

**Directors**

James Taylor  
Tessa Wright  
Steve Baffuto  
Joseph Ferrell  
Stephen Skripak



*John Tuttle*  
**Chairman**

*Tommy Loflin*  
**Vice-Chairman**

*Brian T. Hamilton*  
**Secretary/Treasurer**

*Martin M. McMahon*  
**Attorney**

**MEETING AGENDA**

**Economic Development Authority of Montgomery County, Virginia**  
**Tuesday, April 21, 2020, at 12:00 PM**  
**Zoom Meeting**

**I. Opening Remarks**

- \* A. Declaration of a Quorum
- \* B. Approval of Agenda

**II. General Business**

- \* A. Zapi Contract Amendment– **Exhibit Tab 1**

**III. Announcements/Information** - The date of the next meeting of the EDA is tentatively scheduled to be on **Tuesday, May 19, 2020**, and will begin at **11:30 A.M.**, at the Montgomery County Government Center, Christiansburg, VA.

**V. Adjourn**

## **AGREEMENT FOR THE PURCHASE AND SALE OF PROPERTY**

This PURCHASE AGREEMENT (the "**Agreement**") is made and entered into as of January 21, 2020, by and between the Economic Development Authority of Montgomery County, Virginia ("**Seller**") and ZAPI, Inc., a North Carolina Corporation, or its affiliates or assigns who are authorized to transact business in Virginia and its assigns ("**Buyer**").

### **RECITALS:**

A. Seller is the fee simple owner of that certain property located at 3155 and 3157 State Street, Blacksburg, Virginia 24060 as further described in Exhibit A to this Agreement. This purchase shall include the real property and all other improvements and appurtenances conveying "as is" related thereto collectively referred to as the "Property."

B. Buyer is desirous of purchasing the Property from Seller, and Seller is desirous of selling the Property to Buyer, for the purchase price and upon terms and conditions hereinafter set forth.

C. A portion of the Property is currently leased to Luna Innovations, Inc. ("Luna or Tenant"), pursuant to the Industrial Lease Agreement between Luna Innovations, Inc., and the Economic Development Authority of Montgomery County, Virginia ("Landlord"), dated October 1, 2014, amended by First Amendment to Industrial Lease dated January 20, 2015 ("Exhibit B") and a portion of the Property is currently leased to InMotion US, LLC, a wholly owned subsidiary of Zapi, Inc., pursuant to the Industrial Lease Agreement between InMotion US, LLC and the Economic Development Authority of Montgomery County, Virginia dated October 2, 2014 ("Exhibit C").

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

### **ARTICLE I PURCHASE TERMS**

1.1 Purchase and Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions hereof.

1.2 Purchase Price. The purchase price for the Property shall be Eight Million and No/100 Dollars (\$8,000,000.00) (the "Purchase Price") payable in cash at closing. This Agreement is not contingent on Buyer obtaining financing.

1.3 Earnest Money Deposit. Within three (3) business days after the full execution and delivery of this Agreement, Buyer shall deposit the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) in immediately available funds (the "Earnest Money Deposit") with an escrow agent in the New River Valley area to be designated by Buyer ("Escrow Agent").

1.4 Post-Closing Performance Agreement. The Parties agree that should Buyer close on the Property, the Buyer and Seller shall at closing execute a Post-Closing Performance Agreement whereby if Buyer closes on the Property and continues to operate its existing business on the Property for a minimum of two (2) years, the Seller shall provide an Economic Development Grant for the two (2) year period starting the January following closing equal to fifty percent (50%) of the annual Real Estate taxes paid by Buyer to County of Montgomery that are specifically attributable to the Property.

## **ARTICLE II ASSIGNMENT OF LEASE**

2.1 Assignment of Luna Innovations, Inc. Lease. The Parties agree that, at closing the Parties will have executed an Assignment of Lease, in a form substantially similar to Exhibit E attached hereto, whereby Seller shall assign, and Buyer shall accept, the rights and obligations of the Landlord as provided in the Lease Agreement between Luna Innovations, Inc. and the Economic Development Authority. Prior to closing, Buyer agrees to provide an executed Non-Disturbance Agreement with Luna Innovations, Inc. in a form reasonably acceptable to Seller and to Luna.

2.2 Assignment of InMotion US, LLC Lease. The Parties agree that, at closing, the Parties will have executed an Assignment of Lease, in a form substantially similar to Exhibit F attached hereto, whereby Seller shall assign and Buyer shall accept the rights and obligations of the Landlord as provided in the Lease Agreement between InMotion US, LLC and the Economic Development Authority. Prior to closing, Buyer agrees to provide an executed Non-Disturbance Agreement with InMotion US, LLC in a form reasonably acceptable to Seller and to InMotion US, LLC.

2.3 Tenant Estoppel. During the Review Period, as defined below, Seller for the benefit of Buyer, shall help buyer obtain a Tenant Estoppel for the InMotion USA, LLC lease and the Luna Innovations Lease, in a form substantially similar to Exhibit H attached hereto.

## **ARTICLE III REVIEW PERIOD**

3.1 Review Period. Buyer shall have a period through 6:00 p.m. Eastern Time on the date that is ninety (90) days after the date of full execution of this Agreement (the "Review Period") to evaluate the Property and all matters related thereto, including, but not limited to title, property inspection, and environmental condition, deemed relevant by Buyer. Seller shall provide to Buyer all information in Seller's possession related to the Property that is reasonably requested by Buyer. Seller shall deliver, or cause to be delivered, to Buyer the documents and information (collectively, the "Property Information") requested by Buyer as outlined in Exhibit D of this Agreement within

ten (10) Business Days after the date of this Agreement, to the extent they are in the possession of Seller. If Buyer discovers any matter which is objectionable to Buyer, including but not limited to defects in the existing conditions within buildings, improvements or structures on the Property, or within mechanical equipment serving such buildings, improvements or structures, Buyer may provide Seller with written notice of its objection to same during the Review Period. Seller shall elect either to attempt to cure or not cure any such item by written notice sent to Buyer within five (5) days after Seller's receipt of notice from Buyer, and if Seller commits in writing to attempt to cure any such item, then Seller shall be given until the Closing Date to cure any such defect. In the event Seller elects not to cure any matter objected to by Buyer or fails to cure a defect that Seller has committed in writing to cure prior to closing, then Buyer may elect, if the Review Period has not expired, or if Seller has committed in writing to cure prior to closing and has failed to do so, in Buyer's sole and absolute discretion: (i) to waive such objection and proceed to closing; or (ii) to terminate this Agreement, in which event the Earnest Money shall be promptly returned by the Escrow Agent to Buyer, this Agreement shall be terminated, and both parties shall be relieved of all other rights, obligations and liabilities hereunder. Time is of the essence with respect to the time limits in this Article 3.1.

3.2 Due Diligence Examination. Upon prior approval of the Seller, Buyer and/or its representatives and agents shall have the right to, and may, with at least twenty four (24) hours prior notice to the Tenants on the Property, at any time during the Review Period, enter upon the Property at all reasonable times for the purposes of reviewing all records and other data, documents and/or information relating to the Property and conducting such surveys, appraisals, tests, assessments, inspections, and studies as Buyer reasonably desires to evaluate the Property. Buyer agrees such right of access will be exercised without causing diminution to the value of the property or interruption of the quiet enjoyment of the Property by Seller and Tenants.

3.3 Restoration. Buyer covenants and agrees not to damage or destroy any portion of the Property in conducting its examinations and studies of the Property and, if closing does not occur, shall repair any portion of the Property damaged by the conduct of Buyer, its agents or employees, to substantially the condition such portion(s) of the Property were in immediately prior to such examinations or studies.

3.4 Exercise Right to Purchase. Buyer may elect to terminate this Agreement any time prior to the expiration of the Review Period and the Earnest Money Deposit shall be returned to Buyer by Escrow Agent, and this Agreement shall be deemed null and void, and Buyer and Seller shall be released of any further liability. In the event the Buyer does not notify the Seller in writing of its termination prior to the expiration of the Review Period, Buyer shall proceed to close as detailed herein.

#### **ARTICLE IV TITLE APPROVAL**

4.1 Title. Seller shall promptly deliver to Buyer a true copy of Seller's existing title insurance policy, including copies of all documents referred to therein. Buyer's obligations under this Agreement are conditioned upon Buyer being able to obtain for the Property a Commitment

for Title Insurance (the "Title Commitment") issued by a title company reasonably selected by Buyer (the "Title Company") pursuant to which the Title Company agrees to issue to Buyer at Closing an Owner's Policy of Title Insurance reasonably acceptable to Buyer (the "Title Policy").

4.2 Survey or Title Objections. If Buyer discovers any title or survey matter which is objectionable to Buyer, Buyer may provide Seller with written notice of its objection to same within ten (10) business days after receipt of the Title Commitment (including all exception documents) and survey, if applicable. If Buyer disapproves any condition of title, survey or other matters by written objection to Seller before the expiration of the Review Period, Seller shall elect either to attempt to cure or not cure any such item by written notice sent to Buyer within five (5) days after Seller's receipt of notice from Buyer, and if Seller commits in writing to attempt to cure any such item, then Seller shall be given until the Closing Date to cure any such defect. In the event Seller elects not to cure any matter objected to by Buyer or fails to cure a defect that Seller has committed in writing to cure prior to Closing, then Buyer may elect, if the Review Period has not expired or if Seller has committed in writing to cure prior to closing and has failed to do so, in Buyer's sole and absolute discretion: (i) to waive such objection and proceed to Closing; or (ii) to terminate this Agreement, in which event the Earnest Money shall be promptly returned by the Escrow Agent to Buyer. The items shown on the Title Commitment which are not objected to by Buyer as set forth above (other than those standard exceptions which are ordinarily and customarily omitted in the state in which the applicable Property is located, so long as Seller provides the appropriate owner's affidavit, gap indemnity or other documentation reasonably required by the Title Company for such omission) are hereinafter referred to as the "Permitted Exceptions." In no event shall Permitted Exceptions include liens, or documents evidencing liens, securing any indebtedness or any mechanics' or materialmen's liens or any claims or potential claims therefore covering the Property or any portion thereof, each of which shall be paid in full by Seller and released at Closing.

## **ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants to Buyer as follows:

- a) Authority; No Conflicts. Seller has obtained all necessary consents, and is fully authorized, to enter into and perform this Agreement and to complete the transactions contemplated by this Agreement. Neither the execution nor the performance of, or compliance with, this Agreement by Seller has resulted, or will result, in any violation of, or default under, or acceleration of, any obligation under any organizational documents or under any mortgage indenture, lien agreement, promissory note, contract, or permit, or any judgment, decree, order, restrictive covenant, statute, rule or regulation, applicable to Seller or to the Property.
- b) Property Agreements. There are no leases, contracts, or other agreements affecting the Property other than the existing occupant leases provided in Exhibit B or Exhibit C of this Agreement.

c) Pending Claims. To the best of Seller's knowledge there are no: (i) pending, actual, or threatened claims, demands, litigation or arbitration proceedings, governmental investigations, unsatisfied judgments, orders, or arbitration awards, unfair labor practice charges or complaints, or civil or human rights agency charges or complaints; (ii) special assessments or extraordinary taxes; or (iii) pending or threatened condemnation or eminent domain proceedings any of which could affect any part of the Property or might become a lien on any of the Property.

d) Environmental. With respect to environmental matters: to the best of Seller's knowledge (i) there has been no Release or threat of Release of Hazardous Materials in, on, under, to, from or in the area of the Property; (ii) no portion of the Property is being used for the treatment, storage, disposal or other handling of Hazardous Materials or machinery containing Hazardous Materials other than standard amounts of cleaning supplies and chemicals utilized by the two tenants in the normal course of business, all of which are stored on the Property in strict accordance with applicable Environmental Requirements and do not exceed limits permitted under applicable laws; (iii) no underground storage tanks; (iv) no environmental investigation, administrative order, notification, consent order, litigation, claim, judgment or settlement with respect to the Property or any portion thereof is pending or threatened; (v) there is not currently and, to Seller's actual knowledge, never has been any mold, fungal or other microbial growth in or on the Property, or existing conditions within buildings, structures or mechanical equipment serving such buildings or structures, that could reasonably be expected to result in material liability or material costs or expenses to remediate the mold, fungal or microbial growth, or to remedy such conditions that could reasonably be expected to result in such growth; and (vi) there are no reports or other documentation regarding the environmental condition of the Property in the possession of Seller or Seller's affiliates, consultants, contractors or agents. As used in this Agreement: "Hazardous Materials" means (1) asbestos, oil or other petroleum products, radioactive materials, urea formaldehyde foam insulation, radon gas and transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls; and (2) any substance whose presence is detrimental or hazardous to health or the environment, including, without limitation, microbial or fungal matter or mold, or is otherwise regulated by federal, state and local environmental laws, rules, regulations and orders, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials or environmental, health or safety compliance (collectively, "Environmental Requirements"). As used in this Agreement, "Release" means spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing.

e) Title and Liens. Seller has good and marketable fee simple absolute title to the Property, subject only to the Permitted Exceptions. No party, other than Buyer as provided for in this Agreement has any right or option to acquire the Property or any portion thereof.

f) Utilities. All necessary utilities, including sanitary and storm sewers, water, gas, telephone, and electricity serve the Property.

g) Property Information. Exhibit D is a true, accurate and complete list of all Property Information as of the date set forth on such schedule. Seller shall provide to Buyer for approval any and all new leases and amendments to new or existing leases prior execution. Buyer's approval shall not be unreasonable withheld, conditioned or delayed.

h) No Default. Neither Seller nor any third party is in default under any agreement disclosed on any of the Exhibits to this Agreement or any mortgages or financing statements encumbering any part of the Property, nor, has any event or omission occurred which through the passage of time or the giving of notice, or both, would constitute a default thereunder or cause the acceleration of any of Seller's or any third party's obligations or result in the creation of any Lien on any part of the Property owned, used or occupied by Seller.

i) Exhibit D. Seller shall deliver complete, true and accurate copies of all documents referenced in Exhibit D to Buyer within ten (10) days of the date of this Agreement and, upon receipt, such documents shall be attached hereto in the spaces provided below, and shall be incorporated herein by this reference.

j) Brokers. Seller represents and warrants that it has not dealt with any broker in connection with this Agreement. Seller warrants that Buyer shall not, as a direct or indirect result of execution of this Agreement, be responsible to anyone, including, without limitation, real estate brokers or salespersons, for any fees or commissions.

k) Survival. To the best of Seller's knowledge and understanding, all of the representations and warranties are true, correct and complete in all material respects as of the date hereof and the statements set forth therein shall be true, correct and complete in all material respects as of the Closing Date.

5.2 Buyer's Representations and Warranties. Buyer makes the following representations and warranties to Seller, all of which will survive the Closing

a) Good Standing; Authority; Validity. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of North Carolina and is authorized to do business in the Commonwealth of Virginia; the execution, delivery and performance by Buyer of this Agreement have been duly and effectively authorized by all necessary actions and are within its powers; and this Agreement is a legal, valid and binding obligation of Buyer.

b) Brokers. Buyer represents and warrants that it has not dealt with any broker in connection with this Agreement. Buyer warrants that Seller shall not, as a direct or indirect result of execution of this Agreement, be responsible to anyone, including, without limitation, real estate brokers, sales persons for any fees or commissions.

**ARTICLE VI  
PRE CLOSING COVENANTS**

6.1 Exhibit Updates. Seller shall have a continuing obligation to update all of the documents referenced in any of the Exhibits within three (3) days of any event that would make any such Exhibits inaccurate or misleading in any respect, and at Closing.

6.2 Existing Contracts.

a) Assumed Contracts. On or before the Closing Date, Buyer shall notify Seller in writing as to which of the contracts in the Property Information (the "Contracts"), if any, Buyer elects to assume at Closing (the "Assumed Contracts"). Seller shall, within three (3) business days after such designation and pursuant to a notification prepared or approved by Buyer, notify the other parties under any Assumed Contracts that, if Closing occurs, Buyer shall assume such Assumed Contracts effective as of the Closing Date. If any of the Contracts are by their terms not assignable to Buyer, Buyer and Seller shall work together prior to the Closing Date to obtain the consent required for such assignments. If such consent is not obtained prior to the Closing Date, then Seller shall, at its sole cost and expense, terminate or cause to be terminated such Contract(s).

b) Terminated Contracts. Seller shall notify the other parties under any Contracts that Buyer has not agreed (as evidenced by the notice required by Article 6.2 (a)) to assume as of Closing that, if Closing occurs, Seller shall terminate such Contracts (each a "Terminated Contract"), effective as of the Closing Date. Seller shall be liable for any fees or expenses related to the termination of such Terminated Contracts.

6.3 Transfer of Licenses, Permits and Approvals. Effective as of the Closing Date, and not before, Buyer may, at Buyer's sole option, cost and expense, take all reasonable actions necessary to effect the transfer of any or all licenses and permits held by Seller related to the Property (the "Licenses and Permits") to, for and in the name of Buyer or Buyer's designee. Seller shall execute all necessary applications (such applications to be prepared at Buyer's sole cost and expense), required to be executed by Seller, and shall otherwise cooperate with Buyer in connection with all of Buyer's reasonable efforts to cause the Licenses and Permits to be so transferred.

6.4 No Solicitation. From the date hereof through the earlier of the Closing Date or the termination of this Agreement as provided for herein, Seller shall not, and shall not permit any of Seller's officers, directors, employees or representatives to, directly or indirectly, furnish any information, except as may be required under the Virginia Freedom of Information Act, to any prospective buyer, commence, or conduct presently ongoing, negotiations with any other party or enter into any agreement with any other party concerning, soliciting or encouraging any inquiries or proposals for, or enter into any discussions with respect to, the acquisition of all, or any part, of the Property. Seller shall immediately notify Buyer of the receipt of any proposal or inquiry referred to in the previous sentence.

6.5 Certain Seller Actions. Commencing as of the date of this Agreement and continuing for the entire period in which Seller has any legal or equitable interest in the Property, or any portion thereof:

a) Representations. Seller shall not take any action or fail to take any action which would cause any of the representations or warranties made by Seller under this Agreement to be materially untrue, inaccurate or incomplete;

b) Contracts. Seller shall not terminate, modify, amend or waive any provision of any Contract or any other document required to be disclosed or provided in accordance with this Agreement, or any benefit or entitlement described in this Agreement to be conveyed to Buyer, without the prior written consent of Buyer. Seller shall not do or omit any act, or permit any omission to act, which may cause a breach or an event which, with notice or the passage of time, or both, would constitute a default of any Contract. From and after the date of this Agreement, Seller shall not enter into any contract or commitment without Buyer's written consent except for those entered into in the ordinary course of business and consistent with past practice, in which case Seller shall promptly notify Buyer of such contracts or commitments and provide Buyer with copies thereof.

c) Governmental Authority. In the event Buyer seeks application or request to any Governmental Authority related to the Property that requires the joinder or consent of Seller, Seller shall, as applicable, join in, consent to, and execute all necessary or advisable related documents, including all applications and requests.

d) Ordinary Course of Business. Seller shall operate the Property and maintain the Property in the ordinary course of business and in accordance with Seller's past practices of the Property's business. Seller shall use, operate, maintain and repair all property of Seller in a normal business manner. Seller shall not cause, permit or suffer any act to be performed or the absence of same which might cause damage, waste, or destruction to any part of the Property. Buyer agrees that the Buyer is acquiring the Property in its "As Is" condition and Buyer understands and agrees that the Seller has not made and makes no representations or warranties of any kind with respect to the condition of the Property or its fitness, suitability, availability or acceptability for any particular use or purpose. Seller shall not be liable for any latent or patent defects therein. Seller shall have no obligation to repair or make any improvements to the condition of the Property prior to closing except as stated above. Seller shall have no obligation to repair or make any improvements arising from or out of any and all claims and conditions that Buyer may discover after closing that relate to (i) the condition of the Property at any time before or after closing including without limitation the presence of any hazardous substance, and (ii) any other matter pertaining to the Property.

e) Maintenance of Insurance. Seller shall maintain until closing all of the insurance in effect as of the date hereof.

f) Title. Seller shall not cause, permit or suffer any act to be performed or not performed, the result of which will cause any Lien or cloud upon Seller's title to any part of the Property such that Seller shall be unable to convey title to the Property to Buyer in accordance with this Agreement.

6.6 Utility Service and Deposits. Seller shall notify each utility company serving the Property to terminate any account then in Seller's name, effective at noon on the Closing Date. Prior to Closing, Buyer shall attempt to notify all utilities then in Seller's name servicing the Property of the change in ownership and direct, to the extent possible and necessary, that all future billings for services rendered after the Closing be made to Buyer.

## **ARTICLE VII CLOSING AND CONVEYANCE**

7.1 Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at the earlier of: (a) thirty (30) days after the date of Buyer's written notice to Seller of Buyer's election to close; or (b) thirty (30) days after the expiration of the Review Period (the "Closing Date"). If prior to the end of the Review Period, Buyer does not terminate the Agreement, then (i) Buyer shall be required to close on the purchase as provided in this Article and (ii) the Earnest Money Deposit shall be credited towards the purchase price at Closing. If Buyer does not terminate, and Buyer then fails to close as provided herein, (i) the Escrow Agent shall release to Seller the Earnest Money Deposit, which shall constitute Seller's sole remedy for Buyer's failure to close, and (ii) this Agreement shall be terminated automatically, and (iii) both parties shall be relieved of all other rights, obligations and liabilities hereunder. The Closing shall take place at the offices of the County Attorney unless otherwise agreed to by the Parties. Time is of the essence with respect to the time limits in this Article.

7.2 Deliveries of Seller. At Closing, Seller shall deliver to Buyer the following:

- a) Deed. A Special Warranty Deed conveying to Buyer fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").
- b) FIRPTA; 1099. A FIRPTA Affidavit or Transferor's Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code and an IRS Form 1099.
- c) Title Company Documents. All affidavits, gap indemnity agreements and other documents reasonably required by the Title Company.
- d) Authority Documents. Certified copy of resolutions of the appropriate officers of Seller authorizing the sale of the Property contemplated by this Agreement, and/or other evidence reasonably satisfactory to Buyer and the Title Company that the person or persons executing the closing documents on behalf of Seller have full right, power and authority to do so.

- e) Assignment of Lease with Luna Innovations. An executed original copy by the Seller of the Assignment of Lease between Buyer and Seller attached hereto as Exhibit E.
- f) Assignment of Lease with InMotion USA, LLC. An executed original copy by the Seller of the Assignment of Lease between Buyer and Seller attached hereto as Exhibit F.
- g) Post-Closing Performance Agreement. An executed original copy by the Seller of the Post Closing Performance Agreement between Buyer and Seller attached as Exhibit G whereby if Buyer closes and continues to operate its existing business on the Property for a minimum of two (2) years, the Seller shall provide an Economic Development Grant for the two (2) year period starting the January following closing equal to fifty percent (50%) of the annual Real Estate Taxes paid by Buyer to the County of Montgomery that are directly attributable to the Property.
- h) Miscellaneous. Such other instruments as are contemplated by this Agreement to be executed or delivered by Seller, reasonably required by Buyer or the Title Company, or customarily executed in the jurisdiction in which the Property is located.
- i) Closing Statements. Seller's Closing Statement, and a certificate confirming the truth of Seller's representations and warranties hereunder as of the Closing Date.

7.3 Deliveries of Buyer. At Closing of the Property, Buyer shall deliver the following:

- a) Purchase Price. The balance of the Purchase Price by certified funds or electronic wire transfer.
- b) Authority Documents. Certified copy of resolutions of the members and managers of Buyer authorizing the purchase of the Property and acceptance of the Assignment of the Luna Innovations, Inc. and InMotion US, LLC. Leases as contemplated by this Agreement, and/or other evidence satisfactory to Seller and the Title Company that the person or persons executing the closing documents on behalf of Buyer have full right, power and authority to do so.
- c) Assignment of Lease with Luna Innovations, Inc. and Executed Non-Disturbance Agreement. An executed original copy by the Buyer of the Assignment of Luna Innovations, Inc., Lease, between Buyer and Seller attached hereto as Exhibit E and an executed Non-Disturbance Agreement between Buyer and Luna Innovations, Inc.
- d) Assignment of Lease with InMotion US, LLC. An executed original copy by the Buyer of the Assignment of InMotion US, LLC, Lease, between Buyer and Seller attached hereto as Exhibit F and an executed Non-Disturbance Agreement between Buyer and InMotion US, LLC.
- e) Post-Closing Performance Agreement. An executed original copy by the Buyer of the Post Closing Performance Agreement between Buyer and Seller attached

as Exhibit G whereby if Buyer closes and continues to operate its existing business on the Property for a minimum of two (2) years, the Seller shall provide an Economic Development Grant for the two (2) year period starting the January following closing equal to fifty percent (50%) of the annual Real Estate Taxes paid by Buyer to the County of Montgomery that are directly attributable to the Property.

f) Miscellaneous. Such other instruments as are contemplated by this Agreement to be executed or delivered by Buyer, reasonably required by Seller or the Title Company, or customarily executed in the jurisdiction in which the Property is located.

h) Closing Statements. Buyer's Closing Statement, and a certificate confirming the truth of Buyer's representations and warranties hereunder as of the Closing Date.

7.4 Agreement Shall Survive Closing. The parties agree that the provisions of this Agreement shall not be merged with and shall survive the execution and delivery of the Deed conveying the subject Property.

## **ARTICLE VIII COSTS**

8.1 Seller's Costs. If applicable, Seller shall be responsible for the Grantor's Tax payable by sellers in the Commonwealth of Virginia, all sales and/or use taxes on any personal property constituting part of the Property pursuant to the Bill of Sale, the costs and expenses of its attorneys, accountants, appraisers and other professionals, consultants and representatives, and all other charges and fees customarily paid by a seller in the Commonwealth of Virginia.

8.2 Buyer's Costs. Buyer shall be responsible for all transfer and recordation taxes other than the grantor's tax, and the per page recording charges for the Deed, title insurance premiums, the costs and expenses of its attorneys, accountants and other professionals, consultants and representatives, and all other charges and fees customarily paid by a buyer in the Commonwealth of Virginia.

## **ARTICLE IX ADJUSTMENTS**

9.1 At Closing, taxes and other prorations between the parties as to the Property including, but not limited to, all lease deposits, damage deposits and prepaid rents, shall be made as of 12:01 a.m. on the Closing Date. Except as otherwise expressly provided herein, all apportionments and adjustments shall be made on an accrual basis in accordance with generally accepted accounting principles.

## **ARTICLE X CASUALTY AND CONDEMNATION**

10.1 Prior to Closing and the delivery of possession of the Property to Buyer in accordance with this Agreement, all risk of loss to the Property shall be borne by Seller. If, prior to Closing and the delivery of possession of the Property to Buyer, any condemnation proceeding shall be pending or threatened against a substantial portion of any part of the Property or there is

any substantial casualty loss or damage to any part of the Property, Buyer shall have the option to terminate this Agreement.

## **ARTICLE XI DEFAULT REMEDIES**

11.1 Buyer Default. If Buyer defaults under this Agreement, and such default continues for thirty (30) days following written notice from Seller, then at Seller's election by written notice to Buyer, this Agreement shall be terminated and of no effect, in which event the Earnest Money Deposit, including any interest thereon, shall be paid to and retained by Seller as Seller's sole and exclusive remedy hereunder, and as liquidated damages for Buyer's default or failure to close, and both Buyer and Seller shall thereupon be released from all obligations hereunder

11.2 Seller Default. If Seller defaults under this Agreement, and such default continues for thirty (30) days following written notice from Buyer, Buyer may elect, as Buyer's sole and exclusive remedy, either (i) to terminate this Agreement by written notice to Seller delivered to Seller at any time prior to the completion of the curing of such default, in which event the Earnest Money Deposit, including any interest thereon, shall be returned to the Buyer, and thereafter both the Buyer and Seller shall thereupon be released from all obligations with respect to this Agreement, except as otherwise expressly provided herein; or (ii) to treat this Agreement as being in full force and effect by written notice to Seller delivered to Seller at any time prior to the completion of the curing of such default, in which event the Buyer shall have the right to an action against Seller for specific performance.

## **ARTICLE XII NOTICES**

12.1 All notices required herein shall be given both by email and, additionally, by one of the following: (i) hand delivery with a receipted copy; (ii) certified mail, return receipt requested, postage prepaid; or (iii) via a recognized and reputable commercial overnight delivery service. Such notice shall be deemed to have been validly given upon the soonest of: (i) when the copy of the hand delivery notice is receipted or rejected, (ii) three (3) business days after the certified mail is posted with the U.S. Postal Service at the address of the party specified below or (iii) on the next delivery day after such notice is sent by overnight delivery:

If to Buyer:                   Zapi, Inc.  
  267 Hein Drive  
  Garner, NC 27529  
  ATTN: Jorge Lopez  
  Email: [jlopez@zapinc.com](mailto:jlopez@zapinc.com)  
  Phone: (919) 789-4588 (x208)

If to Seller:                   Economic Development Authority of Montgomery County, VA  
  755 Roanoke Street, Suite 2H  
  Christiansburg, VA 24073  
  Attn: Brian T. Hamilton  
  Email: [hamiltonbt@montgomerycountyva.gov](mailto:hamiltonbt@montgomerycountyva.gov)

Phone: (540) 382-5732

If to Escrow Agent: TBD

Addresses may be changed by the parties hereto by written notice in accordance with this Article.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Performance. Time is of the essence in the performance and satisfaction of each and every obligation and condition of this Agreement.

13.2 Binding Effect; Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective successors and assigns. Buyer may only assign this Agreement or direct that the title to the Property be conveyed to a wholly owned subsidiary of the Buyer. Otherwise, any assignment by the Buyer shall be approved in writing by the Seller.

13.3 Entire Agreement. This Agreement and the Exhibits constitute the sole and entire agreement between Buyer and Seller with respect to the subject matter hereof. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

13.4 Governing Law. The validity, construction, interpretation and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the Commonwealth of Virginia.

13.5 Counterparts; Electronic Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature made, duplicated, or transmitted by email, facsimile, or other electronic means shall have the same force and effect as an original signature.

13.6 Severability. If any provision of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the provision or provisions hereof directly involved in the controversy in which such judgment shall have been rendered, and this Agreement shall be construed as if such provision had never existed, unless such construction would operate as an undue hardship on Seller or Buyer or would constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

13.7 Assignment. With written approval of the EDA, which will not be unreasonably withheld, Buyer may assign this Agreement to a third party

IN WITNESS WHEREOF, this Agreement has been executed, to be effective as of the date first above written, by the Buyer and Seller.

**SELLER:**

Economic Development Authority of  
Montgomery County, VA

By: [Signature]  
JOHN TUTTLE, Chairman

**BUYER:**

Zapi, Inc.

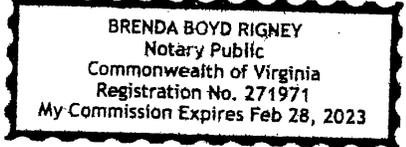
By: [Signature]  
SIMONE PASOTTI, President

STATE OF VIRGINIA,  
COUNTY OF MONTGOMERY, to-wit:

The foregoing instrument bearing date of January 21, 2020 was acknowledged before me this 28<sup>th</sup> day of January, by John Tuttle Chairman of the Economic Development Authority of Montgomery County.

My commission expires: 02-28-2023  
Registration Number: 271971

[Signature]  
Notary Public

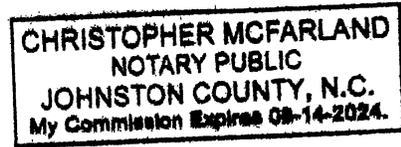


STATE OF NORTH CAROLINA,  
CITY/COUNTY OF JOHNSTON, to-wit:

The foregoing instrument bearing date of ~~JANUARY 27, 2020~~ <sup>CHANGED</sup> JANUARY 21, 2020 was acknowledged before me this 27<sup>th</sup> day of JANUARY 27, 2020, by SIMONE PASOTTI for and on behalf of Zapi, Inc.

My commission expires:  
Registration Number:

[Signature]  
Notary Public



## EXHIBIT A

### DESCRIPTION of PROPERTY

All that certain tract or parcel of Land, with improvements thereon and appurtenances thereon to located and situated in the Mount Tabor Magisterial District of Montgomery County, Virginia, in the Blacksburg Industrial Park and being all of Lot Number Eight (8) containing 15.025 acres, Phase IV, Industrial Park Expansion, as shown on a plat of survey entitled "Industrial Park Expansion Phase IV", prepared by Anderson and Associates, Inc., dated 19 Dec 95 and revised 19 Feb 96, which plat is of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 16, at Page 507.

EXHIBIT B

Lease with Luna Innovations, Inc.

**INDUSTRIAL LEASE AGREEMENT**

**BETWEEN**

**LUNA INNOVATIONS INCORPORATED**

**AS TENANT**

**AND**

**THE ECONOMIC DEVELOPMENT AUTHORITY  
OF MONTGOMERY COUNTY, VIRGINIA  
AS LANDLORD**

## INDUSTRIAL LEASE AGREEMENT

THIS LEASE (the "Lease" or Agreement) is made and effective as of this 1st day of October 1, 2014, by and between The Economic Development Authority of Montgomery County, Virginia ("Landlord"), a public body corporate, having a principal place of business at 755 Roanoke Street, Suite 2 H, Christiansburg, Virginia 24073, and Luna Innovations Incorporated, ("Tenant"), a Virginia corporation having a principal place of business at 3155 State Street, Blacksburg, Virginia, 24060.

WHEREAS, Landlord is the owner of certain real property located in the Town of Blacksburg, Virginia upon which Landlord has built a 109,000 sq. ft. Technology Manufacturing Building (the "Building") on fifteen (15) acres of land in the Blacksburg Industrial Park, 3155 State Street, Blacksburg, VA 24060;

WHEREAS, Tenant desires to lease and occupy 41,900 square feet of the Building as shown on the attached diagram identified as Exhibit A entitled "Luna Innovations Lease Floor Plan Technology Manufacturing Building (Leased Area is Shaded)" (the "Premises") if the Landlord is willing to lease the said Premises to the Tenant; and

WHEREAS, Landlord is willing to lease the said Premises to the Tenant subject to and in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### 1. PREMISES AND TERM.

1.1 Premises. In consideration of the obligations of Landlord and Tenant set forth herein, Landlord leases to Tenant, and Tenant hereby takes from Landlord the Premises identified on Exhibit A situated on real property owned by the Landlord within the Town of Blacksburg, County of Montgomery, Commonwealth of Virginia more particularly described on Exhibit B attached hereto and incorporated herein by reference (the "Property") together with all rights, privileges, easements, appurtenances, and amenities belonging to or in any way pertaining to the Premises, to have and to hold, subject to the terms, covenants and conditions of this Lease. Without limiting the foregoing, Tenant shall have the right, as appurtenant to the Premises, to use the driveways, parking, chemical storage area and loading docks and other common areas on the Property. As used in this Lease, Tenant's "Proportionate Share" shall mean a fraction the numerator of which shall be the square footage of the Premises (41,900 sq. ft.) and the denominator of which shall be the square footage of the Building (109,000 sq. ft.).

1.2 Term. The Term of this Lease (the "Term") shall commence (the "Commencement Date") on October 15, 2014, and shall expire as of 11:59 PM on December 31, 2020, unless terminated sooner, renewed or extended as provided herein. Notwithstanding the fact that the Commencement Date is subsequent to the effective date of this Lease, the parties agree that each have vested rights hereunder and that this Lease constitutes a binding and valid obligation of each as of the date this Lease is fully executed.

1.3 Acceptance of the Premises. After taking possession of all of the Premises as of January 1, 2015, Tenant acknowledges that: (i) it has inspected the Premises; (ii) it accepts the Premises “as is”, except for the agreed upon Upfits in Section 1.4 which are indicated on Exhibit C, attached hereto, (iii) the Premises are suitable for the purpose for which the Premises are leased; and (iv) except as otherwise set forth in this Lease (including all exhibits and attachments), no representations or warranties have been made by Landlord with respect to the Premises.

1.4 Up fit Allowance. The Landlord shall provide the Tenant with an up fit improvement allowance of Five Hundred Thousand Dollars (\$500,000) to be used to cover design and construction costs to convert the clean room into lab space and to renovate the front office area and cafeteria, (altogether, “Renovations”) as shown on Exhibit C (the “Up fit Allowance”). Landlord and Tenant agree that should the desired improvements exceed the Up fit Allowance agreed upon by the Landlord, the Tenant shall be responsible for providing to the Landlord the additional funds required to pay for the additional improvements. Should the desired improvements by the Tenant exceed the Up fit Allowance, the Landlord shall have no obligation to enter into any contract for the agreed upon Up fit work until such time that the Tenant provides the additional funds in excess of the Up fit Allowance or agrees in writing to an adjustment to the price per square foot for rent using a 8% interest rate on the overage across the lease period. Should the Tenant not provide the Landlord with the additional funds in excess of the Up fit Allowance or agree to an amendment of the Lease increasing the price per square foot for rent to cover the overage, within five (5) calendar days of receiving written notice from the Landlord that an overage exists, the Landlord may deem the Tenant in default and the Landlord may, in addition to any other remedy available, use the deposit money and/or letter of credit to pay all the architectural and engineering fees incurred up to the date of default. The list of improvements under the Up fit Allowance as mutually agreed by the Parties to be performed by the Landlord prior to Commencement Date are indicated on Exhibit C and are incorporated herein as a part of this Lease. Landlord shall review with and obtain consent from Tenant for the construction bids or quotes for the Renovation and obtain prior written consent for any bids or quotes that would exceed the Up Fit Allowance.

## **RENEWAL; EXTENSION; SURRENDER**

### **2.1 Renewal.**

2.1.1 Tenant and Landlord may mutually agree to renew this Lease for an additional term on terms and conditions to be negotiated by the Parties (the “First Renewal Term”); provided that this Lease is in full force and effect immediately prior to the date of the commencement of the renewal term and that the Tenant is not in default, beyond applicable cure periods, under any of the provisions of this Lease at the time the Tenant and Landlord mutually agree to renew this Lease for an additional term or at the time the Renewal Term is scheduled to commence. The First Renewal Term, if mutually agreed to, shall commence upon the expiration of the initial term and continue for a period agreed to by the Parties. The First Renewal shall be upon the terms, covenants, conditions and limitations as negotiated by the Parties.

2.2 Extension By Mutual Consent. If Tenant lawfully occupies the Premises after the end of the Term, after having requested and obtained Landlord's written consent to do so, this Lease and all its terms, provisions, conditions, covenants, waivers, remedies and any and all of Landlord's rights herein

specifically given and agreed to, shall be in force for one month thereafter and thereafter from month-to-month until either party gives the other thirty (30) days written notice of its desire to terminate this Lease.

2.3 Surrender. At the expiration of this Lease (including any renewal or extension) or the sooner termination thereof, Tenant shall surrender the Premises to Landlord, together with all additions, alterations and improvements thereto, in broom clean condition and in good order and repair except for ordinary wear and tear and Landlord's maintenance obligations. Nothing herein, however, shall prohibit Tenant from removing any of its computers, voice and data network components, phone system components, phone switch, TV's and other video equipment, satellite antennae, office equipment, furniture, office supplies, storage racks, compressors, vacuum, wastewater and manufacturing equipment and other personal property (collectively "Tenant Equipment") in accordance with the terms of this Lease. Tenant shall repair any damage to the Premises caused by the removal of such Tenant Equipment. Any Tenant Equipment not removed by Tenant as required herein shall be deemed abandoned thirty (30) days after the expiration or earlier termination of the Lease, and may be stored, removed and disposed of by Landlord in its discretion, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention or disposal of same. Tenant shall be entitled to no payment or offset for the value of any abandoned property (even if sold by Landlord) and Tenant shall pay on demand all reasonable costs incurred by Landlord in connection with such removal or disposal. No retention, disposal or sale of such abandoned property shall limit remedies otherwise available to Landlord hereunder for a breach of this Agreement by Tenant. All obligations of Tenant hereunder not fully performed as of the termination or expiration of the Lease shall survive such termination or expiration, until they are performed.

2.4 Holding Over. If Tenant occupies the Premises beyond the Term of this Lease or any properly exercised Renewal Term, without Landlord's written consent (a "Hold Over"), Tenant shall be deemed to occupy the Premises as a tenant at sufferance, and all of the terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay Landlord a rental equal to one hundred twenty-five percent (125%) of the monthly rent applicable hereunder at the expiration of the Term or applicable Renewal Term, prorated for the number of days of such holding over. If Tenant refuses to vacate, Landlord may institute a forcible detainer or similar action against Tenant or any other party in possession of the Premises or pursue any other remedy available at law or in equity.

### **3. PAYMENT OF RENT**

#### **3.1 Payment; Proration.**

3.1.1 Payment. Beginning on October 15, 2014 and lasting through December 31, 2014, the lease rate for the Premises shall be \$0.00. Beginning January 1, 2015 and lasting through December 31, 2020, the Tenant shall pay Landlord per month Base Rent for the Premises in advance, without demand or set-off, in the amount of Thirty Eight Thousand Four Hundred Eight Dollars (\$38,408) for 41,900 sq. ft. at \$11.00 per sq. ft. ("Base Rent") on or before the first day of each successive calendar month during the Term in lawful money of the United States of America, without prior notice or demand, at such place or places as may be designated in writing from time to time by Landlord. The Tenant's proportionate share of the real estate taxes on the Premises is included in the Tenant's Base Rent.

3.1.2 Proration. In the event that the date on which a payment obligation: (i) begins on a date other than the first day of a calendar month; or (ii) ends on a date other than the last day of a

calendar month then the amount of the payment shall be prorated, based upon the number of days during said month that the obligation was effective.

3.1.3 Letter of Credit. The Tenant shall maintain at all times throughout the entire term of the Lease including any renewals, unless otherwise agreed by the Landlord, a letter of credit issued by a bank in the New River/Roanoke Valleys or by Silicon Valley Bank in a form acceptable to the Landlord in the amount of Five Hundred Thousand Dollars (\$500,000), against which the Landlord may draw upon the occurrence of a default by Tenant under this Lease and may be used as security against damages and the Tenant not making lease payments. The Letter of Credit shall be governed by the "Uniform Customs and Practices for Commercial Documentary Credits" promulgated by the XIII Congress of the International Chamber of Commerce (International Chamber of Commerce Brochure No. 500, 1993 revision) and the provisions of the Uniform Commercial Code-Letters of Credit, Title 8.5A of the Code of Virginia, 1950, as amended. The Landlord agrees to reimburse the Tenant for the annual cost of obtaining the Letter of Credit up to a 2% fee annually.

**4. UTILITIES** The Base Rent paid by the Tenant shall include the Tenant's water, sewer, electric and natural gas monthly utility usage ("Utilities"). In the event that any Utilities are interrupted or stopped by the action or inaction of Landlord, its employees, agents or contractors, Landlord shall, upon notice from Tenant, immediately notify the affected utility company and use its best efforts to cause repairs to be commenced. The Tenant shall be responsible for all other utilities including internet service, telephone, cable, satellite, trash and refuse collection.

## **5. USE**

5.1 Tenant agrees that it will use and occupy the Premises as an office, manufacturing, research and development facility and for such other lawful purposes as may be incident thereto and for no other purpose without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall comply with all governmental laws, rules, ordinances and regulations applicable to its particular use of the Premises, and promptly comply with all governmental orders and directives for the correction and abatement of nuisances in or upon the Premises caused by Tenant, all at Tenant's sole expense. Tenant recognizes and agrees that Landlord is making no warranties, expressed or implied, as to the suitability of the Premises for any particular use.

5.2 Landlord represents and warrants that it has not and will not, during the term of this lease, enter into an agreement which limits Tenant's ability to use the Premises for the uses set forth in Section 5.1.

## **6. ALTERATIONS**

6.1 Tenant shall not make any alterations, additions or improvements to the Premises, except for pursuant to Section 1.4 above and non-structural alterations that cost less than \$50,000 per project without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant, at its own cost and expense may erect such shelves, bins, machinery and trade fixtures as it desires provided that (a) such items do not alter the basic character of the Premises or the Building; (b) such items do not overload or damage the same; (c) such items may be removed without injury to the Premises; and (d) the construction, erection or installation thereof complies with all applicable

governmental laws, ordinances, regulations and all provisions of this Lease. All alterations, additions, improvements and partitions erected by Tenant shall be and remain the property of Tenant during the term of this Lease and shall be the property of Landlord upon the expiration or earlier termination of this Lease provided that nothing herein shall prohibit Tenant from removing the Tenant Equipment or other items, in accordance with Section 2.3, above. All shelves, bins, machinery and trade fixtures installed by Tenant shall be removed in accordance with Section 2.3 on or before the expiration or earlier termination of this Lease, at which time Tenant shall repair any damage caused thereby, ordinary wear and tear excepted. All alterations, installations, removals and restoration shall be performed in a good, workmanlike and lien free manner.

6.2 Mechanics Liens. Tenant shall promptly pay all contractors and material men, and will use reasonable commercial efforts to prevent any lien from attaching to the Premises or any part thereof. If any lien is filed purporting to be for labor or material furnished or to be furnished at the request of Tenant, Tenant shall do all acts necessary to discharge such lien within twenty (20) days of filing, or if Tenant desires to contest any lien, then Tenant shall deposit with Landlord the amount of said lien as security for its payment. In the event Tenant fails to deposit the security with Landlord and fails to pay any lien claim after entry of final judgment in favor of the claimant, Landlord shall have the right to expend all sums reasonably necessary to discharge the lien claim, and Tenant shall pay all sums expended by Landlord in discharging said lien, including reasonable attorney's fees within thirty (30) days of receipt of the invoice. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including, without limitation, those who may furnish materials or perform labor for any construction or repairs.

7. **SIGNAGE** Tenant shall not place or permit on any exterior door or window or any exterior wall of the Premises any sign, awning, canopy, advertising matter or lettering without the written consent of the Landlord, which shall not be unreasonably withheld. It shall not be unreasonable for Landlord to withhold its consent to the placement of any sign that does not comply with any federal, state or local law or ordinance.

## 8. MAINTENANCE

8.1 Tenant's Maintenance Responsibilities. Tenant shall at all times keep the Premises (including all entrances and vestibules) and all partitions, fixtures, equipment and appurtenances thereof and all parts of the Premises not required in Section 8.3 to be maintained by Landlord in good order, condition and repair, and in compliance with all applicable laws, rules, ordinances and regulations, damage by casualty excepted. If replacement of equipment, fixtures and appurtenances thereto are necessary, Tenant shall replace the same with equipment, fixtures and appurtenances of the same quality, and shall repair all damages done in or by such replacement.

8.2 Tenant's Failure to maintain or make repairs. If Tenant fails to maintain the Premises or commence any repair to the Building or the Premises or to the common area that is Tenant's responsibility under Section 8.1 within ten (10) days after notification by the Landlord of the need for such maintenance or repair and fails to complete such maintenance or repair within a reasonable period of time, the Landlord may, in addition to any other remedies it may have, complete such maintenance or make such repair at the expense of Tenant and Tenant shall pay to Landlord all costs and expenses

reasonably incurred as a result of such maintenance or repairs within ten (10) days of receipt of invoice thereof. In the event of a bona fide emergency which may result in damage or injury to persons or Landlord's property, Landlord may, unless Tenant commences and diligently pursues such maintenance or repairs within five (5) days after receipt of written notice (or such shorter period as would reasonably be expected under the given circumstances) make such repairs or commence such maintenance on behalf of Tenant and Tenant shall pay Landlord all costs and expenses reasonably incurred in making such repairs within thirty (30) days of receipt of invoice thereof. If the parties so agree, the Landlord may perform any maintenance or repair that is the Tenant's responsibility hereunder, and Tenant shall pay the cost for the maintenance or repair upon receiving a proper invoice from the Landlord.

8.3 Landlord's Maintenance Responsibilities. Landlord shall provide and keep or cause to be kept the HVAC systems, electrical, and plumbing systems all as existing in the Building as of the date of this Lease or added as part of the up fit pursuant to Section 1.4, all other improvements made to the Premises by Landlord pursuant to Section 1.4 and all structural portions of the Building, including without limitation, the foundation, roof, loading docks and all load bearing and exterior walls, in good order, condition and repair, except for damage thereto due to the negligence of Tenant, Tenant's employees or invitees. The term "exterior walls" as used herein shall include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers and dock plates or levelers. Landlord shall keep or cause to be kept the outside grounds, including mowing, landscaping and snow removal, grass, tree and the parking area(s), and sidewalks in good order, condition and repair. Tenant shall immediately give Landlord written notice of defect or need for repairs, after which Landlord shall commence such repairs as soon as reasonably practicable. If the parties so agree, Tenant may perform any maintenance or repair that is Landlord's responsibility hereunder, and Landlord shall pay the cost for the maintenance or repair upon receiving a proper invoice from the Tenant.

8.4 Landlord's Failure to Make Repairs. If Landlord fails to commence any repair to the Building or the Premises or to a common area that is Landlord's responsibility under Section 8.3 within ten (10) days after notification of the need for such repair, and fails to complete such repairs within a reasonable period of time, Tenant may, in addition to any other remedies it may have, make such repairs at the expense of Landlord and Landlord shall pay to Tenant all costs and expenses reasonably incurred as a result of such repairs within ten (10) days of receipt of invoice thereof. In the event of a bona fide emergency which may result in damage or injury to persons or Tenant's property, damage which has a material impact on Tenant's ability to conduct business as contemplated under this Agreement, or damage which otherwise exposes Tenant (in Tenant's reasonable judgment) to liability, Tenant may, unless Landlord commences and diligently pursues such repairs within five (5) days after receipt of written notice (or such shorter period as would reasonably be expected under the given circumstances), make such repairs on behalf of Landlord and Landlord shall pay to Tenant all costs and expenses reasonably incurred in making such repairs within thirty (30) days of receipt of invoice thereof.

## 9. ASSIGNMENT AND SUBLETTING

9.1 Assignment or Subletting by Tenant. Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease, or any interest therein, and shall not sublet the Premises, or any part thereof, without obtaining the prior written consent of Landlord, which shall not be unreasonably

withheld. In connection with any such assignment or sublease, Tenant or the assignee or subtenant of Tenant shall not owe Landlord any legal and administrative costs incurred by Landlord in approving such assignment or subletting. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or deemed consent to the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed consent to any future assignment or subletting. Notwithstanding the foregoing, Tenant shall have the absolute right (without obtaining Landlord's prior written consent which shall not be required) to assign this Lease in whole or in part or to sublet all or any portion of the Premises to: any affiliate controlling, controlled by or under common control with Tenant; an entity with which Tenant merges or consolidates; or to a purchaser of all or substantially all of the assets of Tenant related to the business conducted at the Premises, if the assignee assumes, in writing delivered to Landlord, all of Tenant's obligations under the Lease.

9.2 Assignment by Landlord. Landlord may assign this Lease, in whole or in part, without the prior written consent of Tenant, provided that such assignment does not in any way affect or impair the rights granted to Tenant herein, or adversely affect Tenant's possession of the Premises.

9.3 Assignment pursuant to Provision of the Bankruptcy Code. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code (11 U.S.C. sec. 101 et seq) any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the Landlord and shall be and remain the exclusive property of the Landlord and shall not constitute the property of the Tenant or the estate of the Tenant, within the meaning of the Bankruptcy Code.

**10. RIGHT OF ENTRY** Landlord, its employees and agents, shall have the right to enter the Premises with a designated representative of Tenant upon reasonable notice during regular business hours for the purpose of examining or inspecting the same, showing the same to prospective purchasers, mortgagees or Tenants of the Premises, and to perform its maintenance obligations under Section 8.3, above. In the case of a bona fide emergency, Landlord shall use its best efforts to provide Tenant with the greatest possible notice under the circumstances prior to entering the Premises and in the event that representatives of Tenant are not present to accompany Landlord or to open and permit entry into the Premises during the course of a bona fide emergency, then Landlord may enter the Premises forcibly and without being accompanied by a representative of Tenant without such entry constituting an eviction of Tenant or termination of this Lease. Except in the case of a bona fide emergency, Landlord, its employees and agents shall abide by all reasonable security and safety procedures established for the Premises by Tenant.

## **11. INSURANCE**

11.1 Landlord's Obligations. Throughout the Term of this Lease, including any renewals or extensions thereof, Landlord shall maintain the following insurance coverage: (i) standard all risk coverage in an amount equal to the replacement cost of the Building; (ii) Commercial General Liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, naming Tenant as an additional insured; (iii) boiler insurance with coverage and in an amount reasonably satisfactory to Tenant; and (iv) at Landlord's discretion, such other insurance policies as may be deemed normal and customary for

substantially similar buildings, including but not limited to coverage for loss of rent. All insurance coverage shall be primary and non-contributory and issued by insurers licensed to do business in the state in which the Premises are located. The insurance required of Landlord hereunder may be maintained by a blanket or master policy, which includes properties other than the Premises. All such policies and coverage shall be primary and non-contributory, issued by insurers, licensed to do business in the state in which the Premises are located and which are rated A- or better by Best's Key rating Guide, endorsed to include Tenant as additional insured (Commercial General Liability only), and endorsed to provide at least 30 -days prior notification of cancellation or material change in coverage to said Tenant.

## 11.2 Tenant's Obligations.

11.2.1 Tenant shall keep in effect at Tenant's expense during the term of this Lease: (i) all risk property insurance covering the full replacement cost of Tenant's Equipment and all other property and improvements installed or placed in the Premises by Tenant at Tenant's expense; (ii) worker's compensation insurance with no less than the minimum limits required by law; (iii) employer's liability insurance with such limits as required by law; and (iv) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. All such policies and coverage shall be primary and non-contributory, issued by insurers, licensed to do business in the state in which the Premises are located and which are rated A- or better by Best's Key Rating Guide, endorsed to include Landlord as additional insured (Commercial General Liability only), and endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said Landlord. Tenant may comply with its insurance obligations hereunder in whole or in part through a company-wide program of self-insurance and may maintain company-wide levels of deductibles provided the Tenant provides Landlord with an appropriate self-insurance certificate.

11.2.2 Fire and Casualty Insurance. Tenant shall not do or suffer to be done any act, matter or thing whereby the fire and casualty insurance carried by Landlord on the building of which the Premises are a part shall be suspended or rated as more hazardous than January 1, 2015. As a remedy for the breach of this covenant (in addition to all other remedies given to Landlord for breach of any covenants or conditions of this Lease), Tenant agrees to pay, within thirty (30) days of receipt of written demand, any and all increase of premium for fire and casualty insurance carried by Landlord caused directly by the actions or occupancy of Tenant or may alter its use of the building such that its use is no more hazardous than at the commencement of this Lease.

## 12. **DAMAGE OR DESTRUCTION OF LEASED PREMISES**

12.1 In case the Premises are damaged to the extent of 50% or more of its replacement value by fire or any other cause, then either party may, by a notice in writing sent no later than thirty (30) days after such damage, terminate this Lease as of the date of such damage, and any fixed rent for the unexpired period paid in advance beyond the date of such damage, shall be refunded by Landlord to Tenant.

12.2 If the Premises are damaged to an extent less than 50% of its value or neither party exercises its right to terminate the Lease under Section 12.1 above, the Landlord shall diligently commence restoration and restore the Premises to a condition equal to its condition before the damage. Landlord's obligation to rebuild is contingent upon its receipt of insurance proceeds sufficient to make

such repairs. In the event any mortgagee or lender requires such sums to be applied to any debt, Landlord shall not be deemed to have received the proceeds, in which event Tenant may terminate this Lease unless Landlord agrees to fund the repairs. If Landlord completes such repairs, then Tenant shall promptly repair or replace its Trade Fixtures, furnishings, furniture, carpeting, wall covering, floor covering, drapes and equipment to the same condition as they were in immediately prior to the casualty. A proportion of the rent herein reserved, according to the extent that such damage and its repair shall interfere with the full enjoyment and use of the Premises, shall be suspended and abated from the date of such damage until Landlord's repairs have been completed. In the event that the Premises have not been restored to a condition equal to their condition before the damage within ninety (90) days after Landlord's receipt of the proceeds, then Tenant may, by a notice in writing sent prior to completion of restoration, terminate this Lease as of the date of such termination, and any fixed rent for the unexpired period paid in advance beyond the date of such damage, shall be refunded by Landlord to Tenant.

### **13. REMEDIES OF LANDLORD UPON TENANT'S DEFAULT**

13.1 Tenant's Default Defined. The following shall be considered an "Event of Default" and a breach of this Lease: (a) any failure of Tenant to pay any Base Rent or the money in the excess of the Up-fit Allowance or other amounts due hereunder for more than five (5) business days after receipt of written notice of non-payment; (b) any failure by Tenant to perform or observe any of the other terms, provisions, conditions and covenants of this Lease for more than thirty (30) days after receipt of written notice of such failure provided, however, that if the event for which the notice is given is of a nature that may not be reasonably cured within said thirty (30) day period, Tenant shall not be in default for so long as Tenant commences to cure the default within the thirty (30) day period and diligently pursues it to conclusion; (c) Tenant files a voluntary or involuntary petition in bankruptcy which is not dismissed within thirty (30) days of the filing or makes a general assignment for the benefit of its creditors; (d) a receiver of any property of Tenant in or upon the Premises is appointed in any action, suit, or proceeding by or against Tenant and such appointment shall not be vacated or annulled within sixty (60) days; or (e) this Lease, Tenant's interest herein or in the Premises, any improvements thereon, or any property of Tenant is judicially executed upon or attached and not released within sixty (60) days of such action.

13.2. Landlord's Remedies. Upon the occurrence of any Event of Default specified in Section 13.1, Landlord, in addition to all other rights or remedies Landlord may have for such default at law or in equity, shall have the right to pursue any one or more of the following remedies.

13.2.1 Terminate this Lease and, without prejudice to any other remedy which it may have for possession or arrearages in rent or fees, enter upon and take possession of the Premises by summary dispossession proceedings or any other method authorized by law and recover from Tenant through the Letter of Credit provided pursuant to Paragraph 3.1.3 or by other legal means: (i) the entire remaining unpaid balance of Base Rent, and other fees by deeming the remaining Term of the lease accelerated whereby the entire sum shall become immediately due and payable; (ii) the costs of repairing or otherwise putting the Premises into the condition required by this Lease.

13.2.2 Without terminating this Lease, enter upon and take possession of the Premises, by summary dispossession proceedings or any other remedy authorized by law and re-let the Premises, or any part thereof, for such term or terms (which may extend beyond the term of this Lease), for the highest rent reasonably obtainable (even if such rent is below market value) and to recover from Tenant the

difference between the rent reserved by this Lease and the amount obtained through such re-letting plus the following costs, if reasonably incurred by Landlord in such re-letting: (a) brokerage fees and/or leasing commissions; (b) the costs of removing and storing Tenant's or any other occupant's property; and (c) the costs of repairing or otherwise putting the Premises into the condition required by this Lease together with the costs of alterations reasonably necessary to re-let the Premises. No such re-letting shall relieve Tenant from its obligations hereunder. In no event shall Tenant be entitled to any excess rent obtained by re-letting the Premises over and above the rent reserved herein.

13.3 If the Tenant shall continue in default in the performance of any of the covenants or agreements herein contained, after any applicable cure period, Landlord may perform the same for the account of Tenant. Any amount incurred by Landlord in the performance of any such matter for the account of Tenant shall be payable by Tenant to Landlord within thirty (30) days after written demand.

13.4 No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless Landlord sends a written notice of termination to Tenant. Notwithstanding any such re-letting or re-entry or taking possession, without termination, Landlord may at any time thereafter terminate this Lease for any prior uncured breach or default, unless the Landlord waives the said breach or default in writing. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by at law or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Base Rent, or Fees due to Landlord hereunder or of any damages accruing to Landlord.

#### **14. REMEDIES OF TENANT UPON LANDLORD'S DEFAULT**

14.1 Landlord shall be in default of this Lease ("Landlord Default") if it shall fail to perform any duty or obligation imposed upon it by this Lease and such failure shall continue for a period of thirty (30) days after written notice, provided, however, that if the event for which the notice is given is of a nature that may not reasonably be performed within said thirty (30) day period, Landlord shall not be in default for so long as Landlord commences its performance within said thirty day period and diligently pursues it to conclusion. Upon the occurrence of a Landlord Default, Tenant, in addition to all other rights or remedies Tenant may have for such default at law or in equity, shall have the right to exercise any self-help measures as may be reasonably necessary to cure such default. Landlord shall reimburse any costs and expenses incurred by Tenant in order to cure a Landlord Default within thirty (30) days after written demand. In addition, if Landlord fails to cure any material default within thirty (30) days after receiving written notice of the default, Tenant shall have the right, upon written notice to Landlord, to terminate this Lease without penalty or further obligation to Landlord, its employees, officers, agents or lenders.

14.2 All obligations of Landlord under this Lease will be deemed binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Building and the Property, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing (but not from defaults accruing during such Landlord's ownership), but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of a current Landlord under this Lease shall be limited solely to its interest in the Premises, including without limitation any equity therein,

income derived there from or personal property on or about the Building and the Property, and in no event shall any personal liability be asserted against such current Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of such current Landlord.

**15. EMINENT DOMAIN** In the event that more than thirty percent (30%) of the Premises are taken by paramount governmental authority or in any way condemned or appropriated by the exercise of the right of eminent domain or a deed or conveyance in lieu of eminent domain, (each a "Taking"), either party hereto shall have the right, at its option, within sixty (60) days after said Taking, to terminate this Lease upon thirty (30) days written notice to the other party. In the event that either party elects to terminate the Lease, the rent herein set forth shall be abated and Landlord and Tenant's liability therefore will cease as of the date of such termination, this Lease shall terminate as of said date, and any prepaid rent shall be returned to Tenant. If this Lease is not terminated as herein provided then it shall continue in full force and effect, and Landlord shall within a reasonable time after possession is physically taken by the condemning authority restore the remaining portion of the Premises to render it reasonably suitable for the uses permitted by this Lease and the Base Rent shall be proportionately and equitably reduced. Notwithstanding the foregoing, Landlord shall not be obligated to expend an amount greater than the proceeds received from the condemning authority less all expenses reasonably incurred in connection therewith (including attorney's fees) for the restoration. In the event any mortgagee or lender requires that all or any portion of the proceeds received from the condemning authority be applied to any debt, Landlord will not be deemed to have received such proceeds. All compensation awarded in connection with or as a result of a Taking shall be the property of the Landlord, except that Tenant may apply for and keep as its property a separate award for: (i) the value of Tenant's leasehold interest; (ii) the value of Tenant Equipment or Tenant's trade fixtures or personal property; (iii) Tenant's moving expenses; (iv) Tenant's business relocation expenses; and (v) damages to Tenant's business incurred as a result of such Taking.

## **16. SUBORDINATION OF LEASE**

16.1 This Lease is and shall remain subordinate and subject to any mortgage or mortgages or deed of trust which are now, or at any time hereafter shall be placed, upon the interest of Landlord in the Premises or any part thereof or to any assignment of the interest of Landlord in this Lease; provided that the holder thereof shall execute and deliver to Tenant a non-disturbance agreement in form reasonably acceptable to Tenant. Tenant agrees to execute and deliver to Landlord, without cost, any instrument that may be deemed necessary by Landlord to further effect the subordination of this Lease to any such mortgage, mortgages or assignments in form reasonably acceptable to Tenant. The failure of landlord to obtain a non-disturbance agreement from any lender as provided in this Section 16.1 within thirty (30) days following execution of this Lease shall be deemed an event of default by Landlord. In addition, Landlord shall not execute a mortgage or deed of trust after the date hereof encumbering all or any portion of the Property unless Landlord has first provided Tenant with a non-disturbance agreement in a form satisfactory to Tenant from the party benefitted by such mortgage or deed of trust.

16.2 In the event of a foreclosure of any such mortgage, Landlord and Tenant hereby agree that this Lease shall not terminate by reason thereof, and Tenant further agrees to recognize as Landlord hereunder the mortgagee or purchaser at a foreclosure sale for the balance of the Term, the Renewal Term or an extension of either, subject to all the terms and provisions hereof; provided, however, that any such mortgagee or purchaser at a foreclosure sale, which shall become the Landlord hereunder, shall not be:

(a) liable for acts or omissions of Landlord occurring prior to its ownership of the Premises (but such mortgagee or purchaser shall perform any unperformed obligations under this Lease existing at the time it becomes Landlord);

(b) subject to any offsets or defenses which Tenant might have against Landlord that accrue prior to its ownership of the Premises, except as provided in this Lease;

(c) bound by any rent or additional rent which Tenant may have paid to Landlord more than thirty days in advance (other than the security deposit); or

(d) bound by any amendment or modifications of said Lease made after Tenant receives written notice of such foreclosure.

**17. ESTOPPEL CERTIFICATE** Either party shall, at any time and from time to time within twenty (20) days following receipt of written request from the other party, execute, acknowledge and deliver to the requesting party a written statement certifying that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification), certifying the date to which the rent reserved hereunder has been paid, and certifying that there are not, to the responding party's knowledge, any uncured defaults on the part of the party requesting the certificate, or specifying such defaults if any are claimed. Such a statement may be relied upon by any prospective purchaser, mortgagee or subtenant of all or any portion of the Premises. The responding party's failure to deliver such statement within said twenty-day period shall be conclusive upon such party that this Lease is in full force and effect and unmodified, and that there are no uncured defaults in the requesting party's performance hereunder.

**18. RULES AND REGULATIONS** Tenant and Tenant's agents, employees and invitees shall faithfully observe and comply with all reasonable, uniform rules and regulations promulgated by Landlord from time to time for the safety, care or cleanliness of the Premises and for the preservation of good order therein, provided that such rules and regulations do not materially increase Tenant's duties or obligations under this Lease. In the event of any conflict or inconsistency between the terms and conditions of this Lease and any rules and regulations promulgated by Landlord, the conflict or inconsistency shall be resolved by giving precedence to the terms and conditions of this Lease.

**19. QUIET ENJOYMENT** Landlord represents and warrants that it has the authority to enter into this Lease. Landlord further represents, warrants and covenants that so long as Tenant pays all amounts due hereunder and performs all other material covenants and conditions of this Lease to be performed by the Tenant hereunder, Landlord and its successors and assigns shall not interfere, nor permit interference, with Tenant's quiet use and enjoyment of the Premises and that, subject to the terms and conditions of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof.

## **20. ENVIRONMENTAL MATTERS**

### **20.1 Definitions.**

20.1.1 For purposes of this Lease, the term "Environmental Laws" shall mean any and all

federal, state, or local laws, statutes, rules, regulations, ordinances, or judicial or administrative decrees or orders relating to: (i) health, safety or environmental protection; (ii) the emissions, discharges, releases or threatened releases of pollutants, contaminants or toxic or hazardous materials into the environment (including, without limitation, ambient air, surface water, ground water or subsurface strata); or (iii) the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of, or exposure to pollutants, contaminants or toxic or hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq. ("CERCLA"), as amended and judicially and administratively interpreted through the date hereof, and all regulations promulgated thereunder as of such date.

20.1.2 For purposes of this Lease, the term "Hazardous Substance" shall mean: (i) any products, materials, solvents, elements, compounds, chemical mixtures, contaminants, pollutants, or other substances identified as toxic or hazardous under CERCLA or any other Environmental Law; and (ii) the following substances: PCBs, gasoline, kerosene or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials.

## 20.2 Tenant's Obligations.

20.2.1 Tenant shall not cause or knowingly permit any Hazardous Substance to be placed, stored, treated, released, spilled, transported or disposed of on, under, at or from the Premises in violation of any Environmental Laws. Nor will Tenant knowingly permit the Premises to be used or operated in a manner that may cause the Building or any part thereof, to be contaminated by any Hazardous Substance in violation of any Environmental Laws.

20.2.2 Tenant shall contain at or remove from the Premises or perform any other remedial action regarding any Hazardous Substance placed, held, located, released, spilled, transported or disposed of on, under, at or from the Premises by Tenant, its employees, agents or contractors, at Tenant's sole cost and expense, if, and when such containment, removal or other remedial action is required under any Environmental Law, and shall perform such containment, removal or other remediation in compliance with all Environmental Laws.

20.2.3 Tenant shall provide Landlord with written notice (and a copy as may be applicable) within ten (10) business days after Tenant obtains actual knowledge of any of the following: (a) any governmental or regulatory actions instituted or threatened under any Environmental Law affecting the Tenant or the Premises, (b) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or Property to be classified in a manner which may support a claim under any Environmental Law, and (d) the discovery of any Hazardous Substance on, under, at or from the Premises not authorized or permitted under Environmental Laws.

20.2.4 In addition to Tenant's general indemnification obligations set forth in Section 21 below, Tenant shall defend all actions against Landlord and pay, protect, indemnify and save harmless Landlord from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from Tenant's failure to comply with this Section 20. The indemnity contained in this

Section 20.2.4 shall survive the expiration or earlier termination of this Lease indefinitely with respect to the obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to such expiration or earlier termination.

### 20.3 Landlord's Obligations.

20.3.1 In addition to Landlord's general indemnification obligations set forth in Section 21 below, Landlord shall, to the extent permitted by law and subject to the Landlord's rights and defenses under the doctrine of sovereign immunity, which the Landlord's sovereign immunity shall not be deemed waived, defend all actions against Tenant and pay, protect, indemnify and save harmless Tenant from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising out of or relating to: (i) emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Substances into the environment (including, without limitation, ambient air, surface water, ground water or subsurface strata) or exposure to such Hazardous Substances on, at, under, or from the Premises, or any real estate contiguous thereto, that occurred or originated prior to the Commencement Date or that were caused by Landlord, its employees, agents or contractors; (ii) the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of pollutants, contaminants or Hazardous Substances on, under, at or from the Premises, or any real estate contiguous thereto, that occurred or originated prior to the Commencement Date or by Landlord, its employees, agents or contractors; and (iii) any actual or alleged violation of any Environmental Law on, under, at or arising from the Premises, or any real estate contiguous thereto, that occurred or originated prior to the Commencement Date or by Landlord, its employees, agents or contractors. The indemnity contained in this Section 20.3.1 shall survive the expiration or earlier termination of this Lease indefinitely with respect to the obligations and liabilities of Landlord hereunder, actual or contingent, which have arisen on or prior to such expiration or earlier termination.

20.3.2 Landlord represents to Tenant that as of the Commencement Date Landlord has no knowledge that: (i) the Premises, the Building and the ground under them and the Property are contaminated by any Hazardous Substances; (ii) all or any portion of the Premises has, at any time, been used for the treatment, storage, or disposal of any Hazardous Substances; (iii) Hazardous Substances are (or have been) used, generated or disposed of on or about the Premises, except in compliance with all applicable Environmental Laws; and (iv) any part of the Premises or surrounding common areas are on any governmental list of contaminated properties, or of any investigation, administrative order or notice, consent order, or agreement for litigation pertaining to the Building or the surrounding common areas.

## **21. WAIVER; INDEMNIFICATION**

21.1 Waiver. EXCEPT AS OTHERWISE SET FORTH IN THIS LEASE, NEITHER PARTY OR ITS AGENTS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY OR ANY PERSON CLAIMING THROUGH THAT PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) FOR ANY CAUSE WHATSOEVER, EXCEPT CLAIMS CAUSED BY OR RESULTING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THAT PARTY, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

21.2 Tenant's Indemnity. Except to the extent caused by the breach of this Lease by Landlord or the acts or omissions of Landlord, its officers, agents, employees, contractors, or any other person or entity for whom Landlord is legally responsible, Tenant shall defend, indemnify and hold Landlord and its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) arising directly or indirectly out of: (i) any wrongful act or omission of Tenant, its officers, agents, employees, contractors, or any other person or entity for whom Tenant is legally responsible; or (ii) a breach of any representation, warranty or covenant of Tenant contained or incorporated in this Lease. Tenant's obligations under this Section 21.2 shall survive the expiration or earlier termination of this Lease indefinitely.

21.3 Landlord's Indemnity. Except to the extent caused by the breach of this Lease by Tenant or the acts or omissions of Tenant, its officers, agents, employees, contractors, or any other person or entity for whom Tenant is legally responsible, and to the extent permitted by law and subject to the Landlord's rights and defenses under the doctrine of sovereign immunity, which the Landlord's sovereign immunity shall not be deemed waived, Landlord shall defend, indemnify and hold Tenant, its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) arising directly or indirectly out of: (i) any wrongful act or omission of Landlord, its officers, agents, employees, contractors or any other person or entity for whom Landlord is legally responsible; or (ii) a breach of any representation, warranty or covenant of Landlord contained or incorporated in this Lease. Landlord's obligations under this Section 21.3 shall survive the expiration or earlier termination of this Lease indefinitely.

21.4 Indemnification Procedure. The party seeking indemnification (the "Indemnified Party") shall promptly notify in writing the party from whom indemnification is being sought (the "Indemnifying Party") of the claim or suit for which indemnification is sought. The Indemnified Party shall not make any admission as to liability or agree to any settlement of or compromise any claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall be entitled to have the exclusive conduct of and/or settle all negotiations and litigation arising from any claim and the Indemnified Party shall, at the Indemnifying Party request and expense, give the Indemnifying Party all reasonable assistance in connection with those negotiations and litigation.

## **22. MISCELLANEOUS**

22.1 Force Majeure. Notwithstanding anything to the contrary in this Lease, neither party shall be liable to the other party for nonperformance or delay in performance of any of its obligations under this Lease (except Tenant's obligation to pay rent) due to causes beyond its reasonable control, including without limitation strikes, lockouts, labor troubles, acts of God, accidents, technical failure, governmental restrictions, insurrections, riots, enemy act, war, civil commotion, fire, explosion, flood, windstorm, earthquake, natural disaster, or other casualty ("Force Majeure"). Upon the occurrence of a Force Majeure condition, the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the other party of any further developments. Immediately after the Force Majeure event is removed or abates, the affected party shall perform such obligations with all due speed. Neither party shall be deemed in default under this Agreement if a delay or other breach is caused

by a Force Majeure event. A proportion of the rent, according to the extent that such Force Majeure event shall interfere with the full enjoyment and use of the Premises, shall be suspended and abated from the date of commencement of such Force Majeure event until the date that such Force Majeure event subsides.

22.2 Affiliates. For purposes of this Lease, the term "Affiliate" shall mean, with respect to a party hereto, any other person or entity directly or indirectly controlling, controlled by or under common control with that party.

22.3 Successors and Assigns. The respective rights and obligations provided in this Lease shall bind and shall inure to the benefit of the parties hereto, their legal representative, heirs, successors and permitted assigns. No rights however, shall inure to the benefit of any assignee of Tenant, unless such assignment shall have been made in accordance with Section 9 above.

22.4 Brokers. Each party represents and warrants to the other that no person or entity has a claim or will claim any commission, finder's fee or other amounts by, through, under or as a result of any relationship with such party because of this transaction. Landlord and Tenant each agree to defend, indemnify and hold the other party harmless from and against any and all claims, losses or damages, including without limitation reasonable attorney's fees arising out of or relating to any breach of such party's representations and warranties contained in this Section 22.4.

22.5 Governing Law and Construction. This Lease shall be construed, governed and enforced in accordance with the laws of the Commonwealth of Virginia. Landlord and Tenant acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

22.6 Person; Gender; Number. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall mean to include any other gender.

22.7 Severability. If any provisions of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired and such remaining provisions shall remain in full force and effect.

22.8 Waiver. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent default or breach of the same or similar nature. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

22.9 Notice. Any notice to be given hereunder shall be in writing and shall be sent by hand delivery with verified receipt, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party notified, addressed to such party at the following address or such

other address as such party may have substituted by written notice to the other parties. The receipt of such notice shall constitute the giving thereof:

If to Landlord: Economic Development Authority of Montgomery County, VA.  
755 Roanoke Street, Suite 2H  
Christiansburg, VA 24073  
Attn: Economic Development Authority Secretary/Treasurer

With a copy to: County Attorney  
County of Montgomery, VA  
755 Roanoke Street, Suite 2F  
Christiansburg, Virginia 24073

If to Tenant: Luna Innovations Incorporated  
3155 State Street  
Blacksburg, Virginia 24060

With a copy to: Whitlow and Youell, PLC  
Attn: C. Cooper Youell, IV  
28A Kirk Avenue  
Roanoke, VA 24011

22.10 Entire Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

22.11 Compliance with Law. The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the Term, a Renewal Term or any extension of either.

22.12 Counterparts. This Lease may be executed in any number of identical counterparts and, as so executed, shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

22.13 Remedies Cumulative. It is agreed that, except as expressly set forth in this Lease, the rights and remedies herein provided in case of default or breach by either Landlord or Tenant are cumulative and shall not affect in any manner any other remedies that the non breaching party may have by reason of such default or breach. The exercise of any right or remedy herein provided shall be without

prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

22.14 Attorneys' Fees. If an action is brought by either party for breach of any lease covenant and/or to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney's fees, both at trial and on appeal, in addition to all other sums allowed by law.

22.15 Recordation of Memorandum of Lease. Landlord and Tenant mutually agree to execute a notarized memorandum (the "Memorandum") setting forth the material terms and disclosing the existence of this Lease within ten (10) days of a written request by either party with the cost of such recording being borne by the requesting party.

22.16 Time is of the Essence. Time is of the essence; and all due dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided.

22.17 Access to Dock Doors and Parking. The Tenant shall have access to the existing dock doors and drive through door on the Premises. Tenant shall be entitled to priority use of Eighty-Nine (89) parking spaces on the Property based upon the Tenant's proportionate share of the Premises.

22.18 Air and Wastewater Discharge. Except as follows, Tenant shall not be permitted to discharge wastewater or air through the Building's existing wastewater or air handling systems. Nothing herein shall prohibit Tenant from discharging ordinary sanitary sewage through the Building's sanitary sewage system. Tenant can use the air handling system that is designed for air discharge.

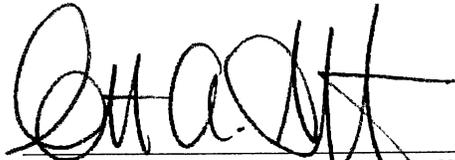
[Remainder of Page Intentionally Left Blank – Signature Page Follows]

WITNESS the following signatures and seals:

**THE ECONOMIC DEVELOPMENT  
AUTHORITY OF MONTGOMERY  
COUNTY, VIRGINIA**

By:  \_\_\_\_\_  
Eric Johnsen, Chair

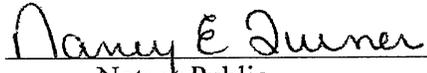
**LUNA INNOVATIONS Incorporated**

By:  \_\_\_\_\_  
Scott A. Graeff, Chief Strategy Officer

COMMONWEALTH OF VIRGINIA, at large,  
COUNTY OF MONTGOMERY, to-wit;

I, the undersigned, a notary public in and for the jurisdiction aforesaid, do hereby certify that Eric Johnsen, whose name as Chairman of the Economic Development Authority of Montgomery County is signed to the foregoing Lease, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 3<sup>rd</sup> day of October, 2014.  
My Commission expires: April 30, 2018

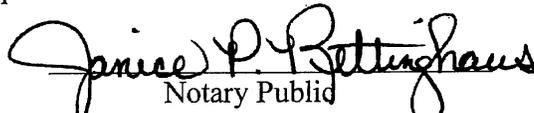
  
Notary Public



COMMONWEALTH OF VIRGINIA, at large,  
COUNTY OF MONTGOMERY, to-wit;

I, the undersigned, a notary public in and for the jurisdiction aforesaid, do hereby certify that Scott A. Graeff, whose name as Chief Strategy Officer of Luna Innovations Incorporated is signed to the foregoing Lease, has acknowledged the same before me in my Jurisdiction aforesaid.

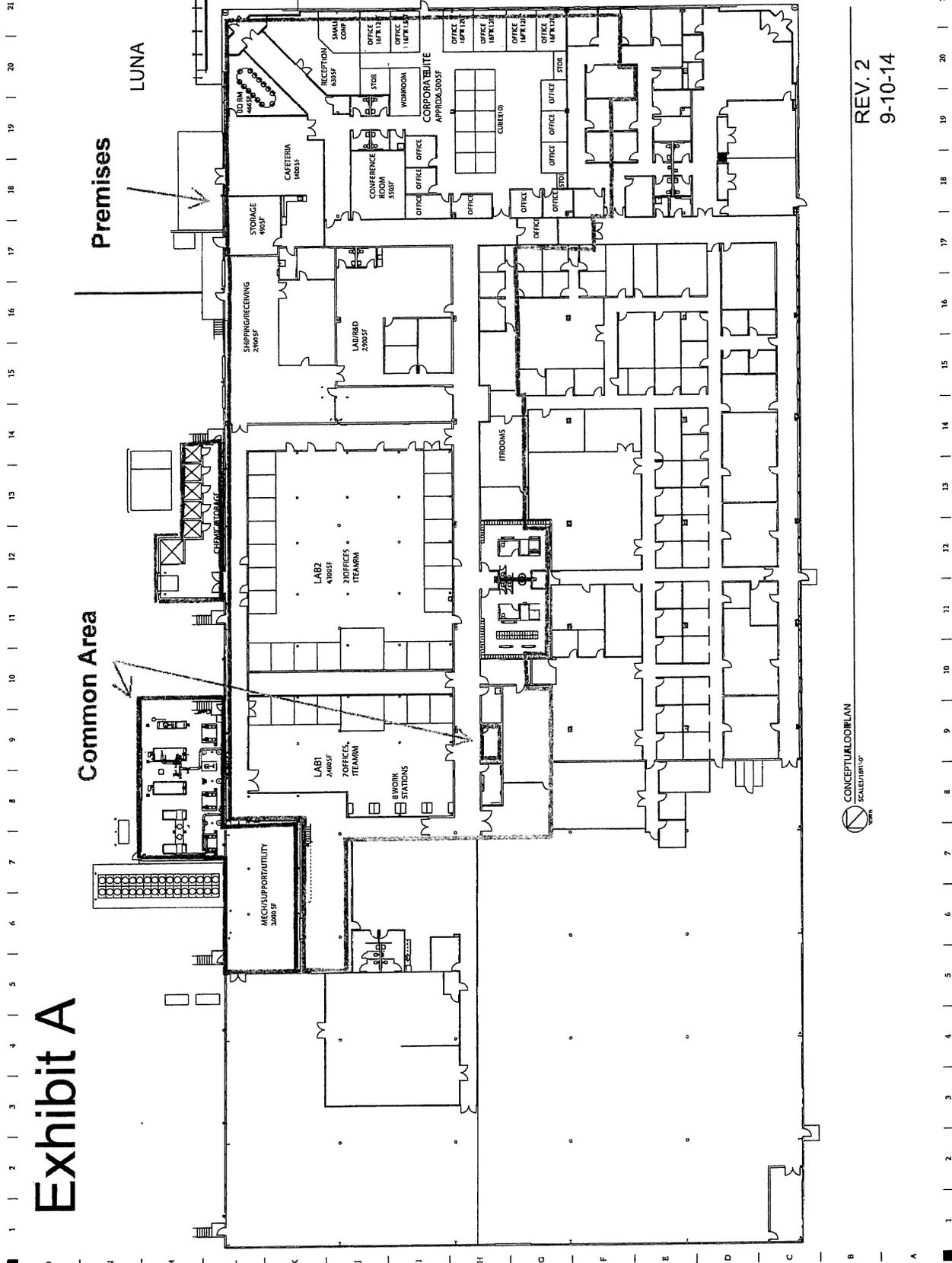
Given under my hand this 1<sup>st</sup> day of October, 2014.  
My commission expires:

  
Notary Public



*THA*

# Exhibit A



BLACKSBURG INDUSTRIAL PARK  
BLACKSBURG VIRGINIA

PRELIMINARY  
CONCEPTUAL PLAN

TKA  
THOMAS KOONITZ  
ARCHITECT, PC

DATE	DESCRIPTION
10/10/14	REV. 2
9-10-14	REV. 1

CONCEPTUAL FLOOR PLAN

SCALE: 1/8" = 1'-0"

REV. 2  
9-10-14

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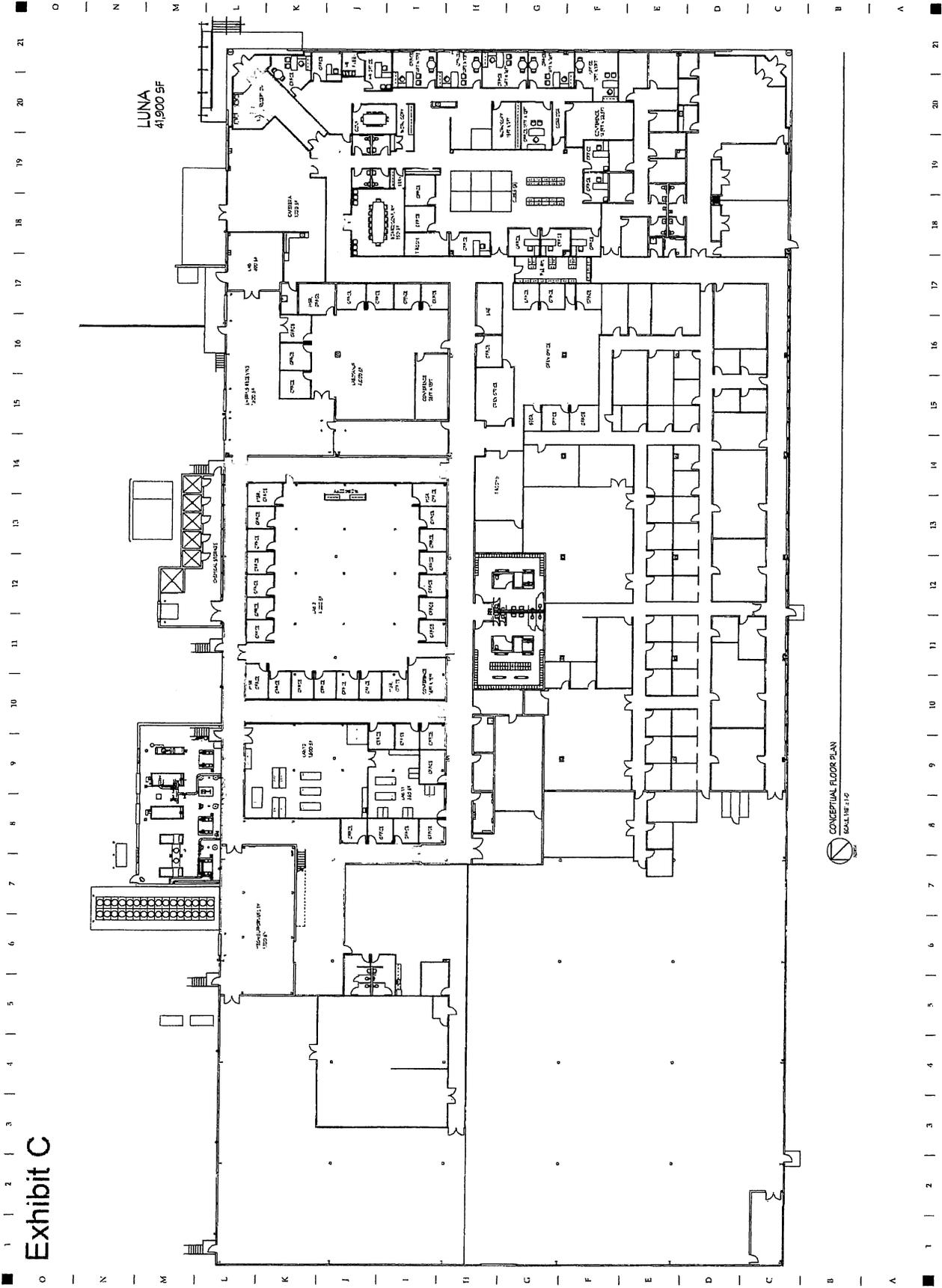
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## **Exhibit B**

### **Description of the Property**

All that certain tract or parcel of Land, with improvements thereon and appurtenances thereon to located and situated in the Mount Tabor Magisterial District of Montgomery County, Virginia, in the Blacksburg Industrial Park and being all of Lot Number Eight (8) containing 15.025 acres, Phase IV, Industrial Park Expansion, as shown on a plat of survey entitled "Industrial Park Expansion Phase IV", prepared by Anderson and Associates, Inc., dated 19 Dec 95 and revised 19 Feb 96, which plat is of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 16, at page 507.

# Exhibit C



LUNA  
41,900 SF

CONCEPTUAL FLOOR PLAN  
SCALE: 1/8" = 1'-0"

BLACKSBURG TECHNOLOGY BUILDING - TENANT UPFIT FOR  
BLACKSBURG INDUSTRIAL PARK  
BLACKSBURG, VIRGINIA

LUNA INNOVATIONS

PRELIMINARY  
CONSTRUCTION

**TKA**  
THOMAS KOLODZ  
ARCHITECT, PC  
1000 COMMONWEALTH CENTER DRIVE  
SUITE 200  
BLACKSBURG, VA 24050  
TEL: 540-231-1100  
WWW.TKAARCHITECTS.COM

DATE:	02/14/18
BY:	CS
APP.:	CS
SCALE:	AS SHOWN
PROJECT NO.:	18001
DRAWING NO.:	100

CONCEPTUAL FLOOR PLAN

A1

18001-TENANT UPFIT-01

## FIRST AMENDMENT TO INDUSTRIAL LEASE

THIS FIRST AMENDMENT TO INDUSTRIAL LEASE AGREEMENT (“the Amendment”) is made and effective as of January 20, 2015, by and between the **Economic Development Authority of Montgomery County, Virginia** (“Landlord”), a public body corporate, having a principal place of business at 755 Roanoke Street, Suite 2H, Christiansburg, Virginia, 24073 and **Luna Innovations Incorporated** (“Tenant”), a Virginia Corporation, having a principal place of business at 3155 State Street, Blacksburg, Virginia 24060.

WHEREAS, the Landlord and Tenant have entered into that certain Industrial Lease Agreement dated as of the 1<sup>st</sup> day of October, 2014 (the “Lease”), whereby the Landlord leased to Tenant 41,900 sq. ft. located in the 109,000 sq. ft. Technology Manufacturing Building (“the Building”) situated in the Blacksburg Industrial Park, 3155 State Street, Blacksburg, Virginia 24060, such space being more particularly described in the Lease (“the premises”); and

WHEREAS, approximately an additional One Million One Hundred Thousand Dollars (\$1,100,000) is required in upfit costs to cover the design and construction required under Phase 2 to convert the cleanroom into lab space and renovate the front office area and cafeteria as shown on the attached drawing entitled “Blacksburg Technology Building Tenant Upfit for Luna Innovations-Phase 2 dated November 12, 2014” prepared by Thomas Koontz, PC (the “Phase 2 Renovations”); and

WHEREAS, the Landlord is willing to increase the upfit allowance to cover the Phase 2 Renovations in return for the Tenant agreeing to extend the term of the Lease from six to ten years; increase the lease rate by two dollars per sq. ft. in years seven through ten and increase the Letter of Credit to One Million Dollars; and

WHEREAS, the Landlord and Tenant desire to Amend Section 1.2, Section 1.4, Section 3.1.1. and Section 3.1.3. of the Lease pursuant to the terms and conditions set forth therein.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein set forth and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein by reference and all capitalized terms not otherwise defined herein shall have the meaning as set forth in the Lease.

2. Section 1.2 **Term** of the Lease is deleted in its entirety and replaced with the following:

- 1.2 **Term.** The term of this Lease (the “Term”) shall commence (the Commencement Date”) on October 15, 2014, and shall expire as of 11:59 p.m. on December 31, 2024, unless terminated sooner, renewed or extended as provided herein. Notwithstanding the fact that the Commencement Date is subsequent to the effective date of this Lease,

the parties agree that each have vested rights hereunder and that this Lease constitutes a binding and valid obligation of each as of the date this Lease is fully executed.

3. Section 1.4 **Upfit Allowance** of the Lease is deleted in its entirety and replaced with the following:

1.4 **Upfit Allowance.** The Landlord shall provide the Tenant with an upfit improvement allowance of One Million, Six Hundred Thousand Dollars (\$1,600,000) (the "Up Fit Allowance") to be used to cover design and construction costs to convert the cleanroom into useable lab space and to renovate the front office area and cafeteria as shown on Exhibit C (altogether the "Renovations"). The Renovations are generally divided for ease of reference into Phase 1 and Phase 2. Landlord engaged Thomas Koontz Architect, PC, to prepare architectural plans and drawings for the Renovations in Phase 2, as shown on the Blacksburg Technology Building Tenant Upfit for Luna Innovations-Phase 2 dated November 12, 2014" prepared by Thomas Koontz, PC (as such Renovations are thus described, the "Phase 2 Renovations"). Landlord has agreed that the Phase 2 Renovations will be completed under and within the Up Fit Allowance. Therefore, the Up Fit Allowance can only be exceeded if Tenant requests changes to the Phase 2 Renovations that it has been informed in writing will exceed the Up Fit Allowance and agrees to pay the excess; Landlord shall have no obligations to accept such changes unless Tenant thus agrees to pay the excess by providing the Landlord with additional funds required to pay for the excess. Landlord shall review with and obtain consent from the Tenant on the construction bids or quotes received for the Renovations and obtain prior written consent for any bids or quotes that would exceed the Up Fit Allowance. Based on the final bid to complete the mutually agreed Renovations, the parties expect that only \$1,521,337 of the Up Fit Allowance will be used, plus the cost of any change orders for items or work that can reasonably have been expected to be a part of the Phase II Renovations (e.g., to add a door between the small room and the adjacent conference room or to install power strips in lab space) or necessary to obtain a certificate of occupancy; otherwise, Tenant will not have a right to request change orders for upgrades to the Phase II Renovations.

4. Section 3.1.1. **Payment** of the Lease is deleted in its entirety and replaced with the following:

3.1.1. **Payment.** Beginning on October 15, 2014 and lasting through December 31, 2014, the lease rate for the Premises shall be \$0.00. Beginning January 1, 2015 and lasting through December 31, 2020, the Tenant shall pay Landlord per month Base Rent for the Premises in advance, without demand or setoff in the amount of Thirty-Eight Thousand, Four Hundred Eight Dollars (\$38,408.00) for 41,900 sq. ft. at \$11.00 per sq. ft. Beginning January 1, 2021 and lasting through December 31, 2024, the Tenant shall pay the Landlord per month Base Rent for the Premises in advance,

without demand or setoff in the amount of Forty-Five Thousand, Three Hundred Ninety-Two Dollars (\$45,392.00) for 41,900 sq. ft. at \$13.00 per sq. ft. Base Rent shall be due on or before the first day of each successive calendar month during the Term in lawful money of the United States of America, without prior notice or demand at such place or places as may be designated in writing from time to time by Landlord. The Tenant's proportionate share of the real estate taxes on the premises is included in the Tenant's Base Rent.

5. Section 3.1.3 **Letter of Credit** of the Lease is deleted in its entirety and replaced with the following:

3.1.3 **Letter of Credit.** The Tenant shall maintain at all times throughout the entire term of the Lease including renewals, unless otherwise agreed by the Landlord, a Letter of Credit issued by a bank in the New River/Roanoke Valley or by Silicon Valley Bank in a form acceptable to the Landlord in the amount of One Million Dollars (\$1,000,000), against which the Landlord may draw upon the occurrence of default by Tenant under this Lease and may be used by the Landlord as security against damages and the Tenant not making lease payments. The Letter of Credit shall be governed by the "Uniform Customs and Practices for Commercial Documentary Credits" promulgated by the XIII Congress of the International Chamber of Commerce (International Chamber of Commerce Brochure No. 500, 1993 revision) and the provisions of the Uniform Commercial Code – Letter of Credit, Title 8.5A of the Code of Virginia, 1950, as amended. The Landlord agrees to reimburse the Tenant for the annual costs of obtaining the Letter of Credit up to a 2% fee annually.

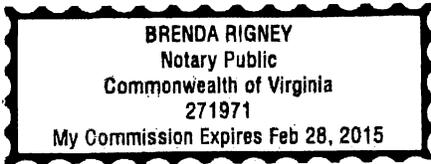
6. This Amendment may be executed in any number of identical counterparts and, as so executed, shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatures to the original or the same counterpart.

7. Except as specifically amended herein, the Lease shall remain in full force and effect.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

THE ECONOMIC DEVELOPMENT AUTHORITY  
OF MONTGOMERY COUNTY, VIRGINIA

By: [Signature]  
Eric Johnsen, Chair



LUNA INNOVATIONS INCORPORATED

By: [Signature]  
Scott A. Graeff, Chief Strategy Officer  
and Treasurer

COMMONWEALTH OF VIRGINIA,  
COUNTY OF MONTGOMERY, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Eric Johnsen, Chair of the Economic Development Authority of Montgomery County, Virginia, has signed the foregoing Lease Amendment before me in my jurisdiction aforesaid.

Given under my hand this 20 day of January, 2015.

My commission expires: 02-28-15  
Registration Number: 271971

[Signature]  
Notary Public

COMMONWEALTH OF VIRGINIA,  
COUNTY/CITY OF Roanoke, to-wit;

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Scott A. Graeff, Chief Strategy Officer of Luna Innovations Incorporated has signed the foregoing Lease Amendment before me in my jurisdiction aforesaid.

Given under my hand this 12<sup>th</sup> day of January, 2015.

My commission expires: March 31, 2017  
Registration Number: 7286924



[Signature]  
Notary Public

TALK

EXHIBIT C

Lease with InMotion US, LLC

**INDUSTRIAL LEASE AGREEMENT**

**BETWEEN**

**INMOTION US, LLC  
AS TENANT**

**AND**

**THE ECONOMIC DEVELOPMENT AUTHORITY  
OF MONTGOMERY COUNTY, VIRGINIA**

**AS LANDLORD**

## INDUSTRIAL LEASE AGREEMENT

THIS LEASE (the "Lease" or "Agreement") is made and effective as of this 2nd day of October, 2014, by and between the Economic Development Authority of Montgomery County, Virginia ("Landlord"), a public body corporate, having a principal place of business at 755 Roanoke Street, Suite 2 H, Christiansburg, Virginia 24073, and InMotion US, LLC, ("Tenant"), a Virginia Corporation having a principal place of business at 3155 State Street, Blacksburg, Virginia, 24060.

WHEREAS, Landlord is the owner of certain real property located in the Town of Blacksburg, Virginia upon which the Landlord built a 109,000 sq. ft. Technology Manufacturing Building (the "Building") on fifteen (15) acres of land in the Blacksburg Industrial Park with a property address of 3155 State Street, Blacksburg, VA 24060; and

WHEREAS, Tenant desires to lease and occupy 59,330 square feet of the Building consisting of 13,950 sq. ft. of executive office space and 45,380 sq. ft. of flexible manufacturing floor space as shown on the attached diagram identified as Exhibit A entitled "InMotion US Lease Floor Plan Technology Manufacturing Building (Leased Area is Shaded)" (the "Premises") if the Landlord is willing to lease the said Premises to the Tenant; and

WHEREAS, Landlord is willing to lease the said Premises to the Tenant subject to and in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein set forth, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### 1. PREMISES AND TERM

1.1 Premises. In consideration of the obligations of Landlord and Tenant set forth herein, Landlord leases to Tenant, and Tenant hereby takes from Landlord the Premises identified on Exhibit A situated on real property owned by the Landlord within the Town of Blacksburg, County of Montgomery, State of Virginia more particularly described on Exhibit B attached hereto and incorporated herein by reference (the "Property") together with all rights, privileges, easements, appurtenances, and amenities belonging to or in any way pertaining to the Premises, to have and to hold, subject to the terms, covenants and conditions of this Lease. Without limiting the foregoing, Tenant shall have the right, as appurtenant to the Premises, to use the driveways, parking, and other common areas on the Property. As used in this Lease, Tenant's "Proportionate Share" shall mean a fraction the numerator of which shall be the square footage of the Premises (59,330 sq. ft.) and the denominator of which shall be the square footage of the Building (109,000 sq. ft.).

1.1.1 First Right of Refusal on Additional Lease Space. During the initial term of this Lease the Tenant shall have the right of first refusal to lease the remaining 800 sq. ft. of office space not being leased in the Building as shown on Exhibit A. Any proposed lease of this remaining space in the Building by the Landlord to a third party shall be submitted to the Tenant in writing and the Tenant shall have the right to lease the requested space at \$9.00 per sq. ft. The Tenant shall have ten

(10) days from receiving the written notification from the Landlord to notify the Landlord in writing that the Tenant desires to lease the additional space and thirty (30) days from receiving written notification to enter into a written amendment to the Lease with the Landlord agreeing to lease the additional space. If the Tenant fails to either notify the Landlord in writing within ten (10) days of first receiving written notification or to enter into a written lease amendment with Landlord agreeing to lease the additional space within thirty (30) days of first receiving written notification from the Landlord, the Tenant's right of first refusal to lease additional space shall be null and void and of no further effect.

1.2 Term. The Term of this Lease (the "Term") shall commence (the "Commencement Date") on October 16, 2014, and shall expire as of 11:59 PM on December 31, 2022 unless terminated sooner, renewed or extended as provided herein. Notwithstanding the fact that the Commencement Date is subsequent to the effective date of this Lease, the parties agree that each have vested rights hereunder and that this Lease constitutes a binding and valid obligation of each as of the date this Lease is fully executed.

1.3 Acceptance of the Premises. By taking possession of the Premises, Tenant acknowledges that: (i) it has inspected the Premises; (ii) it accepts the Premises "as is" except for the agreed upon Up-fit of Premises as indicated on the design drawings marked Exhibit C, referenced below, (iii) the Premises are suitable for the purpose for which the Premises are leased; and (iv) except as otherwise set forth in this Lease (including all exhibits and attachments), no representations or warranties have been made by Landlord with respect to the Premises.

1.4 Improvements and Up-Fit Allowance. Landlord shall provide the Tenant with an up-fit improvement allowance reimbursement of Four Hundred Thousand Dollars (\$400,000) to assist in offsetting the costs incurred by the Tenant renovating the office, storage and manufacturing space and for the installation of two new dock doors. Landlord shall provide the Four Hundred Thousand Dollars (\$400,000) reimbursement to Tenant upon completion of the improvements. The Tenant shall contract and be responsible for all design and construction costs associated with all improvements to be made to the Building and /or Property. The design drawing for all improvements to be made by the Tenant to the Building and Property, including the improvements covered by the up fit allowance, shall be pre-approved by the Landlord prior to construction and shall be marked as Exhibit C, and made a part of this Lease. Approval by Landlord shall not be unreasonably withheld, conditioned or delayed. All improvements by Tenant shall be performed in a good, workmanlike and lien free manner. Notwithstanding the above, the Landlord shall contract and be responsible for the engineering costs, (but not construction costs) associated with the installation of the two dock doors and the pavement and stormwater improvements for the existing drive through door and for the design costs (not construction costs) associated with the development of the demolition plan.

1.5 Future Building Expansion. The Building can be expanded an additional 81,000 sq. ft. The Landlord is willing to expand the Building if the Tenant executes a ten (10) year lease extension on the Premises, including the current and expanded Leased Premises. The new Lease rate for the expanded area shall be based on the Landlord's expenses in expanding the Building, which shall include, but not necessarily be limited to the cost of financing, architectural and engineering services, construction and site development costs and a three (3) percent annual fee

above the actual cost for future maintenance. The Tenant shall provide a new Letter of Credit upon execution of the ten year lease extension that is equal to the Tenant's one year's lease payments for the entire Leased Premises. The Letter of Credit shall be in effect for the term of the extended Lease period.

## 2. RENEWAL; EXTENSION; SURRENDER

### 2.1 Renewal.

2.1. The Tenant shall have the option to renew this Lease for an additional term of seven (7) years on the same terms, covenants and conditions set forth herein ( "Renewal Term"), provided (i) that this Lease is in full force and effect immediately prior to the date of the commencement of the Renewal Term and that the Tenant is not in default, beyond applicable cure periods, under any of the provisions of this Lease at the time option to renew is exercised by Tenant, (ii) that the Base Rent for the first year of the Renewal Term shall be increased by fifty percent (50%) of the percentage increase in the CPI (as defined hereinafter) during the period from January 1, 2015 to December 31, 2022, and the Base Rent for each lease year thereafter during the Renewal Term shall increase by seventy five percent (75%) of the percentage increase in the CPI (as defined hereinafter) during the preceding lease year. The term "CPI" shall mean the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is not available, a comparable index selected by Landlord and Tenant which is published by a government institution or a nationally recognized publisher of statistical information.

2.1.2 Tenant's desire to renew this Lease for the Renewal Term set forth above shall be expressed, if at all, by delivery of written notice (the Renewal Notice") to Landlord no later than 240 days prior to expiration of the initial term. Time shall be of the essence with respect to Tenant's Renewal Notice.

2.2 Extension By Mutual Consent. If Tenant lawfully occupies the Premises after the end of the Term, after having requested and obtained Landlord's written consent to do so, this Lease and all its terms, provisions, conditions, covenants, waivers, remedies and any and all of Landlord's rights herein specifically given and agreed to, shall be in force for one month thereafter and thereafter from month-to-month until either party gives the other thirty (30) days written notice of its desire to terminate this Lease. The rent shall be subject to a CPI increase if the Lease is extended month to month under this provision.

2.3 Surrender. At the expiration of this Lease (including any renewal or extension) or the sooner termination thereof, Tenant shall surrender the Premises to Landlord, together with all additions, alterations and improvements thereto, in broom clean condition and in good order and repair except for ordinary wear and tear and Landlord's maintenance obligations. Nothing herein, however, shall prohibit Tenant from removing any of its computers, voice and data network components, phone system components, phone switch, TV's and other video equipment, satellite antennae, office equipment, furniture, office supplies, storage racks, compressors, vacuum,

wastewater and manufacturing equipment and other personal property (collectively "Tenant Equipment") in accordance with the terms of this Lease. Tenant shall repair any damage to the Premises caused by the removal of such Tenant Equipment. Any Tenant Equipment not removed by Tenant as required herein shall be deemed abandoned thirty (30) days after the expiration or earlier termination of the Lease, and may be stored, removed and disposed of by Landlord in its discretion, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention or disposal of same. Tenant shall be entitled to no payment or offset for the value of any abandoned property (even if sold by Landlord) and Tenant shall pay on demand all reasonable costs incurred by Landlord in connection with such removal or disposal. No retention, disposal or sale of such abandoned property shall limit remedies otherwise available to Landlord hereunder for a breach of this Agreement by Tenant. All obligations of Tenant hereunder not fully performed as of the termination or expiration of the Lease shall survive such termination or expiration, until they are performed. The Lease rate shall be subject to a CPI increase once extended. All other terms and conditions shall apply.

2.4 Holding Over. If Tenant occupies the Premises beyond the Term of this Lease or any properly exercised Renewal Term, without Landlord's written consent (a "Hold Over"), Tenant shall be deemed to occupy the Premises as a tenant at sufferance, and all of the terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay Landlord a rental equal to one hundred twenty-five percent (125%) of the monthly rent applicable hereunder at the expiration of the Term or applicable Renewal Term, prorated for the number of days of such holding over. If Tenant refuses to vacate, Landlord may institute a forcible detainer or similar action against Tenant or any other party in possession of the Premises or pursue any other remedy available at law or in equity.

### 3. PAYMENT OF RENT

3.1 Payment. Beginning on October 16, 2014 and lasting through January 31, 2015 the lease rate for the Premises shall be \$0.00. Beginning February 1, 2015 and lasting through December 31, 2022, the Tenant shall pay to Landlord per month Base Rent for the Premises ("Base Rent") in advance, without demand or set-off, in the amount of Ten Thousand Four Hundred and Sixty Two Dollars and Fifty Cents (\$10,462.50) (Nine Dollars (\$9.00) per sq. ft.) for the office portion of the Premises (13,950 sq. ft.) and Twenty Two Thousand Six Hundred Ninety Dollars (\$22,690) (Six Dollars (\$6.00) per sq. ft.) for the manufacturing/storage portion of the Premises (45,380 sq. ft.) for a total of Thirty Three Thousand One Hundred Fifty Two Dollars and Fifty Cents (\$33,152.50) on or before the first day of each successive calendar month during the Term in lawful money of the United States of America, without prior notice or demand, at such place or places as may be designated in writing from time to time by Landlord. The Tenant's proportionate share of the real estate taxes on the Premises is included in the Tenant's Base Rent.

3.2 Proration. In the event that the date on which a payment obligation: (i) begins on a date other than the first day of a calendar month; or (ii) ends on a date other than the last day of a calendar month then the amount of the payment shall be prorated, based upon the number of days during said month that the obligation was effective.

3.3 Letter of Credit. The Tenant shall maintain at all times throughout the entire term of the Lease including any renewals, unless otherwise agreed by the Landlord, a letter of credit issued by a Bank in the New River/Roanoke Valleys in a form that is acceptable to the Landlord in the amount of Four Hundred Thousand Dollars (\$400,000), against which the Landlord may draw upon the occurrence of a default by Tenant under this Lease and may be used as security against damages and the Tenant not making lease payments. The Letter of Credit shall be provided in a satisfactory form to the Landlord and be governed by the "Uniform Customs and Practices for Commercial Documentary Credits" promulgated by the XIII Congress of the International Chamber of Commerce (International Chamber of Commerce Brochure No. 500, 1993 revision) and the provisions of the Uniform Commercial Code-Letters of Credit, Title 8.5A of the Code of Virginia, 1950, as amended.

#### 4. UTILITIES

The Tenant shall pay the Landlord when due for all electric and natural gas used by the Tenant. The Landlord shall bill the Tenant based on the Landlord sub-metering the Tenant's electric and natural gas use without any surcharge. The Tenant shall pay the Landlord within Fifteen (15) days of receiving Tenant's cost for electric and natural gas use. The Landlord shall provide 10 MBS of internet service, use of the existing phones and phone switch and domestic water and sewer service to the Tenant at no charge to the Tenant. The Tenant shall be responsible for all other utilities.

#### 5. USE

5.1 Tenant agrees to use and occupy the Premises as a manufacturing, research and development facility and for such other lawful purposes as may be incident thereto and for no other purpose without Landlord's prior written consent. Tenant shall comply with all governmental laws, rules, ordinances and regulations applicable to its particular use of the Premises, and promptly comply with all governmental orders and directives for the correction and abatement of nuisances in or upon the Premises caused by Tenant, all at Tenant's sole expense. Tenant recognizes and agrees that Landlord is making no warranties, expressed or implied, as to the suitability of the Premises for any particular use.

5.2 Landlord represents and warrants that it has not and will not, during the term of this Lease, enter into an agreement or mortgage or encumber the Building in any way which limits Tenant's ability to use the Premises for the uses set forth in Section 5.1, except by operation of law.

#### 6. ALTERATIONS

6.1 Tenant shall not make any alterations, additions or improvements to the Premises, except for non-structural alterations that cost less than \$50,000 per project without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant, at

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its own cost and expense may erect such shelves, bins, machinery and trade fixtures as it desires provided that (a) such items do not alter the basic character of the Premises or the Building; (b) such items do not overload or damage the same; (c) such items may be removed without injury to the Premises; and (d) the construction, erection or installation thereof complies with all applicable governmental laws, ordinances, regulations and all provisions of this Lease. All alterations, additions, improvements and partitions erected by Tenant shall be and remain the property of Tenant during the term of this Lease and shall be the property of Landlord upon the expiration or earlier termination of this Lease provided that nothing herein shall prohibit Tenant from removing the Tenant Equipment or other items, in accordance with Section 2.3, above. All shelves, bins, machinery and trade fixtures installed by Tenant shall be removed in accordance with Section 2.3 on or before the expiration or earlier termination of this Lease, at which time Tenant shall repair any damage caused thereby, ordinary wear and tear excepted. All alterations, installations, removals and restoration shall be performed in a good, workmanlike and lien free manner.

6.2 Mechanics Liens. Tenant shall promptly pay all contractors and material men, and will use reasonable commercial efforts to prevent any lien from attaching to the Premises or any part thereof. If any lien is filed purporting to be for labor or material furnished or to be furnished at the request of Tenant, Tenant shall do all acts necessary to discharge such lien within twenty (20) days of filing, or if Tenant desires to contest any lien, then Tenant shall deposit with Landlord the amount of said lien as security for its payment. In the event Tenant fails to deposit the security with Landlord and fails to pay any lien claim after entry of final judgment in favor of the claimant, Landlord shall have the right to expend all sums reasonably necessary to discharge the lien claim, and Tenant shall pay all sums expended by Landlord in discharging said lien, including reasonable attorney's fees within thirty (30) days of receipt of the invoice. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including, without limitation, those who may furnish materials or perform labor for any construction or repairs.

## 7. SIGNAGE

Tenant shall not place or permit on any exterior door or window or any exterior wall of the Premises any sign, awning, canopy, advertising matter or lettering without the written consent of the Landlord, which shall not be unreasonably withheld. It shall not be unreasonable for Landlord to withhold its consent to the placement of any sign that does not comply with any federal, state or local law or ordinance.

## 8. MAINTENANCE

8.1 Tenant's Maintenance Responsibilities. Tenant shall at all times keep the Premises (including all entrances and vestibules) and all partitions, fixtures, equipment, compressors, dock doors, interior and exterior building lighting within the Premises but not including parking lot lights, and appurtenances thereof and all parts of the Premises not required in Section 8.2 to be maintained by Landlord in good order, condition and repair, and in compliance with all applicable

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laws, rules, ordinances and regulations, damage by casualty excepted. If replacement of equipment, fixtures and appurtenances thereto are necessary, Tenant shall replace the same with equipment, fixtures and appurtenances of the same quality, and shall repair all damages done in or by such replacement.

8.2 Tenant's Failure to maintain or make repairs. If Tenant fails to maintain the Premises or commence any repair to the Building or the Premises or to the common area that is Tenant's responsibility under Section 8.1 within ten (10) days after notification by the Landlord of the need for such maintenance or repair and fails to complete such maintenance or repair within a reasonable period of time, the Landlord may, in addition to any other remedies it may have, complete such maintenance or make such repair at the expense of Tenant and Tenant shall pay to Landlord all costs and expenses reasonably incurred as a result of such maintenance or repairs within ten (10) days of receipt of invoice thereof. In the event of a bona fide emergency which may result in damage or injury to persons or Landlord's property, Landlord may, unless Tenant commences and diligently pursues such maintenance or repairs within five (5) days after receipt of written notice (or such shorter period as would reasonably be expected under the given circumstances) make such repairs or commence such maintenance on behalf of Tenant and Tenant shall pay Landlord all costs and expenses reasonably incurred in making such repairs within thirty (30) days of receipt of invoice thereof. If the parties so agree, the Landlord may perform any maintenance or repair that is the Tenant's responsibility hereunder, and Tenant shall pay the cost for the maintenance or repair upon receiving a proper invoice from the Landlord.

8.3 Landlord's Maintenance Responsibilities. Landlord shall provide and keep or cause to be kept the HVAC systems, electrical, and plumbing systems all as existing in the Building as of the date of this Lease and all structural portions of the Building, including without limitation, the foundation, roof, and all load bearing and exterior walls, in good order, condition and repair, except for damage thereto due to the negligence of Tenant, Tenant's employees or invitees. The term "exterior walls" as used herein shall include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers and dock plates or levelers. Except for those actions that are the responsibility of Tenant, Landlord shall keep or cause to be kept the outside grounds, including mowing, landscaping and snow removal, grass, tree and the parking area(s), and sidewalks in good order, condition and repair. Tenant shall immediately give Landlord written notice of defect or need for repairs, after which Landlord shall commence such repairs as soon as reasonably practicable. If the parties so agree, Tenant may perform any maintenance or repair that is Landlord's responsibility hereunder, and Landlord shall pay the cost for the maintenance or repair upon receiving a proper invoice from the Tenant.

8.4 Landlord's Failure to Make Repairs. If Landlord fails to commence any repair to the Building or the Premises or to a common area that is Landlord's responsibility under Section 8.3 within ten (10) days after notification of the need for such repair, and fails to complete such repairs within a reasonable period of time, Tenant may, in addition to any other remedies it may have, make such repairs at the expense of Landlord and Landlord shall pay to Tenant all costs and expenses reasonably incurred as a result of such repairs within ten (10) days of receipt of invoice thereof. In the event of a bona fide emergency which may result in damage or injury to persons or Tenant's property, damage which has a material impact on Tenant's ability to conduct business as

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contemplated under this Agreement, or damage which otherwise exposes Tenant (in Tenant's reasonable judgment) to liability, Tenant may, unless Landlord commences and diligently pursues such repairs within five (5) days after receipt of written notice (or such shorter period as would reasonably be expected under the given circumstances), make such repairs on behalf of Landlord and Landlord shall pay to Tenant all costs and expenses reasonably incurred in making such repairs within thirty (30) days of receipt of invoice thereof.

## 9. ASSIGNMENT AND SUBLETTING

9.1 Assignment or Subletting by Tenant. Tenant shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease, or any interest therein, and shall not sublet the Premises, or any part thereof, without obtaining the prior written consent of Landlord which shall not be unreasonably withheld. In connection with any such assignment or sublease, Tenant or the assignee or subtenant of Tenant shall pay to Landlord any legal and administrative costs incurred by Landlord in approving such assignment or subletting, not to exceed \$750.00. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or deemed consent to the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed consent to any future assignment or subletting. Notwithstanding the foregoing, Tenant shall have the absolute right (without obtaining Landlord's prior written consent which shall not be required) to assign this Lease in whole or in part or to sublet all or any portion of the Premises to: any affiliate controlling, controlled by or under common control with Tenant; an entity into which Tenant merges or consolidates; or to a purchaser of all or substantially all of the assets of Tenant, if the assignee assumes, in writing delivered to Landlord, all of Tenant's obligations under the Lease.

9.2 Assignment by Landlord. Landlord may assign this Lease, in whole or in part, without the prior written consent of Tenant, provided that such assignment does not in any way affect or impair the rights granted to Tenant herein, or adversely affect Tenant's possession of the Premises.

9.3 Assignment pursuant to Provision of the Bankruptcy Code. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code (11 U.S.C. sec. 101 et seq.) any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the Landlord and shall be and remain the exclusive property of the Landlord and shall not constitute the property of the Tenant or the estate of the Tenant, within the meaning of the Bankruptcy Code.

## 10. RIGHT OF ENTRY

Landlord, its employees and agents, shall have the right to enter the Premises with a designated representative of Tenant upon reasonable notice during regular business hours for the purpose of examining or inspecting the same, showing the same to prospective purchasers, mortgagees or Tenants of the Premises, and to perform its maintenance obligations under Section 8.3, above. In the case of a bona fide emergency, Landlord shall use its best efforts to provide Tenant with the greatest possible notice under the circumstances prior to entering the Premises and

in the event that representatives of Tenant are not present to accompany Landlord or to open and permit entry into the Premises during the course of a bona fide emergency, then Landlord may enter the Premises forcibly and without being accompanied by a representative of Tenant without such entry constituting an eviction of Tenant or termination of this Lease. Except in the case of a bona fide emergency, Landlord, its employees and agents shall abide by all reasonable security and safety procedures established for the Premises by Tenant. Tenant, its employees and agents shall have the right of entry to the Mechanical Room, IT Room and Chemical Storage Room if the entrance is in the Luna space.

## 11. INSURANCE

11.1 Landlord's Obligations. Throughout the Term of this Lease, including any renewals or extensions thereof, Landlord shall maintain the following insurance coverage: (i) standard all risk coverage in an amount equal to the replacement cost of the Building; (ii) Commercial General Liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, naming Tenant as an additional insured; (iii) boiler insurance with coverage and in an amount reasonably satisfactory to Tenant; and (iv) at Landlord's discretion, such other insurance policies as may be deemed normal and customary for substantially similar buildings, including but not limited to coverage for loss of rent. All insurance coverage shall be primary and non-contributory and issued by insurers licensed to do business in the State of Virginia. The insurance required of Landlord hereunder may be maintained by a blanket or master policy, which includes properties other than the Premises.

11.2 Tenant's Obligations. Tenant shall keep in effect at Tenant's expense during the term of this Lease: (i) all risk property insurance covering the full replacement cost of Tenant's Equipment and all other property and improvements installed or placed in the Premises by Tenant at Tenant's expense; (ii) worker's compensation insurance with no less than the minimum limits required by law; (iii) employer's liability insurance with such limits as required by law; and (iv) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. All such policies and coverage shall be primary and non-contributory, issued by insurers, licensed to do business in the State of Virginia and which are rated A- or better by Best's Key Rating Guide, endorsed to include Landlord as additional insured (Commercial General Liability only), and endorsed to provide at least 30-days prior notification of cancellation or material change in coverage to said Landlord. Tenant may comply with its insurance obligations hereunder in whole or in part through a company-wide program of self-insurance and may maintain company-wide levels of deductibles provided the Tenant provides Landlord with an appropriate self-insurance certificate.

11.3 Fire and Casualty Insurance. Tenant shall not do or suffer to be done any act, matter or thing whereby the fire and casualty insurance carried by Landlord on the building of which the Premises are a part shall be suspended or rated as more hazardous than at the commencement of this Lease. In case of breach of this covenant (in addition to all other remedies given to Landlord for breach of any covenants or conditions of this Lease), Tenant agrees to pay, within thirty (30) days of receipt of written demand, any and all increase of premium for fire and casualty insurance carried by Landlord caused directly by the actions or occupancy of Tenant.

## 12. DAMAGE OR DESTRUCTION OF LEASED PREMISES

12.1 In case the Premises are damaged to the extent of 50% or more of its replacement value by fire or any other cause, then either party may, by a notice in writing sent no later than thirty (30) days after such damage, terminate this Lease as of the date of such damage, and any fixed rent for the unexpired period paid in advance beyond the date of such damage, shall be refunded by Landlord to Tenant.

12.2 If the Premises are damaged to an extent less than 50% of its value or neither party exercises its right to terminate the Lease under Section 12.1 above, the Landlord shall diligently commence restoration and restore the Premises to a condition equal to its condition before the damage. Landlord's obligation to rebuild is contingent upon its receipt of insurance proceeds sufficient to make such repairs. In the event any mortgagee or lender requires such sums to be applied to any debt, Landlord shall not be deemed to have received the proceeds, in which event Tenant may terminate this Lease unless Landlord agrees to fund the repairs. If Landlord completes such repairs within ninety (90) days, then Tenant may promptly repair or replace its Trade Fixtures, furnishings, furniture, carpeting, wall covering, floor covering, drapes and equipment to the same condition as they were in immediately prior to the casualty. A proportion of the rent herein reserved, according to the extent that such damage and its repair shall interfere with the full enjoyment and use of the Premises, shall be suspended and abated from the date of such damage until Landlord's repairs have been completed. In the event that the Premises have not been restored to a condition equal to their condition before the damage within ninety (90) days after Landlord's receipt of the proceeds, then Tenant may, by a notice in writing sent prior to completion of restoration, terminate this Lease as of the date of such termination, and any fixed rent for the unexpired period paid in advance beyond the date of such damage, shall be refunded by Landlord to Tenant.

## 13. REMEDIES OF LANDLORD UPON TENANT'S DEFAULT

13.1 Tenant's Default Defined. The following shall be considered an "Event of Default" and a breach of this Lease: (a) any failure of Tenant to pay any Base Rent, any Utility fees, or other amounts due hereunder for more than fifteen (15) days after receipt of written notice of non-payment; (b) any failure by Tenant to perform or observe any of the other terms, provisions, conditions and covenants of this Lease for more than thirty (30) days after receipt of written notice of such failure provided, however, that if the event for which the notice is given is of a nature that may not be reasonably cured within said thirty (30) day period, Tenant shall not be in default for so long as Tenant commences to cure the default within the thirty (30) day period and diligently pursues it to conclusion; (c) Tenant files a voluntary or involuntary petition in bankruptcy which is not dismissed within thirty (30) days of the filing or makes a general assignment for the benefit of its creditors; (d) a receiver of any property of Tenant in or upon the Premises is appointed in any action, suit, or proceeding by or against Tenant and such appointment shall not be vacated or annulled within sixty (60) days; or (e) this Lease, Tenant's interest herein or in the Premises, any

improvements thereon, or any property of Tenant is executed upon or attached.

### 13.2. Landlord's Remedies.

Upon the occurrence of any Event of Default specified in Section 13.1, Landlord, in addition to all other rights or remedies Landlord may have for such default at law or in equity, shall have the right to pursue any one or more of the following remedies.

13.2.1 Terminate this Lease and, without prejudice to any other remedy which it may have for possession or arrearages in rent or fees, enter upon and take possession of the Premises by summary dispossession proceedings or any other method authorized by law and recover from Tenant through the Letter of Credit provided pursuant to Paragraph 3.3 or by other legal means: (i) the entire remaining balance of unpaid Rent and fees by deeming the remaining term of the Lease accelerated whereby the entire sum shall become immediately due and payable; and (ii) the costs of repairing or otherwise putting the Premises into the condition required by this Lease;

13.2.2 Without terminating this Lease, enter upon and take possession of the Premises, by summary dispossession proceedings or any other remedy authorized by law and re-let the Premises, or any part thereof, for such term or terms (which may extend beyond the term of this Lease), for the highest rent reasonably obtainable (even if such rent is below market value) and to recover from Tenant the difference between the rent reserved by this Lease and the amount obtained through such re-letting plus the following costs, if reasonably incurred by Landlord in such re-letting: (a) brokerage fees and/or leasing commissions; (b) the costs of removing and storing Tenant's or any other occupant's property; and (c) the costs of repairing or otherwise putting the Premises into the condition required by this Lease together with the costs of alterations reasonably necessary to re-let the Premises. No such re-letting shall relieve Tenant from its obligations hereunder. In no event shall Tenant be entitled to any excess rent obtained by re-letting the Premises over and above the rent reserved herein.

13.3 If the Tenant shall continue in default in the performance of any of the covenants or agreements herein contained, after any applicable cure period, Landlord may perform the same for the account of Tenant. Any amount incurred by Landlord in the performance of any such matter for the account of Tenant shall be payable by Tenant to Landlord within thirty (30) days after written demand.

13.4 No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless Landlord sends a written notice of termination to Tenant. Notwithstanding any such re-letting or re-entry or taking possession, without termination, Landlord may at any time thereafter terminate this Lease for any prior uncured breach or default, unless the Landlord waives the said breach in writing. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by at law or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Base Rent, or Fees due to Landlord hereunder or of any damages accruing to Landlord.

#### 14. REMEDIES OF TENANT UPON LANDLORD'S DEFAULT

14.1 Landlord shall be in default of this Lease (a "Landlord Default") if it shall fail to perform any duty or obligation imposed upon it by this Lease and such failure shall continue for a period of thirty (30) days after written notice, provided, however, that if the event for which the notice is given is of a nature that may not reasonably be performed within said thirty (30) day period, Landlord shall not be in default for so long as Landlord commences its performance within said thirty day period and diligently pursues it to conclusion. Upon the occurrence of a Landlord Default, Tenant, in addition to all other rights or remedies Tenant may have for such default at law or in equity including claim for damages caused by Landlord's default, shall have the right to exercise any self-help measures as may be reasonably necessary to cure such default. Landlord shall reimburse any costs and expenses incurred by Tenant in order to cure a Landlord Default within thirty (30) days after written demand. In addition, if Landlord fails to cure any material default within thirty (30) days after receiving written notice of the default, Tenant shall have the right, upon written notice to Landlord, to terminate this Lease without penalty or further obligation to Landlord, its employees, officers, agents or lenders.

14.2 All obligations of Landlord under this Lease will be deemed binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Building and the Property, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing (but not from defaults accruing during such Landlord's ownership), but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of a current Landlord under this Lease shall be limited solely to its interest in the Premises, including without limitation any equity therein, income derived there from or personal property on or about the Building and the Property, and in no event shall any personal liability be asserted against such current Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of such current Landlord.

#### 15. EMINENT DOMAIN

In the event that more than thirty percent (30%) of the Premises are taken by paramount governmental authority or in any way condemned or appropriated by the exercise of the right of eminent domain or a deed or conveyance in lieu of eminent domain, (each a "Taking"), either party hereto shall have the right, at its option, within sixty (60) days after said Taking, to terminate this Lease upon thirty (30) days written notice to the other party. In the event that either party elects to terminate the Lease, the rent herein set forth shall be abated and Tenant's liability therefore will cease as of the date of such termination, this Lease shall terminate as of said date, and any prepaid rent shall be returned to Tenant. If this Lease is not terminated as herein provided then it shall continue in full force and effect, and Landlord shall within a reasonable time after possession is physically taken by the condemning authority restore the remaining portion of the Premises to render it reasonably suitable for the uses permitted by this Lease and the Base Rent shall be proportionately and equitably reduced. Notwithstanding the foregoing, Landlord shall not be

obligated to expend an amount greater than the proceeds received from the condemning authority less all expenses reasonably incurred in connection therewith (including attorney's fees) for the restoration. In the event any mortgagee or lender requires that all or any portion of the proceeds received from the condemning authority be applied to any debt, Landlord will not be deemed to have received such proceeds. All compensation awarded in connection with or as a result of a Taking shall be the property of the Landlord, except that Tenant may apply for and keep as its property a separate award for: (i) the value of Tenant's leasehold interest; (ii) the value of Tenant Equipment or Tenant's trade fixtures or personal property; (iii) Tenant's moving expenses; (iv) Tenant's business relocation expenses; and (v) damages to Tenant's business incurred as a result of such Taking.

## 16. SUBORDINATION OF LEASE

16.1 This Lease is and shall remain subordinate and subject to any mortgage or mortgages or deed of trust which are now, or at any time hereafter shall be placed, upon the interest of Landlord in the Premises or any part thereof or to any assignment of the interest of Landlord in this Lease; provided that the holder thereof shall execute and deliver to Tenant a non-disturbance agreement in form reasonably acceptable to Tenant. Tenant agrees to execute and deliver to Landlord, without cost, any instrument that may be deemed necessary by Landlord to further effect the subordination of this Lease to any such mortgage, mortgages or assignments in form reasonably acceptable to Tenant.

Landlord represents and warrants that it may refinance the existing mortgage on the Property with another lender or lenders and accordingly Tenant has agreed not to require a non-disturbance agreement from the existing mortgagee.

16.2 In the event of a foreclosure of any such mortgage, Landlord and Tenant hereby agree that this Lease shall not terminate by reason thereof, and Tenant further agrees to recognize as Landlord hereunder the mortgagee or purchaser at a foreclosure sale for the balance of the Term, the Renewal Term or an extension of either, subject to all the terms and provisions hereof; provided, however, that any such mortgagee or purchaser at a foreclosure sale, which shall become the Landlord hereunder, shall not be:

(a) liable for acts or omissions of Landlord occurring prior to its ownership of the Premises (but such mortgagee or purchaser shall perform any unperformed obligations under this Lease existing at the time it becomes Landlord);

(b) subject to any offsets or defenses which Tenant might have against Landlord that accrue prior to its ownership of the Premises, except as provided in this Lease;

(c) bound by any rent or additional rent which Tenant may have paid to Landlord more than thirty days in advance (other than the security deposit); or

(d) bound by any amendment or modifications of said Lease made after Tenant receives written notice of such foreclosure.

**17. ESTOPPEL CERTIFICATE**

Either party shall, at any time and from time to time within twenty (20) days following receipt of written request from the other party, execute, acknowledge and deliver to the requesting party a written statement certifying that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification), certifying the date to which the rent reserved hereunder has been paid, and certifying that there are not, to the responding party's knowledge, any uncured defaults on the part of the party requesting the certificate, or specifying such defaults if any are claimed. Such a statement may be relied upon by any prospective purchaser, mortgagee or subtenant of all or any portion of the Premises. The responding party's failure to deliver such statement within said twenty-day period shall be conclusive upon such party that this Lease is in full force and effect and unmodified, and that there are no uncured defaults in the requesting party's performance hereunder.

**18. RULES AND REGULATIONS**

Tenant and Tenant's agents, employees and invitees shall faithfully observe and comply with all reasonable, uniform rules and regulations promulgated by Landlord from time to time for the safety, care or cleanliness of the Premises and for the preservation of good order therein, provided that such rules and regulations do not materially increase Tenant's duties or obligations under this Lease. In the event of any conflict or inconsistency between the terms and conditions of this Lease and any rules and regulations promulgated by Landlord, the conflict or inconsistency shall be resolved by giving precedence to the terms and conditions of this Lease if not in conflict with any local, state or federal law or regulation.

**19. QUIET ENJOYMENT**

Landlord represents and warrants that it has the authority to enter into this Lease. Landlord further represents, warrants and covenants that so long as Tenant pays all amounts due hereunder and performs all other material covenants and conditions of this Lease to be performed by the Tenant hereunder, Landlord and its successors and assigns shall not interfere, nor permit interference, with Tenant's quiet use and enjoyment of the Premises and that, subject to the terms and conditions of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof.

**20. ENVIRONMENTAL MATTERS**

20.1 Definitions.

20.1.1 For purposes of this Lease, the term "Environmental Laws" shall mean any

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and all federal, state, or local laws, statutes, rules, regulations, ordinances, or judicial or administrative decrees or orders relating to: (i) health, safety or environmental protection; (ii) the emissions, discharges, releases or threatened releases of pollutants, contaminants or toxic or hazardous materials into the environment (including, without limitation, ambient air, surface water, ground water or subsurface strata); or (iii) the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of, or exposure to pollutants, contaminants or toxic or hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq. ("CERCLA"), as amended and judicially and administratively interpreted through the date hereof, and all regulations promulgated thereunder as of such date.

20.1.2 For purposes of this Lease, the term "Hazardous Substance" shall mean: (i) any products, materials, solvents, elements, compounds, chemical mixtures, contaminants, pollutants, or other substances identified as toxic or hazardous under CERCLA or any other Environmental Law; and (ii) the following substances: PCBs, gasoline, kerosene or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials.

## 20.2 Tenant's Obligations.

20.2.1 Tenant shall not cause or knowingly permit any Hazardous Substance to be placed, stored, treated, released, spilled, transported or disposed of on, under, at or from the Premises in violation of any Environmental Laws. Nor will Tenant knowingly permit the Premises to be used or operated in a manner that may cause the Building, or any part thereof, to be contaminated by any Hazardous Substance in violation of any Environmental Laws.

20.2.2 Tenant shall contain at or remove from the Premises or perform any other remedial action regarding any Hazardous Substance placed, held, located, released, spilled, transported or disposed of on, under, at or from the Premises by Tenant, its employees, agents or contractors, at Tenant's sole cost and expense, if, and when such containment, removal or other remedial action is required under any Environmental Law, and shall perform such containment, removal or other remediation in compliance with all Environmental Laws.

20.2.3 Tenant shall provide Landlord with written notice (and a copy as may be applicable) within ten (10) business days after Tenant obtains actual knowledge of any of the following: (a) any governmental or regulatory actions instituted or threatened under any Environmental Law affecting the Tenant or the Premises, (b) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or Property to be classified in a manner which may support a claim under any Environmental Law, and (d) the discovery of any Hazardous Substance on, under, at or from the Premises not authorized or permitted under Environmental Laws.

20.2.4 In addition to Tenant's general indemnification obligations set forth in Section 21 below, Tenant shall defend all actions against Landlord and pay, protect, indemnify and save harmless Landlord from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from Tenant's failure to comply with this Section 20. The indemnity contained in this Section 20.2.4 shall survive the expiration or earlier termination of this Lease indefinitely with respect to the obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to such expiration or earlier termination.

### 20.3 Landlord's Obligations.

20.3.1 In addition to Landlord's general indemnification obligations set forth in Section 21 below, Landlord shall, to the extent permitted by law and subject to the Landlord rights and defenses under sovereign immunity, which the Landlord's sovereign immunity shall not be deemed waived, defend all actions against Tenant and pay, protect, indemnify and save harmless Tenant from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorney fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising out of or relating to: (i) emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Substances into the environment (including, without limitation, ambient air, surface water, ground water or subsurface strata) or exposure to such Hazardous Substances on, at, under, or from the Premises, or any real estate contiguous thereto, which were caused by Landlord, its employees, agents or contractors; (ii) the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of pollutants, contaminants or Hazardous Substances on, under, at or from the Premises, or any real estate contiguous thereto, by Landlord, its employees, agents or contractors; and (iii) any actual or alleged violation of any Environmental Law on, under, at or arising from the Premises, or any real estate contiguous thereto, by Landlord, its employees, agents or contractors. The indemnity contained in this Section 20.3.1 shall survive the expiration or earlier termination of this Lease indefinitely with respect to the obligations and liabilities of Landlord hereunder, actual or contingent, which have arisen on or prior to such expiration or earlier termination.

20.3.2 Landlord represents to Tenant that as of the Commencement Date Landlord has no knowledge that: (i) the Premises, the Building and the ground under them and the Property are contaminated by any Hazardous Substances, including asbestos; (ii) all or any portion of the Premises has, at any time, been used for the treatment, storage, or disposal of any Hazardous Substances; (iii) Hazardous Substances are (or have been) used, generated or disposed of on or about the Premises, except in compliance with all applicable Environmental Laws; and (iv) any part of the Premises or surrounding common areas are on any governmental list of contaminated properties, or of any investigation, administrative order or notice, consent order, or agreement for litigation pertaining to the Building or the surrounding common areas.

## 21. WAIVER; INDEMNIFICATION

21.1 Waiver. EXCEPT AS OTHERWISE SET FORTH IN THIS LEASE, NEITHER PARTY OR ITS AGENTS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY OR ANY PERSON CLAIMING THROUGH THAT PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) FOR ANY CAUSE WHATSOEVER, EXCEPT CLAIMS CAUSED BY OR RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTY, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

21.2 Tenant's Indemnity. Except to the extent caused by the breach of this Lease by Landlord or the acts or omissions of Landlord, its officers, agents, employees, contractors, or any other person or entity for whom Landlord is legally responsible, Tenant shall defend, indemnify and hold Landlord and its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) arising directly or indirectly out of: (i) any act or omission of Tenant, its officers, agents, employees, contractors, or any other person or entity for whom Tenant is legally responsible; or (ii) a breach of any representation, warranty or covenant of Tenant contained or incorporated in this Lease. Tenant's obligations under this Section 21.2 shall survive the expiration or earlier termination of this Lease indefinitely.

21.3 Landlord's Indemnity. Except to the extent caused by the breach of this Lease by Tenant or the acts or omissions of Tenant, its officers, agents, employees, contractors, or any other person or entity for whom Tenant is legally responsible, and to the extent permitted by law and subject to the Landlord's rights and defenses under sovereign immunity, which the Landlord's sovereign immunity shall not be deemed waived, Landlord shall defend, indemnify and hold Tenant, its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) arising directly or indirectly out of: (i) any act or omission of Landlord, its officers, agents, employees, contractors or any other person or entity for whom Landlord is legally responsible; or (ii) a breach of any representation, warranty or covenant of Landlord contained or incorporated in this Lease. Landlord's obligations under this Section 21.3 shall survive the expiration or earlier termination of this Lease indefinitely.

21.4 Indemnification Procedure. The party seeking indemnification (the "Indemnified Party") shall promptly notify in writing the party from whom indemnification is being sought (the "Indemnifying Party") of the claim or suit for which indemnification is sought. The Indemnified Party shall not make any admission as to liability or agree to any settlement of or compromise any claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall be entitled to have the exclusive conduct of and/or settle all negotiations and litigation arising from any claim and the Indemnified Party shall, at the Indemnifying Party request and expense, give the Indemnifying Party all reasonable assistance in connection with those negotiations and litigation.

## 22. MISCELLANEOUS

22.1 Force Majeure. Notwithstanding anything to the contrary in this Lease, neither party shall be liable to the other party for nonperformance or delay in performance of any of its obligations under this Lease (except Tenant's obligation to pay rent) due to causes beyond its reasonable control, including without limitation strikes, lockouts, labor troubles, acts of God, accidents, technical failure, governmental restrictions, insurrections, riots, enemy act, war, civil commotion, fire, explosion, flood, windstorm, earthquake, natural disaster, or other casualty ("Force Majeure"). Upon the occurrence of a Force Majeure condition, the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the other party of any further developments. Immediately after the Force Majeure event is removed or abates, the affected party shall perform such obligations with all due speed. Neither party shall be deemed in default under this Agreement if a delay or other breach is caused by a Force Majeure event. A proportion of the rent, according to the extent that such Force Majeure event shall interfere with the full enjoyment and use of the Premises, shall be suspended and abated from the date of commencement of such Force Majeure event until the date that such Force Majeure event subsides.

22.2 Affiliates. For purposes of this Lease, the term "Affiliate" shall mean, with respect to a party hereto, any other person or entity directly or indirectly controlling, controlled by or under common control with that party.

22.3 Successors and Assigns. The respective rights and obligations provided in this Lease shall bind and shall inure to the benefit of the parties hereto, their legal representative, heirs, successors and permitted assigns. No rights however, shall inure to the benefit of any assignee of Tenant, unless such assignment shall have been made in accordance with Section 9 above.

22.4 Brokers. Each party represents and warrants to the other that no person or entity has a claim or will claim any commission, finder's fee or other amounts by, through, under or as a result of any relationship with such party because of this transaction. Landlord and Tenant each agree to defend, indemnify and hold the other party harmless from and against any and all claims, losses or damages, including without limitation reasonable attorney's fees arising out of or relating to any breach of such party's representations and warranties contained in this Section 22.4.

22.5 Governing Law and Construction. This Lease shall be construed, governed and enforced in accordance with the laws of the state in which the Premises are located. Landlord and Tenant acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

22.6 Person; Gender; Number. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be

substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall mean to include any other gender.

22.7 Severability. If any provisions of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired and such remaining provisions shall remain in full force and effect.

22.8 Waiver. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent default or breach of the same or similar nature. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

22.9 Notice. Any notice to be given hereunder shall be in writing and shall be sent by facsimile transmission, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party notified, addressed to such party at the following address, or sent by facsimile to the following fax number, or such other address or fax number as such party may have substituted by written notice to the other parties. The sending of such notice with confirmation of receipt thereof (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by mail or by overnight courier service) shall constitute the giving thereof:

If to Landlord: Economic Development Authority of Montgomery County, VA.  
755 Roanoke Street, Suite 2H  
Christiansburg, VA 24073  
Attn: Economic Development Authority Secretary/Treasurer  
Fax No.: (540) 381-6888

With a copy to: County Attorney  
County of Montgomery, VA  
755 Roanoke Street, Suite 2F  
Christiansburg, Virginia 24073  
Fax No.: (540) 382-6943

If to Tenant: INMOTION US, LLC  
3157 State Street  
Blacksburg, Virginia 24060

22.10 Entire Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically

provided in this Agreement.

22.11 Compliance with Law. The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the Term, a Renewal Term or any extension of either.

22.12 Counterparts. This Lease may be executed in any number of identical counterparts and, as so executed, shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

22.13 Remedies Cumulative. It is agreed that, except as expressly set forth in this Lease, the rights and remedies herein provided in case of default or breach by either Landlord or Tenant are cumulative and shall not affect in any manner any other remedies that the non-breaching party may have by reason of such default or breach. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

22.14 Attorneys' Fees. If an action is brought by either party for breach of any lease covenant and/or to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney's fees, both at trial and on appeal, in addition to all other sums allowed by law.

22.15 Recordation of Memorandum of Lease. Landlord and Tenant mutually agree to execute a notarized memorandum (the "Memorandum") setting forth the material terms and disclosing the existence of this Lease within ten (10) days of a written request by either party with the cost of such recording being borne by the requesting party.

22.16 Time is of the Essence. Time is of the essence; and all due dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided.

22.17 Parking Tenant shall be entitled to priority use of One Hundred (100) parking spaces on the Property based upon the Tenant's proportionate share of the Premises.

22.18 Air and Wastewater Discharge. Tenant shall not be permitted to discharge wastewater or air through the Building's existing wastewater or air handling systems. Nothing herein shall prohibit Tenant from discharging ordinary sanitary sewage through the Building's sanitary sewage system. The Tenant can use the air handling systems designed for air discharge.

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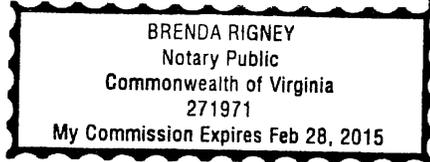
WITNESS the following signatures and seals:

**THE ECONOMIC DEVELOPMENT  
AUTHORITY OF MONTGOMERY  
COUNTY, VIRGINIA**

**INMOTION US, LLC**

By: [Signature]  
Name: Eric Johnson  
Title: Chairman

By: [Signature]  
Name: Chris Murphy  
Title: President, Zapi, Inc, its manager



STATE OF VIRGINIA,  
COUNTY OF MONTGOMERY, to-wit:

The foregoing instrument bearing date of October 2, was acknowledged before me this 6, day of October 2014, by, Chairman of the Economic Development Authority of Montgomery County, VA.

My commission expires: 02-28-15  
Registration Number: 271971

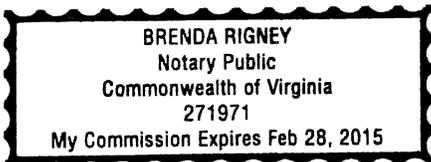
[Signature]  
Notary Public

STATE OF VIRGINIA,  
CITY/COUNTY OF Montgomery, to-wit:

The foregoing instrument bearing date of October 2, was acknowledged before me this 6<sup>th</sup>, day of October, 2014, Chris Murphy, Managing Manager of and on behalf of InMotion US, LLC

My commission expires: 02-28-15  
Registration Number: 271971

[Signature]



Notary Public

**Exhibit B**

**Description of the Property**

All that certain tract or parcel of land, with improvements thereon and appurtenances thereon to located and situated in the Mount Tabor Magisterial District, Town of Blacksburg, Montgomery County, Virginia, in the Blacksburg Industrial Park and being all of Lot Number 8 (8) containing 15.025 acres, phase IV, Industrial Park Expansion, as shown on a plat of survey entitled "Industrial Park Expansion Phase IV", prepared by Anderson and Associates, Inc., dated 19 Dec 95 and revised 19 Feb 96, which plat is of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 16, at page 507.

*ESM*

## EXHIBIT D

### Property Information

Seller shall deliver any of the following in its reasonable possession:

1. Title insurance policies
2. Surveys
3. Soil test reports
4. Environmental surveys or reports
5. Site plans
6. Civil drawings or building plans
7. Maintenance records
8. Warranties and Service contractors
9. License or service agreements

EXHIBIT E

Assignment of Lease with Luna Innovations, Inc.

## ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the “**Assignment**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Economic Development Authority of Montgomery County, Virginia (“**Assignor**”), and \_\_\_\_\_ (“**Assignee**”).

### RECITALS:

WHEREAS, Assignor shall convey and transfer to Assignee all of its interest in the real property located 3155 and 3157 State Street, Blacksburg, VA 24060 (the “**Premises**”); and

WHEREAS, in connection with the consummation of the transaction contemplated under the Agreement, Assignor and Assignee desire to execute this Assignment.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are hereby incorporated into this Agreement as if fully rewritten and restated in the body of this Assignment. Capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to them in the Agreement.
2. **Assignment of Leases.** Assignor hereby sells, transfers and assigns to Assignee all of its right, title and interest in and to that certain lease presently existing and described on **Exhibit A** attached hereto (the “**Lease**”), including security deposits, and any and all guaranties made in connection with the Lease, subject, however, to the terms, covenants and conditions of the Lease and this Assignment. Notwithstanding the foregoing, however, Assignor nevertheless retains, on a nonexclusive basis, the benefit and protection of any indemnities provided by the tenant under the Lease for the benefit of the landlord.
3. **Assumption of Obligations.** Assignee hereby accepts the assignment of the Lease, the rents due and security deposits paid thereunder, subject to the terms and conditions hereof, and from and after the date hereof, Assignee hereby assumes and shall be responsible for and shall perform all of those obligations imposed on the lessor or landlord under the Lease which first arise or accrue on or after the date hereof (the “**Closing**”).
4. **Assignee’s Indemnification.** Assignee hereby indemnifies, protects, defends and holds Assignor and Assignor’s members and managers and their respective successors, and assigns, harmless from any and all claims, damages, losses, suits, proceedings, costs and expenses, including, without limitation, reasonable attorneys’ fees (collectively, “**Losses**”), both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the breach by Assignee of (or Assignee’s failure to timely perform) any or all of the obligations imposed on the lessor or the landlord under the Lease which first arise or accrue from and after the date of the Closing.
5. **Assignor’s Indemnification.** Assignor hereby indemnifies, protects, defends and holds Assignee, and Assignee’s members and managers, and all of their respective successors and

assigns harmless from any and all Losses, both known and unknown, present and future, at law or in equity and arising out of, by virtue of, or related in any way to, the breach by Assignor of (or Assignor's failure to timely perform) any or all of the obligations imposed on the lessor or the landlord under the Lease which arose or accrued prior to the date of the Closing.

6. **Counterparts.** This Assignment may be executed in one or more identical counterparts, all of which, when taken together shall constitute one and the same instrument.

7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Virginia.

8. **Partial Invalidity.** The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment on the date first above written.

**ASSIGNOR:**

Economic Development Authority of Montgomery  
County, VA

By: \_\_\_\_\_  
John Tuttle, Chairman

**ASSIGNEE:**

[TO BE ADDED]

**EXHIBIT A**

1. Lease with Luna Innovations, Inc. dated \_\_\_\_\_, and all amendments thereto.
2. Lease with InMotion US, LLC dated \_\_\_\_\_, and all amendments thereto.

EXHIBIT F

Assignment of Lease with InMotion US, LLC

**ASSIGNMENT AND ASSUMPTION OF LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the “**Assignment**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Economic Development Authority of Montgomery County, Virginia (“**Assignor**”), and \_\_\_\_\_ (“**Assignee**”).

**RECITALS:**

WHEREAS, Assignor shall convey and transfer to Assignee all of its interest in the real property located 3155 and 3157 State Street, Blacksburg, VA 24060 (the “**Premises**”); and

WHEREAS, in connection with the consummation of the transaction contemplated under the Agreement, Assignor and Assignee desire to execute this Assignment.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are hereby incorporated into this Agreement as if fully rewritten and restated in the body of this Assignment. Capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to them in the Agreement.
2. **Assignment of Leases.** Assignor hereby sells, transfers and assigns to Assignee all of its right, title and interest in and to that certain lease presently existing and described on **Exhibit A** attached hereto (the “**Lease**”), including security deposits, and any and all guaranties made in connection with the Lease, subject, however, to the terms, covenants and conditions of the Lease and this Assignment. Notwithstanding the foregoing, however, Assignor nevertheless retains, on a nonexclusive basis, the benefit and protection of any indemnities provided by the tenant under the Lease for the benefit of the landlord.
3. **Assumption of Obligations.** Assignee hereby accepts the assignment of the Lease, the rents due and security deposits paid thereunder, subject to the terms and conditions hereof, and from and after the date hereof, Assignee hereby assumes and shall be responsible for and shall perform all of those obligations imposed on the lessor or landlord under the Lease which first arise or accrue on or after the date hereof (the “**Closing**”).
4. **Assignee’s Indemnification.** Assignee hereby indemnifies, protects, defends and holds Assignor and Assignor’s members and managers and their respective successors, and assigns, harmless from any and all claims, damages, losses, suits, proceedings, costs and expenses, including, without limitation, reasonable attorneys’ fees (collectively, “**Losses**”), both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the breach by Assignee of (or Assignee’s failure to timely perform) any or all of the obligations imposed on the lessor or the landlord under the Lease which first arise or accrue from and after the date of the Closing.
5. **Assignor’s Indemnification.** Assignor hereby indemnifies, protects, defends and holds Assignee, and Assignee’s members and managers, and all of their respective successors and

assigns harmless from any and all Losses, both known and unknown, present and future, at law or in equity and arising out of, by virtue of, or related in any way to, the breach by Assignor of (or Assignor's failure to timely perform) any or all of the obligations imposed on the lessor or the landlord under the Lease which arose or accrued prior to the date of the Closing.

6. **Counterparts.** This Assignment may be executed in one or more identical counterparts, all of which, when taken together shall constitute one and the same instrument.

7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Virginia.

8. **Partial Invalidity.** The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment on the date first above written.

**ASSIGNOR:**

Economic Development Authority of Montgomery  
County, VA

By: \_\_\_\_\_  
John Tuttle, Chairman

**ASSIGNEE:**

[TO BE ADDED]

**EXHIBIT A**

1. Lease with Luna Innovations, Inc. dated \_\_\_\_\_, and all amendments thereto.
2. Lease with InMotion US, LLC dated \_\_\_\_\_, and all amendments thereto.

## Exhibit H

### TENANT ESTOPPEL CERTIFICATE

Re:

Ladies and Gentlemen:

The undersigned ("Tenant") is the present owner and holder of the tenant's interest under the lease (the "Lease") described on the **Exhibit A** attached hereto and incorporated herein by reference, which Lease covers the premises (the "Leased Premises") described on **Exhibit A**. Tenant will be bound by this Tenant Estoppel Certificate and the statements and information set forth herein. The undersigned acknowledges and agrees that Purchaser and Landlord, and their respective successors, assigns, designees, and attorneys (the "Relying Parties") may rely upon the statements set forth below. Tenant hereby represents to the Relying Parties that as of the date hereof:

1. Basic Lease Information. The information set forth on **Exhibit A** is true and correct.
2. Lease. The copy of the Lease attached hereto is a true, correct and complete copy, and contains all riders, exhibits or amendments thereto. The person identified on **Exhibit A** as the "Landlord" (the "Landlord") is the current landlord thereunder. Except as set forth therein, the Lease has not been modified, altered or amended and there are no oral or other written agreements or understandings between Tenant and the Landlord under the Lease relating to the Leased Premises.
3. No Defaults. To the best of Tenant's knowledge, there exist no defaults by Landlord or Tenant under the Lease, nor an event that with the passage of time or giving of notice or both would be a default. Tenant has received no notice of any default or event which could cause a default under the Lease which has not been cured. Tenant has no right of termination with respect to the Lease. To the best of Tenant's knowledge, no item or amount of a tenant inducement nature payable or owed to Tenant (including, without limitation, any tenant improvement allowance or rent credits) remains due and payable, regardless of whether any such non-payment would constitute a default as of the date of this Tenant Estoppel Certificate, by Landlord under the Lease.
4. Rent. Base Rent and any Impositions required under the Lease have been paid through the date shown on **Exhibit A**. To the best of Tenant's knowledge, the Tenant does not presently have any right of offset or any defense against payment of any rent under the Lease. No rent has been paid more than 30 days in advance, and to the best of Tenant's knowledge Tenant has no claim against Landlord for any deposits or other sums except for a security deposit, if any, given by Tenant to Landlord, the amount of which, if any, is set forth on **Exhibit A**.
5. Term and Possession. The Lease has not been assigned by Tenant, and no sublease, or other agreement covering the Leased Premises which would relieve Tenant of any its obligations or liabilities under the Lease has been entered into by Tenant. The term of the Lease has commenced, Landlord has delivered the Premises to Tenant in accordance with its delivery requirements under the Lease, Tenant has accepted possession and occupies the Leased Premises, and to the best of Tenant's knowledge all the improvements or other construction activities contemplated by the Lease have been completed as required therein, unless otherwise provided on **Exhibit A**. The term of the Lease is set to expire on the Expiration Date set forth on **Exhibit A**.
6. Preemptive Rights. Tenant has no right of first refusal, right of first offer, option or other right to purchase the Property or any portion thereof, including, without limitation, the Leased Premises, or to expand its existing Leased Premises or to lease additional space within the Property, except as may be set forth on **Exhibit A**.
7. Address for Notices. The address for notices to be sent to Tenant is set forth on **Exhibit A**.

8. Successors and Assigns; Number and Gender. The foregoing provisions of this Tenant Estoppel Certificate shall be binding upon the heirs, legal representatives, successors or assigns of Tenant and shall inure to the benefit of the successors or assigns of Purchaser. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, trusts, business trusts, corporations and legal entities, including public and quasi-public bodies, as well as individuals.

Very truly yours,

EXHIBIT G  
Post-Closing Performance Agreement

## Exhibit G

THIS POST CLOSING PERFORMANCE AGREEMENT, made and entered into this 21st day of January, 2020, by and between the ECONOMIC DEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY, VIRGINIA, hereinafter referred to as “the EDA” and ZAPI, INC., a North Carolina corporation, hereinafter referred to as “the Purchaser.”

### W I T N E S S E T H:

WHEREAS, the EDA and the Purchaser have entered into an Agreement for the Purchase and Sale of Property dated January 21, 2020 (the “Purchase Agreement”), whereby the EDA has agreed to sell that certain property located at 3155 and 3157 State Street, in the Blacksburg Industrial Park and being all of Lot Number Eight (8) containing 15.025 acres, Phase IV, Industrial Park Expansion, as shown on a plat of survey entitled “Industrial Park Expansion Phase IV”, prepared by Anderson and Associates, Inc., dated 19 Dec 95 and revised 19 Feb 96, which plat is of record in the Clerk’s Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 16, at Page 507 (the “Property”) to the Purchaser subject to the covenants, terms and conditions of the Purchase Agreement and this Post Closing Performance Agreement; and

WHEREAS, the Purchaser agrees to purchase the Property and have its wholly owned subsidiary, InMotion US., Inc., continue to operate its electrical components manufacturing business on the Property maintaining at least ninety-percent (90%) of their current employment levels of One Hundred (100) jobs for a minimum of two (2) years following the Closing Date of the Purchase, and in return the EDA agrees to provide an Economic Development Grant equal to fifty-percent (50%) of the annual Real Estate taxes attributed to the Property that are paid by Purchaser to the County of Montgomery, Virginia during the calendar years of 2021 and 2022; and

WHEREAS, it is the intent of the parties to have this Post Closing Performance Agreement govern the performance requirements for the EDA and the Purchaser; and

## Exhibit G

WHEREAS, the parties agree that the Purchase Agreement is hereby incorporated and made a part of this Post Closing Performance Agreement by reference; and

WHEREAS, the Board of Directors of the EDA approved a resolution on January 21, 2020 agreeing to the terms of this Agreement and authorized the Chairman of the EDA to execute this Agreement on behalf of the EDA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the EDA and the Purchaser agree and covenant as follows:

1. The EDA agrees to sell and the Purchaser agrees to buy the Property in accordance with the terms of this Agreement and the Purchase Agreement.
2. In consideration of the Purchaser agreeing to purchase the Property and have its wholly owned subsidiary InMotion, US, Inc., continue to operate its electrical components manufacturing business on the Property maintaining at least ninety percent (90%) of their current employment levels of one hundred (100) employees for a minimum of two (2) years following the Closing Date of the Purchase Agreement, the EDA agrees as an incentive to provide two Annual Cash Grants equal to fifty percent (50%) of the real estate property taxes specifically attributed to the Property that are paid to Montgomery County by Zapi, Inc. ("Annual Cash Grant"). This Annual Cash Grant shall only apply to real estate property taxes paid by the Purchaser, during the two (2) year period starting on January 1, 2021. If the Purchaser meets the requirements specified herein during the calendar year of 2021, the EDA agrees to pay the Annual Cash Grant applicable to taxes paid during 2021 no later than March 1, 2022. If the Purchaser meets the requirements specified herein during the calendar year of 2022, the EDA agrees to pay the Annual Cash Grant applicable to taxes paid during 2022 no later than March 1, 2023. The EDA's obligation to provide the Annual Cash

## Exhibit G

Grant is conditioned upon Zapi, Inc., first paying all taxes owed to Montgomery County, including but not limited to all the real estate taxes owed on the Property. The EDA's obligation to provide the Annual Cash Grant shall terminate and Zapi, Inc shall no longer be eligible for any Cash Grant payment, either when Zapi, Inc. no longer has its wholly owned subsidiary InMotion, US Inc., operating its electrical component manufacturing business on the Property maintaining at least ninety percent (90%) of their current employment levels of one hundred (100) employees or after the EDA tenders the two Annual Cash Grants to Zapi, Inc. following each year of the two (2) year period that starts on January 1, 2021, whichever occurs first.

3. This Post Closing Performance Agreement supplements and does not substitute for the covenants and obligations of the Purchaser and the EDA under the Purchase Agreement. All representations, warranties, covenants and obligations under the Purchase Agreement that, by their nature or by agreement, survive closing shall continue to be binding upon the Purchaser and the EDA.

4. This Agreement shall be governed by, construed, interpreted and the rights of the parties determined in accordance with the applicable laws of the United States and the Commonwealth of Virginia. Any dispute between the parties relating to this Agreement, shall be submitted to and determined by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, modified as follows:

(A) At least one month prior to the arbitration hearing, the arbitrator(s) shall convene a preliminary hearing, which shall be conducted in the fashion of a pretrial conference.

(B) The arbitrator(s) award shall be in writing and shall indicate separately the arbitrator's decision with respect to each contested issue, except with respect to those issues ruled upon during the course of the hearing.

## Exhibit G

(C) Any party to the arbitration may seek injunctive relief from courts of competent jurisdiction to prevent another party from taking actions alleged by a party to be in violation of this Agreement, pending a final determination by the arbitrator(s).

(D) The arbitration shall take place in Montgomery County, Virginia.

5. Notice and other correspondence regarding this Agreement shall be hand delivered or mailed through the U.S. Mail or by national overnight carrier to the following addresses, or to such other or additional addresses as the parties may designate in writing:

EDA: Brian Hamilton  
Economic Development Authority of Montgomery County, Virginia  
755 Roanoke Street, Suite 2H  
Christiansburg, Virginia 24073  
hamiltonbt@montgomerycountyva.gov  
(540) 382-5732  
(FAX #) 381-6888

PURCHASER: Jorge Lopez  
Zapi, Inc.  
267 Hein Drive  
Cary, North Carolina 27529  
jlopez@zapiinc.com  
(919) 789-4588 (x208)

6. This Agreement shall not be assigned by the EDA or the Purchaser without the written consent of the others.

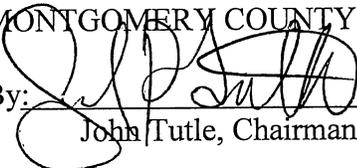
7. This Agreement embodies the entire understanding of the parties, there being no promises or undertakings written or oral, other than those expressly set forth herein. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

[Signature Page Follows]

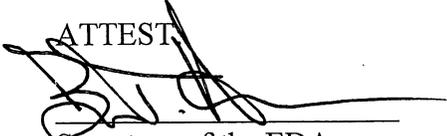
**Exhibit G**

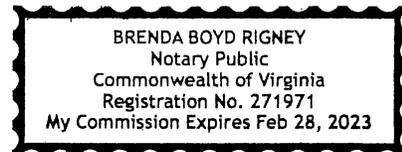
WITNESS the following signatures and seals:

ECONOMIC DEVELOPMENT AUTHORITY OF  
MONTGOMERY COUNTY

By:   
John Tuttle, Chairman

ATTEST

  
Secretary of the EDA



STATE OF VIRGINIA,  
COUNTY OF MONTGOMERY, to-wit:

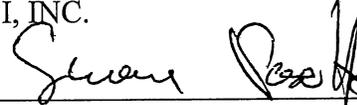
The foregoing instrument bearing date of January 21, 2020, 2020, was acknowledged before me this 28<sup>th</sup> day of January 2020, by John Tuttle, Chairman of the Economic Development Authority of Montgomery County.

My commission expires: 02-28-23  
Registration Number: 271971

  
Notary Public

**Exhibit G**

ZAPI, INC.

By:   
Simone Pasotti, President

STATE OF NORTH CAROLINA,

CITY/COUNTY OF JOHNSTON, to-wit:

The foregoing instrument bearing date of JANUARY 21, 2020, was acknowledged before me this 27TH, day of JANUARY, 2020, by Simone Pasotti, President of and on behalf of Zapi, Inc.

My commission expires:  
Registration Number:

  
Notary Public

CHRISTOPHER MCFARLAND  
NOTARY PUBLIC  
JOHNSTON COUNTY, N.C.  
My Commission Expires 08-14-2024.

**DRAFT FIRST AMENDMENT TO  
AGREEMENT OF  
PURCHASE AND SALE OF PROPERTY**

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE OF PROPERTY (the "**Amendment**"), made and entered into on the \_\_\_\_ day of April, 2020, by and between the **Economic Development Authority of Montgomery County, Virginia ("Seller")**, and **ZAPI, Inc.**, a North Carolina corporation, and/or its successors or assigns ("**Buyer**");

RECITALS:

A. Seller and Buyer entered into that certain Agreement of Purchase and Sale of Property dated January 21, 2020 (the "**Contract**") for the sale and purchase of that certain real property located at 3155 & 3157 State Street, Blacksburg, Montgomery County, Virginia, as more specifically described therein (the "**Property**").

B. Seller and Buyer have agreed to amend the Contract, all subject to and in accordance with the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree:

1. Recitals and Undefined Terms. The above recitals are incorporated herein by reference and any capitalized but undefined terms used herein shall have the same meaning as set forth in the Contract.

2. Review Period. The Review Period as defined in Section 3.1 is hereby extended an additional sixty (60) days and shall expire at 5:00 p.m. EST on Friday, June 19, 2020.

3. Scope of Modification. Except as expressly amended herein, all other terms and provisions of the Contract shall remain in full force and effect.

4. Counterparts; Ratification; Authority. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[intentionally blank; signatures follow]*

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment to be executed as of the day and year first above written.

**SELLER:**

**Economic Development Authority of Montgomery County,  
Virginia**

By: \_\_\_\_\_  
John Tuttle, Chairman

**BUYER:**

**ZAPI, Inc.,**  
a North Carolina corporation

By: \_\_\_\_\_  
Simone Pasotti, President