

RESOLUTION NO. 28936

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A USAGE AGREEMENT WITH THE UNIVERSITY OF TENNESSEE, ON BEHALF OF ITS CHATTANOOGA CAMPUS, FOR A TERM ENDING NOVEMBER 4, 2017, FOR THE USE OF THE ATHLETIC FIELDS, ON A PORTION OF 4501 N. ACCESS ROAD, FURTHER IDENTIFIED AS TAX PARCEL NO. 110P-B-001.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Usage Agreement with the University of Tennessee, on behalf of its Chattanooga Campus, for a term ending November 4, 2017, for the use of the athletic fields, on a portion of 4501 N. Access Road, further identified as Tax Parcel No. 110P-B-001.

ADOPTED: February 21, 2017

/mem

USAGE AGREEMENT

This Usage Agreement (“Agreement”) is made and entered as of this 5th day of November, 2016 (the “Effective Date”), by and between the City of Chattanooga (the “City”) and the University of Tennessee, on behalf of its Chattanooga campus (“UTC”).

WITNESSETH:

Whereas, the City has entered into a lease agreement with InVista S.A.R.L.(“Lease”) for the leasing of a certain parcel of land containing approximately 5.03 acres, situated at 4501 North Access Road in the City of Chattanooga which contains two softball fields (“Fields”). A copy of said Lease is attached hereto as Exhibit A:

Whereas, UTC desires to use the Fields; and

Whereas, the City desires to sublet its interest in the Lease of the Fields to UTC in return for the consideration set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants, terms and conditions as hereinafter stated, the Parties hereto agree as follows;

1. Recitals. The above recitals are incorporated herein as terms of this Agreement.
2. Access. The City agrees to provide UTC priority access to the Fields and storage unit free of charge on Monday through Thursday from 5pm to 11pm (some weekends) during August, September, October, March, April, May, June and July.
3. Term. The term of this Agreement shall run congruently with the Term of the Lease with the City of Chattanooga, Tennessee starting November 5, 2016 and ending November 4, 2017.
4. Maintenance. The City shall be responsible for cutting the grass, maintaining the lights and emptying the garbage. UTC shall be responsible for field maintenance including dragging and lining the fields and base repair when using the Fields, and all staffing for events during UTC’s use of the Fields.
5. Representatives. City represents and warrants that it has the appropriate approvals and authority to enter this Agreement.
6. Claims.
 - (a) The parties being government entities under the State of Tennessee will be liable to each other for claims arising from or related to this Agreement, as provided under the laws relating to Tennessee governmental entities. With respect to claims against the University, the governing law is T.C.A. § 9-8-307 et. seq. With respect to claims against City, the University may assert any and all remedies available at law or equity in any court of competent jurisdiction in the State.
 - (b) In no event shall University bear liability for loss, expense, attorney’s fees or claims for injury or damages arising out of acts or omissions in the performance of this Agreement on part of the City. Likewise, the City shall bear no liability for loss, expense, attorney’s fees or claims for injury or damages arising out of acts or omissions in the performance of this Agreement on

part of University. It is the express intention of the parties hereto that neither shall bear liability for injury or loss caused by the other party, and each shall be responsible for injury or loss as provided by applicable Tennessee Law.

7. Termination. Either party may terminate this Agreement at any time upon ninety (90) days written notice to the other party to that effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Day and year first above.

CITY OF CHATTANOOGA, TENNESSEE

Signature _____ Date _____

Andy Berke, Mayor

UNIVERSITY OF TENNESSEE ON BEHALF
OF ITS CHATTANOOGA CAMPUS

Signature _____ Date _____

Richard L. Brown, Junior
Executive Vice Chancellor Finance & Operations, UTC

INVISTA S.A.R.L

Signature _____ Date _____

Print _____

Chattanooga Site Manager

EXHIBIT A



AMENDED AND RESTATED LEASE AGREEMENT BETWEEN INVISTA S.À R.L. AND CITY OF CHATTANOOGA

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease" or "Agreement") is made this 15th day of July, 2011, between INVISTA S.à r.l., a Luxembourg private limited company, with offices at 4123 East 37th Street North, Wichita, Kansas 67220 ("INVISTA") and the CITY OF CHATTANOOGA, a municipality of the State of Tennessee ("CITY") (collectively, the "Parties"). This agreement is subject to the following terms and conditions:

1. PROPERTY LEASED. INVISTA leases to CITY and CITY rents from INVISTA that certain parcel of land containing approximately 5.03 acres, said parcel of land being described in "Exhibit A" attached hereto, being land situated at 4501 North Access Road in the City of Chattanooga, Tennessee ("PREMISES"). Should there be any controversy or doubt as to the PREMISES included in this Lease, the decision of INVISTA in respect thereto shall be final and conclusive.

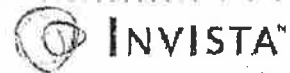
2. TERM. The term of this Lease shall be for a period of five (5) years beginning on the date hereof and shall end at midnight on November 4 2016, and shall continue from year to year thereafter unless and until this Lease is terminated as hereinafter provided.

3. RENT. CITY shall pay rent to INVISTA in the amount of One Dollar (\$1.00) receipt of which is hereby acknowledged. City shall pay the cost of all utilities.

4. USE. CITY shall use the PREMISES for public recreation and no other purposes. CITY shall have the right to construct facilities for such purpose as it may deem necessary with INVISTA's prior written consent. These facilities shall revert to INVISTA upon the termination of this Lease. INVISTA shall have no obligation to make improvements or modifications to the PREMISES or any facilities thereon.

5. CARE AND MAINTENANCE. CITY shall keep PREMISES neat and orderly and perform mowing of grass and trash removal. CITY may utilize community partners to assist in maintaining, renovating and caring for the leased PREMISES and facilities.

6. SAFETY. CITY shall use and care for the PREMISES in compliance with all applicable Laws (as defined below) and INVISTA's then-current policies, rules and regulations, including, without limitation, INVISTA's Chattanooga site safety policies, rules and regulations. It shall be CITY's responsibility to obtain, and to be familiar with, such Laws, policies, rules and regulations. "Laws" means all laws, treaties, conventions, directives, statutes, ordinances, rules, regulations, standards, orders, writs, judgments, injunctions or decrees of any governmental authority, international conventions, and any other rules or directives of any authority or regulatory body, whether or not an agency of any government.



7. INSURANCE. CITY shall at all times during the term hereof carry public liability insurance covering itself and its use and occupancy of the PREMISES and all liability assumed by CITY hereunder, such insurance to afford protection in a combined single limit of not less than Three Hundred Thousand Dollars (\$300,000.00), and to the limit of not less than Twenty-Five Thousand Dollars (\$25,000.00) in respect to property damage and naming INVISTA as an additional insured. Certificates evidencing compliance with this paragraph shall be promptly forwarded to INVISTA. CITY may elect to meet its insurance obligations herein by means of its self-insurance program.

An exception to the requirement that Lessee procure and maintain Commercial General Liability Insurance on the Leased PREMISES shall be allowed by Lessor since Lessee maintains a self-funded insurance plan under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-201, et seq., which establishes the limits of liability for governmental entities in the State of Tennessee.

8. NONWARRANTY. INVISTA does not and will not in any way warrant the condition of the PREMISES and CITY assumes all risk incident thereto.

9. ACCESS. INVISTA shall be permitted to enter upon the PREMISES from time to time for purposes of making inspection thereof, performing maintenance or constructing improvements thereon, or for any other purposes. At any time, INVISTA shall have the right, in its sole discretion and without cause, to deny access to any individual to the PREMISES, or to any INVISTA property or facility.

10. ASSIGNMENT OR SUBLET. CITY shall not assign or sublet the PREMISES except for clubs, groups, athletic and youth associations that request permission to use the PREMISES for recreational programming or as agreed to in writing by INVISTA and CITY.

11. TERMINATION. Either party to this Lease may terminate this Lease at any time upon ninety (90) days written notice to the other party to that effect.

12. AUDIT. The City or its assign may audit all financial and related records (including digital) associated with the terms of this Lease agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Parties. The City may further audit any records of the Parties directly related to the terms of this Lease to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest. The Parties shall at all times during the term of the Lease and for a period of five (5) years after the end of this Lease, keep and maintain records of the work performed pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Parties under the terms of the Lease. Documents shall be maintained as necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Parties shall, at their own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Parties to this agreement and any subcontractors or suppliers of goods or services to the extent that



those subcontracts or agreements relate to fulfillment of the obligations to the City under this agreement. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. INVISTA shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

13. NONDISCRIMINATION. Any member of the public who qualifies under applicable rules may participate in such programs and events on the PREMISES without discrimination as to race, color, sex, religion, handicap, age, national origin or any other prohibited factor.

14. PUBLICITY AND CORPORATE IDENTITY. Unless it obtains the prior written consent of the General Counsel of Litigation/Compliance for INVISTA, CITY shall not: (i) use any name, trade name, logo, trademark or service mark owned or used by INVISTA, or (ii) represent, directly or indirectly, that any product or service offered by the CITY has been used, approved or endorsed by INVISTA.

15. GOVERNING LAW. This Lease shall be governed by the laws of the State of Tennessee.

16. AMENDMENTS AND MODIFICATIONS OF THIS AGREEMENT. The Parties from time to time may amend this contract by agreement. Any amendments shall be effective upon the approval of the City and the Corporation and upon the signature of the Chief Elected Official of the City and the respective official with INVISTA.

17. PRIOR RIGHTS. This Lease is made subject to all matters of record and any state of facts that is apparent or that an inspection of PREMISES would disclose.

18. RESERVED RIGHTS. INVISTA and its permittees shall have the right to use PREMISES, or any part thereof, for any purpose that does not unreasonably interfere with CITY's use and occupancy of the same.

19. CONVERSION FROM SUBLEASE TO LEASE. This Agreement is a sublease as of the time of execution. It amends and restates that certain Lease Agreement between E.I. du Pont de Nemours and Company ("DuPont") and CITY ("DuPont Lease") for the same PREMISES. The DuPont Lease was assigned to INVISTA by way of a Purchase and Sale Agreement between DuPont and INVISTA. INVISTA currently is a lessee of the PREMISES but will obtain fee simple title to the PREMISES during the term of the Lease. At that time, this Agreement will convert from a sublease to a lease.



IN WITNESS WHEREOF, the parties hereto have executed this Lease effective the date listed above.

CITY OF CHATTANOOGA, TENNESSEE:

WITNESS:

Wanda Jelata

BY:

Lawrence A. Zehnder
Lawrence A. Zehnder, CCPR
Administrator, Parks and Recreation

INVISTA S.À R.L.:

WITNESS:

Wanda Jelata

BY:

Stephen P. French
Stephen P. French, Chattanooga Site Manager



EXHIBIT "A"

LEGAL DESCRIPTION
RECREATIONAL FIELD AT 4501 NORTH ACCESS ROAD
5.03+/- ACRE SITE
PROPOSED "LEASEHOLD PROPERTY"

Being part of the property of E. I. du Pont de Nemours and Company, recorded in Deed Book 867, Page 537, of the Register's Office of Hamilton County (R.O.H.C.), Tennessee; said property being located in the second civil district of Hamilton County, Tennessee;

BEGINNING at a point in the northeast right-of-way line of North Access Road where it intersects with the southeast right-of-way line of DuPont Parkway; said point being located South 81 degrees-52 minutes-30 seconds West, 1,207.65 feet from DuPont's Plant "grid" concrete monument located at grid co-ordinate N=8762.0 and W=4210.0 (as stamped on said monument);

Thence along the southeast right-of-way line of DuPont Parkway the following bearings and distances;

North 01 degree-51 minutes-30 seconds West, 157.35 feet to a point;

North 25 degrees-39 minutes-40 seconds East, 349.9 feet to a point;

North 43 degrees-34 minutes East, 239.0 feet to a point;

Thence along the leasehold lines the following bearings and distances;

South 51 degrees-18 minutes-20 seconds East, 260.35 feet to a point;

South 23 degrees-25 minutes West, 595.0 feet to a point;

South 67 degrees-49 minutes West, 77.0 feet to a point;

Thence North 66 degrees West, along the Northeast right-of-way line of North Access Road a distance of 226.2 feet to-the POINT OF BEGINNING.

CONTAINING: 5.03 acres, more or less, as shown on Boundary Survey by True Line Company, Land Surveyors, Job No. 935962, Dated March 22, 1993.

SUBJECT TO: Any and all easements, covenants, conditions, restrictions and agreements affecting this property.

AGREEMENT TO EXERCISE OPTION TO RENEW

Agreement Title: AMENDED AND RESTATED LEASE AGREEMENT BETWEEN INVISTA S.A.R.L. AND CITY OF CHATTANOOGA

Effective Date: July 15, 2011

Initial Expiration Date: November 4, 2016

Number of Previously Exercised Options: None

Tax Map Number: A portion of 110P-B-001

Property Address: A portion of 4501 N. Access Road

Lessor/Licensor: INVISTA S.A.R.L.

Lessee/Licensee: City of Chattanooga

Initial Term: 5 years, 3.5 months

Term Renewal Option: Year to year thereafter unless and until this Lease is terminated as hereinafter provided. Lessor has notified Lessee this will be the last renewal Agreement.

Term Renewal Expiration: November 4, 2017

By written mutual agreement of the above named Lessor/Licensor and Lessee/Licensee, the option to extend the original term of the Agreement is exercised. With the option to extend the term being exercised, the original Agreement of July 15, 2011 is hereby extended for one (1) year to the date of November 4, 2017. There remain zero (0) options to extend the terms of the original Agreement of July 15, 2011. All terms and conditions of the original Agreement of July 15, 2011 and any subsequent Amendments shall remain in full force and effect.

Agreed upon this the ____ day of _____, 20____.

Lessor/Licensor
Title _____

Lessee/Licensee
Title _____

On City Council Agenda of 02-21-17 For document execution. Executed document will be provided upon execution.