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**LEASE AGREEMENT**

Dated as of May 11, 2022

by and between

**COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**

and

**MOMENTIVE PERFORMANCE MATERIALS USA LLC**

Affecting the Land generally known by the street address

Building 180 at 401 N. Middletown Road, Pearl River,

Town of Orangetown,  
in the County of Rockland,  
State of New York  
as more particularly described in  
Exhibit A to this Lease Agreement  
and which is also known as  
Section 68.08 Block 1 Lot 1  
on the Official Tax Map of the  
Town of Orangetown  
Rockland County

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## LEASE AGREEMENT

This LEASE AGREEMENT, made and entered into as of the 18<sup>th</sup> day of May, 2022 (this "Agreement"), by and between the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, 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, **party of the first part**, and **MOMENTIVE PERFORMANCE MATERIALS USA LLC**, a Delaware limited liability company duly registered and authorized to transact business in the State of New York, (the "Lessee") having an office at 260 Hudson River Road, Waterford, New York 12188, party of the second part:

### 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 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, 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 of New York 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 and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a "project" within the meaning of the Act within the territorial boundaries of the County of Rockland and located on that certain lot, piece or parcel of land generally known as and by the street address of Building 180 at 401 N. Middletown Road, Pearl River, Town of Orangetown, County of Rockland, New York and otherwise described in **Exhibit A** attached hereto; and

**WHEREAS**, the Project will consist of the leasing, renovation and redevelopment of existing facility on an underutilized property, all to be used as a research and development facility with offices and laboratories and the acquisition of additional equipment, as more fully described in the application and supplemental materials, for a cost of \$8,000,000.00 (the "Project") the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now

or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the “**Facility**”; and

**WHEREAS**, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a “straight lease transaction” within the meaning of the Act in which the Agency will acquire a leasehold interest in the Land and Improvements and the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on November 22, 2021 the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the acquisition of a leasehold interest in the Facility by the Agency and the lease of the Facility by the Agency to the Lessee; and

**WHEREAS**, the provision by the Agency of financial assistance to the Lessee through a straight lease transaction has been determined to be necessary to renovate and equip the Facility; and if the Agency does not provide such financial assistance, the Lessee may not proceed with the Project; and

**WHEREAS**, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Head Lease Agreement, dated the date hereof (the “**Head Lease**”), a leasehold interest in and to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof; and

**WHEREAS**, pursuant to this Agreement, the Agency will lease to the Lessee the Agency's interest in the Facility; and

**NOW, THEREFORE**, in consideration of the Facility and the respective representations and agreements hereinafter contained, the parties hereto 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 create a debt of the State of New York or of the County of Rockland, and neither the State of New York nor the County of Rockland shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility (as hereinafter defined), including moneys received under this Agreement:

**ARTICLE I**  
**DEFINITIONS AND REPRESENTATIONS**

**Section 1.1** **Definitions.** The following terms shall have the following meanings in this Agreement:

**Act** shall mean, collectively, 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, and Chapter 564 of the 1980 Laws of New York, as amended.

**Additional Rent** shall mean any additional rental payments described in Section 3.3(b) of this Agreement.

An **Affiliate** of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

**Agency** shall mean the **County of Rockland Industrial Development Agency**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

**Agreement** shall mean this Agreement and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

**Application** shall mean the application by the Lessee to the County of Rockland Industrial Development Agency for financial assistance.

**Approved Facility** shall mean a warehouse and distribution facility and administrative offices.

**Authorized Representative** shall mean, (a) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary or Executive Director of the Agency, or any other member, officer, manager or employee of the Agency who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Lessee; and (b) in the case of the Lessee, a Member or Manager of Lessee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency.

**Base Rent** shall mean the rental payment described in Section 3.3(a) of this Agreement.

**Business Day** shall mean any day which shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the County are authorized by law or executive order to close.



**Commencement Date** shall mean May 18, 2022 on which date this Agreement was executed and delivered.

**County** shall mean the County of Rockland, New York.

**Event of Default** shall have the meaning specified in Section 7.1 hereof.

**Exempt Property** shall mean only tangible personal property conveyed to or acquired by the Agency in connection with the Project up to the Maximum Sales Tax Benefit (as evidenced in accordance with Section 2.2 hereof) for incorporation in the Facility or for use in connection with the Facility.

**Facility Equipment** shall mean that machinery, equipment and other tangible personal property acquired and installed pursuant to the Sales Tax Letter as part of the Project pursuant to Section 2.2 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Lessee's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof), as more particularly described in **Exhibit B** "Description of the Facility Equipment" hereto, which is made a part of this Agreement. "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personality which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, objects d'arte or other similar decorative items.

**Facility** shall mean, collectively, the Facility Realty and the Facility Equipment.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Fiscal Year of the Lessee** shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

**Head Lease** shall mean the Head Lease referred to in the recitals to this Agreement.

**Improvements** shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.2 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

**Independent Accountant** shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld).

**Land** shall mean that certain lot, piece or parcel of land generally known by the street address Building 180 at 401 N Middletown Road, Pearl River, Town of Orangetown, County of Rockland, State of New York, all as more particularly described in **Exhibit A** - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

**Lessee** shall be Momentive Performance Materials USA LLC, a Delaware limited liability company duly registered and authorized to transact business in the State of New York and its permitted successors and assigns pursuant to Sections 6.1 or 9.2 hereof.

**Lessee's Property** shall have the meaning specified in Section 4.1(c) hereof.

**Liens** shall have the meaning specified in Section 6.5(a) hereof.

**Loss Event** shall have the meaning specified in Section 5.1(a) hereof.

**Maximum Sales Tax Benefit** shall mean a maximum aggregate amount of sales and use tax exemptions conferred upon the Lessee pursuant to the Sales Tax Letter and/or this Agreement until the date which is the earliest to occur of (i) the receipt by the Lessee of \$355,397.50 of sales and use tax exemptions on qualified expenses of up to \$4,250,000.00 or (ii) three (3) years from the date hereof.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency, the Lessee) incurred in the collection thereof.

**Opinion of Counsel** shall mean a written opinion of counsel for the Lessee which shall be reasonably acceptable to the Agency.

**Permitted Encumbrances** shall mean:

- (a) this Agreement;
- (b) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (c) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (d) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility Equipment or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;

(e) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;

(f) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(g) those exceptions to title to the Facility enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof, a copy of which is on file at the offices of the Agency.

**Person** shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

**Project** shall have the meaning set forth in the recitals of this Agreement.

**Project Counsel** shall mean Bleakley Platt & Schmidt, LLP, selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

**Project Documents** shall mean the Head Lease, this Agreement, the Indemnification Agreement, the Indemnification Agreement Regarding Hazardous Materials, the Sales Tax Letter and all other documents executed by Lessee in connection with this transaction.

**Rental Payments** shall mean, collectively, Base Rent and Additional Rent.

**Sales Taxes** shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

**Sales Tax Letter** shall mean the Letter of Authorization for Sales Tax Agent Authorization Letter, which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

**State** shall mean the State of New York.

**Section 1.2 Construction.** In this Agreement, unless the context otherwise requires, any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**Section 1.3 Representations and Warranties by Agency.** The Agency represents and warrants that the Agency (i) is 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, (ii) is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and (iii) by proper action of its members, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

**Section 1.4 Findings by Agency.** The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that

(a) the providing of financial assistance (within the meaning of the Act) through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project;

(b) the Project is reasonably necessary to discourage the Lessee from locating a facility or plant to a location outside the State;

(c) the Lessee but for the financial assistance provided by the Agency as contemplated by this Agreement would consider locating the related jobs outside the State; and

(d) no funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of a manufacturing plant within the State.

**Section 1.5 Representations and Warranties by the Lessee.** The Lessee makes and affirms the following representations and warranties:

(a) The Lessee is a limited liability company duly organized in the State of Delaware and duly authorized to do business in, validly existing and in good standing under the laws of the State of New York. Lessee is not in violation of any provision of its certificate of incorporation or bylaws, has the power and authority to own its properties and assets, to carry on its businesses as now being conducted by it and to execute and deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which it is or shall be a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its respective 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 result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) There is no action or proceeding pending or threatened by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this Agreement and each other Project Document to which it shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

(d) The Facility will constitute a “project” under the Act, and the Lessee intends to operate the Facility, or cause the Facility to be operated, in accordance with this Agreement and as an Approved Facility and a qualified “project” in accordance with and as defined under the Act.

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Lessee to proceed with the Project.

(f) Subject to Sections 4.2 and 5.1 hereof, no Facility Equipment shall be located at any site other than the Facility Realty.

(g) The Project is reasonably necessary to encourage the Lessee to move a facility or plant to a location in the County of Rockland rather than to a facility outside of the State of New York.

(h) The Lessee but for the financial assistance provided by the Agency as contemplated by this Agreement would consider locating the related jobs outside the State.

(i) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(j) This Agreement and the other Project Documents to which it is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

(k) Lessee is in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(l) Lessee represents and warrants that the moneys available to the Lessee, are sufficient to pay all costs in connection with the completion of the Project.

(m) No Person other than the Lessee or a permitted tenant is or will be in use, occupancy or possession of any portion of the Facility.

## ARTICLE II CONVEYANCE TO THE AGENCY AND THE PROJECT

**Section 2.1 The Head Lease.** The Agency has acquired, for good and valuable consideration therefor, pursuant to the Head Lease, a leasehold interest in and to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

**Section 2.2 The Project.** (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) renovating and installing the Improvements and the Facility Equipment thereon or therein, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in the renovation, and equipping of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally represents, warrants, covenants and agrees that they will complete the Project, or cause the Project to be completed in a first-class workmanlike manner, using high grade materials, free of defects in materials and workmanship (including latent defects); provided, however, the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency. In undertaking the Project, the Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) funds of the Lessee and (ii) other sources of funds obtained by the Lessee for this Project.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with

the conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1 hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(c) The Lessee unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. The Lessee will promptly obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and each of the Agency and Lessee agree to execute any documents, agreements and instruments reasonably necessary to permit Lessee to obtain such permits, authorizations and licenses. Lessee shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Lessee, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee, (i) that the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that all property constituting the Facility is subject to this Agreement and the Head Lease, subject only to Permitted Encumbrances, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project.

Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) that no Person other than the Agency may benefit therefrom. Such certificate of the Authorized Representative of the Lessee shall be accompanied by (i) either a permanent certificate of occupancy or temporary certificate of occupancy, with conditions reasonably acceptable to the Agency, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a certificate of an Authorized Representative of the Lessee that all costs of the Project have been paid in full, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project. Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

**Section 2.3** Intentionally deleted.

**Section 2.4 Limitation on Sales Tax Exemption.** (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

(b) The Lessee covenants and agrees that it shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Lessee as agent for the Agency in connection with the Project:

“This contract is being entered into by **MOMENTIVE PERFORMANCE MATERIALS USA LLC**, a Delaware limited liability company (the “Agent”), as agent for and on behalf of the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”) in connection with a certain project of the Agency for the Agent consisting of the leasing, renovation, redevelopment and equipping of an underutilized property with offices and laboratories, all to be used as a research and development facility and administrative offices (the “Project”), such Project to be located at Building 180 at 401 N Middletown Road, Pearl River, Town of Orangetown, New York, for lease to the Agency, and lease-back to Momentive Performance Materials USA LLC. The renovation and capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this agreement shall be exempt from the sales and use tax levied by the State of New York and the County of Rockland if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this agreement is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the vendor or contractor hereby acknowledges the terms and conditions set forth in this paragraph.”

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) On the Commencement Date, the Agency shall make available to the Lessee the Sales Tax Letter. The Agency, at the sole cost and expense of the Lessee, shall also execute



such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount by the Maximum Sales Tax Benefit.

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on the Commencement Date and expiring upon the date which is the earliest to occur of (A) the termination of this Agreement, (B) three (3) years from the date hereof, (C) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof or (D) such time as the aggregate amount of sales and use tax exemptions availed of by the Lessee pursuant to the Sales Tax Letter shall equal the Maximum Sales Tax Benefit (such date, the "Sales Tax Letter Expiration Date").

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee is in default beyond applicable grace periods under this Agreement until the Lessee shall cure such Event of Default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter:

(A) shall not be available for payment of any costs other than the costs of the Project, or for any items of personalty other than those items of Facility Equipment located at the Facility Realty,

(B) shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for use only by the Lessee and its Affiliates at the Facility Realty until the Maximum Sales Tax Benefit is achieved, it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee and its Affiliates at the Facility Realty,

(C) shall not be available for any item of (i) rolling stock, or (ii) computer software unless the computer software is in the form of tangible personal property and of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure, and has been purchased for a mainframe computer or other data processing equipment constituting Facility Equipment, and in each case for use only at the Facility Realty by the Lessee or an Affiliate,

(D) shall not be available for any item subsequent to the conferral of the Maximum Sales Tax Benefit of aggregate sales and use tax exemptions pursuant to the Sales Tax Letter and this Agreement,

(E) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(F) shall not be available for or with respect to any tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee with funds received from the Lessee or any other source, (including its own funds) as agent for the Agency for use by the Lessee or any of its Affiliates at the Facility Realty,

(G) shall not be available for any cost of utilities, cleaning service or supplies,

(H) shall not be available subsequent to the termination of this Agreement, and

(I) shall only be available for those costs set forth in Exhibit A to the Sales Tax Letter.

(J) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) The Lessee shall, on or before January 15th of each year, commencing January 15, 2023 and ending on the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit (and on January 15th following the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit),

(A) deliver to the Agency a certificate of an Authorized Representative of the Lessee certifying (i) as to each sales or use tax exemption availed of by the Lessee, the dollar amount of same and the date availed of, all as availed of by the Lessee in the immediately preceding calendar year, and the specific items of Project costs to which they shall relate, (ii) that all such sales or use tax exemptions so availed of were in compliance with the provisions of the Sales Tax Letter and Section 2.4(c) hereof, (iii) as to the dollar amount of all sales and use tax exemptions availed of by the Lessee from the Commencement Date through the end of the calendar year period to which such certificate shall relate, and (v) as to the unused amount remaining of the Maximum Sales Tax Benefit, and

(B) deliver to the Agency, on request, an opinion of an Independent Accountant to the effect that such Independent Accountant has audited the

certificates of the Lessee provided in paragraph (A) above for the preceding calendar year, and such certificates were properly prepared and accurately reflect the matters certified therein.

(vi) Upon request by the Agency of, and reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs to which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(vii) The Lessee shall obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Lessee to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Letter for any purpose other than for the Project.

(d) Prior to the Sales Tax Letter Expiration Date, the Lessee shall annually file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

### **ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS**

**Section 3.1 Lease of the Facility.** (a) The Agency hereby leases to the Lessee, and the Lessee hereby leases from the Agency, the Facility for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Agency of the Facility as the same is renovated shall take no further act or deed by the parties hereto).

(b) The Lessee, hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Facility will be an Approved Facility and a “project” within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be an Approved Facility or a “project” within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be an Approved Facility or a “project” within the meaning of the Act. The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

**Section 3.2 Duration of Term.** The term of this Agreement shall commence on the Commencement Date and shall expire on the earlier of (i) May 1, 2025, (ii) attaining of the Maximum Sales Tax Benefit or (iii) such earlier date as this Agreement may be terminated as hereinafter provided.

**Section 3.3 Rental Provisions.** (a) **Base Rent.** The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) **Additional Rent.** Throughout the term of this Agreement the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder. Any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

(c) **Missed Payments.** In the event the Lessee should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

**Section 3.4 Rental Payments Payable Absolutely Net.** The obligation of the Lessee to pay Rental Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

**Section 3.5 Nature of Lessee's Obligation Unconditional.** The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might

whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waive all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

**Section 3.6 Assignment of Subleases.** In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder during the existence of an Event of Default.

The Lessee agrees not to terminate, modify or amend any sublease or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of any sublease without such written consent shall be null and void.

In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Lessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under any sublease, or under or by reason of this assignment.

#### **ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE**

**Section 4.1 Maintenance, Alterations and Improvements** (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee at the Facility shall not be impaired or diminished in any way. All replacements, renewals and repairs shall be equal to or better in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that

(i) as a result of such alterations or additions, the fair market value of the Facility is not materially reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iii) such additions or alterations do not change the nature of the Facility so that it would not constitute an Approved Facility and a "project" within the meaning of the Act.

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title and/or a leasehold interest to such property to the Agency and to subject such property to this Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**") without conveying title to such Lessee's Property to the Agency nor subjecting such Lessee's Property to this Agreement. The Lessee's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

**Section 4.2 Removal of Property of the Facility.** (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (in either case, the "**Existing Facility Property**") and thereby acquiring such Existing Facility Property, **provided, however**, no such removal shall be effected if (x) such removal is to another location other than the Facility Realty, (y) such removal is for a purpose contrary to the provisions of Section 2.4(c)(iii)(B) hereof or (z) such removal would change the nature of the Facility as an Approved Facility and a "project" within the meaning of the Act.

(b) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the Rental Payments payable by the Lessee under this Agreement.

(c) Within one hundred twenty (120) days after the close of each Fiscal Year of the Lessee (i) during which Fiscal Year action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee shall furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of

Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) during which Fiscal Year of the Lessee no action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee shall furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

**Section 4.3 Taxes, Assessments and Charges.** The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the Rental Payments or other amounts payable hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions**".

**Section 4.4 Insurance.** (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, including, without limitation:

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$2,000,000.00 Excess Liability (coverage can be met by self-insurance, primary, or excess coverage).

(ii) (A) Property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction of the Facility, Builders' All Risk insurance (included in Property All Risk insurance), whether by endorsement or otherwise, written on one hundred percent (100%) builders' risk completed value, non-reporting form including coverage therein for completion and/or premises occupancy, all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee and the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than eighty percent (80%) of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency) not less often than once every year, at the expense of the Lessee; any such insurance may provide that the insurer is not liable to the extent of the first \$1,000,000.00 with the result that the Lessee is its own insurer

to the extent of \$1,000,000.00 of such risks it being understood that from and after the date hereof, such amount may be increased provided that such amount shall in no event exceed deductible amounts customarily included in policies of financially sound and reputable insurers with entities of established reputations engaged in the same or similar businesses as Lessee;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$2,000,000.00, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available), (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate, and (C) as of the date hereof, shall not contain any provisions for a deductible amount greater than \$10,000.00 per occurrence, it being understood that from and after the date hereof, such amount may be increased, **provided** that such amount shall in no event exceed deductible amounts customarily included in policies of financially sound and reputable insurers with entities of established reputations engaged in the same or similar businesses as Lessee;

(iv) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located at the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises and in each case approved by the Agency;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee or the Agency is required by law to provide; and

(vi) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require as set forth in a written notice from an Authorized Representative of the Agency submitted to an Authorized Representative of the Lessee.

(b) All insurance required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State.

(c) Each of the policies or binders evidencing the insurance required above (or Certificate of Insurance) to be obtained shall:

(i) designate (except in the case of workers' compensation insurance) the Agency as an additional insured as its interests may appear;

(ii) Reserved

(iii) Reserved



(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest in the Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers or by Lessee of such cancellation, lapse, expiration, reduction or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be applied in accordance with Section 5.1 of this Agreement.

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Lessee, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency duplicate copies of the insurance policies and binders or certificates evidencing compliance with the insurance requirements of this Section 4.4. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.4, and shall cause any sublessee, contractor or other insuring party under this Section 4.4 to take similar action with respect to such party's insurance required hereunder. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 would or might be suspended or impaired.

(g) **THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OF COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE FACILITY OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE LESSEE.**

**Section 4.5 Compliance with Law.** The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal,

State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, employment practices, and the Agency's Labor Policy, a copy of which is annexed hereto as **Appendix A**) (the "**Legal Requirements**"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

## **ARTICLE V DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 5.1 Damage, Destruction and Condemnation.** (a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "**Loss Event**")

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Facility,

(ii) the Net Proceeds, to be used for restoration of the Facility, shall be provided to Lessee in accordance with this Lease,

(iii) there shall be no abatement, postponement or reduction in the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party, and

(iv) the Lessee will promptly give written notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

(b) In the event a Loss Event shall occur, the Lessee shall

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below) promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 5.1(b).

(c) All rebuilding, replacements, repairs or restorations of the Facility in respect of or occasioned by a Loss Event shall

(i) automatically be deemed a part of the Facility and shall be subject to this Agreement,

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as an Approved Facility and a qualified "project" as defined in the Act,

(iii) be effected only if the Lessee shall deliver to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency, and

(iv) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor.

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility after the occurrence of a Loss Event shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and valid title to all personal property constituting part of the Facility and all property of

the Facility is subject to this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy, if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exists no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee may exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

(f) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property.

(g) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

## ARTICLE VI PARTICULAR COVENANTS

**Section 6.1 Restrictions on Lessee.** The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its limited liability company existence, (ii) continue to be subject to service of process in the State of New York and organized under the laws of, or qualified to do business in, the State of New York, and (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date.

The Lessee further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State of New York and that any corporation or entity organized and existing pursuant to the laws of the State of New York succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

**Section 6.2 Indemnity.** (a) The Lessee shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**") and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract

or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or at the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or their respective managers, members, partners, employees, agents or servants or persons under the control or supervision of the Lessee or any other Person who may be at the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and the Lessee agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.4 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Agency relating to the enforcement of the provisions herein specified.

(d) For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

**Section 6.3 Compensation and Expenses of the Agency.** The Lessee shall pay the fees, costs and expenses of the Agency together with any reasonable and necessary fees and disbursements incurred by the Agency's Project Counsel and the Agency's general counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$500.00 payable upon the Commencement Date and on every January 1 thereafter until the termination of this Agreement.

**Section 6.4 Retention of Title to Facility; Grant of Easements; Release of Facility Realty.** (a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

Notwithstanding the foregoing paragraph, the Agency will, at the written request of an Authorized Representative of the Lessee, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of this Agreement, as shall be necessary or convenient for the operation or use of the Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement.

(b) No conveyance or release affected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

**Section 6.5 Discharge of Liens.** (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement or the interest of the Agency or the Lessee under this Agreement, other than Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written

notice thereof to the Agency and the Lessee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

**Section 6.6 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.**

**Section 6.7 Financial Statements; No-Default Certificates.** The Lessee agrees to furnish to the Agency, as soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Lessee, a copy of the most recent fiscal year annual internally generated financial statements of Lessee and its subsidiaries (including balance sheets as at the end of such most recent fiscal year and the related statements of income, earnings, retained

earnings and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles and practices.

**Section 6.8 Employment Information, Opportunities and Guidelines.** (a) Annually, by October 1 of each year until the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in the form required by the Agency and/or the State, certified as to accuracy by the chief financial or accounting officer of the Lessee.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination and shall comply New York General Municipal Law §858-b. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee hereby authorizes any private or governmental entity, including but not limited to the New York State Department of Labor (“DOL”), to release to the Agency and/or the County of Rockland Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by any and all applicable laws, rules or regulations. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by any and all applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the County of Rockland, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to applicable laws, rules or regulations, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.



(d) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

**Section 6.9 Further Assurances.** The Lessee shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, if applicable, at the sole cost and expense of the Lessee, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

**Section 6.10 Recording and Filing.** A memorandum of this Agreement shall be recorded by the Lessee in the appropriate office of the Clerk of the County of Rockland, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

**Section 6.11 Further Encumbrances.** The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee in the Facility or this Agreement, except for Permitted Encumbrances.

## **ARTICLE VII EVENTS OF DEFAULT; REMEDIES**

**Section 7.1 Events of Default.** Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any amount (including Rental Payment, fee or charge within fifteen (15) days of the due date thereof;

(b) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under this Agreement and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed within (thirty) 30 days after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(c) The Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an

involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of their respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Lessee shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(e) Any representation or warranty made (i) by the Lessee in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by the Lessee herein or by the Lessee in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The commencement of proceedings to foreclose the lien of any mortgage or lien on the Facility Realty;

(g) Any loss by the Agency of its leasehold rights to the Facility Realty;

(h) The Lessee shall have transferred all or substantially all of its employees at the Facility to a location outside of the County;

(i) The failure of the Lessee to: (i) substantially meet the job retention predictions set forth in the Application; (ii) comply with the Agency’s Labor Policy (Appendix A attached); (iii) provide required reports to the State or the Agency; or (iv) comply with the terms of the Sales Tax Letter, if any;

(j) The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of the Facility Equipment; or

(k) The Lessee shall have vacated all or part of the Facility at any time during the Lease Term.

**Section 7.2 Remedies on Default.** Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing, at the sole cost and expense of the Lessee, a termination of the Head Lease therefor as required by law, and a bill of sale, and the Lessee hereby waives delivery and acceptance of such termination of Head Lease and bill of sale as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination of Head Lease or a memorandum thereof, provided however, that if the Lender obtains a Judgment of Foreclosure, this Agreement shall terminate upon the Agency's receipt of notice of same ; or

(b) The Agency may bring an action for damages, injunction or specific performance;

(c) The Agency may suspend or terminate the Sale Tax Letter or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation;

(d) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from its obligations hereunder, and under Sections 6.2, 8.5, 9.12 and 9.14 hereof all of which shall survive any such action.

**Section 7.3 Remedies Cumulative.** The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

**Section 7.4 No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter 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. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the

Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

**Section 7.5 Effect on Discontinuance of Proceedings.** In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

**Section 7.6 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other reasonable and necessary expenses for the collection of the Rental Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

## ARTICLE VIII OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

### **Section 8.1 Option to Purchase Facility and to Terminate Agreement.**

(a) The Lessee shall have the option to purchase the Agency's interest in the Facility and to terminate this Agreement on any date during the term hereof by paying, or causing to be paid, all Rental Payments due hereunder. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to an Authorized Representative of the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such purchase and termination is to be made. In addition, the Lessee shall purchase the Agency's interest in the Facility on the scheduled expiration date of this Agreement by paying on such date any and all Rental Payments then due hereunder.

(b) The Lessee, in purchasing the Agency's interest in the Facility and terminating this Agreement pursuant to Section 8.1(a) hereof, shall pay to the Agency, as the purchase price, in legal tender, an amount equal to all Rental Payments due hereunder, plus one dollar (\$1.00).

(c) Except to the extent permitted under Section 3.2 hereof, the Lessee shall not, at any time, assign or transfer its option to purchase the Agency's interest in the Facility as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.2 hereof without the prior written consent of the Agency.

**Section 8.2 Conveyance on Exercise of Option to Purchase.** At the closing of any purchase of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) a termination

of the Head Lease, and all other necessary documents conveying to the Lessee all of the Agency's right and interest in and to the Facility and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.4(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated and under Sections 6.2, 8.5, 9.12 and 9.14 hereof shall survive such termination.

**Section 8.3** [Reserved].

**Section 8.4** [Reserved].

**Section 8.5** Recapture of Agency Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees that if there shall occur a Recapture Event (as defined below) at any time during the term of this Agreement the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency the following amounts:

(a) one hundred percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first four (4) years after the Commencement Date;

(b) eighty percent (80%) of the Benefits if the Recapture Event occurs during the 5<sup>th</sup> or 6<sup>th</sup> year after the Commencement Date; and

(c) sixty percent (60%) of the Benefits if the Recapture Event occurs during the 7<sup>th</sup> or 8<sup>th</sup> year after the Commencement Date; and

(d) forty percent (40%) of the Benefits if the Recapture Event occurs during the 9<sup>th</sup> year after the Commencement Date; and

(e) zero percent (0%) of the Benefits if the Recapture Event occurs during the 10<sup>th</sup> year or thereafter after the Commencement Date.

The term “**Benefits**” shall mean, all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, sales or use tax and filing and recording fees.

The term “**Recapture Event**” shall mean any of the following events:

(a) The Lessee shall have liquidated its operations and/or assets at the Facility (absent a showing of extreme hardship as determined by the Agency in its reasonable discretion);

(b) The Lessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility, or otherwise, or whether to another location either within, or outside of the County);

(c) The Lessee shall have transferred all or substantially all of its employees at the Facility to a location outside of the County;

(d) The Lessee shall have effected a substantial change in the scope and nature of the operations at the Facility as determined by the Agency in its reasonable discretion;

(e) The Lessee shall have subleased all or any portion of the Facility in violation of the limitations imposed by Section 9.2 hereof, without the prior written consent of the Agency;

(f) The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility, except (i) in connection with a transfer or other disposition to any corporation or other entity into or with which the Lessee may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of the Lessee or (ii) as permitted under Section 9.2 hereof; or

(g) An Event of Default shall have occurred pursuant to the provisions of Section 7.1.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

(a) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof during the term of this Agreement, which notification shall set forth the terms of such Recapture Event and/or disposition.

(b) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

(c) The Lessee covenants and agrees to furnish the Agency with written notification upon any such disposition of the Facility or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale.

(d) The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

**Section 8.6 Agency Termination Fee.** In the event a Recapture of Benefits event shall occur under Section 8.5, the Lessee shall pay to the Agency a sum equal to one percent (1%) of the Benefits Recaptured as a result of the early termination of this Agreement.

## ARTICLE IX MISCELLANEOUS

**Section 9.1 Force Majeure.** In case by reason of *force majeure* the Agency or the Lessee shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the Rental Payments required under the terms hereof, or to comply with Sections 4.4 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee.

**Section 9.2 Assignment or Sublease.** (a) Lessee shall not at any time except as permitted by clause (f) of this Section 9.2, (i) assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility without the prior written consent of the Agency, and provided that

(i) the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the assignment or sublease shall not cause the Facility to cease being an Approved Facility and a "project" under the Act;

(ii) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) any assignee or transferee of the Lessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee, for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any assignee, transferee or sublessee shall utilize the Facility as an Approved Facility and a qualified "project" within the meaning of the Act;

(v) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any subletting in part, the term of each such sublease does not exceed the term of this Agreement, and no more than an aggregate of twenty percent (20%) of the Facility Realty would be subleased by the Lessee;

(vii) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement which Lessee is obligated to perform or of any other Project Document to which the Lessee shall be a party;

(viii) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.4 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease; and

(ix) each such sublease contains such other provisions as the Agency may reasonably require.

The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least ten (10) days prior to the date of execution thereof and the parties hereto agree that such assignment, transfer or sublease shall not be effective until the Agency has granted its consent to same in accordance with the provisions of this Section 9.2.

(b) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee or the successors or assigns of the Lessee to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.



(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee (or any permitted sublessee or permitted sub-sublessee), the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the sublessee or occupant during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) Lessee covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or suffer any amendment, modification, termination or assignment of any sublease entered into in accordance with this Section.

(e) The limitations in this Section 9.2 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any sub-subletting in whole or in part of the Facility.

(f) Intentionally omitted.

(g) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency.

**Section 9.3 Amendments.** This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

**Section 9.4 Notices.** All notices, certificates or other communications hereunder shall be sufficient if sent (a) by registered or certified United States mail, postage prepaid, (b) by a nationally recognized overnight delivery service, charges prepaid or (c) by hand delivery, addressed, as follows:

If to the Agency, to the Chairperson, County of Rockland Industrial Development Agency, 254 South Main Street, Suite 401, New City, New York 10956 with a copy to the Executive Director of the Agency at the same address, with an additional copy to Bleakley Platt & Schmidt, LLC, 1 Blue Hill Plaza, 3<sup>rd</sup> Floor, Pearl River, New York 10965, Attention: Rudolph O. Zodda, Esq.

If to Lessee, to Momentive Performance Materials USA LLC, 260 Hudson River Road, Waterford, New York 12188, Attention: General Counsel, with a copy to Harris Beach PLLC, 677 Broadway, Suite 1101, Albany, New York 12207, Attention: Robert J. Ryan, Esq.

The Agency and the Lessee 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.

**Section 9.5 Prior Agreements Superseded.** This Agreement, together with the Head Lease, and other Project Documents shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency, and the Lessee relating to the Facility.

**Section 9.6 Severability.** If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**Section 9.7 Inspection of Facility.** The Lessee will permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice, to enter the Facility but solely for the purpose of (y) assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as an Approved Facility and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

**Section 9.8 Effective Date; Counterparts.** This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.9 Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Lessee and their respective successors and assigns.

**Section 9.10 Third Party Beneficiaries.** It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

**Section 9.11 Law Governing.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

**Section 9.12 Waiver of Trial by Jury.** The parties 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.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

**Section 9.13 Non-Discrimination.** (a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

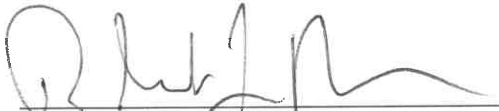
**Section 9.14 Recourse under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County shall be liable on any obligation so incurred, by any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.


**Section 9.15 Date of Agreement for Reference Purposes Only.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered as of May 18<sup>th</sup>, 2022.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written in their respective names and by their duly authorized representatives.

**MOMENTIVE PERFORMANCE MATERIALS  
USA LLC**  
**By: Momentive Performance Materials Inc.,  
Sole member**


WITNESS:

  
Name: Robert J. Ryan  
Title: Lessee's Counsel

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, a notary public in and for said state, 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 upon behalf of which the individual acted, executed the instrument.

  
Notary Public

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

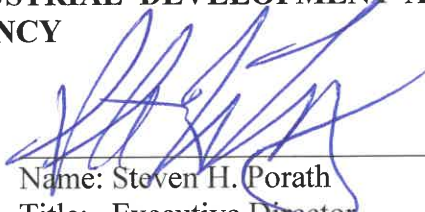
*[Signature page Lease Agreement]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written in their respective names and by their duly authorized representatives.

**COUNTY OF ROCKLAND  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENCY**


WITNESS:

\_\_\_\_\_  
Name: Brian J. Quinn  
Title: Agency Counsel

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, a notary public in and for said state, personally appeared **STEVEN 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 upon behalf of which the individual acted, executed the instrument.

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

RUDOLPH O. ZODDA III  
Notary Public, State of New York  
No. 02Z05087989  
Qualified in Rockland County  
Commission Expires Nov. 10, 2025

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

**(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**

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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.

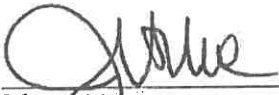
*[Remainder of page intentionally left blank; Signatures contained on the following page]*

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**

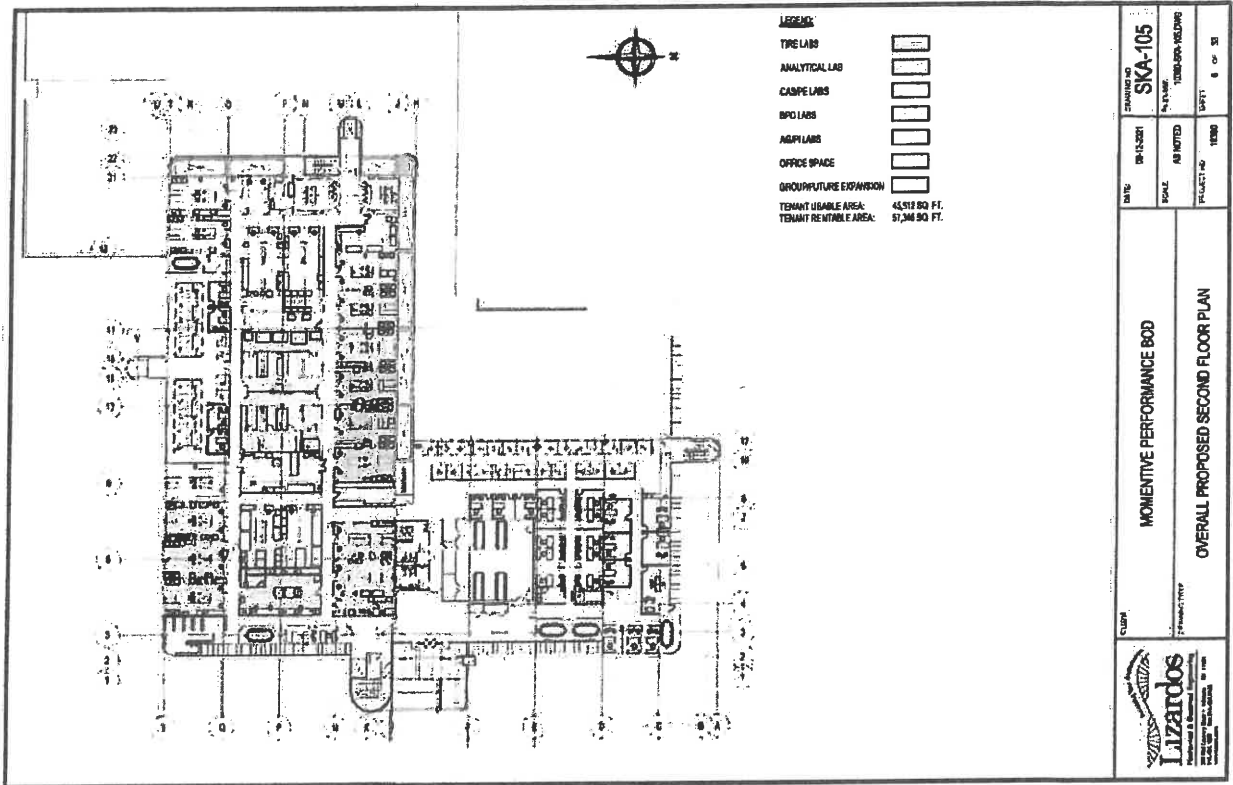


Exhibit "A"





EXHIBIT A (Continued)

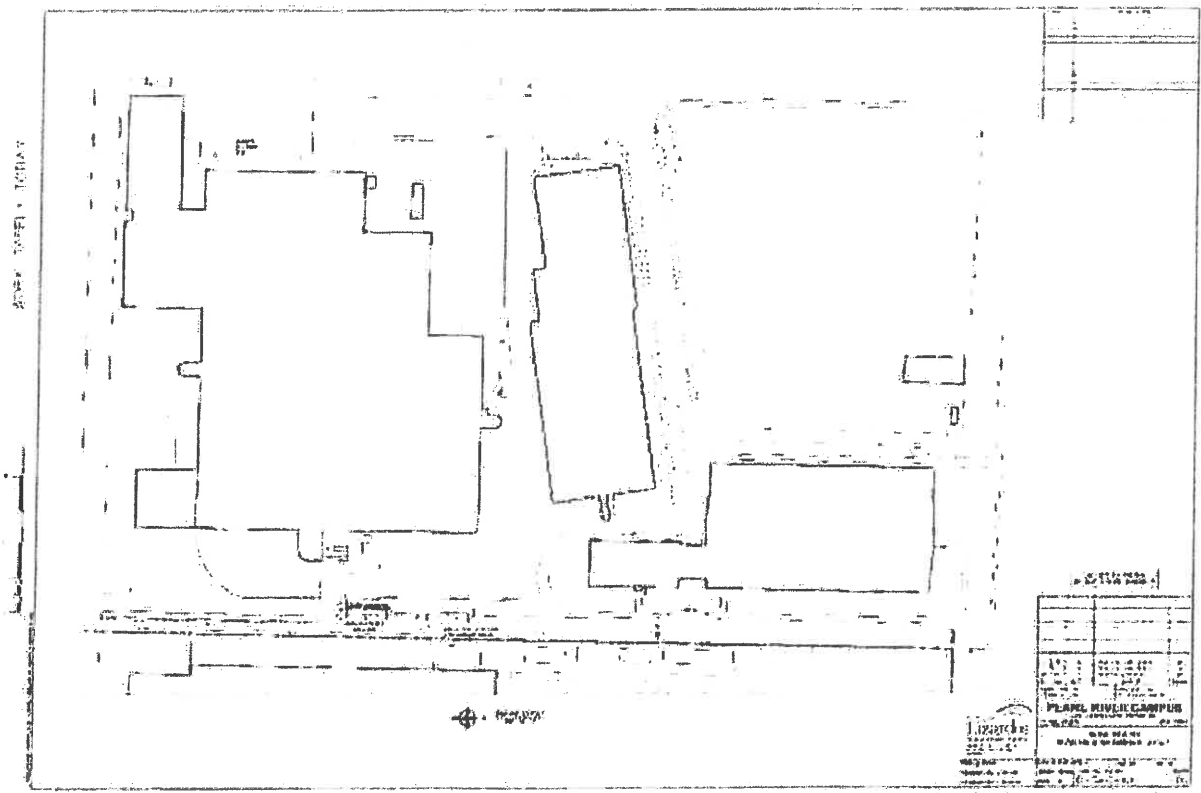


Exhibit "A"

## 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: \_\_\_\_\_



**EXHIBIT B**

**DESCRIPTION OF THE FACILITY EQUIPMENT**

**(See Attached)**

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY EQUIPMENT**

(A) (1) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (collectively, the "Buildings"), (2) all right, title and interest of Lessee, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in or on the Land or any of the Buildings, and all fixtures, fittings, machinery, appliances, equipment, apparatus, furnishings and personal property of every nature whatsoever (other than inventory) now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Land, any of the Buildings or any business or other operations now or hereafter conducted in or on the Land or any of the Buildings or in connection with any construction or other work now or hereafter conducted in or on the Land or any of the Buildings including all substitutions and replacements therefor, all accessions and additions thereto, all of which now owned or hereafter acquired by the Lessee including, but not limited to all equipment employed in the operation of the Lessee's business and all proceeds and insurance as to the foregoing.

## APPENDIX A

### LOCAL CONSTRUCTION LABOR POLICY

The County of Rockland Industrial Development Agency hereby adopts a Local Construction Labor Policy (the “Labor Policy”), effective April 1, 2022.

Project applicants (the “Company”), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the County of Rockland Industrial Development Agency or Rockland Economic Assistance Corporation (collectively the “Agency”), will be required to utilize qualified Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the “Project Site”).

#### Local Labor Defined

Local Labor is defined as individuals residing in the following Counties: Rockland, Orange, Westchester, Putnam, Ulster, Sullivan, and Dutchess (collectively, the “Local Labor Area”).

#### Local Labor Requirement

At least 80% of the total number of employees working at the Project Site, excluding construction project management, of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the “Workers”) working on the Project Site must reside within the Local Labor Area. Companies do not have to be local companies as defined herein but must employ local Workers residing within the Local Labor Area to qualify under the 80% Local Labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project Site. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the “Local Labor Waiver Request”) based on the following circumstances: (i) warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers; (ii) specialized construction for which qualified Local Labor Area Workers are not available; (iii) documented lack of Workers meeting the Local Labor Area requirement; or (iv) cost differentials in bids whereby use of Local Labor significantly increases the construction cost of the project. Prior to the granting of said waiver, the lowest bidding contractor which bid said construction project using Local Labor would have the right of first refusal to bid and match the lowest bid as a remedy to ensure compliance with this policy. Comprehensive documentation and justification will be required including documented evidence and verification by Agency staff or agents that the “right of first refusal” remedy has been affected unsuccessfully.

The Agency may require an outside consultant of its choosing be hired by the project to assist in reviewing any waiver requests that may be submitted. The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

### **Local Labor Reporting Requirement**

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency, or its designated agents as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

The Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project Site to verify compliance with the Local Labor Requirement throughout the construction period.

### **Enforcement**

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice delivered personally or by reliable overnight delivery service (i.e. Federal Express) of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company.

The Company shall have 10 business days thereafter to either:

- i (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; or
- ii (ii) submit the Local Labor Waiver Request as described above; or
- iii (iii) confirm in writing its inability to meet the Local Labor Requirement.

If the Company does not respond to the Agency's Notice of Violation within ten (10) business days thereafter, or if the Company confirms its inability to meet the Local Labor Requirement then the Agency shall immediately terminate any and all Financial Assistance being provided to the project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the project in

accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project.

### **Escrow**

The County of Rockland Industrial Development Agency, in the review or enforcement of its Labor Policy, may refer such matter to such consultants/professionals as it deems necessary to enable it to review or enforce the Labor Policy. The fees for such services shall be paid for by the Company.

At the time of submission of any application, the County of Rockland Industrial Development Agency may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Agency for the costs of professional review services in connection with the Labor Policy.

The sum deposited shall be held by the County of Rockland Industrial Development Agency in a separate account for the benefit of the Company and will be disbursed by the County of Rockland Industrial Development Agency for payment of consultant/professional fees in accordance with the usual requirements of the County of Rockland Industrial Development Agency for the payment of bills.

If such account is not replenished within 30 days after the Company is notified of the requirement for such additional deposit, the County of Rockland Industrial Development Agency may take appropriate action under applicable law and exercise its remedies under the underlying Agency documents, including but not limited to recapture.

After all pertinent charges have been paid, the County of Rockland Industrial Development Agency shall refund to the Company any funds remaining on deposit.

### **Miscellaneous**

This Labor Policy shall not apply if the Project is subject to prevailing wage requirements pursuant to NYS Labor Law section 224-a, as amended.

This Labor Policy may be amended by the County of Rockland Industrial Development Agency from time to time in a manner that is in accordance with applicable laws, rules and regulations, as modified or amended by local, state and/or federal law.