GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of November, 2014, by and among the **COUNTY OF MONTGOMERY, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **WOLVERINE ADVANCED MATERIALS, LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive $250,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to equip, improve and operate its two manufacturing facilities in the Locality (together, the "Facility"), thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation and Maintenance and the repayment by the Company of all or part of the GOF Grant under certain circumstances;

WHEREAS, the equipping, improvement and operation of the Facility will entail a capital expenditure of approximately $10,625,000 which will be invested in machinery and equipment;

WHEREAS, the equipping, improvement and operation of the Facility will further entail the creation and Maintenance of 93 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. <u>Definitions</u>.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements. The Capital Investment must be in addition to the capital improvements at the Facility as of October 1, 2014. The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, will qualify as Capital Investment. The total expected capital expenditure of $10,625,000 is referred to in this Agreement as the "Capital Investment."

"Maintain" means that the New Jobs created pursuant to the GOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least $34,609. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 235 full-time jobs at the Facility as of October 1, 2014.

"Performance Date" means March 1, 2018. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least $10,625,000 and to create and Maintain at least 93 New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. <u>Targets; Statutory Criteria</u>.

The Company will equip, improve and operate the Facility in the Locality, make a Capital Investment of at least $10,625,000 and create and Maintain at least 93 New Jobs at the Facility, all as of the Performance Date.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least $34,609 is less than the prevailing average annual wage in the Locality of $39,072, but is more than 85% of that prevailing average annual wage ($33,211). The Locality is not a high-unemployment locality, with an unemployment rate for 2013, which is the last year for which such data is available, of 5.5% which is the same as the 2013 statewide unemployment rate of 5.5%. The Locality is a high-poverty locality, with a poverty rate for 2012, which is the last year for which such data is available, of 23.3% as compared to the 2012 statewide poverty rate of 11.8%.

Section 3. <u>Disbursement of GOF Grant</u>.

By no later than March 1, 2015, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by March 1, 2015, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the GOF Grant proceeds for build-out of the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. <u>Break-Even Point; State and Local Incentives</u>.

VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

Category of Incentive:	Total Amount
GOF Grant	$250,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	74,400
Port of Virginia Economic and Infrastructure Development Grant	186,000

("POV Grant") (Estimated)

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

Category of Incentive:	Total Amount
Local Economic Development Grant (Estimated)	$250,000

If, by the Performance Date, the proceeds of the Local Economic Development Grant disbursed or committed to be disbursed by the Locality to the Company total less than the $250,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the POV Grant may be used by the Company for any lawful purpose. The proceeds of the Local Economic Development Grant may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least $2,500,000 in the Facility and create and Maintain at least 25 New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire GOF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, the GOF Grant is to be allocated as $125,000 (50%) for the Capital Investment Target and $125,000 (50%) for the New Jobs Target. If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only $7,968,750 (reflecting achievement of 75% of the Capital Investment Target) and only 70 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Authority 25% of the moneys allocated to the Capital Investment Target ($31,250) and 25% of the moneys allocated to the New Jobs Target ($31,250).

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the GOF Grant.

(d) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. <u>Company Reporting</u>.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at June 1, 2015 and covering the period through the prior March 1. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. <u>Notices</u>.

Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the

date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Wolverine Advanced Materials, LLC
_____
_____
Facsimile: _____
Email: _____
Attention: _____

with a copy to:

Wolverine Advanced Materials, LLC
_____
_____
Facsimile: _____
Email: _____
Attention: _____

if to the Locality, to:

County of Montgomery, Virginia
775 Roanoke Street, Suite 2E
Christiansburg, VA 24073-3181
Facsimile: 540.382.6943
Email: _____
Attention: County Administrator

with a copy to:

County of Montgomery, Virginia
_____
_____
Facsimile: _____
Email: _____
Attention: County Attorney

if to the Authority, to:

Economic Development Authority of
Montgomery County, Virginia
775 Roanoke Street, Suite 2H
Christiansburg, VA 24073-3184
Facsimile: 540.381.6888
Email: _____
Attention: Chair

with a copy to:

Economic Development Authority of
Montgomery County, Virginia
_____
_____
Facsimile: _____
Email: _____
Attention: Counsel

if to VEDP, to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: mbriley@yesvirginia.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. <u>Miscellaneous</u>.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Montgomery, and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF MONTGOMERY, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

ECONOMIC DEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

WOLVERINE ADVANCED MATERIALS, LLC

By _____
Name: _____
Title: _____
Date: _____