENT

**3.1. Rent.** Rent shall be due and payable in lawful money of the United States in advance on the first day of each month after the Commencement Date. Tenant shall pay to Landlord as base rent (“**Base Rent**”) for the Premises, without notice or demand and without abatement, deduction, offset or set off, the following sums:

#### Initial Term of the Premises

<u>Period</u>	<u>Premises</u> <u>SF</u>	<u>Base Rent</u> <u>per SF</u>	<u>Annual Base</u> <u>Rent</u>	<u>Monthly</u> <u>Base Rent</u>
January 1, 2023-June 30, 2023	64,057	Base Rent fully abated	Base Rent fully abated	Base Rent fully abated
July 1, 2023-December 31, 2023	64,057	\$ 9.50	\$ 608,541.50	\$ 50,711.79
January 1, 2024-December 31, 2024	64,057	\$ 9.71	\$ 621,993.47	\$ 51,832.79
January 1, 2025-December 31, 2025	64,057	\$ 9.93	\$ 636,086.01	\$ 53,007.17
January 1, 2026-December 31, 2026	64,057	\$ 20.31	\$1,300,997.67	\$108,416.47

<u>Period</u>	<u>Premises</u> <u>SF</u>	<u>Base Rent</u> <u>per SF</u>	<u>Annual Base</u> <u>Rent</u>	<u>Monthly</u> <u>Base Rent</u>
January 1, 2027-December 31, 2027	64,057	\$ 20.77	\$1,330,463.89	\$110,871.99
January 1, 2028-December 31, 2028	64,057	\$ 21.24	\$1,360,570.68	\$113,380.89
January 1, 2029-December 31, 2029	64,057	\$ 21.72	\$1,391,318.04	\$115,943.17
January 1, 2030-December 31, 2030	64,057	\$ 22.21	\$1,422,705.97	\$118,558.83
January 1, 2031-December 31, 2031	64,057	\$ 22.71	\$1,454,734.47	\$121,227.87
January 1, 2032-December 31, 2032	64,057	\$ 23.22	\$1,487,403.54	\$123,950.30
January 1, 2033-December 31, 2033	64,057	\$ 23.74	\$1,520,713.18	\$126,726.10
January 1, 2034-December 31, 2034	64,057	\$ 24.27	\$1,554,663.39	\$129,555.28
January 1, 2035-December 31, 2035	64,057	\$ 24.82	\$1,589,894.74	\$132,491.23
January 1, 2036-December 31, 2036	64,057	\$ 25.38	\$1,625,766.66	\$135,480.56
January 1, 2037-December 31, 2037	64,057	\$ 25.95	\$1,662,279.15	\$138,523.26

**First Option Term of the Premises**

<b>Period</b>	<b>Premises SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2038-December 31, 2038	64,057	\$ 26.53	\$1,699,432.21	\$141,619.35
January 1, 2039-December 31, 2039	64,057	\$ 27.13	\$1,737,866.41	\$144,822.20
January 1, 2040-December 31, 2040	64,057	\$ 27.74	\$1,776,941.18	\$148,078.43
January 1, 2041-December 31, 2041	64,057	\$ 28.36	\$1,816,656.52	\$151,388.04
January 1, 2042-December 31, 2042	64,057	\$ 29.00	\$1,857,653.00	\$154,804.42
January 1, 2043-December 31, 2043	64,057	\$ 29.65	\$1,899,290.05	\$158,274.17
January 1, 2044-December 31, 2044	64,057	\$ 30.32	\$1,942,208.24	\$161,850.69
January 1, 2045-December 31, 2045	64,057	\$ 31.00	\$1,985,767.00	\$165,480.58
January 1, 2046-December 31, 2046	64,057	\$ 31.70	\$2,030,606.90	\$169,217.24
January 1, 2047-December 31, 2047	64,057	\$ 32.41	\$2,076,087.37	\$173,007.28

**Second Option Term of the Premises**

<b>Period</b>	<b>Premises SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2048- December 31, 2048	64,057	\$ 32.41	\$2,076,087.37	\$173,007.28
January 1, 2049- December 31, 2049	64,057	\$ 33.14	\$2,122,848.98	\$176,904.08
January 1, 2050- December 31, 2050	64,057	\$ 33.89	\$2,170,891.73	\$180,907.64
January 1, 2051- December 31, 2051	64,057	\$ 34.65	\$2,219,575.05	\$184,964.59
January 1, 2052- December 31, 2052	64,057	\$ 35.43	\$2,269,539.51	\$189,128.29

As shown in the first three tables above, Tenant's obligation to pay Base Rent only for the Premises for the following shall be abated: (i) 100% of the Base Rent for the first (6) months of the Term, (ii) 50% of the Base Rent for the next six (6) months of the Term, (iii) 50% of the Base Rent for the second Lease Year, and (iv) 50% of the Base Rent for the third Lease Year (for a total of twenty-one (21) months of abated Base Rent, collectively the "**Abated Rent**") *provided, however*, in the event Tenant remains in default of any monetary or material non-monetary obligations under this Lease after all applicable notice and cure periods, then such Base Rent shall not be deemed to have been abated and Tenant shall be liable for the unamortized portion of the Base Rent that would have otherwise been abated if Tenant had not defaulted, and such Base Rent shall become immediately due and payable.

**Initial Term of the Storage Space**

<b>Period</b>	<b>Storage SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2023-December 31, 2023	2,373	\$ 17.00	\$40,341.00	\$ 3,361.75
January 1, 2024-December 31, 2024	2,373	\$ 17.38	\$41,242.74	\$ 3,436.90
January 1, 2025-December 31, 2025	2,373	\$ 17.77	\$42,168.21	\$ 3,514.02
January 1, 2026-December 31, 2026	2,373	\$ 18.17	\$43,117.41	\$ 3,593.12
January 1, 2027-December 31, 2027	2,373	\$ 18.58	\$44,090.34	\$ 3,674.20
January 1, 2028-December 31, 2028	2,373	\$ 19.00	\$45,087.00	\$ 3,757.25
January 1, 2029-December 31, 2029	2,373	\$ 19.43	\$46,107.39	\$ 3,842.28
January 1, 2030-December 31, 2030	2,373	\$ 19.87	\$47,151.51	\$ 3,929.29
January 1, 2031-December 31, 2031	2,373	\$ 20.32	\$48,219.36	\$ 4,018.28
January 1, 2032-December 31, 2032	2,373	\$ 20.78	\$49,310.94	\$ 4,109.25
January 1, 2033-December 31, 2033	2,373	\$ 21.25	\$50,426.25	\$ 4,202.19



<b>Period</b>	<b>Storage SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2034-December 31, 2034	2,373	\$ 21.73	\$51,565.29	\$ 4,297.11
January 1, 2035-December 31, 2035	2,373	\$ 22.22	\$52,728.06	\$ 4,394.01
January 1, 2036-December 31, 2036	2,373	\$ 22.72	\$53,914.56	\$ 4,492.88
January 1, 2037-December 31, 2037	2,373	\$ 23.23	\$55,124.79	\$ 4,593.73

**First Option Term of the Storage Space**

<b>Period</b>	<b>Storage SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2038-December 31, 2038	2,373	\$ 23.75	\$56,358.75	\$ 4,696.56
January 1, 2039-December 31, 2039	2,373	\$ 24.28	\$57,616.44	\$ 4,801.37
January 1, 2040-December 31, 2040	2,373	\$ 24.83	\$58,921.59	\$ 4,910.13
January 1, 2041-December 31, 2041	2,373	\$ 25.39	\$60,250.47	\$ 5,020.87
January 1, 2042-December 31, 2042	2,373	\$ 25.96	\$61,603.08	\$ 5,133.59
January 1, 2043-December 31, 2043	2,373	\$ 26.54	\$62,979.42	\$ 5,248.29

<b>Period</b>	<b>Storage SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2044-December 31, 2044	2,373	\$ 27.14	\$64,403.22	\$ 5,366.94
January 1, 2045-December 31, 2045	2,373	\$ 27.75	\$65,850.75	\$ 5,487.56
January 1, 2046-December 31, 2046	2,373	\$ 28.37	\$67,322.01	\$ 5,610.17
January 1, 2047-December 31, 2047	2,373	\$ 29.01	\$68,840.73	\$ 5,736.73

**Second Option Term of the Storage Space**

<b>Period</b>	<b>Storage SF</b>	<b>Base Rent per SF</b>	<b>Annual Base Rent</b>	<b>Monthly Base Rent</b>
January 1, 2048-December 31, 2048	2,373	\$ 29.66	\$70,383.18	\$ 5,865.27
January 1, 2049-December 31, 2049	2,373	\$ 30.33	\$71,973.09	\$ 5,997.76
January 1, 2050-December 31, 2050	2,373	\$ 31.01	\$73,586.73	\$ 6,132.23
January 1, 2051-December 31, 2051	2,373	\$ 31.71	\$75,247.83	\$ 6,270.65
January 1, 2052-December 31, 2052	2,373	\$ 32.42	\$76,932.66	\$ 6,411.06

Rent for any period during the Term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved.

**3.2. Place of Payment.** All payments under this Lease to be made by Tenant to Landlord shall be made payable to, and mailed or personally delivered to Landlord at the following address or such other address(es) which Landlord may notify Tenant from time to time: c/o IRG Realty Advisors, LLC, 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286.

**3.3. Late Payment.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent (as defined in Paragraph 3.2. herein) pursuant to this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Rent or other payment under this Lease is not received by Landlord, on or before the fifth (5th) day of the month in which such Rent or other payment is due, Tenant shall pay a late charge equal to five percent (5%) of such overdue amounts. Tenant shall also be responsible for a service fee equal to fifty dollars (\$50.00) for any check returned for insufficient funds together with such other costs and expenses as may be imposed by Landlord's bank. The payment to and acceptance by Landlord of such late charge shall in no event constitute a waiver by Landlord of Tenant's default with respect to such overdue amounts, nor prevent Landlord from exercising any of the other rights and remedies granted at law or equity or pursuant to this Lease.

**3.4. Payment on Account.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent actually due hereunder shall be deemed to be other than a payment on account. No restrictive endorsement or statement on any check or any letter accompanying any check or payment shall be deemed to effect an accord and satisfaction or have any effect whatsoever. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law or in equity provided.

#### **4. SECURITY DEPOSIT**

Within ten (10) business days of the Effective Date, Tenant shall pay to Landlord a security deposit for the faithful performance of Tenant's obligations under this Lease in the amount of \$1,435,517.37 ("**Security Deposit**"). In lieu of cash, Tenant may provide an irrevocable and unconditional standby letter of credit in the same amount, from a federally insured banking institution in such form as reasonably acceptable to Landlord, and with a term expiring thirty (30) days after the expiration date of the Term (the "**Letter of Credit**"). If Tenant fails to pay Rent or other charges due hereunder, or otherwise defaults under this Lease following applicable notice and cure periods, Landlord may use, apply or retain all or a portion of the Security Deposit to compensate Landlord for the amount due by Tenant (including reasonable attorneys' fees) under this Lease. If Landlord uses or otherwise applies all or any portion of the Security Deposit, Tenant shall restore such Security Deposit within ten (10) days of notice from Landlord. The Security Deposit shall be non-interest bearing and Landlord shall be entitled to retain such funds in its general accounts. The balance of the Security Deposit not applied or used by Landlord as permitted in this Paragraph shall be refunded to Tenant thirty (30) days after the later of (i) expiration or other termination of this Lease, and (ii) the date Tenant has vacated the Premises. Notwithstanding the foregoing, as long as Tenant is not in monetary or material non-monetary default after all applicable notice and cure periods, the amount of the Security Deposit required to be maintained by Tenant shall be reduced to \$1,116,513.51 on July 1, 2028, \$797,509.65 on July 1, 2030 and \$319,003.86 on July 1, 2032, which amount shall be continued to be held by Landlord for the remainder of the Term, including any timely exercised Option Terms, in accordance with the terms of this Paragraph 4.

#### **5. ADDITIONAL RENT**

##### **5.1. Definitions.**

A. "**Additional Rent**" shall mean Tenant's Share of the Building Expenses (as defined in Paragraph 5.1.B) plus Tenant's Share of the Property Expenses (as defined in Paragraph 5.1.G).

B. "**Building Expenses**" means those Common Expenses (as defined in Paragraph 5.1.D) related solely or primarily to the Building and not to the Property generally. Landlord estimates that Building Expenses for calendar year 2021 were \$2.60 per rentable square foot.

C. "**Capital Improvement**" shall mean any capital improvement or replacement to the Building or components thereof, as reasonably determined by Landlord, but specifically excluding (i) any Structural Repairs for which Landlord is responsible pursuant to Paragraph 10 herein and (ii) any Capital Improvement

made by Landlord to ready the Building for Tenant's occupancy, including but not limited to the Work to be Completed. The costs of all Capital Improvements shall be amortized over the earlier of (i) the useful life of such Capital Improvement, and (ii) ten years from the Commencement Date, at an interest rate of eight percent (8%) per annum.

D. **"Common Expenses"** shall mean the aggregate amount of the total costs and expenses paid or incurred by Landlord, including the annual amortization amount of any Capital Improvement, in any way connected with or related to (i) the operation, repair and maintenance of the Common Areas, the Building and the Property, including, without limitation: electricity, gas, water, sewer and other utilities; utility systems; utility consulting fees; trash removal; security; snow plowing, sanding, salting and shoveling snow; landscaping, mowing and weed removal; pest control; sweeping and janitorial services; on-site manager and employees and related on-site office expenses; repair and maintenance costs for roof, flashing, roof membrane, decking, gutters, leaders, and downspouts; electrical, plumbing, sprinkler and HVAC repair and maintenance; fire alarm and sprinkler system testing, maintenance and repair; sealing, resurfacing, restriping and repair of all parking areas, loading and unloading areas, trash areas, roadways, driveways and walkways; common signage; painting of the Building and Property; fence and gate repair and maintenance; repair and replacement of all lighting facilities; and any and all other repairs and maintenance, and (ii) the furnishing of or contracting for any service generally provided to the tenants of the Property by Landlord, including without limitation, managerial fees and professional fees. For managerial fees, Tenant's portion shall be calculated by multiplying the Base Rent from Tenant by three percent (3%). The costs and expenses related to Capital Improvements shall only be included as part of Common Expenses in each Computation Year to the extent of the annual amortized amount of such Capital Improvements for such Computation Year determined in accordance with Paragraph 5.1.C above. In the event that, during all or any portion of any calendar year, the Building is not fully rented and occupied, Landlord may make any appropriate adjustment in occupancy-related Common Expenses that benefit the Premises for such year by determining, on a commercially reasonable basis, the Common Expenses that would have been paid or incurred by Landlord had the Building been fully rented and occupied, and the amount so determined shall be deemed to have been Common Expenses for such year; provided that in no event shall Landlord be permitted to collect more than one hundred percent (100%) of its actual out-of-pocket expenses incurred for such Common Expenses. Common Expenses shall not include any Insurance Expenses or Taxes, any items expressly excluded from the definitions of such term, or any item set forth on Exhibit "E" attached hereto and incorporated herein.

E. **"Computation Year"** shall mean each twelve (12) consecutive month period commencing January 1 of each year during the Term, *provided* that Landlord, upon notice to Tenant, may (i) change the Computation Year from time to time to any other twelve (12) consecutive month period, or (ii) adjust payments due within any such Computation year, to equitably adjust for Tenant's Share of Property Expenses and Building Expenses due within any portion of the Computation Year.

F. **"Insurance Expenses"** shall mean the aggregate amount of the cost of fire, extended coverage, boiler, sprinkler, commercial general liability, property damage, rent, earthquake, terrorism and other insurance obtained by Landlord in connection with the Property, including insurance required pursuant to Paragraph 14.1 hereof, and the deductible portion of any insured loss otherwise covered by such insurance.

G. **"Property Expenses"** shall mean the sum of Taxes, Insurance Expenses, and those Common Expenses related to the Property as a whole, but not including Building Expenses. Landlord shall determine, in its reasonable discretion, which Common Expenses will be classified as Building Expenses and which Common Expenses will be classified as Property Expenses. No item shall be classified as both a Building Expense and a Property Expense. Landlord estimates that Property Expenses (excluding Taxes) for calendar year 2021 were \$1.58 per rentable square foot.

H. **"Rent" or "rent"** shall mean the total of all sums due to Landlord from Tenant hereunder, including but not limited to Base Rent, Additional Rent, Utilities, and all other fees and charges owed to Landlord.

I. **"Rentable Area of the Building"** shall mean 174,669 agreed square feet.

J. **"Rentable Area of the Premises"** shall mean 64,057 agreed square feet

K. **"Rentable Area of the Property"** shall mean 1,937,641 agreed square feet.

L. **"Taxes"** shall mean all taxes, assessments and charges levied upon or with respect to the Property or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Property or such personal property. Taxes shall include, without limitation, all general real property taxes and general and special assessments, occupancy taxes, commercial rental taxes, impervious surface fees or taxes, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Property, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into any lease for space in the Property, or on the use or occupancy of the Property or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Property that are now or hereafter levied or assessed against Landlord by the United States of America, the state in which the Property is located, or any political subdivision, public corporation, district or other political or public entity, whether due to increased rate and/or valuation, additional improvements, change of ownership, or any other events or circumstances, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for or as an addition to, as a whole or in part, any other Taxes whether or not now customary or in the contemplation of the parties on the Effective Date. Taxes shall not include franchise, transfer, inheritance or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for or as an addition to, as a whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees, appraisal costs, expert witness and consultant fees, and other costs and disbursements incurred in connection with proceedings to contest, determine or reduce Taxes. If any Taxes are specially assessed by reason of the occupancy or activities of one or more tenants and not the occupancy or activities of the tenants as a whole, such Taxes shall be allocated by Landlord to the tenant or tenants whose occupancy or activities brought about such assessment. Notwithstanding anything contained in this Lease to the contrary, Taxes shall be \$3.50 per rentable square foot through June 30, 2026. Landlord agrees to use commercially reasonable efforts to pursue the extension of the existing payment-in-lieu of tax arrangements ("**PILOT**") affecting the Property. Tenant shall equitably share in any and all benefits that inure to the Property by virtue of any PILOT with any applicable government authority. Notwithstanding the foregoing, in the event that Landlord is unable to have the PILOT extended, Tenant's Share of Taxes shall not increase more than five percent (5%) per annum.

M. **"Tenant's Share of the Building Expenses"** shall mean 36.673% computed by dividing the Rentable Area of the Premises by the Rentable Area of the Building. In the event that either the Rentable Area of the Premises or the Rentable Area of the Building is changed, Tenant's Share will be appropriately adjusted by Landlord. For purposes of the Computation Year in which such change occurs, Tenant's Share shall be determined on the basis of the number of days during such Computation Year at each such percentage.

N. **"Tenant's Share of the Property Expenses"** shall mean 3.306% computed by dividing the Rentable Area of the Premises by the Rentable Area of the Property. In the event that either the Rentable Area of the Premises or the Rentable Area of the Property is changed, Tenant's Share will be appropriately adjusted by Landlord. For purposes of the Computation Year in which such change occurs, Tenant's Share shall be determined on the basis of the number of days during such Computation Year at each such percentage. Notwithstanding anything to the contrary herein, Landlord shall have the right, from time to time, to equitably allocate and prorate some or all of the Property Expenses among different tenants and/or different Buildings of the Property and/or on a building-by-building basis, adjusting Tenant's Share as to each of the separately allocated costs on a fair and reasonable basis as determined by Landlord in its reasonable discretion.

O. **"Utilities and Infrastructure Systems"** shall mean those portions of the Property comprising of any and all utility plants, utility systems, utility distribution systems and utility facilities of an serving the Property or any portion thereof, including without limitation the central utility plant, cogeneration plant, maintenance shop, backup generators, satellite auxiliary utility buildings, central and satellite chiller

facilities and systems, cooling towers, steam facilities and systems, water projection wells, duct banks, system of pipes, valves and other apparatus used for the flow of wastewater to the wastewater treatment plant and public sewer system, the supply systems and any other facilities, improvements, and components.

**5.2. Payments.** In addition to Base Rent, and beginning on the Commencement Date, Tenant shall pay to Landlord, monthly, in advance, one-twelfth (1/12) of the Additional Rent due for each Computation Year, in an amount estimated by Landlord and billed by Landlord to Tenant ("**Estimated Expenses**"). Landlord shall have the right to reasonably revise such estimates from time to time and to adjust Tenant's monthly payments accordingly. If either the Commencement Date or the expiration of the Term shall occur on a date other than the first or last day of a Computation Year respectively, the Additional Rent for such Computation Year shall be in the proportion that the number of days the Lease was in effect during such Computation Year bears to 365. With reasonable promptness after the expiration of each Computation Year, Landlord shall furnish Tenant with a statement of the actual expenses ("**Actual Expenses**"), setting forth in reasonable detail the Property Expenses for such Computation Year, and Tenant's Share of such Property Expenses and certified as complete and correct by an authorized representative of Landlord, including supportive documentation. If the actual Property Expenses for such Computation Year exceed the estimated Property Expenses paid by Tenant for such Computation Year, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual Property Expenses within sixty (60) days after the receipt of Landlord's Expense Statement. If the total amount paid by Tenant for any such Computation Year shall exceed the actual Property Expenses for such Computation Year, such excess shall be credited against the next installments of Additional Rent due from Tenant to Landlord hereunder. Neither Landlord's failure to deliver, nor late delivery of, the Estimated or Actual Expenses shall constitute a default by Landlord hereunder or a waiver of Landlord's right to collect any payment provided for herein.

**5.3. Excessive Expenses.** In addition to any other sums payable hereunder, Tenant shall (A) pay to Landlord, any excessive or extraordinary operating or insurance costs as Landlord may reasonably determine to be incurred due to Tenant's excessive and extraordinary use of the Premises or other facilities of the Property, as compared to other similar tenants of the Property, including, but not limited to, use beyond the normal business work week, and (B) reimburse Landlord for any maintenance, repair, or restoration of the Common Areas or Parking Facilities (as defined in Paragraph 6) that become necessary as a result of the excessive use, negligence or willful misconduct of Tenant or any violation by Tenant of the terms of this Lease. Landlord may reasonably estimate the amount of such use and costs, and bill Tenant periodically for the same.

**5.4. Disputes.** If there is any dispute as to any Additional Rent due under this Paragraph 5 for any particular Computation Year, Tenant shall have the right during the nine (9) month period following Tenant's receipt of the Actual Expenses for such disputed Computation Year ("**Audit Period**"), upon reasonable notice and at reasonable times, to inspect Landlord's accounting records at Landlord's accounting office, solely related to any such disputed items. Tenant's failure to provide Landlord with notice of any dispute as to Additional Rent during the Audit Period, shall constitute a waiver by Tenant to dispute or audit the Additional Rent, or any component thereof, for such Computation Year. If after such inspection Tenant still disputes such Additional Rent, upon Tenant's written request therefore, a certification as to the proper amount of Property Expenses and the amount due to or payable by Tenant shall be made by an independent accounting firm selected by Landlord and Tenant. If Landlord and Tenant are unable to agree upon an accounting firm, Landlord and Tenant shall each select an accounting firm and the two (2) firms so selected shall select a third firm which shall make the certification requested hereunder. Such certification shall be final and conclusive as to all parties. Should the parties obtain a certification, or otherwise agree to compromise the amount in dispute, they shall each pay their proportionate amount of the cost of obtaining the certification in the same percentage as the final certification or compromise amount relates to each party's initial assertion. For example, if Landlord claims Tenant owes \$20.00 and Tenant asserts that only \$10.00 is due, and the parties ultimately agree on \$15.00, each party shall be responsible for paying 50% of the costs of obtaining the certification, if the parties ultimately agree on \$18.00, Landlord shall be responsible for 20% and Tenant shall be responsible for 80% of the costs of obtaining the certification. If there is any dispute as to determination and billing by Landlord for Utilities under Paragraph 9, then the dispute shall be resolved by an engineer mutually acceptable to, and equally paid by, Landlord and Tenant. Notwithstanding the foregoing, in no event shall Tenant be entitled to withhold payment of Additional Rent or Utilities as billed by Landlord during the certification or Utility dispute resolution process and Tenant shall remain obligated to pay all Additional Rent and Utilities due as otherwise set forth in this Lease. Tenant's failure to timely pay any Additional Rent or Utilities as determined by Landlord shall be a default by Tenant and Landlord reserves all rights related to or arising out of a default by Tenant in the payment of rent. In the event Tenant

shall prevail in the certification or Utility dispute resolution process, Landlord, at its election, shall either promptly refund any excess Additional Rent payments to Tenant or shall apply such excess as a credit against future Additional Rent or Utilities due from Tenant.

## **6. PARKING**

Landlord shall maintain and operate, or cause to be maintained and operated unreserved automobile parking facilities ("**Parking Facilities**") adjacent to the Building. Tenant shall have the non-exclusive right to up to one hundred eighty (180) parking spaces in the Parking Facilities. Tenant shall be entitled to park within the Parking Facilities on a first come first served basis. Landlord shall make available to Tenant visitor spaces for Tenant's use in front of the Building entrance as is set forth in Exhibit "A". Tenant acknowledges and agrees that the use of the Parking Facilities by Tenant and Tenant's employees, agents, suppliers, customers and patrons will be subject to the Rules and Regulations in Paragraph 27. NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT ACKNOWLEDGES AND AGREES THAT IT SHALL USE ANY PARKING FACILITIES AT ITS SOLE RISK AND THAT LANDLORD SHALL HAVE NO RESPONSIBILITY TO PREVENT, AND SHALL NOT BE LIABLE TO TENANT OR ANY TENANT REPRESENTATIVES FOR, DAMAGES OR INJURIES TO PERSONS OR PROPERTY PARKED OR OTHERWISE LOCATED ON OR ABOUT THE PREMISES EXCEPT AS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY LANDLORD PARTIES.

## **7. PERMITTED USES/PROHIBITED USES**

Tenant shall use and occupy the Premises throughout the term of the Lease for the Permitted Use in compliance with applicable laws and zoning; except with respect to the Permitted Use, no use shall be made or permitted to be made of the Premises, nor acts done which will increase the existing rate of insurance upon the Building, or cause a cancellation of any insurance policy covering the Building, or any part thereof, nor shall Tenant sell, or permit to be kept, used, or sold, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall comply with all laws, ordinances, rules, regulations and codes of all municipal, county, state and federal authorities pertaining to Tenant's use and occupation of the Premises. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the Building. Tenant, at its expense, shall provide (and enclose if required by codes or Landlord) a dumpster or dumpsters for Tenant's trash in a location shown on Exhibit "A" and manner approved by Landlord (so long as such location is commercially reasonable), and shall cause its trash to be removed at intervals reasonably satisfactory to Landlord except as provided in Paragraph 8 below.

Landlord agrees that, as long as Tenant is not in default of this Lease beyond any applicable notice and cure periods, Landlord will not permit the operation of a vivarium in Building 180 during the Term or any extension thereof.

## **8. ENVIRONMENTAL COMPLIANCE/HAZARDOUS MATERIALS**

**8.1. Definitions.** "**Hazardous Materials**" shall mean any: (i) material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive, mutagenic or corrosive, including, without limitation, petroleum, or any petroleum derivative, solvents, heavy metals, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Property is located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted, (ii) any other substance or matter

which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory, and (iii) any substance or matter which is in excess of relevant and appropriate levels set forth in any applicable federal, state or local law or regulation pertaining to any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires removal, remediation or treatment. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

**8.2. Use of Premises by Tenant.** Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, consultants, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees (for purposes of this Paragraph 8, referred to collectively herein as "**Tenant Representatives**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or the Property or transport to or from the Premises or the Property without the express prior written consent of Landlord except as may be in compliance with Hazardous Materials Laws and for the Permitted Use. Landlord may, place reasonable conditions with respect to such Hazardous Materials, including without limitation, rules, regulations and safeguards as may be required by any insurance carrier, environmental consultant or lender of Landlord, or environmental consultant retained by any lender of Landlord. Tenant shall store hazardous waste in accordance with state and federal regulations, including but not limited to limits on the amount of time such waste can be stored on site. Hazardous waste shall be marked and dated accordingly and comply with all applicable state and federal regulations. In connection therewith, Tenant shall at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant Representatives of Hazardous Materials on the Premises or the Property, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Property with all required permits. The Town of Orangetown requires a permit for any discharge into the sanitary sewer system. It is the Tenant's responsibility to acquire all necessary permitting for any discharge, even if it is not due to the presence of Hazardous Materials, and to comply with subsequent reporting, testing, and monitoring. Notwithstanding the foregoing Tenant shall be entitled to use and store in the Premises common cleaning solutions, lubricants and fuels used by Tenant in its ordinary operations, so long as the same are stored in appropriate containers in compliance with all Hazardous Materials Laws.

**8.3. Remediation.** If at any time during the Term any contamination of the Premises or the Property by Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant Representatives ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Premises, the Property or the groundwater underlying the Premises or the Property to the extent required to comply with applicable Hazardous Materials Laws to restore the Premises or the Property to the same or better condition which existed before Tenant's Contamination. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or the Property, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as reasonably determined by Landlord, provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises or the Property (i) poses an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary, or (iii) immediate removal action is required under any applicable laws or regulations or pursuant to an order from a government agency, and it is not feasible to obtain Landlord's consent before taking such action. Tenant and Landlord shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently commence the agreed-upon remediation plan within sixty (60) days of the later of obtaining all approvals or obtaining Landlord's agreement on the remediation plan, or does not thereafter continue to prosecute such remediation to completion in accordance with an approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within thirty (30) days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord consistent with the agreed-upon remediation plan, when such demand is accompanied by reasonable proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord legible copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous



Materials removed from the Premises or the Property as part of Tenant's remediation of any Tenant's Contamination. Notwithstanding the above, Landlord's prior written consent and preparation of a remediation plan shall not be required for small spills of Hazardous Materials that are cleaned up within forty-eight (48) hours of discovery.

**8.4. Disposition of Hazardous Materials.** Except as discharged into the sanitary sewer in strict accordance and conformity with Paragraph 8.2 herein and all applicable Hazardous Materials Laws, Tenant shall cause any and all Hazardous Materials removed from the Premises and the Property (including without limitation all Hazardous Materials removed from the Premises as part of the required remediation of Tenant's Contamination) to be removed and transported solely by duly licensed haulers to duly licensed facilities for recycling or final disposal of such materials and wastes. Tenant is and shall be deemed to be the "operator" "in charge" of Tenant's "facility" and the "owner," as such terms are used in the Hazardous Materials Laws, of all Hazardous Materials and any wastes generated or resulting therefrom. Tenant shall be designated as the "generator," as such terms are used in the Hazardous Materials Laws, on all manifests relating to such Hazardous Materials or wastes.

**8.5. Notice of Hazardous Materials Matters.**

A. Tenant shall immediately notify Landlord in writing of: (i) any enforcement, clean up, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Premises; (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by Tenant of actual knowledge of any of the foregoing matters; and (iv) any spill, release, discharge or disposal by Tenant or Tenant Representatives of any Hazardous Materials in, on or under the Premises, the Property, or any portion thereof. Tenant shall also supply to Landlord as promptly as possible, and in any event within ten (10) business days after Tenant first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

B. Landlord represents that, as of the Effective Date, to its actual knowledge without further inquiry or investigation, Landlord has not received any notification from any third-party or governmental authority having jurisdiction over the Property that there are any Hazardous Materials present on, under or about the Premises, Storage Space, Building, or Property in violation of Hazardous Materials Laws or in amounts or concentrations that require remediation under applicable Hazardous Materials Laws. Without limiting the foregoing, Landlord represents that it has provided to Tenant all information in Landlord's possession concerning any release of Hazardous Materials on, under, or about the Premises, Building, or Property (or off-site of the Premises that might affect the Premises, or off-site of the Property that might affect the Premises, Building, or Property) including, without limitation, sampling data, environmental studies or reports, environmental site assessments, building surveys, and historical use reviews.

**8.6. Indemnification by Tenant.** Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, and each of Landlord's employees, representatives, agents, attorneys, successors and assigns, and its directors, officers, partners, representatives, any lender having a lien on or covering the Premises or any part thereof, and any entity or person named or required to be named as an additional insured in Paragraph 14.2 of this Lease ("**Landlord Representatives**") free and harmless from and against any and all claims, actions (including, without limitation, the cost of investigation and testing, consultant's and attorney's fees, remedial and enforcement actions of any kind, administrative (informal or otherwise) or judicial proceedings and orders or judgments arising therefrom), causes of action, liabilities, penalties, forfeitures, damages, fines, injunctive relief, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly by (i) any Tenant's Contamination, (ii) Tenant's or Tenant Representatives' failure to comply with any Hazardous Materials Laws with respect to the Premises, or (iii) offsite disposal or transportation of Hazardous Materials on, from, under or about the Premises or the Property by Tenant or Tenant Representatives. Tenant's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any repair, clean up or detoxification or decontamination of the Premises required to comply with Hazardous Materials Laws, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Tenant, or by employees, agents, assignees, contractors or

subcontractors of Tenant or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant.

**8.7. Indemnification by Landlord.**

(a) Notwithstanding anything in this Lease to the contrary, Landlord shall be responsible for any and all remediation, response or corrective action required by any local, state or federal agencies or Hazardous Materials Laws related to or arising from any environmental contamination on the site existing as of the Effective Date ("Preexisting Contamination").

(b) In addition, Landlord shall indemnify, defend (by counsel reasonably acceptable to Tenant), protect, and hold Tenant, and each of Tenant's employees, representatives, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, actions, causes of action (including, without limitation, remedial and enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising therefrom), liabilities, penalties, forfeitures, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or damage to any property whatsoever, to the extent arising from or caused in whole or in part by directly or indirectly by any contamination caused by Landlord or Landlord Representatives. Landlord's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any repair, clean up or detoxification or decontamination of any such contamination on the Premises required to comply with Hazardous Materials Laws, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. The indemnification obligation in this Paragraph 8.7(b) shall be specifically limited to affirmative acts of Landlord or Landlord Representatives, and shall not include the acts or omissions of any other tenants of the Property or other persons.

**8.8. Intentionally Omitted.**

**8.9. Exclusivity.** The allocations of responsibility between, obligations and liabilities undertaken by, and indemnifications given by Landlord and Tenant under this Paragraph 8, shall be the exclusive provisions under this Lease, applicable to the subject matter treated in this Paragraph 8, and any other conflicting or inconsistent provisions contained in this Lease shall not apply with respect to the subject matter.

**8.10. Compliance with Environmental Laws.** Landlord and Tenant shall at all times and in all respects comply with all Hazardous Materials Laws. Tenant and Landlord have been informed that certain judicial decisions have held that, notwithstanding the specific language of a lease, courts may impose the responsibility for complying with legal requirements and for performing improvements, maintenance and repairs on a landlord or tenant based on the court's assessment of the parties' intent in light of certain equitable factors. Tenant and Landlord have each been advised by their respective legal counsel about the provisions of this Lease allocating responsibility for compliance with laws and for performing improvements, maintenance and repairs between Tenant and Landlord. Tenant and Landlord expressly agree that the allocation of responsibility for compliance with laws and for performing improvements, maintenance and repairs set forth in this Lease represents Tenant's and Landlord's intent with respect to this issue.

**8.11. Survival and Duration of Obligations.** All covenants, representations, warranties, obligations and indemnities made or given under this Paragraph 8 shall survive the expiration or earlier termination of this Lease.

**9. UTILITIES**

**9.1.** Beginning on the Occupancy Date and continuing through the duration of the Lease, Tenant shall pay all service charges, utility deposits and fees for water, chilled water, electricity, steam, sewage, telephone, and any other utility services furnished to the Premises and the Storage Space and the improvements on the Premises ("Utilities"). Tenant shall pay for all Utilities on a monthly basis within thirty (30) days after receipt of a statement from Landlord, together with reasonable supporting documentation, except for telephone service for which Tenant shall contract with and pay for directly to the service provider. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such Utilities are supplied to, distributed in,

or serve the Premises. Tenant shall be required to pay for its usage of electricity in the Storage Space. Landlord, at Tenant's cost, shall have a submeter installed in the Storage Space to capture Tenant's usage of electricity and steam.

9.2 If Tenant desires to install any equipment that shall require additional Utilities or any Utilities in a greater capacity than provided by Landlord, Tenant shall provide Landlord with plans and specifications for such installation and Landlord shall have the right to approve Tenant's request in Landlord's reasonable discretion. The installation, operation and maintenance of any such Utilities shall be at Tenant's expense.

9.3 Landlord shall cause the Premises (for electricity, steam and chilled water) and the Storage Space (for electricity and steam) to be separately metered or sub-metered. If any Utilities are not capable of being separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord for the entire Property or a portion of the Property greater than the Premises, Tenant shall pay to Landlord Tenant's share of the cost of such Utilities at local tariff rates without markup or surcharge from Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by submetering, survey or other methods designed to measure consumption with reasonable accuracy. Landlord shall charge Tenant for Utilities based upon Tenant's actual metered consumption, demand and a reasonable share of system losses and expenses which shall fairly include and allocate the costs of providing and allocating the Utilities as determined by Landlord in its reasonable discretion. Landlord shall have the right from time to time to alter the method and source of supply to the Premises of any of the Utilities. Landlord may elect to separately meter or submeter each of the Utilities to the Premises in a manner reasonably determined by Landlord at Landlord's expense. If Tenant desires to contest the determination of Utility charges, Landlord and Tenant shall meet and attempt to resolve such disagreement. If Landlord and Tenant cannot agree on Tenant's Utility consumption and billing, then Tenant may exercise its right to dispute such amounts in accordance with Paragraph 5.4. There shall be no abatement of rent and Landlord shall not be liable for any reason for any loss or damage resulting from an interruption of any of the Utility services, except to the extent caused by the gross negligence or willful misconduct of Landlord or its agents.

#### 10. REPAIRS BY LANDLORD

Landlord shall maintain only the structural soundness of the roof, foundations, and the exterior walls of the Buildings (exclusive of all glass and exclusive of all exterior doors) (collectively, "**Structural Repairs**"), in good repair at Landlord's expense, except repairs rendered necessary by the misuse, negligence or intentional acts of Tenant, its employees, invitees or representatives which shall be repaired by Tenant. Landlord shall keep and maintain all Common Areas of the Property as part of the Common Expenses (including but not limited to the three (3) HVAC units serving the Building and the Premises) in good condition and otherwise comparable to other first-class office and industrial buildings in the Pearl River metropolitan area. Tenant shall promptly report in writing to Landlord any condition known to Tenant to be defective which Landlord is required to repair. Landlord shall commence such repairs within a reasonable period of time from receipt of Tenant's notice. Notwithstanding anything in this Lease to the contrary, Landlord shall perform or cause to be performed all Major Repairs and replacements to the HVAC systems (other than as a result of the misuse or negligence by Tenant or any Tenant Parties) at Landlord's sole cost and expense (and not as a Common Expense) for the first twelve (12) months after the Commencement Date. The term "Major Repairs" shall mean any individual repair costing more than Twenty Five Thousand Dollars (\$25,000.00). Landlord shall maintain an annual service maintenance contract for the HVAC unit exclusively serving the 2<sup>nd</sup> floor office space of the Premises and shall bill Tenant for the cost of same.

#### 11. REPAIRS BY TENANT

Tenant accepts the Premises in its present "As-Is" condition (except for the "**Work to be Completed**" which is the responsibility of Landlord, if any, set forth in Exhibit "B"). Tenant shall at its own cost and expense keep and maintain the Premises (including, once Substantially Completed, the Tenant Improvements, if any, set forth in Exhibit "B") in good order and repair, promptly making all necessary repairs and replacements, including, but not limited to, all equipment and facilities and components thereof within the Premises, fixtures, walls (interior), finish work, ceilings, floors, lighting fixtures, bulbs and ballasts, utility connections and facilities within the Premises, windows, glass, doors, and plate glass, HVAC systems (but only the HVAC unit exclusively serving the 2<sup>nd</sup> floor office space of the Premises) inside the Premises and exclusively serving the Premises, plumbing, electrical, termite and pest extermination, and damage to the Common Areas caused by Tenant, excluding only those repairs expressly required to be made by Landlord hereunder. At Tenant's election, Landlord, at Tenant's cost and expense, shall perform all

necessary repairs and replacements to the HVAC unit exclusively serving the 2<sup>nd</sup> floor office space of the Premises. Tenant shall be responsible for janitorial service in the Premises. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Except as set forth in Paragraph 10 above, Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Tenant shall be permitted to implement its own reasonable security measures in the Premises, subject to prior approval by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Any security implemented by Tenant shall not interfere with the Building's security. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that it shall be solely responsible for providing adequate security for its premises, trucks and containers, and its use of the Property and Premises thereof. Landlord shall have no responsibility to prevent, and shall not be liable to tenant, its agents, employees, contractors, visitors or invitees, for losses due to theft, burglary or other criminal activity, or for damages or injuries to persons or property resulting from Tenant's storage of trucks and containers on the Premises, from persons gaining access to the Premises or any part of the Property, except due to the gross negligence or willful misconduct of Landlord or Landlord Parties.

## **12. TENANT'S TAXES AND ASSESSMENTS**

Tenant covenants and agrees to pay promptly, when due, all personal property taxes or other taxes and assessments levied and assessed by any governmental authority upon the removable property of Tenant in, upon or about the Premises. In the event that such personal property taxes are assessed with the Taxes, Tenant shall be required to reimburse Landlord for Tenant's Share of such assessment.

## **13. ALTERATION OF PREMISES**

Tenant shall not alter, repair or change the Premises in any manner that (i) costs in excess of \$100,000.00 per occurrence, (ii) alters the structural components of the Buildings or penetrates the roof in any manner, or (iii) requires a permit ("**Tenant Repairs**") without the prior written consent of Landlord which shall not be unreasonably withheld. All alterations, improvements or changes (any of the foregoing, "**Tenant Alterations**") shall remain a part of and be surrendered with the Premises except that Tenant shall remove its proprietary equipment, personal property and trade fixtures, which shall include but not be limited to non-affixed furniture; laboratory equipment/trade fixtures (including extruder), but specifically excluding the chemical hoods installed by Tenant in accordance with Paragraph 23 of this Lease. Tenant shall procure and keep in force, at Tenant's sole cost and expense, any permits, licenses, and other governmental and regulatory approvals required for any Tenant Alterations. All Tenant Alterations shall be performed in a good and workmanlike manner, and in compliance with all applicable laws, ordinances, rules, regulations, codes, and permits, by licensed contractors, who shall satisfy the insurance requirements in Paragraph 14.4. Tenant shall fully pay and discharge, when due and payable, all claims for labor done and material and services furnished in connection with any Tenant Alterations, and shall not allow any liens or claims against the Premises or the Property. Tenant, subject to Landlord's prior consent (which consent shall not be unreasonably withheld, conditioned or delayed), shall have access to and the right to utilize a portion of the roof area of the Building in a location to be mutually agreed by Landlord and Tenant. and incorporated herein for the installation, maintenance and repair of satellite and other communication and telecommunication dishes and related equipment and/or such other equipment (collectively, "**Rooftop Equipment**"), each as and to the extent Tenant shall reasonably require. Landlord shall have the right to have its roofing contractor perform any roof penetrations necessary for Tenant's installation of the Rooftop Equipment at Tenant's sole cost and expense. Such Rooftop Equipment shall in no way interfere with Landlord's or other tenants' communication equipment located on the roof area of the Building. Any damage caused by the installation and/or removal of the Rooftop Equipment shall be promptly repaired by Tenant, at its sole cost and expense provided that Tenant shall have no responsibility for any damage caused by or arising out of Landlord's roofing contractor's roof penetrations.

## **14. INSURANCE**

**14.1. Landlord's Insurance.** Landlord shall maintain in full force and effect throughout the entire term of this Lease general comprehensive liability insurance for the Building and the Common Areas in an amount not less than \$3,000,000.00 per occurrence, and general fire and extended coverage insurance, including vandalism and special form or such other or broader coverage as may from time to time be customary on the Building and the Common Areas and other areas of land within which the Building are located in such amounts as reasonably determined by

Landlord to represent the replacement value of the Building. Copies of all such insurance policies or certificates thereof endorsed to show payment of the premium shall be available for inspection by Tenant and such policies and certificates shall show Landlord and the beneficiary of any mortgage or deed of trust on the Premises to be additional insureds as their interests may exist (or a mortgagee loss payable endorsement). Such insurance may be provided by a blanket insurance policy covering the Premises, so long as the coverage on the Premises is at all times at least as great as required by this Paragraph. The insurance obtained by Landlord under this Paragraph 14.1 shall constitute an item of "Insurance Expenses" under Paragraph 5.1.F.

**14.2. Tenant's Insurance.** Tenant agrees to take out and keep in force from the Occupancy Date and throughout the Term hereof, without expense to Landlord, with an insurance company with general policy holder's rating of not less than A-VII, as rated in the most current Best's Insurance Reports, or other company acceptable to Landlord, the policies of insurance as set forth below. Tenant shall be permitted to obtain the insurance required under this Paragraph 14 by providing a blanket policy of insurance only if such blanket policies expressly provide coverage to the Premises and Landlord as required by this Lease without regard to claims made under such policies with respect to other persons or properties and in such form and content reasonably acceptable to Landlord. All such insurance policies shall be on an occurrence basis and not a claims-made basis, contain a standard separation of insureds provision, and shall name Landlord, its property manager IRG Realty Advisors, LLC (or such other property manager selected by Landlord), and their respective agents and employees as additional insureds on a primary and non-contributory basis.

A. Causes of Loss – Special Form property insurance, in an amount not less than one hundred percent (100%) of replacement cost covering all tenant improvements, betterments and alterations permitted under this Lease, floor and wall coverings, and Tenant's office furniture, business and personal trade fixtures, equipment, furniture system and other personal property from time to time situated in the Premises. Such property insurance shall include a replacement cost endorsement, providing protection against any peril included within the classification fire and extended coverage, sprinkler damage, vandalism, malicious mischief, and such other additional perils as covered in a cause of loss (special form) insurance policy. The proceeds of such insurance shall be used for the repair and replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the leasehold improvements shall first be paid to Landlord and the proceeds applicable to Tenant's personal property shall then be paid to Tenant;

B. Commercial general liability insurance, in the name of Tenant, insuring against liability arising from the use and occupancy of the Premises and the business operated by Tenant. All such policies shall be written to apply to all bodily injury or death, property damage and personal injury losses, and shall include blanket contractual liability (including Tenant's indemnity obligations under this Lease), premise-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from hostile fire, and provide primary coverage to Landlord (any insurance policy issued to Landlord providing duplicate or similar coverage shall be deemed to be excess over Tenant's policies), in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than \$3,000,000.00 per occurrence (may be a combination of self-insurance, primary and excess or umbrella coverage). The amounts of such insurance required hereunder shall be adjusted from time to time as requested by Landlord based upon Landlord's reasonable determination as to the amounts of such insurance generally required at such time for comparable premises and buildings in the general geographical area of the Premises. In addition, such policy of insurance shall include coverage for any potential liability arising out of or because of any construction, work of repair, maintenance, restoration, replacement, alteration, or other work done on or about the Premises by or under the control or direction of Tenant. Notwithstanding the foregoing, Tenant shall have the right to self-insure for the commercial general liability insurance coverage subject to the terms hereof so long as Tenant or Guarantor maintains a net worth at least equal to One Hundred Million and No/100ths Dollars (\$100,000,000.00) according to Tenant's or Guarantor's most recent financial statement. Upon request, Tenant shall supply Landlord from time to time (but no more than two (2) times per Lease Year) with evidence reasonably satisfactory to Landlord of Tenant's net worth and the satisfaction of the conditions set forth above (subject to the confidentiality provision of Paragraph 35.2 below). If Tenant elects to self-insure, Tenant shall be responsible for any losses or liabilities that would have been assumed by the insurance companies which would have issued the insurance required of Tenant under the Lease and shall be bound by

the waiver of subrogation provision set forth in Paragraph 15.5. In the event that Tenant elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, Tenant shall make funds available to the same extent that they would have been available had such insurance policy been carried;

C. Workers Compensation insurance as required by the state law applicable in the state in which the Premises is located with Employers Liability insurance with limits of not less than \$1,000,000.00; and

D. Business automobile liability insurance covering owned, hired and non-owned vehicles with limits of not less than \$1,000,000.00 combined single limit (bodily injury and property damage) per occurrence.

**14.3. Certificates of Insurance.** All policies of insurance set forth in Paragraph 14.2 above, shall provide that copies of the policies or current certificates thereof, shall be delivered to Landlord and to IRG Realty Advisors, LLC, at its address set forth in Paragraph 3.2 (or such other address or property manager designated by Landlord), prior to the Occupancy Date and thereafter fifteen (15) days prior to each renewal date. All such policies shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days prior written notice to Landlord, or, in the absence of the foregoing, Tenant shall be required to give Landlord such notice. If Tenant fails to procure and keep in force such insurance, Landlord may procure it, and the cost thereof with interest at the maximum lawful rate shall be payable immediately by Tenant to Landlord as additional rent. Such insurance may be provided by a blanket insurance policy covering the Premises, so long as the coverage on the Premises is at all times at least as great as required by this Paragraph 14.

**14.4. Contractors' Insurance.** If Tenant permits or causes any construction, work of repair, maintenance, restoration, replacement, alteration, or other work to be done on or about the Premises by any independent contractor or other person ("Contractor"), then Tenant shall cause such Contractor to take out and keep in force, throughout the period during which such independent contractor or other person performs any work on the Premises and for a period of two years after completion of such work, without expense to Landlord, the policies of insurance as set forth below. All such policies shall be provided by an insurance company with general policy holder's rating of not less than A-VII, as rated in the most current Best's Insurance Reports, or other company acceptable to Landlord. All such insurance policies shall be on an occurrence basis, and shall name Landlord, its property manager IRG Realty Advisors, LLC (or such other property manager selected by Landlord), Tenant, and their respective agents and employees as additional insureds on a primary and non-contributory basis. All policies of insurance set forth in this Paragraph 14.4 shall provide that copies of the policies or certificates, shall be delivered to Landlord and to IRG Realty Advisors, LLC, at its address set forth in Paragraph 3.2 (or such other address or property manager designated by Landlord), prior to the date on which such Contractor commences work on the Premises and thereafter fifteen (15) days prior to each renewal date. All such policies shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days prior written notice to Landlord. If Tenant fails to cause such any independent contractors or other person performing work on the Premises to procure and keep in force such insurance, Landlord may procure it, and the cost thereof with interest at the maximum lawful rate shall be payable by Tenant to Landlord as additional rent promptly following receipt of written demand therefor.

A. Commercial general liability insurance, in the name of Contractor, insuring against liability arising from the use and occupancy of the Premises and the business operated by Contractor. All such policies shall be written to apply to all bodily injury or death, property damage and personal injury losses, and shall include blanket contractual liability (including Tenant's indemnity obligations under this Lease), premise-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from hostile fire, and provide primary coverage to Landlord (any insurance policy issued to Landlord providing duplicate or similar coverage shall be deemed to be excess over Tenant's and Contractor's policies), in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than \$ 1,000,000.00 per occurrence with an umbrella/excess policy of at least \$2,000,000 (or such other amounts as may be required by Landlord). The amounts of such insurance required hereunder shall be adjusted from time to time as requested by Landlord based upon Landlord's determination as to the amounts

of such insurance generally required at such time for comparable premises and buildings in the general geographical area of the Premises. In addition, such policy of insurance shall include coverage for any potential liability arising out of or because of any construction, work of repair, maintenance, restoration, replacement, alteration, or other work done on or about the Premises by or under the control or direction of Tenant;

B. Workers compensation insurance as required by the state law applicable in the state in which the Premises is located with employer liability insurance with limits of not less than \$1,000,000.00; and

C. Business automobile liability insurance covering owned, hired and non-owned vehicles with limits of not less than \$1,000,000.00 combined single limit (bodily injury and property damage) per occurrence.

## **15. WAIVER, EXCULPATION AND INDEMNITY**

**15.1. Definitions.** For purposes of this Paragraph 15, (i) "**Tenant Parties**" shall mean, singularly and collectively, Tenant and Tenant's officers, directors, shareholders, partners, members, trustees, agents, employees, independent contractors, consultants, licensees, concessionaires, customers, guests, invitees or visitors as well as to all persons and entities claiming through any of the foregoing persons or entities, and (ii) "**Landlord Parties**" shall mean singularly and collectively, Landlord and Landlord's, mortgagees, officers, directors, shareholders, partners, members, trustees, agents, employees, independent contractors, and consultants, as well as to all persons and entities claiming through any of the foregoing persons or entities but expressly excluding any other tenant or occupant of the Property.

**15.2. Exculpation.** Tenant, on behalf of itself and of all Tenant Parties, and as a material part of the consideration to be rendered to Landlord under this Lease, hereby waives, to the fullest extent permitted by law, all claims against Landlord for loss, theft or damage to goods, wares, merchandise or other property (whether tangible or intangible) in and about the Premises, for loss or damage to Tenant's business or other economic loss (whether direct, indirect or consequential), and for the injury or death to any persons in, on or about the Premises, except for damage or loss caused by Landlord's gross negligence or willful misconduct.

**15.3. Landlord's Indemnity.** Landlord shall indemnify, defend (by an attorney of Landlord's choice, reasonably acceptable to Tenant), reimburse, protect and hold harmless Tenant and all Tenant Parties from and against all third party claims, liability and/or damages arising from or related to: (i) the acts or omissions of Landlord or Landlord Parties, relating to their use, possession, or occupancy of the Property or, its obligations under this Lease, or to any work done, permitted or contracted for by any of them on or about the Premises, to the extent that such liability or damage is covered by Landlord's insurance (or would have been covered had Landlord carried the insurance as required under this Lease). It is specifically understood and agreed that Landlord shall not be liable or responsible for the acts or omissions of any of the other tenants of the Property or of any agents, independent contractors, consultants, licensees, concessionaires, customers, guests, invitees or visitors of persons other than Landlord.

**15.4. Tenant's Indemnity.** Tenant shall indemnify, defend (by an attorney of Tenant's choice, reasonably acceptable to Landlord), reimburse, protect and hold harmless Landlord and all Landlord Parties from and against all third party claims, liability and/or damages (i) arising from or related to the negligence, acts or omissions of Tenant or any Tenant Parties relating to their use, possession, or occupancy of the Property or, Tenant's obligations under this Lease, or to any work done, permitted or contracted for by any of them on or about the Premises, to the extent that such liability or damage is covered by Tenant's insurance (or would have been covered had Tenant carried the insurance as required under this Lease) or (ii) that would have been barred by Paragraph 15.2 had they been claimed directly by Tenant.

**15.5. Waiver of Subrogation.** To the extent of any and all insurance maintained, or required to be maintained, by either Landlord or Tenant in any way connected with the Premises, Landlord and Tenant hereby waive on behalf of their respective insurance carriers any right of subrogation that may exist or arise as against the other party to this Lease. Landlord and Tenant shall cause the insurance companies issuing their insurance policies with



respect to the Premises to waive any subrogation rights that the companies may have against Tenant and Landlord, respectively, which waivers shall be specifically stated in the respective policies.

**15.6. Notice.** If Landlord or Tenant believes that such party has suffered or incurred any claim, liability or damage subject to indemnification hereunder, it shall notify the other party promptly in writing describing any such claim, liability or damage with all reasonable particularity.

**15.7. Survival and Duration of Obligations.** All representations, warranties, obligations and indemnities made or given under this Paragraph 15 shall survive the expiration or earlier termination of this Lease.

## **16. CONSTRUCTION LIENS**

**16.1.** Tenant shall not suffer or permit any construction liens, mechanic's liens or materialman's liens to be filed against Landlord's interest in the real property of which the Premises form a part nor against Tenant's leasehold interest in the Premises ("**Tenant Lien**"). Landlord shall have the right at all reasonable times to post and keep posted on the Premises, any notices which it deems necessary for protection from such liens, or take such other action as applicable law may require to protect from such liens. In connection therewith, Tenant shall cooperate with Landlord and shall sign any notice or other documents reasonably required by Landlord to comply with such applicable law. Tenant shall have the right to contest by proper proceedings any Tenant Lien, provided that Tenant shall prosecute such contest diligently and in good faith and such contest shall not expose Landlord to any civil or criminal penalty or liability in connection therewith. In the event Tenant fails to so contest any Tenant Lien, within thirty (30) days after Landlord's demand, Tenant shall furnish Landlord a surety bond or other adequate security satisfactory to Landlord in an amount equal to one hundred fifty percent (150%) of the amount of such claim or such higher amount as may be reasonably required to both to indemnify Landlord against liability and hold the Property free from adverse effect in the event the contest is not successful ("**Lien Bond**"). The Lien Bond may be retained by Landlord until the Tenant Lien has been removed of record or until judgment has been rendered on such claim and such judgment has become final, at which time Landlord shall have the right to apply such Lien Bond in discharge of the judgment on the Tenant Lien and to any actual costs, including reasonable attorneys' fees incurred by Landlord, and shall remit the balance thereof to Tenant. In the event that a Tenant Lien is filed and Tenant does not properly contest such lien or timely post the Lien Bond, Landlord, at its election, and upon not less than thirty (30) days prior written notice to Tenant, may pay and satisfy the Tenant Lien and, in such event the sums so paid by Landlord, including all actual and other expenses, including reasonable attorney's fees, so paid by Landlord, shall be deemed to be additional rent due and shall be payable by Tenant at once without notice or demand together with interest thereon from the date of payment at the rate of eighteen percent (18%) per annum, provided such interest rate shall not exceed the maximum interest rate permitted by law. Notwithstanding the foregoing, Tenant shall have no responsibility for discharge of any mechanics' liens filed by a contractor, subcontractor, materialman, or laborer of Landlord.

**16.2.** Tenant agrees to give Landlord written notice not less than ten (10) days in advance of the commencement of any Tenant Repairs in order that Landlord may post appropriate notices of Landlord's non-responsibility. Promptly after the Tenant Repairs are completed, Tenant shall file a Notice of Completion.

## **17. QUIET ENJOYMENT**

Landlord covenants and agrees that Tenant, upon making all of Tenant's payments of Rent as and when due under the Lease, and upon performing, observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall peaceably and quietly hold, occupy and enjoy the Premises during the term of this Lease as extended by the options described herein, if any, subject to the (i) terms and provisions of this Lease and (ii) rights of any mortgagee or ground lessor.

## **18. LANDLORD'S RIGHT OF ENTRY**

Landlord or its agents shall have the right to enter the Premises at reasonable times upon reasonable prior written notice (but not less than forty-eight (48) hours) in order to examine it or to show it to prospective tenants or buyers, to place "For Sale" signs on or about the Premises (and "For Rent" signs during the last twelve (12) months of the Term), provided, however, Landlord shall use its best efforts to minimize the effect of any such entry or any



interference with Tenant's use of the Premises. Upon receipt of reasonable advance notice from Landlord, Tenant may arrange to have a designated representative accompany Landlord in entering the Premises and Landlord and its guests or invitees shall comply with any of Tenant's health and safety requirements for the Premises. Landlord acknowledges that portions of the Premises may be temporarily unavailable for examination due to Tenant's research and development activities and/or proprietary or intellectual property concerns. Landlord's right of reentry shall not be deemed to impose upon Landlord any obligation, responsibility, or liability for the care, supervision or repair of the Premises other than as herein provided; except that Landlord shall use reasonable care to prevent loss or damage to Tenant's property resulting from Landlord's entry. Landlord shall have the right at any time, without effecting an actual or constructive eviction and without incurring any liability to Tenant therefore, to change the arrangement or location of the Common Areas, which shall include entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Buildings and to change the name, number or designation by which the Buildings are commonly known, provided that such action does not result in any material or unreasonable interference with Tenant's access to or use of the Premises. Notwithstanding the foregoing, Landlord shall have the right to enter the Premises without first giving notice to Tenant in the event of an emergency where the nature of the emergency will not reasonably permit the giving of notice.

## **19. DESTRUCTION OF BUILDINGS**

**19.1. Partial Destruction.** In the event of a partial destruction of the building containing the Premises during the term of this Lease from any cause, Landlord shall forthwith repair the same, provided such repair can reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable laws and regulations (but only to the extent of insurance proceeds made available to Landlord by any mortgagee of the Premises). During such period of repair, Tenant shall be entitled to a proportionate reduction of rent to the extent such repairs interfere or the extent the damage interferes with the business carried on by Tenant in the Premises. If Tenant fails to remove its goods, wares or equipment within a reasonable time and as a result the repair or restoration is delayed, or if such damage or destruction is caused primarily by the negligence or willful act of Tenant, or its employees, invitees or agents, there shall be no reduction in rent during such delay. In the event that such repair cannot reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable laws and regulations, Landlord shall have the right to terminate this Lease by notifying Tenant in writing within sixty (60) days from the happening of such destruction of Landlord's decision not to repair such building in which event this Lease shall be deemed terminated. If Landlord fails to give such written notice of Landlord's decision not to repair such building within such sixty (60) days, then Landlord shall be required to commence the repair of the building promptly and thereafter diligently complete the repairs. If such repairs take longer than two hundred seventy (270) days from the happening of such destruction, Tenant shall have the right to terminate this Lease upon notice to Landlord, unless Landlord notifies Tenant that Landlord will complete the repairs within sixty (60) days of receipt of Tenant's notice and Landlord subsequently completes such repairs during the foregoing time period, in which case Tenant's election to terminate shall be void. In addition to the above, in the event that such building is partially destroyed and (i) the cost of repairing such building exceeds thirty-three and one-third percent (33-1/3%) of the replacement cost thereof, or (ii) the damage caused by the partial destruction of such building cannot reasonably be repaired within a period of one hundred eighty (180) days from the happening of such damage, Landlord may elect to terminate this Lease, whether or not such building is insured, by written notice to Tenant, given within sixty (60) days from the happening of such destruction. If Landlord fails to give such written notice of Landlord's decision not to repair such building within such sixty (60) days, then Landlord shall be required to repair such building within one hundred eighty (180) days from the happening of such destruction, if it can be reasonably repaired in such time, or as soon thereafter as reasonably practical if it cannot reasonably be repaired in such earlier period of time; provided however, if such repairs take longer than two hundred seventy (270) days from the happening of such destruction, Tenant shall have the right to terminate this Lease upon notice to Landlord, unless Landlord notifies Tenant that Landlord will complete the repairs within sixty (60) days of receipt of Tenant's notice and Landlord subsequently completes such repairs during the foregoing time period, in which case Tenant's election to terminate shall be void. If such partial destruction occurs during the last year of the Term, as may have been extended, Tenant shall have the right to terminate this Lease upon sixty (60) days' written notice to Landlord.

**19.2. Total Destruction.** A total destruction of the building containing the Premises shall terminate this Lease. A total destruction of such building means the cost of repairing such building exceeds seventy-five percent (75%) of the replacement cost of such building.

**19.3. Event of Destruction.** In the event the Premises, or a portion thereof, is unavailable due to a partial destruction, Landlord and Tenant shall negotiate in good faith for the reletting of comparable space at the Property, if available, on a temporary basis for the duration of construction activities or a permanent basis if requested by Tenant.

## **20. EMINENT DOMAIN**

**20.1. Definitions.** For purposes of this Lease, the word “**condemned**” is co-extensive with the phrase “**right of eminent domain**”, that is, the right of the government to take property for public use, and shall include the intention to condemn expressed in writing as well as the filing of any action or proceeding for condemnation as well as if the Property is sold, transferred or conveyed in lieu of such appropriation.

**20.2. Exercise of Condemnation.** If any action or proceeding is commenced for the condemnation of the Premises or any portion thereof, or if Landlord is advised in writing by any government (federal, state or local) agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn all or any portion of the Premises at the time thereof, or if the Premises or any part or portion thereof be condemned through such action, then and in any of such events Landlord may, without any obligation or liability to Tenant, and without affecting the validity and existence of this Lease other than as hereafter expressly provided, agree to sell and/or convey to the condemnor, without first requiring that any action or proceeding be instituted, or if such action or proceeding shall have been instituted, without requiring any trial or hearing thereof, and Landlord is expressly empowered to stipulate to judgment therein, the part and portion of the Premises sought by the condemnor, free from this Lease and the rights of Tenant hereunder. Tenant shall have no claim against Landlord nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the Premises or any part or portion thereof, except that Tenant shall be entitled to recover from the condemnor and Landlord shall have no claim therefore or thereto for Tenant’s relocation costs, loss of goodwill, for Tenant’s trade fixtures, any removable structures and improvements erected and made by Tenant to or upon the Premises which Tenant is or may be entitled to remove at the expiration of this Lease and Tenant’s leasehold estate hereunder.

**20.3. Effect on Lease.** If the entire Premises is condemned, this Lease shall terminate as of the earlier of such taking or loss of possession. If only a part of the Premises is condemned and taken and the remaining portion thereof is in Tenant’s reasonable discretion not suitable for purposes for which Tenant has leased the Premises, Tenant shall have the option to terminate this Lease effective as of the earlier of such taking or loss of possession. If by such condemnation and taking only a part of the Premises is taken, and the remaining part thereof is in Tenant’s reasonable discretion suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue, but the rental shall be reduced in an amount proportionate to the percentage that the floor area of that portion of the Premises physically taken by eminent domain bears to the floor area of the entire Premises.

## **21. BANKRUPTCY**

If a general assignment is made by Tenant for the benefit of creditors, or any action is taken by Tenant under any insolvency or bankruptcy act, or if a receiver is appointed to take possession of all or substantially all of the assets of Tenant (and Tenant fails to terminate such receivership within sixty (60) days after such appointment), or if any action is taken by a creditor of Tenant under any insolvency or bankruptcy act, and such action is not dismissed or vacated within thirty (30) days after the date of such filing, subject to the provisions of any insolvency or bankruptcy act, including any automatic stay, then this Lease shall terminate at the option of Landlord upon the occurrence of any such contingency and shall expire as fully and completely as if the day of the occurrence of such contingency was the date specified in this Lease for the expiration thereof. In such event, Tenant shall then quit and surrender the Premises to Landlord.

## **22. DEFAULT**

A. If Tenant fails to pay any Base Rent within five (5) days of when due, or Tenant fails to make any payment of Additional Rent or other sum due hereunder (excluding Base Rent) within five (5) days after receipt of written notice from Landlord pertaining thereto, or in the event Tenant fails to perform any other covenant to be performed by Tenant under this Lease and continues to fail to perform the same for a period of thirty (30) days after receipt of written notice from Landlord pertaining thereto (or a reasonable period of time, using due diligence, if any

non-monetary default cannot be cured within such thirty (30) day period, provided Tenant is pursuing a cure to completion), then Tenant shall be deemed to have breached this Lease and Landlord, in addition to other rights or remedies it may have, may:

1. Continue this Lease in effect by not terminating Tenant's right to possession of the Premises, and thereby be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent specified in this Lease as it becomes due under this Lease; or

2. Terminate Tenant's right to possession of the Premises, thereby terminating this Lease, and recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the then-existing term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for reasonable costs incurred by Landlord (including reasonable attorney's fees) caused by Tenant's failure to perform its obligations under this Lease; or

3. In lieu of, or in addition to, bringing an action for any or all of the recoveries described in subparagraph B above, bring an action to recover and regain possession of the Premises in the manner provided by the laws of unlawful detainer then in effect in the state where the Property is located. If after Tenant's default and any expiration of any applicable cure period, Landlord makes any expenditure required of Tenant hereunder, or if Tenant fails to make any payment or expenditure required of Tenant hereunder, such amount shall be payable by Tenant to Landlord as Rent together with interest from the date due at the rate of eighteen percent (18%) per annum, provided such interest rate shall not exceed the maximum interest rate permitted by law, and Landlord shall have the same remedies as on the default in payment of Rent. The payment of interest required hereunder shall be in addition to the late charge set forth in Paragraph 3.3. Notwithstanding any other provisions of this Lease, under no circumstances shall Landlord or Tenant be liable to the other for any consequential damages arising out of the acts or omissions of Landlord or Tenant or a breach of this Lease by either party. Landlord shall use commercially reasonable efforts to mitigate Tenant's damages in the event of Tenant's default beyond applicable notice and cure periods under this Lease, which efforts shall include but not be limited to Landlord causing the Premises to be listed as available for lease with its broker or on digital commercial real estate platforms, including but not limited to Co-Star, Loopnet, etc.

B. The occurrence of the following event shall constitute a default and breach of this Lease by Landlord: (a) Landlord fails to perform any covenant to be performed by Landlord under this Lease and continues to fail to perform the same for a period of thirty (30) days after receipt of written notice from Tenant pertaining thereto (or a reasonable period of time, using due diligence, if such default cannot be cured within such thirty (30) day period, provided Landlord is pursuing a cure to completion). In the event of such a default by Landlord that continues for ten (10) days following a second (2nd) written notice thereof to Landlord, Tenant, at its option, without further notice or demand, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein: (w) to remedy such default or breach and deduct the costs thereof (including attorneys' fees) from the installments of Rent next falling due; (x) to pursue the remedy of specific performance; or (y) to seek money damages for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its obligations hereunder, nor shall this Paragraph 22B be construed to obligate Tenant to perform Landlord's repair obligations. In no event shall Tenant have the right to terminate this Lease due to a Landlord default.

## **23. SURRENDER OF PREMISES**

On or before the expiration of the Term, Tenant shall vacate the Premises in broom clean condition and otherwise in the same condition as existed on the Commencement Date, ordinary wear and tear and fire and casualty loss excepted, except that any improvements made within and on the Premises by Tenant shall remain, in the same condition and repair as when constructed or installed, reasonable wear and tear and fire and casualty loss excepted. Tenant shall remove from the Premises all of Tenant's proprietary equipment, personal property and trade fixtures (but expressly excluding the chemical hoods), in order that Landlord can repossess the Premises on the day this Lease or any extension hereof expires or is sooner terminated. Any removal of Tenant's improvements, Tenant's property and/or trade fixtures by Tenant shall be accomplished in a manner which will minimize any damage or injury to the Premises, and any such damage or injury shall be repaired by Tenant at its sole cost and expense with thirty (30) days after Tenant vacates. Notwithstanding the foregoing, Tenant may, prior to constructing any improvement, notify Landlord of its intention to install or construct an improvement, fully describing the nature and location of such improvement, and request a determination of whether Landlord will require the removal of such improvement at the end of the Term. Upon receipt of Tenant's notice, Landlord will advise Tenant as to whether the improvement must be removed from the Premises at the end of the Term and, provided that such improvement is installed or constructed substantially as set forth in Tenant's notice, Landlord will thereafter be bound by its determination.

## **24. HOLDING OVER**

Should Tenant hold over and remain in possession of the Premises after the expiration of this Lease, without the written consent of Landlord, such possession shall be as a month-to-month tenant. Unless Landlord agrees otherwise in writing, Base Rent during the hold-over period shall be payable in an amount equal to one hundred fifty percent (150%) of the Base Rent paid for the last month of the term hereof until Tenant vacates the Premises and the Security Deposit shall increase to an amount equal to the increased monthly Base Rent. All other terms and conditions of this Lease shall continue in full force and effect during such hold-over tenancy, which hold-over tenancy shall be terminable by either party delivering at least one (1) month's written notice, before the end of any monthly period. Such hold-over tenancy shall terminate effective as of the last day of the month following the month in which the termination notice is given. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs, and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

## **25. SURRENDER OF LEASE**

The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, shall not work a merger and may, at the option of Landlord, terminate all or any existing subleases or subtenancies or may operate as an assignment of any or all such subleases or subtenancies to Landlord.

## **26. IDA FINANCING**

Landlord acknowledges and agrees that Tenant intends to enter into a leasing, financing and/or incentive transaction with the IDA related to this Lease. Landlord shall, at no cost to Landlord, reasonably cooperate with Tenant and execute any documents reasonably requested by Tenant or the IDA to effectuate such IDA transaction.

## **27. RULES AND REGULATIONS**

Tenant shall comply with all reasonable and nondiscriminatory rules and regulations now or hereinafter adopted by Landlord during the existence of this Lease, both in regard to the Property, the Building as a whole and to the Premises herein leased within ten (10) days of the same being provided to Tenant in writing (the "**Rules and Regulations**"). Landlord shall provide Tenant with the Rules and Regulations. In the event of any inconsistency between the provisions of this Lease and the provisions of any such Rules and Regulations, the provisions of this Lease shall control.

## 28. NOTICE

Any notice, request, demand, instruction or other document or communication required or permitted to be given hereunder shall be in writing addressed to the respective party as set forth below and may be personally served, sent by email, or sent by a nationally recognized overnight courier or by U.S. Mail, first class, addressed as follows:

**TO LANDLORD:**

c/o Hudson Valley iCampus  
401 North Middletown Road, B-205 Annex  
Pearl River, New York 10965  
Attention: Jamie Schwartz, President  
Email: [jschwartz@hvicampus.com](mailto:jschwartz@hvicampus.com)  
Telephone: (845) 330-4560

**with a copy to:**

Fainsbert Mase Brown & Sussman, LLP  
11111 Santa Monica Boulevard, Suite 810  
Los Angeles, California 90025  
Attention: Jerry A. Brown, Jr., Esq.  
Email: [jbrown@fms-law.com](mailto:jbrown@fms-law.com)  
Telephone: (310) 473-6400

**TO TENANT:**

Momentive Performance Materials USA LLC  
769 Old Saw Mill River Road  
Tarrytown, NY 10591  
Attention: Joseph Ostroff  
Email: [joseph.ostroff@momentive.com](mailto:joseph.ostroff@momentive.com)  
Telephone: (914) 325-8562

**with a copy to:**

MPM Intermediate Holdings, Inc.  
260 Hudson River Road  
Waterford, New York 12188  
Attention: General Counsel

**with a courtesy copy to:**

Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Attention: Jeremy H. Speich, Esq.  
Email: [jspeich@harrisbeach.com](mailto:jspeich@harrisbeach.com)  
Telephone: (518) 701-2737

Any party may change their notice or email address by giving written notice thereof in accordance with this Paragraph. All notices hereunder shall be deemed given: (1) if served in person, when served; (2) if sent by email, on the date of transmission if before 6:00 p.m. E.S.T.; provided that a hard copy of such notice is also sent by either a nationally recognized overnight courier; (3) if by overnight courier, by a nationally recognized courier which has a system of providing evidence of delivery, on the first business day after delivery to the courier; or (4) if by U.S. Mail, first class, on the third day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

## 29. ASSIGNMENT AND SUBLETTING

**29.1. No Assignment.** Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or sublet the Premises (collectively, "Sublease") or any portion thereof without Landlord's prior written consent in each instance, which consent may not be unreasonably withheld by Landlord. In addition, Tenant shall provide financial statements for Tenant and any proposed assignee or sublessee of this Lease, in form and substance reasonably acceptable to Landlord, with any request for Landlord's approval (or other notice) of any Assignment or Sublease and

prior to the effectiveness of any such Assignment or Sublease. Tenant may assign this Lease or sublet the Premises for the use permitted under this Lease, without Landlord's consent: (i) to an Affiliate (as hereinafter defined) of Tenant or (ii) to any corporation or other entity with or into which Tenant shall be merged or consolidated, or (iii) to any entity purchasing or otherwise receiving all or substantially all of the assets or corporate stock of Tenant, including any entity which is the subject of a public offering (collectively, "Permitted Assignees"). The term "Affiliate" shall mean any person that controls, is controlled by, or is under common control with Tenant. Any subsequent transfer by an Affiliate or other entity to whom a transfer is permitted under this Paragraph 29 shall again be subject to all of the terms and conditions of this Lease.

**29.2. No Relief of Obligations.** No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Without limitation, Landlord shall have the right to withhold its consent to any Assignment or Sublease involving any existing tenant at the Property, or any company or entity with which Landlord is or has been in negotiations or discussions as a prospective tenant. Any Assignment or Sublease that is not in compliance with this Paragraph 29 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of Rent by Landlord from a proposed assignee or sublessee shall not constitute the consent by Landlord to such Assignment or Sublease.

**29.3. Profits from Assignment or Sublease.** Any net profits (after the deduction of reasonable transaction costs, but not including attorneys' fees) resulting from any Assignment or Sublease shall be divided evenly between Landlord and Tenant.

**29.4. Reimbursement of Landlord.** Tenant shall reimburse Landlord for all reasonable out-of-pocket costs (including, without limitation, Landlord's reasonable attorneys' fees and any fees or costs imposed on Landlord by Landlord's mortgage lender) incurred by Landlord in connection with any proposed Assignment or Sublease.

### **30. ATTORNEY'S FEES**

In the event of any legal or equitable action arising out of this Lease, the prevailing party shall be entitled to recover all reasonable fees, costs and expenses, together with reasonable attorney's fees incurred in connection with such action. The fees, costs and expenses so recovered shall include those incurred in prosecuting or defending any appeal. The prevailing party shall also be entitled to reasonable attorney's fees incurred to collect or enforce the judgment.

### **31. JUDGMENT COSTS**

**31.1. Landlord.** Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by or against Tenant, or by or against any person holding the Premises by license of Tenant, or for foreclosure of any lien for labor or material furnished to or for Tenant, or any such person, or otherwise arising out of or resulting from any act or transaction of Tenant, or of any such person, Tenant covenants to pay to Landlord, the amount of any judgment rendered against Landlord or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees incurred by Landlord in connection with such litigation.

**31.2. Tenant.** Should Tenant, without fault on Tenant's part, be made a party to any litigation instituted by or against Landlord, or by or against any person holding the Premises by license of Landlord, or for foreclosure of any lien for labor or material furnished to or for Landlord, or any such person, or otherwise arising out of or resulting from any act or transaction of Landlord, or of any such person, Landlord covenants to pay to Tenant, the amount of any judgment rendered against Tenant or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees incurred by Tenant in connection with such litigation.

### 32. BROKERS

Landlord and Tenant each represent and warrant to each other that it has had no dealings with any real estate broker or agent in connection with the Premises and this Lease, and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease other than Jones Lang LaSalle Brokerage, Inc., who represents Landlord, and Tarvin Commercial Real Estate, who represents Tenant (collectively, "**Brokers**"). Landlord shall only pay the real estate brokerage commission due to the Brokers pursuant to a separate written agreement and any real estate broker or agent entitled to a commission in connection with this Lease if claimed through the actions of Landlord. Tenant shall pay any other commission or finder's fee due if claimed through the actions of Tenant. Each of Tenant and Landlord shall indemnify and hold the other harmless from and against any such commission or finder's fee which may be claimed by any person or broker with respect to this transaction as a result of its breach of the foregoing representation other than the Brokers.

### 33. SUBORDINATION OF LEASE

This Lease is subject and subordinate to any mortgages which may now or hereafter be placed upon or affect the Property or Building of which the Premises are a part, and to all renewals, modifications, consolidations, replacements and extensions hereof, provided that, if Landlord has a loan on the Property as of the Commencement Date, Landlord shall deliver to Tenant, on or before the Commencement Date, a commercially reasonable subordination, attornment and non-disturbance agreement ("**SNDA**") executed by Landlord, Tenant and any holder(s) of such mortgage(s) (collectively, "**Mortgagees**") providing that the Mortgagees shall not disturb the possession of the Premises by Tenant or the rights of Tenant under this Lease so long as Tenant is not in monetary or material non-monetary default (subject to applicable notice and cure rights in favor of Tenant as contained in this Lease) in the performance of its obligations thereunder and, in the event of foreclosure, Tenant agrees to attorn to the Mortgagee and look solely to the Mortgagee's interest in the Property for the payment and discharge of any obligations imposed upon the Mortgagee or Landlord under this Lease. Tenant shall pay for all costs associated with the SNDA. In the event that a Successor Landlord, as hereinafter defined, takes title to the Property, (i) Successor Landlord shall be bound to Tenant under all of the terms and conditions of this Lease, (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under this Lease, and (iii) this Lease shall continue in full force and effect, in accordance with its terms, as a direct lease between Successor Landlord and Tenant. Tenant shall sign, within five (5) business days after requested in writing by a Mortgagee, such instruments and/or documents as the Mortgagee and/or insuring title company reasonably request be signed. For purposes of this Paragraph 33, "**Successor Landlord**" shall mean any party that becomes owner of the Property as the result of a (i) foreclosure under any mortgage or deed of trust; (ii) any other exercise by a lender of rights and remedies (whether under any security instrument or under applicable law, including bankruptcy law) as a result of which such lender becomes owner of the Property; or (iii) delivery by Landlord to any lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing.

Landlord shall sign, within ten (10) business days after requested in writing by Tenant or Tenant's lender, a commercially reasonable lien waiver and subordination agreement in the form attached hereto and incorporated herein as Exhibit "F" (the "**Lien Waiver**"), subject to commercially reasonable changes by Tenant's lender.

### 34. OPTIONS TO EXTEND/RIGHT OF FIRST OFFER

**34.1 Options to Extend.** Landlord hereby grants to Tenant two (2) options to extend ("**Option(s) to Extend**") the Term for the Premises and Storage Space for an additional ten (10) years and five (5) years respectively ("**Option Term(s)**"), upon each and all of the terms and conditions of this Lease as amended below; *provided, however*, Tenant is not in default of this Lease beyond any applicable notice and cure period on the date of (i) exercise of an Option to Extend and (ii) the Option to Extend being effective. Tenant shall give to Landlord written notice on or prior to nine (9) months before expiration of the then current Term of the exercise of either of the Options to Extend for such Option Term, time being of the essence. The Term, as defined in Paragraph 2 hereof, shall also include an Option to Extend properly exercised hereunder. If notice of exercise of any Option to Extend is not timely given, all further Options to Extend shall automatically expire. The rent for the Option Terms shall consist of Base Rent as set forth in Paragraph 3.1, Tenant's Share of Property Expenses and Building Expenses pursuant to Paragraph 5 (excluding the Storage Space), and any other charges under this Lease. The Options to Extend are personal to Tenant

and, except to a Permitted Assignee, may not be assigned without Landlord's written consent which may be withheld in its sole discretion.

**34.2 Option to Expand.** Tenant shall also have an expansion option ("**Option to Expand**") during the first twelve (12) months of the Term to lease vacant space on the first floor of Building 180 of the Property, which space is at least 10,000 square feet (the "**Expansion Space**"), provided, however, Tenant is not in default of this Lease on the date of exercise of the Option to Expand and has not been in default of this Lease more than two (2) times during the Term. Tenant shall provide Landlord with no less than sixty (60) days' written notice of its election of the Option to Expand. In the event that Tenant timely exercises the Option to Expand, the base rent for the Expansion Space shall be ninety percent (90%) of the Base Rent in effect for the Premises for the first year of the Term (i.e., \$17.10 per rentable square foot) and Tenant shall be entitled to a tenant improvement allowance equal to ninety percent (90%) of the TI Allowance (as defined in **Exhibit "B"**). Tenant shall also pay Additional Rent on the Expansion Space and in connection therewith, Tenant's Share, the Rentable Area of the Building and the Rentable Area of the Premises shall each be adjusted as set forth in **Paragraph 5.1** herein. Tenant shall be required to sign an amendment to this Lease for the Expansion Space within the first twelve (12) months of the Term, time being of the essence.

**34.3 Right of First Offer.** Upon termination of the Option to Expand, in the event that during the Term, including an Option Term if properly exercised hereunder, Landlord receives an expression of interest from a third party for the Expansion Space, Landlord shall offer such Expansion Space to Tenant prior to going to market ("**Space Offer**"), by providing Tenant with written notice of the Space Offer ("**Space Offer Notice**"), which Space Offer Notice shall contain the terms and conditions with respect to the Expansion Space, including the term. The Base Rent for the Expansion Space shall be negotiated between Landlord and Tenant within twenty-one (21) days after delivery of the Space Offer Notice and, if the parties agree to any such Base Rent the amount shall be set forth in the Expansion Space Amendment (as defined below). Tenant shall also pay Additional Rent on the Expansion Space and in connection therewith, Tenant's Share, the Rentable Area of the Building and the Rentable Area of the Premises shall each be adjusted as set forth in **Paragraph 5.1** herein. Tenant may lease the Expansion Space set forth in the Space Offer Notice by performing both of the following: (i) Tenant shall provide Landlord with written notice within twenty-one (21) days after its receipt of the Space Offer Notice that Tenant agrees to lease the Expansion Space pursuant to all the terms set forth in the Space Offer Notice (subject to the terms of this **Paragraph 34.3**) at the Base Rent agreed to in the foregoing sentence and the Expansion Space shall be delivered in its "as-is, where-is" condition ("**Acceptance Notice**"); and (ii) Tenant shall execute an amendment to this Lease for the Expansion Space with Landlord within ten (10) business days of its Acceptance Notice ("**Expansion Space Amendment**"). If (i) Landlord and Tenant are unable to negotiate the Base Rent for the Expansion Space, or (ii) Landlord and Tenant are able to negotiate the Base Rent for the Expansion Space, but Landlord does not timely receive the Acceptance Notice or the Expansion Space Amendment (all within the applicable time periods set forth above), Tenant's right to lease the Expansion Space shall terminate and Landlord shall be free to lease the Expansion Space to a third party.

### **35. ESTOPPEL CERTIFICATES**

**35.1. Estoppel Certificate.** The parties shall, at any time and from time to time, upon not less than ten (10) business days' prior request by the other party, execute, acknowledge and deliver to such requesting party, or to such other persons who may be designated in such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the rent and any other charges have been paid in advance, and such other items requested by the requesting party, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present. It is intended that any such statement delivered pursuant to this **Paragraph 35.1** may be relied upon by any prospective purchaser or encumbrancer (including assignee) of the Premises.

**35.2. Financial Statements.** On request of Landlord, but no more often than once per annum, Tenant shall deliver to Landlord, or to a potential lender or purchaser designated by Landlord, current financial statements and such other financial information regarding Tenant. In addition, Tenant shall provide such financial information in any request for Landlord's approval of any Assignment or Sublease, prior to the effectiveness of such Assignment or Sublease. All financial information provided by Tenant to Landlord or any lender or potential purchaser shall be held by the recipient in strict confidence and such parties shall execute a commercially reasonable confidentiality agreement.



**36. MEMORANDUM OF LEASE**

The parties agree to execute, deliver and acknowledge, at the request of the other, a memorandum of this Lease in form that satisfies New York Real Property Law Section 291-c, and such party may record, at its sole cost and expense, the memorandum of Lease in the County where the Premises are located. Landlord further agrees to execute, deliver and acknowledge any memorandum of lease requested by the IDA.

**37. SIGNS**

Tenant shall not place any sign upon the Premises, except that Tenant may, with Landlord's prior written consent which shall not be unreasonably withheld, install such signs on the exterior of the Premises and at the entrance to the Property as are reasonably required to advertise Tenant's own business; notwithstanding the foregoing, any signage set forth in Exhibit "C" is hereby deemed approved by Landlord ("Tenant's Signage"). The installation of the Tenant's Signage and any other sign on the Premises by or for Tenant shall be subject to the provisions of Paragraph 23. Tenant shall maintain any such signs installed on the Building and Property. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Tenant's business or advertise any use of the Property prohibited hereunder.

**38. GUARANTY OF LEASE**

Execution of this Lease is conditioned on the contemporaneous execution of the Guaranty of Lease by MPM Intermediate Holdings Inc., a Delaware corporation, as guarantor of Tenant under the Lease, in favor of Landlord, a copy of which is attached hereto as Exhibit "D" and made a part hereof. Landlord is entering into this Lease in reliance on the Guaranty of Lease.

**39. FORCE MAJEURE**

In discharging its duty as set forth in this Lease, Landlord and Tenant shall be held to a standard of reasonableness and shall not be liable to the other party for matters outside its control, including, but not limited to, acts of God, civil riot, war, pandemics, strikes, labor unrest, governmental action or inaction, or shortage of material (collectively, "Force Majeure"). If either party shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure, the time for performance of such obligation shall be extended for the period of such delay, provided that Tenant's obligation to pay Rent shall not be excused due to Force Majeure.

**40. GENERAL PROVISIONS**

**40.1. Waiver of Jury Trial; Governing Law; Venue.** EACH PARTY TO THIS LEASE HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO AGREE THAT VENUE SHALL BE PROPER IN ANY STATE OR FEDERAL COURT LOCATED WITHIN, OR HAVING JURISDICTION OVER, ROCKLAND COUNTY, NEW YORK.

**40.2. Waiver.** The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, condition or covenant of this Lease.

**40.3. Remedies Cumulative.** It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy of Landlord shall not be to the exclusion of any other remedy.

**40.4. Successors and Assigns.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the

parties hereto; if Landlord or Tenant is comprised of multiple parties, each of such parties hereto shall be jointly and severally liable hereunder.

**40.5. No Personal Liability.** No individual member, manager, manager of a member, partner, shareholder, director, officer, employee, trustee, investment advisor, consultant or agent of Landlord, or individual member of a joint venture, tenancy in common, firm, limited liability company or partnership (general or limited), which constitutes Landlord, or any successor interest thereof, shall be subject to personal liability with respect to any of the covenants or conditions of this Lease. Tenant shall look solely to the equity of Landlord in the Property and to no other assets of Landlord for the satisfaction of any remedies of Tenant in the event of any breach by Landlord. It is mutually agreed by Tenant and Landlord that this Paragraph 40.5 is and shall be deemed to be a material and integral part of this Lease. All obligations of Landlord shall be binding upon Landlord only during the period of Landlord's ownership of the Property and not thereafter.

**40.6. Entire Agreement.** This Lease, the exhibits referred to herein, and any addendum executed concurrently herewith, are the final, complete and exclusive agreement between the parties and cover in full each and every agreement of every kind or nature, whatsoever, concerning the Premises and all preliminary negotiations and agreements of whatsoever kind or nature, are merged herein. Landlord has made no representations or promises whatsoever with respect to the Premises, except those contained herein, and no other person, firm or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord, and Tenant expressly agrees that if any such representations or promises have been made by others, Tenant hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law or custom to the contrary notwithstanding. Unless otherwise provided herein, no supplement, modification, or amendment of this Lease shall be binding unless executed in writing by the parties.

**40.7. Captions.** The captions of paragraphs of this Lease are for convenience only, and do not in any way limit or amplify the terms and provisions of this Lease.

**40.8. Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**40.9. Authority.** The person(s) executing this Lease warrants that he or she has the authority to execute this Lease and has obtained or has the requisite corporate or other authority to do the same.

**40.10. Approvals.** Any consent or approval required hereunder shall not be unreasonably withheld, conditioned or delayed by the party from whom such consent or approval is requested unless this Lease expressly provides otherwise. Tenant shall promptly reimburse Landlord for the reasonable costs and expenses related to Landlord's review, approval or execution of any Tenant requested documentation or requests, including without limitation, any assignment, sublease, permitting or financing by Tenant.

**40.11. Counterparts and Electronic Signatures.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Lease. The parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Lease upon request.

**40.12. Joint and Several Obligations.** The obligations of the persons signing as Tenant under this Lease shall be joint and several in all respects.

**40.13. OFAC Certification.** Tenant represents and warrants to Landlord that neither Tenant nor any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Tenant, and Landlord represents and warrants to Tenant that neither Landlord nor any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Landlord: (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the

Treasury pursuant to Executive Order No. 13224, 66 Federal Register 49079 (September 25, 2001) or (b) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

**40.14. No Third-Party Beneficiaries.** No provisions of this Lease are intended, nor shall they be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, subtenant, affiliate, stockholder, partner or employee of any party hereto or any other person or entity unless specifically provided otherwise herein, and except as so provided, all provisions hereof shall be personal solely between the parties to this Lease.

**40.15. Representations and Warranties.**

A. The parties represent and warrant as of the Effective Date:

i. Each of Landlord and Tenant has the full right and authority and has obtained any and all consents required to enter into this Lease;

ii. This Lease has been and will upon the Effective Date (a) be duly authorized, properly executed and delivered by each of Landlord and Tenant, (b) be legal, valid and binding obligations of each of Landlord and Tenant enforceable in accordance with their terms, (c) not violate any provision of any agreement or judicial order to which Landlord or Tenant is a party or to which Landlord or Tenant is subject; or (d) not require the consent of any third party;

iii. Neither party is a party or subject to any judgment, order or decree entered in any action or proceeding brought by any governmental agency or any other party against it enjoining or preventing the consummation of the transactions provided for herein; and

iv. To the best of each party's actual knowledge and belief, no representation or warranty of such party contained in this Lease omits or will omit to state a material fact necessary to prevent such representation, warranty or statement from being materially misleading.

B. Landlord represents as of the Effective Date (and as of the Commencement Date with respect to items (i), (iv) and (v) below):

i. All parts of the Building and the Property, including, without limitation, sidewalks, parking areas, driveways, all structural elements, the foundation, roof, roof membrane and roof system, exterior walls, HVAC, plumbing, electrical, and other mechanical systems are and will be in good, workable, and sanitary order, condition, and repair, unless any damage is caused by Tenant or Tenant Parties or repair is needed in the ordinary course of operation of the Building or Property. Notwithstanding the foregoing, with respect to items "excluded from definition of Substantial Completion" on Exhibit "B-1", such items will be in good, workable, and sanitary order, condition, and repair when Substantially Completed;

ii. Landlord has disclosed to Tenant any conditions or restrictions, including, without limitation, restrictions on utilities, or exclusive use restrictions within Landlord's actual knowledge without further inquiry that would adversely affect Tenant's design, permitting, construction, or use of the Premises as contemplated by this Lease;

iii. Landlord owns and holds fee title in and to the Property and there are no encumbrances, liens, agreements, covenants in effect that would limit Tenant's rights or augment Tenant's obligations hereunder;

iv. To the best of Landlord's knowledge without further inquiry or investigation, Landlord has not received notice of any building or zoning violations with respect to the Building, Property or Premises; and

v. To the best of Landlord's knowledge without further inquiry or investigation, Landlord has not received notice of any violation of any federal, state, and local laws, codes, rules and regulations, or handicapped

accessibility standards, such as those promulgated under the Americans With Disabilities Act, affecting or relating to any part of the Building and the Property.

**40.16. CONSEQUENTIAL AND INDIRECT DAMAGES.**

NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, NEITHER LANDLORD OR TENANT, NOR ITS AFFILIATES, NOR ITS OR THEIR RESPECTIVE DIRECTORS, TRUSTEES, MEMBERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE LIABLE UNDER OR IN CONNECTION WITH THIS LEASE FOR ANY PUNITIVE, SPECIAL, LOST PROFIT, EXEMPLARY, MULTIPLE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING IN CONNECTION WITH OR ARISING FROM ANY PERFORMANCE OR LACK OF PERFORMANCE UNDER THIS LEASE, REGARDLESS OF WHETHER (X) ANY SUCH DAMAGES CLAIM IS BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF ANY APPLICABLE DECEPTIVE TRADE PRACTICES ACT OR ANY OTHER LEGAL OR EQUITABLE THEORY OR PRINCIPLE, OR (Y) SUCH DAMAGES WERE REASONABLY FORESEEABLE OR (Z) THE PARTIES WERE ADVISED OR AWARE THAT SUCH DAMAGES MIGHT BE INCURRED.

*[Remainder of page intentionally left blank; Signatures contained on the following page]*

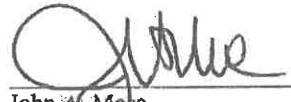
IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in duplicate as of the day and year first above written.

**LANDLORD:**

**PEARL RIVER CAMPUS, LLC,**  
a Delaware limited liability company

By: Holdings SPE Manager, LLC  
a Delaware limited liability company,  
its Manager

By:

  
John A. Mase  
Chief Executive Officer

Dated:

2/2/22

**TENANT:**

**MOMENTIVE PERFORMANCE MATERIALS USA LLC,**  
a Delaware limited liability company

By:



Name: Varghese P. Nalian

Title: President & General Manager

Dated:

2<sup>nd</sup> Feb 2022

# EXHIBIT "A" PREMISES, STORAGE SPACE, PARKING AND DUMPSTER LOCATION

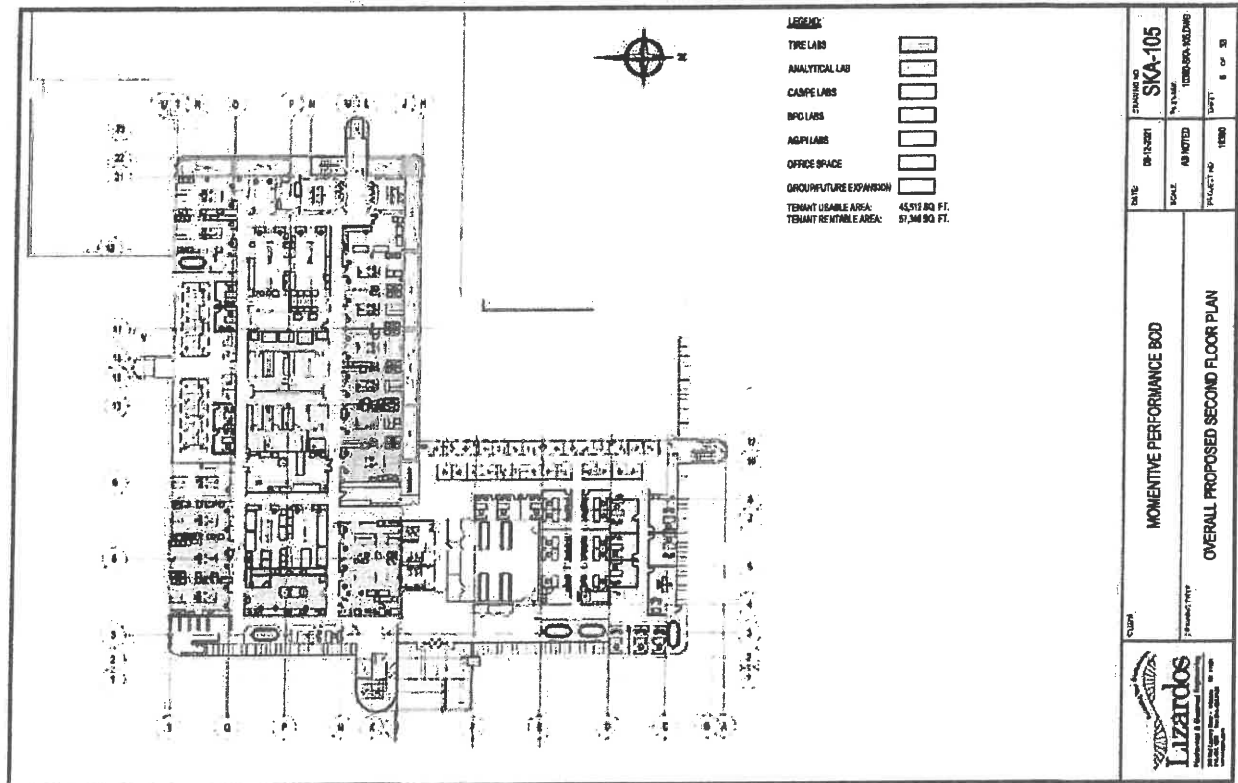
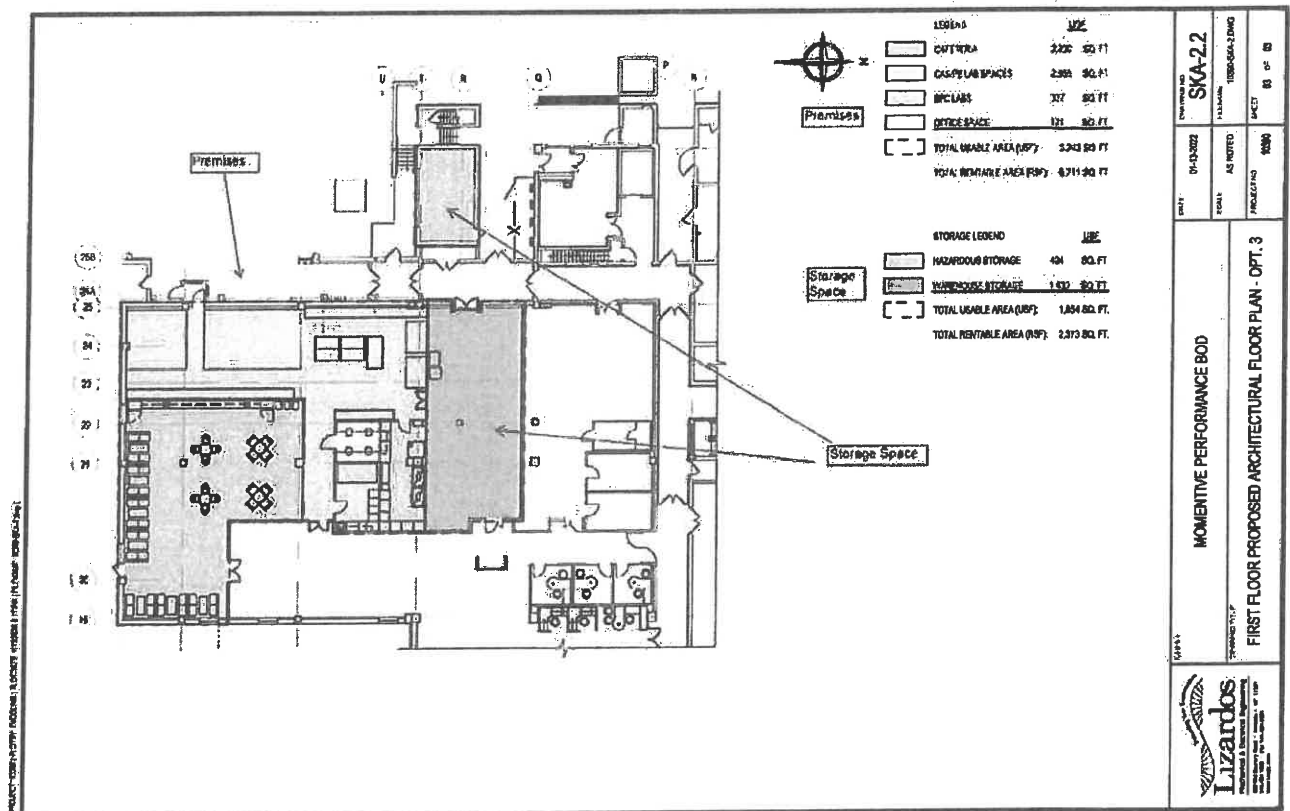


Exhibit "A"

**Exhibit "A"**



# EXHIBIT A (Continued)

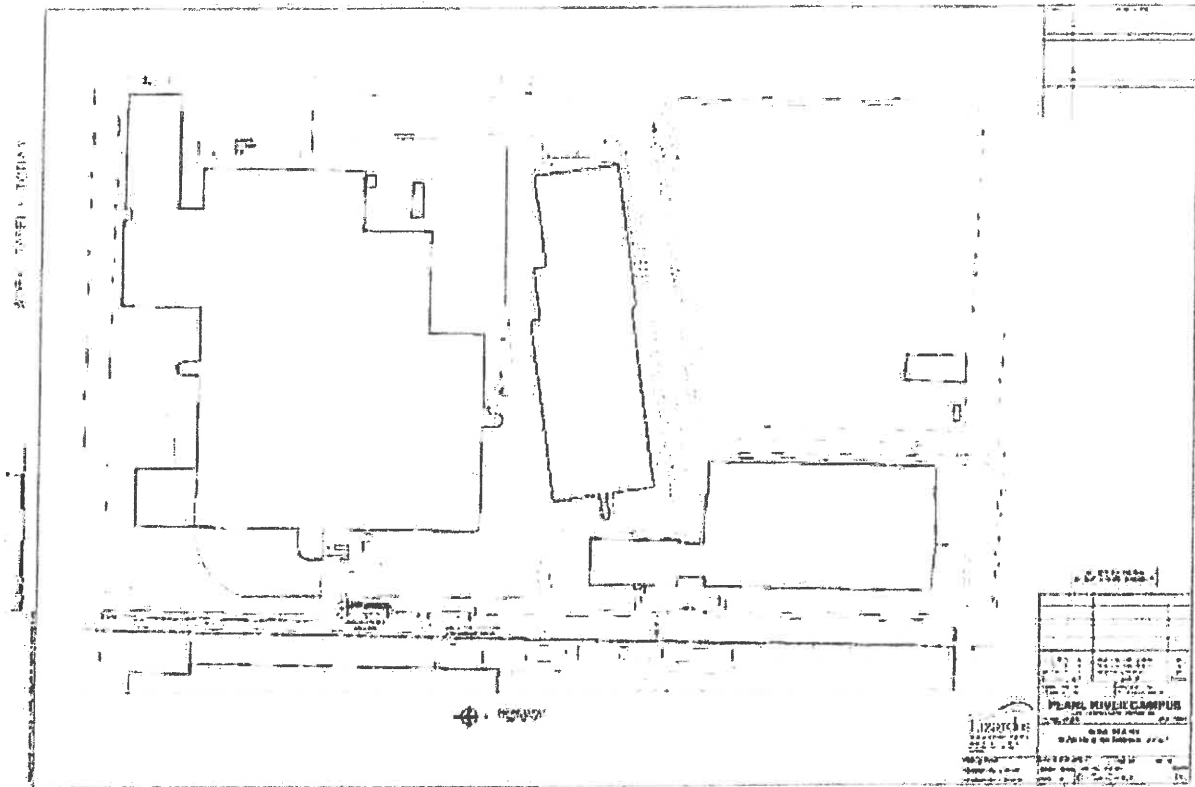


Exhibit "A"



**EXHIBIT "B"**  
**IMPROVEMENTS**

**IMPROVEMENTS AT LANDLORD'S EXPENSE**

Landlord shall construct certain improvements to the Building and Premises, at Landlord's sole cost and expense, as more fully described on Exhibit "B-1" attached hereto (the "**Work to be Completed**"). Landlord shall construct the Work to be Completed in a good and workmanlike manner, and in compliance with all applicable governmental laws and ordinances. In connection therewith, the Premises shall be deemed to be ready for occupancy by Tenant upon the earlier of (i) the date the Premises are Substantially Completed, or (ii) the date the Premises would have been Substantially Completed, had one or more Tenant Delays not occurred. Except as otherwise set forth herein and the items required to be Ready for Tenant's Work, Landlord shall cause the Work to be Completed to be Substantially Completed on or before the Commencement Date.

The term "**Substantially Complete(d)**" means that (i) the contractor has substantially completed the Work to be Completed, which shall be deemed complete, even though that minor details of construction, mechanical adjustments or decorations which do not materially interfere with Tenant's use of the Premises remain to be performed (items normally referred to as "**Punch-List**" items) and (ii) Tenant shall have access to the Building and parking facilities, and substantially all services provided for in the Lease. Landlord and Tenant shall jointly prepare the Punch-List items. Landlord shall cause the Punch-List items to be corrected as soon as reasonably possible and practical but in no event later than sixty (60) days following the date the Work to be Completed is Substantially Completed. Tenant's occupancy of the Premises shall be deemed acceptance of the Premises and the Work to be Completed, subject to the Punch-List items.

The term "**Tenant Delays**" shall mean any delays attributable to the following: (i) any failure by Tenant to comply with the date and time limits in this Agreement; (ii) delays due to the acts or failures to act of Tenant; its agent or contractor where such acts or failures to act delay the completion of the Work to be Completed; (iii) delays due to any changes to the plans requested by Tenant; (iv) delays due to Tenant's selection of materials or methods of construction which cannot be timely incorporated into the schedule for the Work to be Completed; and (v) any other delays due to the acts or omissions of Tenant, its agent or representative, construction consultants or space planner, where such acts or omissions delay the completion of the Work to be Completed.

The term "**Landlord Delays**" shall mean any delays attributable to the following: (i) delays due to the acts or failures to act of Landlord, its agent or contractor where such acts or failures to act delay the Landlord Delivery Date or Landlord Work to be Completed; (ii) delays due to Landlord's selection of materials or methods of construction which cannot be timely incorporated into the schedule for the Landlord Delivery Date or Landlord Work to be Completed (so long as such delays are within Landlord's control); and (iii) any other delays due to the acts or omissions of Landlord, its agent or representative, construction consultants or space planner, where such acts or omissions delay the completion of the items required to make the Premises Ready for Tenant's Work or the Work to be Completed.

The term "**Ready for Tenant's Work**" shall mean completion of any and all work necessary for the following items to be fully-functioning and operable and in good working order: (a) freight elevator; (b) second floor bathrooms; and (c) removal of non-chemical hoods.

Landlord shall cause the Premises and Storage Space to be Ready for Tenant's Work on or before the date that is one hundred (100) days following the Effective Date (the "**Landlord Delivery Date**").

In the event the Premises or Storage Space are not Ready for Tenant's Work on or before the Landlord Delivery Date, or the Work to Be Completed is not Substantially Completed by the Commencement Date, due to a Landlord Delay, the Commencement Date shall be extended by one day for each and every day of such Landlord Delay.

## **IMPROVEMENTS AT TENANT'S EXPENSE**

Except for the Work to be Completed, Tenant shall construct all other improvements to the Premises and/or Storage Space, at Tenant's sole cost and expense, including without limitation those items set forth on Exhibit "B-2" (the "**Tenant Improvements**").

Tenant shall cause to be prepared, and thereafter provide to Landlord, the initial construction plans ("**Construction Plans**") for the Work to be Completed and the Tenant Improvements, including any required upgrades to the existing Building systems, in sufficient detail to permit construction of the Tenant Improvements and obtain any necessary building permits related thereto. Tenant shall deliver the Construction Plans to Landlord within one hundred twenty (120) days after the Effective Date and Landlord shall reasonably approve such Construction Plans within twenty one (21) days of receipt of same. Once the Construction Plans are approved by the parties, the same will be attached to Exhibit "B-2" hereof.

Tenant shall utilize contractors reasonably approved by Landlord to complete the Tenant Improvements and provide Landlord with copies of the contracts with the general contractor and any subcontractors. Tenant shall complete the Tenant Improvements in a good and workmanlike manner, and in compliance with all applicable governmental laws and ordinances. Tenant shall be solely responsible for obtaining all permits and approvals as may be necessary to complete the Work to be Completed and the Tenant Improvements, all at Tenant's sole cost and expense. Upon completion of the Tenant Improvements, Tenant shall provide Landlord with (i) the total costs of the Tenant Improvements and (ii) lien waivers fully executed by all contractors and subcontractors providing materials and labor for the Tenant Improvements, all in such recordable form as may be reasonably satisfactory to Landlord.

Landlord will be entitled to receive a construction management fee equal to the lesser of (i) three percent (3%) of hard costs or (ii) \$150,000.00. Notwithstanding the foregoing, such fee shall not include the costs for any of Tenant's fixtures, furniture or equipment including chemical hoods.

Landlord shall provide Tenant with a tenant improvement allowance of up to \$60.00 per square foot to be used solely for improvements to the Premises ("**Premises TI Allowance**"). Landlord shall pay to Tenant, or at Tenant's election, Landlord shall pay to Tenant's contractors or suppliers, the Premises TI Allowance upon Landlord's receipt of (i) invoices from contractors or suppliers showing, in reasonable detail, the expenditures to the Premises for which Tenant seeks reimbursement or payment; (ii) evidence, reasonably satisfactory to Landlord, confirming the completion of the Tenant Improvements for the Premises in a good and workmanlike manner, and in compliance with all applicable governmental laws and ordinances; (iii) executed partial, conditional and/or final lien waivers, as applicable, in recordable form reasonably satisfactory to Landlord, from all contractors and subcontractors providing materials and labor for the Tenant Improvements for the Premises. Furthermore, Landlord shall provide Tenant with a tenant improvement allowance of up to \$10.00 per square foot to be used solely for improvements to the Storage Space ("**Storage Space TI Allowance**"). Landlord shall pay to Tenant, or at Tenant's election, Landlord shall pay to Tenant's contractors or suppliers, the Storage Space TI Allowance upon Landlord's receipt of (i) invoices from contractors or suppliers showing, in reasonable detail, the expenditures to the Storage Space for which Tenant seeks reimbursement or payment; (ii) evidence, reasonably satisfactory to Landlord, confirming the completion of the Tenant Improvements for the Storage Space in a good and workmanlike manner, and in compliance with all applicable governmental laws and ordinances; (iii) executed partial, conditional and/or final lien waivers, as applicable, in recordable form reasonably satisfactory to Landlord, from all contractors and subcontractors providing materials and labor for the Tenant Improvements for the Storage Space.

## EXHIBIT "B-1"

### WORK TO BE COMPLETED

Landlord shall perform the Work to be Completed utilizing its usual and customary building standard materials and finishes, unless otherwise noted. Deliver the Premises fully demised and all building systems, including existing lab hoods, HVAC, plumbing, electrical and life safety in full compliance with applicable building codes and regulations, and in good working order and condition. Items noted as "*Excluded from definition of Substantial Completion*" below shall be delivered by Landlord on or before April 30, 2023.

- Landlord to professionally clean exterior of the building utilizing a mechanical lift to enable the thorough power washing and cleaning of all panel surfaces. Depending on the existing conditions of panel surfaces, Landlord will utilize a hand or mechanical type cleaning system of the Alucobond building panels. [*Excluded from definition of Substantial Completion*]
- Replace the handicapped ramp with a lift in the approximate location as per Architect rendering attached
- Repair stair entrance, including addition of glass panel barriers below the railings. Renovate exterior deck area adjacent to staircase by installing new floor (allowance for new floor not to exceed \$12.00 per square foot), wall, tiling, and a safety railing having glass panel barriers below the railing (stainless steel railings and the like would be a considered an upgraded material at Tenant's cost). Except as otherwise noted herein, materials and finishes to be of standard type architectural grade with minimal manufacturing and delivery times. Cost to be based on typical finish grades used within the Hudson Valley iCampus.
- Paint/coat U-shaped portion and top band of the eastern side to color as requested by Tenant. Signage (lettering and installation and all approvals at Tenant's cost and expense). [*Excluded from definition of Substantial Completion*]
- Replace current windows on second floor north side office space with Option W1 of Lizardos D-SKA-6. New windows and window frame will go to the underside of the existing ceiling. Any modifications to the existing ceiling grid required as part of the window installation shall be at Tenant's cost and expense. Landlord and Tenant will discuss how to minimize impact to the existing ceiling grid without raising cost of window replacement.
- Remove and dispose of existing furniture (including demountable partitions) and fixtures and equipment as agreed between Landlord and Tenant (including, but not limited to, file cabinets and cubicles from office areas).
- Replace damaged concrete and blacktop in loading dock area and all Tenant entrances and parking areas. [*Excluded from definition of Substantial Completion*]
- Grade and re-seed lawn area outside of south side of building. [*Excluded from definition of Substantial Completion.*]
- Provide two (2) non-reserved handicapped spaces (closest to front entrance of the building) and four (4) parking spaces reserved for Tenant in front of the building. [*Excluded from definition of Substantial Completion*]
- All 4 elevator interior cabs cleaned and repaired as needed; lighting re-lamped. [*Excluded from definition of Substantial Completion except that Freight elevator on west side of building needs to be operational before tenant improvements can commence.*]
- All stairwells to be cleaned, painted, and re-lamped, as necessary, with building standard finishes. Existing stair treads to remain. [*Excluded from definition of Substantial Completion.*]

- All restrooms on the second floor are to be in good working condition and order and code compliant.
- Restrooms adjacent to Tenant space on first floor are to be in good working condition and order and code compliant. *[Excluded from definition of Substantial Completion.]*
- Existing roof to be free of damage and debris prior to the commencement of Tenant's Tenant Improvement work.
- At least one (1) of the loading docks and related equipment (i.e. dock levelers, bumpers, lighting, etc.) are to be in good working order prior to the commencement of Tenant's Tenant Improvement work. *[The remaining loading dock and related equipment are excluded from definition of Substantial Completion.]*
- Landlord's scope of the Work to be Completed to be coordinated with Tenant's scope of Tenant Improvement work to a mutually agreed schedule.

## **EXHIBIT "B-2"**

### **TENANT IMPROVEMENTS**

- Refurbish laboratory and office areas with new offices, cubicles, furniture and fixtures on the second floor.
- Add new hoods to laboratory areas.
- Add cafeteria (non-cooking), work area and storage area to first floor.
- High level schematic of the space is shown in Exhibit A.
- Construction Plans to be provided to Landlord.

**EXHIBIT "C"**  
**TENANT'S SIGNAGE**



Exhibit "C"

## EXHIBIT "D"

### GUARANTY OF LEASE

This Guaranty of Lease ("Guaranty") dated as of February 2, 2022, is executed by MPM Intermediate Holdings Inc., a Delaware corporation ("Guarantor") in favor of PEARL RIVER CAMPUS, LLC, a Delaware limited liability company ("Landlord").

#### Recitals

A. Effective contemporaneously with the execution of this Guaranty, Landlord and Momentive Performance Materials USA LLC, a Delaware limited liability company ("Tenant") have entered into a lease dated as of February 2, 2022 (the "Lease"), whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord the "Premises" more particularly described as approximately 64,057 square feet of office/manufacturing space within a larger multi-tenant building located at 401 North Middletown Road, Pearl River, New York.

B. As a condition to entering into the Lease, Landlord has required that Guarantor execute and deliver to Landlord this Guaranty.

#### Agreement

In consideration of Landlord entering into the Lease of the Premises to Tenant, Guarantor covenants and agrees as follows:

1. **Guaranty.** Guarantor absolutely and unconditionally guarantees to Landlord the timely payment of all amounts that Tenant may at any time owe under the Lease, or any extensions, renewals, or modifications of the Lease. Guarantor further guarantees to Landlord the full, faithful, and timely performance by Tenant of the Lease, or any extensions, renewals, or modifications of the Lease. If Tenant shall default at any time in the payment of any Rent or any other sums, costs, or charges, or in the performance of any covenant or obligation under the Lease, then Guarantor, at Guarantor's expense, shall on demand by Landlord fully and promptly pay all rent, sums, costs and charges to be paid and perform all other covenants and obligations to be performed by Tenant pursuant to the Lease. In addition, Guarantor shall on demand by Landlord pay to Landlord all sums due to Landlord by Tenant, including, without limitation, all interest on past due obligations of Tenant, costs advanced by Landlord on behalf of Tenant, damages, and all expenses (including, without limitation, court costs and reasonable attorney fees) that may arise under the Lease.

2. **Waivers.** Guarantor authorizes Landlord, without notice or demand and without affecting Guarantor's liability under this Guaranty, to:

a) consent to any extensions, accelerations, or other changes in the time for any payment provided for in the Lease, or consent to any other alteration of any covenant, term, or condition of the Lease in any respect, and to consent to any assignment, subletting, or reassignment of the Lease; and

b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term, or condition of the Lease, or exchange, waive, or release any security.

c) Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty shall continue until all of the covenants and obligations on the part of Tenant to be performed have been fully and completely performed by Tenant and Guarantor shall not be released of any obligation or liability under this Guaranty so long as there is any claim against Tenant arising out of the Lease that has not been settled or discharged in full.

**3. Independent Obligations.** The obligations of Guarantor under this Guaranty are independent of the obligations of Tenant. A separate action may, at Landlord's option, be brought and prosecuted against Guarantor, whether or not any action is first or subsequently brought against Tenant, or whether or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Landlord against Tenant arising out of, in connection with, or based upon the Lease. Guarantor waives any right to:

a) require Landlord to proceed against Tenant or any other person or entity or pursue any other remedy in Landlord's power;

b) complain of delay in the enforcement of Landlord's rights under the Lease; and

c) require Landlord to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause of the liability of Tenant. Guarantor waives all demands upon and notices to Tenant and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of non-payment, and notices of acceptance of this Guaranty.

**4. Definition of Tenant.** For purposes of this Guaranty and the obligations and liabilities of Guarantor, the term Tenant shall be deemed to include any assignee or sub-tenant of Tenant and the obligations of Tenant as they pertain to obligations of the Tenant Parties and Tenant Representatives under the Lease.

**5. No Reporting Duty.** Guarantor assumes full responsibility for keeping fully informed of the financial condition of Tenant and all other circumstances affecting Tenant's ability to perform Tenant's obligations under the Lease, and agrees that Landlord will have no duty to report to Guarantor any information that Landlord receives about Tenant's financial condition or any circumstances bearing on Tenant's ability to perform such obligations.

**6. Continuing Guaranty.** This Guaranty shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Lease in any action or otherwise.

**7. Successors and Assigns.** This Guaranty shall be binding upon Guarantor and Guarantor's successors, and assigns, and shall inure to the benefit of Landlord and Landlord's successors and assigns. Landlord may, without notice, assign this Guaranty, the Lease, or the rents and other sums payable under the Lease, in whole or in part.

**8. Guaranty of Costs and Fees.** In addition to the amounts guaranteed, Guarantor agrees to pay reasonable attorney fees and all other costs and expenses incurred by Landlord in enforcing this Guaranty or in any action or proceeding arising out of, or relating to, this Guaranty.

**9. Financial Statements.** If Landlord desires to finance, refinance, or sell the Property, or any part thereof, Guarantor shall deliver to Landlord, or to such potential lender or purchaser designated by Landlord, such current financial statements and such other financial information regarding Guarantor, as may reasonably be required to establish Guarantor's creditworthiness certified by an officer of Guarantor as to accuracy. All financial information provided by Guarantor to Landlord or any lender or potential purchaser shall be held by the recipient in strict confidence and such parties shall execute a commercially reasonable confidentiality agreement. Any financial information may not be used or disclosed by the recipient except for the purpose of determining Guarantor's creditworthiness in connection with Guarantor's obligations under this Guaranty.

**10. Governing Law.** This Guaranty shall be deemed to be made under and shall be governed by New York law in all respects, including matters of construction, validity, and performance, and the terms and provisions of this Guaranty may not be waived, altered, modified, or amended except in a writing signed by an authorized officer of Landlord and by Guarantor.



11. **Severance.** If any of the provisions of this Guaranty shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty shall be construed as if it did not contain those provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

12. **Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS GUARANTY TO THE CONTRARY, NEITHER GUARANTOR, NOR ITS AFFILIATES, NOR ITS OR THEIR RESPECTIVE DIRECTORS, TRUSTEES, MEMBERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE LIABLE UNDER OR IN CONNECTION WITH THIS GUARANTY FOR ANY PUNITIVE, SPECIAL, LOST PROFIT, EXEMPLARY, MULTIPLE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING IN CONNECTION WITH OR ARISING FROM ANY PERFORMANCE OR LACK OF PERFORMANCE UNDER THIS GUARANTY, REGARDLESS OF WHETHER (X) ANY SUCH DAMAGES CLAIM IS BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF ANY APPLICABLE DECEPTIVE TRADE PRACTICES ACT OR ANY OTHER LEGAL OR EQUITABLE THEORY OR PRINCIPLE, OR (Y) SUCH DAMAGES WERE REASONABLY FORESEEABLE OR (Z) THE PARTIES WERE ADVISED OR AWARE THAT SUCH DAMAGES MIGHT BE INCURRED.

13. **Counterparts.** This Guaranty may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Guaranty. The parties shall be entitled to sign and transmit an electronic signature of this Guaranty (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Guaranty upon request. Guarantor has executed this Guaranty as of the date first written above.

**GUARANTOR:**

MPM Intermediate Holdings Inc.,  
a Delaware Corporation

By: 

Name: Varghese P. Nalian

Title: President & General Manager

## EXHIBIT "E"

### COMMON EXPENSE EXCLUSIONS

The following matters shall be excluded from the definition of Common Expenses:

1. Expenses incurred in procuring or entering into leases with new tenants (i.e. lease commissions, advertising expenses, expenses of renovating space for new tenants, and legal expenses incurred in preparing leases for tenants);
2. Costs of preparing, improving or altering space for any new or renewal tenant or any other costs or expenses or allowances given to any new or renewal tenant;
3. Legal expenses in enforcing the terms of any lease other than this Lease;
4. Interest or amortization payments on any mortgage or mortgages;
5. Any sums payable under any underlying ground leases or mortgages;
6. Depreciation or amortization of the Property or any portion thereof;
7. Costs of services or other benefits offered only to other tenants of the Property and not offered to Tenant, or for which Tenant is charged directly;
8. Other than any management fees specifically set forth in Paragraph 5.1.C of this Lease, any amounts paid to Landlord or Landlord's subsidiaries or affiliates for goods and services furnished to the Property to the extent in excess of competitive market rates for the same;
9. Costs arising from the gross negligence or willful misconduct of Landlord;
10. Expenses for repairs or the repair work required of Landlord under this Lease, to the extent Landlord is reimbursed by insurance proceeds;
11. Costs reimbursed to Landlord by others, including, without limitation, items under warranty;
12. Costs associated with the transfer or encumbrance of any portion of the Property or Landlord's interest therein (including, without limitation, any real estate transfer taxes associated therewith);
13. Costs related to environmental testing or remediation;
14. Additional costs of insurance related to the specific acts or activities of Landlord or of other tenants of the Property;
15. Fines, penalties or other late payment charges incurred by Landlord (including Landlord's violation of any applicable laws, regulations, rules, or ordinances), unless such fines, penalties or late payment charges result, in whole or in part, from Tenant's breach of its obligations under this Lease;
16. Expenses for the defense of Landlord's title to the Property or disputes arising out of any covenants, conditions, restrictions, easements or similar agreement;
17. Any expenses incurred: (i) to comply with any governmental laws, regulations and rules or any court order, decree or judgment including, without limitation, the Americans with Disabilities Act; or (ii) as a result of Landlord's alleged violation of or failure to comply with any governmental laws, regulations and rules or any court order, decree or judgment, all as it relates to the Premises and Property in general and not as it relates to Tenant's specific use of the Premises; and
18. Costs incurred by Landlord which result from Landlord's breach of this Lease.

## EXHIBIT F

### FORM OF SUBORDINATION AGREEMENT

#### LANDLORD'S SUBORDINATION AGREEMENT

This LANDLORD'S SUBORDINATION AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among \_\_\_\_\_, a Delaware limited liability company ("Landlord"), \_\_\_\_\_, a \_\_\_\_\_ ("Borrower"), and \_\_\_\_\_, a national banking association ("Lender").

#### RECITALS:

A. Lender has made and/or may in the future make loans and/or certain other credit accommodations available to Borrower (collectively, the "Loan"). To secure the payment and performance of Borrower's obligations to Lender in connection with the Loan, Borrower has granted to Lender a security interest in certain personal property (including equipment, inventory, furniture, and trade fixtures) of Borrower (all such personal property subject to Lender's security interest, the "Collateral").

B. Landlord and Borrower are parties to that certain Lease Agreement, dated as of \_\_\_\_\_ as amended from time to time, the "Lease"), pursuant to which Landlord leases to Borrower, and Borrower leases from Landlord, certain premises (the "Premises") located on the property at \_\_\_\_\_ (the "Property"). All or some of the Collateral is now located or may hereafter be located on the Premises.

C. In order to induce Lender to make the Loan to Borrower, Lender has requested that Landlord and Borrower execute this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Borrower, and Lender hereby covenant and agree as follows:

1. Recitals. The foregoing recitals are incorporated into this Agreement by this reference.
2. Consent; Subordination. Landlord consents to Borrower's grant to Lender of a security interest in the Collateral. Landlord agrees that any security interest, lien, or levy, including statutory landlord's rights or interests, that Landlord may now or hereafter have in the Collateral, shall be subordinate to Lender's security interest in the Collateral, subject to the terms of this Agreement. Landlord further agrees that, except as otherwise set forth in this Agreement, so long as Lender has a security interest in the Collateral, Landlord will not exercise any rights that it may have with respect to the Collateral, including the rights of distress, repossession or foreclosure. However, if at the expiration or earlier termination of the Lease, neither Lender nor Borrower removes the Collateral from the Premises in accordance with this Agreement, then this Agreement shall terminate, and Landlord may exercise any and all legal rights and remedies and it may have under the Lease or under applicable law with respect to the Collateral. Further, the Collateral does not include, and this Agreement does not extend to, any property or improvements affixed to the Premises (i.e. fixtures), which shall become the property of Landlord at the expiration or termination of the Lease, as set forth in the Lease.
3. Lease Defaults. Landlord agrees to provide Lender with written notice of any default by Borrower under the Lease, if Landlord intends to cancel or terminate the Lease as a result of such default ("Landlord Default Notice"), at the same time as Landlord sends notice of such default to Borrower.
4. Default under Loan Documents. Lender agrees to provide Landlord with written notice of any default by Borrower under any document entered into in connection with the Loan (collectively, the "Loan

Documents”), if Lender intends to exercise any of its rights or remedies with respect to the Collateral as a result of such default (a “Loan Default Notice”), at the same time as Lender sends notice of such default to Borrower.

5. Right of Access. Beginning on the earlier to occur of (a) the date Lender receives a Landlord Default Notice or (b) the date Landlord receives a Loan Default Notice (such earlier date being the “Notice Date”), and subject to the conditions set forth in this Paragraph 5, Lender may have access to the Premises at any reasonable time for the purpose of inspecting, appraising, repossessing, removing, preparing for sale, advertising, displaying, selling (including conducting “going out of business” sales), disposing or otherwise dealing with the Collateral or any part thereof in accordance with the terms and conditions of the Loan Documents and this Agreement, without unreasonable objection, delay, hindrance or interference by Landlord. Lender’s right to access the Premises under this Agreement shall be subject to satisfaction (or waiver by Landlord) of all of the following conditions:

(a) Lender shall give Landlord at least five (5) days’ prior written notice of Lender’s intention to enter the Premises and exercise any of Lender’s rights or remedies with respect to the Collateral. In no event shall Lender (nor shall anyone acting on Lender’s behalf) effect a forced entry upon the Premises. Lender shall not (nor shall anyone acting on Lender’s behalf) disturb or otherwise violate the rights of Landlord, Borrower or any other tenant on the Premises or the Property.

(b) The period during which Lender may exercise any rights with respect to the Collateral (the “Access Period”) shall commence on the Notice Date and terminate three (3) months following the Notice Date, unless such Access Period is extended by Landlord in its sole and absolute discretion.

(c) During the Access Period (which Access Period may be terminated by Lender at any time), Lender must pay rent to Landlord, monthly in advance as provided in the Lease, pro-rated on a per-diem basis for any partial month (based on the actual number of days in the relevant month) (the “Access Fee”). Lender’s obligation to pay the Access Fee shall begin on the first day of the Access Period and end on the Expiration Date (as defined in Paragraph 6). Lender shall not be liable for any past due rent owing by Borrower to Landlord.

(d) Lender shall remove all of the Collateral and shall return the Premises to Landlord in broom-clean condition, and otherwise in substantially the condition that existed on the Notice Date. Lender shall reimburse Landlord for the cost of any repair of any physical injury or damage to the Premises or the Property arising from the removal of any Collateral by Lender (or anyone acting on Lender’s behalf). Lender’s obligations under this Paragraph 5(d) shall survive the expiration or termination of this Agreement.

(e) Lender shall indemnify, defend, protect, and hold harmless Landlord, the Premises, the Property, and Landlord’s managers, members, officers, agents, and employees from and against any actions, claims, damages, liabilities, losses, and expenses (including attorneys’ fees and court costs) arising out of Lender’s exercise of any of its rights or remedies with respect to the Collateral. Lender’s obligations under this Paragraph 5(e) shall survive the expiration or termination of this Agreement.

(f) All contractors, subcontractors, and other agents or representatives engaged by Lender (or acting on Lender’s behalf) in connection with the removal, repossession, sale or other disposition of the Collateral pursuant to this Agreement shall take out and keep in force, throughout the period during which such independent contractor or other person performs any work on the Premises, without expense to Landlord, the policies of insurance required for Tenant’s contractors pursuant to the terms of the Lease. Neither Lender (nor anyone acting on Lender’s behalf) may have access to the Premises unless and until Lender furnishes to Landlord reasonable evidence that such required insurance is in place.

6. Term. This Agreement, including Lender’s right to remove the Collateral from the Premises, shall expire and terminate automatically at the earlier to occur of (a) the date that Lender sends written notice to Landlord indicating that Lender no longer wishes to exercise any of its rights or remedies with respect to the Collateral; or (b) the last day of the Access Period (such earlier date, the “Expiration Date”). On the Expiration Date, each and all of the rights of Lender under this Agreement shall become null and void, and Landlord shall thereupon be entitled to exercise any and all rights that Landlord may have with respect to the Collateral, without regard to the matters contained in this Agreement.

7. Non-Responsibility of Landlord. Lender acknowledges and agrees that Landlord has no responsibility to provide security for the Premises or the Collateral. Landlord has no responsibility to prevent, and shall not be liable to Lender or Lender's agents, employees, contractors, visitors or invitees for damages or injuries to persons or property (including the Collateral) resulting from the existence of the Collateral on the Property, or for any losses due to theft, burglary or other criminal activity or due to persons gaining access to the Premises, and Lender hereby releases Landlord and its managers, members, officers, agents, and employees from all liabilities for such losses, damages or injury, regardless of the cause thereof.

8. Successors and Assigns. This Agreement shall inure to the benefit of the successors and assigns of Lender, Borrower and Landlord, and shall be binding upon the heirs, personal representatives, successors and assigns of Lender, Borrower and Landlord.

9. Notices. Any notice, demand, consent, approval or documents which any party is required or may desire to give or deliver to any other party shall be given in writing by (a) personal delivery; (b) certified mail, return receipt requested, postage prepaid; or (c) a national overnight courier service that provides written evidence of delivery and addressed as follows:

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Borrower:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

with a required copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Any party may change its notice address by giving written notice thereof in accordance with this Paragraph. All notices hereunder shall be deemed given: (i) if delivered personally, when delivered; (ii) if sent by U.S. Mail, postage prepaid, certified, return receipt requested, on the third day after deposit in the U.S. mail; and (iii) if sent by overnight courier, on the first business day after delivery to the courier.

10. Waivers. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of such provision or any other provision hereof. No waiver shall be binding unless executed in writing by the party making the waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition.

11. Entire Agreement. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas, without regard to conflict of laws principles. In the event of any legal action arising from this Agreement, the parties agree that the venue for resolution of such action shall be any state or federal court located in the county where the Premises is located.

13. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement. The parties shall be entitled to sign a facsimile copy of this Agreement which shall be binding on the party signing by facsimile. Any party signing by facsimile agrees to promptly execute and deliver to the other parties an original signed Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the day and year specified at the beginning hereof.

LANDLORD:

\_\_\_\_\_  
a Delaware limited liability company

By: \_\_\_\_\_  
a \_\_\_\_\_ Delaware \_\_\_\_\_  
its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER:

\_\_\_\_\_  
a \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_